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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, May 12, 2009
9:00 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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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 00–094–2]

RIN 0579–AB84

Interstate Movement of Sheep and Goats

Correction

In rule document E9–7233 beginning on page 14703 in the issue of Wednesday, April 1, 2009, make the following correction:

On page 14706, TABLE 1—SHEEP AND GOATS: IMPORTS AND EXPORTS, 2007 should be corrected as follows:

TABLE 1—SHEEP AND GOATS: IMPORTS AND EXPORTS, 2007

Item	Imports		Exports	
	Numbers	Value in millions	Numbers	Value in millions
Sheep	92	$0.058	116,618	$8.148
Goats	33	0.010	9,231	0.597
Total	125	0.068	125,849	8.745

Source: Global Trade Atlas, November 2008.

[FR Doc. Z9–7233 Filed 4–14–09; 8:45 am]
BILLING CODE 1505–01–D

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

RIN 3055–AA10

Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Direct final rule.

SUMMARY: The Farm Credit System Insurance Corporation (FCSIC or Corporation) is issuing a direct final rule amending its premium regulations to reflect the amendments of the Farm Credit Act of 1971 that were made by the enactment of the Food, Conservation, and Energy Act of 2008. The purpose of the amended rule is to clarify the premium regulations and eliminate provisions of the premium regulations that are obsolete or inconsistent with the Farm Credit Act of 1971, as amended.

DATES: If we receive no significant adverse comment on or before May 15, 2009, these regulations will be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**.

If we receive significant adverse comment on an amendment, paragraph, or section of the rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

ADDRESSES: You may send comments by electronic mail through the ''Contact Us'' section of FCSIC's Web site, *http://www.fcsic.gov*, or through the Governmentwide *www.regulations.gov* portal. You may also send comments to James M. Morris, General Counsel, at *morrisj@fcsic.gov* or by mail at the address listed below. Copies of all comments we receive may be reviewed in our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: James M. Morris, General Counsel, Farm

Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, VA 22102, 703–883–4380, TTY 703–883–4390, Fax 703–790–9088.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the rule will not have significant impact on a substantial number of small entities. Each of the banks in the Farm Credit System (FCS or System), considered together with its affiliated associations, has assets and annual income in excess of the amounts that qualify them as small entities. Therefore, System banks are not ''small entities'' as defined in the Regulatory Flexibility Act.

Direct Final Rulemaking

We are amending our premium regulations using the ''direct final'' procedure for rulemaking. Direct final rulemaking permits agencies to adopt noncontroversial rules on an expedited basis, without going through the usual proposed and final stages of notice-and-comment rulemaking. This process enables us to reduce the time and resources we need to develop, review, and publish a noncontroversial final rule while still affording the public an adequate opportunity to comment on or object to the rule. Direct final rulemaking was recommended by the Administrative Conference of the United States.[1]

In direct final rulemaking, we notify the public that a rule will become final on a specified future date unless we receive significant adverse comment during the comment period specified in the notice. A significant adverse comment is one where the commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from us in a notice-and-comment rulemaking.

We believe these amendments are noncontroversial. As discussed below, the provisions of the Farm Credit Act of 1971 (Act)[2] that govern FCSIC premiums were recently amended. Some of FCSIC's existing premium regulations are inconsistent with the amended provisions of the Act. Generally, regulatory provisions that are inconsistent with subsequent statutory amendments are invalidated by operation of law. The Corporation wishes to amend its regulations in order to minimize any potential for confusion and clarify the regulations. This rule withdraws regulations that are inconsistent with the amended provisions of the Act and clarifies the effect of these amended statutory provisions.

We do not anticipate significant adverse comment on this rulemaking. If we receive no significant adverse comment, we will publish a notice of the effective date of the rule in accordance with applicable law.

If we do receive significant adverse comment during the comment period, we will publish a notice of withdrawal of the relevant portions of this rule. Our notice will also indicate how further rulemaking would proceed.

Background

The Farm Credit System Insurance Corporation (FCSIC or Corporation) insures the timely payment of principal and interest on insured debt obligations issued by Farm Credit System banks.

On March 23, 2007, the Corporation's Board of Directors adopted a legislative proposal requesting that the Congress amend the Act to, *inter alia,* base premiums on the outstanding insured debt obligations instead of loans, and permit the Corporation to collect a broader range of premiums on insured debt.

Provisions incorporating the legislative proposal became a part of versions of proposed Farm Bills in the House and Senate. Ultimately, enactment of the Food, Conservation, and Energy Act (FCE Act)[3] in 2008 amended the provisions of the Farm Credit Act of 1971[4] that govern FCSIC premiums to include[5] the Corporation's proposed changes.

As amended, the Act's provisions assess premiums that are generally based on each bank's pro rata share of outstanding insured debt obligations (rather than on loans), aligning premiums with the obligations that FCSIC insures. The amendments reduce the total insured debt obligations on which premiums are assessed by 90 percent of Federal government-guaranteed loans and investments and 80 percent of State government-guaranteed loans and investments, and deduct similar percentages of such guaranteed loans and investments when calculating the ''secure base amount.'' If the Farm Credit Insurance Fund is below the secure base amount, the amended Act requires that each insured Farm Credit System bank pay FCSIC the premium due from the bank, which shall be equal to (a) the adjusted average outstanding insured obligations multiplied by 0.0020; and (b) the average principal outstanding on loans in nonaccrual status and average amount outstanding of other than temporarily impaired investments multiplied by 0.0010; subject to FCSIC's power to reduce the premium in its sole discretion.

The statutory amendments also clarified that FCSIC may collect premiums more frequently than annually. The amended Act provides that each insured System bank shall file with the Corporation a certified statement showing the amount of the premium due the Corporation from the bank. The Act mandates that each insured System bank shall pay to the Corporation the premium payments required under the statute not more frequently than once in each calendar quarter, in such manner and at such one or more times as the Board of Directors shall prescribe. The certified statement is to be filed on a date to be determined in the sole discretion of the Corporation. Under existing regulations, the certified statement and payments must be received by January 31.[6] No change is being made to this date.

In June 2008, the Corporation's Board of Directors took action to implement the amendments of the Act's premium provisions. The Board implemented (effective on July 1, 2008) the new premium rates and calculation method and adjusted the premiums pursuant to the Corporation's authority under section 5.55(a)(3) of the Act, as amended by the FCE Act. Consistent with the Corporation's past practice of generally adjusting premium rates quarterly, the new rates were made effective at the beginning of the next quarter, July 1, 2008.

The Corporation has existing regulations concerning premiums.[7] The Corporation has concluded that some of those regulations are inconsistent with

[1] Recommendation 95–4, referencing the Administrative Procedure Act (APA) ''good cause'' exemption at 5 U.S.C. 553(b)(B) (adopted June 15, 1995).

[2] 12 U.S.C. 2001 *et seq.*

[3] Public Law 110–234 (2008), Public Law 110–246, 122 Stat. 1651 (2008).

[4] 12 U.S.C. 2001 *et seq.*

[5] The House and Senate passed H.R. 2419 over veto, enacting 14 of 15 Farm Bill titles into law. On May 22, 2008, H.R. 2419 became Public Law 110–234. Because one title of the Farm Bill was omitted from H.R. 2419, in June 2008, Congress passed a new bill, H.R. 6124, enacting 15 Farm Bill titles. On June 18, 2008, H.R. 6124 became Public Law 110–246. Corresponding amendments of the premium provisions of the Farm Credit Act were included in both H.R. 2419 and H.R. 6124.

[6] 12 CFR 1410.4.

[7] 12 CFR part 1410.

the provisions of the Act, as amended by the FCE Act. Generally, regulatory provisions that are inconsistent with subsequent statutory amendments are invalidated by operation of law. The Corporation is amending its regulations in order to minimize any potential for confusion and clarify the regulations. The rule withdraws regulations that are inconsistent with the FCE Act and clarifies the effect of the premium provisions of the Act as amended by the FCE Act.

The provisions of the amended rule are consistent with the June 2008 action of the FCSIC Board of Directors implementing the new statutory premium calculations as of July 1, for the second half of 2008. The amended provisions of the Act are not applied retroactively and premiums are calculated under the old method for the first half of 2008.

In order to provide a measured and structured transition to the new premium levels, the Board of Directors, in its June action, also exercised its discretion under section 5.55(a)(3) of the Act to reduce the premiums from the 20 basis points rate imposed by the amended Act to an annualized rate of 15 basis points on the adjusted average outstanding insured obligations for the 3rd quarter of 2008, and to an annualized rate of 18 basis points on the adjusted average outstanding insured obligations for the 4th quarter of 2008. The amended rule reflects these rates.

The Corporation is generally limiting its current regulatory amendments to those that are necessary in order to eliminate provisions that are obsolete or inconsistent with the FCE Act. Accordingly, new regulatory definitions are not being added. While two new terms, ''investment'' and ''other than temporarily impaired,'' were added by the FCE Act, those terms can be interpreted as accounting terms. If experience under the new statutory provisions leads us to believe that these or other terms should be defined, those definitions will be added later.

A section of the existing regulations [8] provides that copies of the certified statements are available from the Corporation. The Corporation is amending this section to remove outdated references, but is not otherwise amending this provision. The banks and others may obtain copies of the current certified statements for 2008 by contacting the Corporation.

The FCE Act amendments clarified that, in addition to FCSIC's regulatory authority under title V of the Farm Credit Act, FCSIC has authority to adopt rules and regulations concerning provisions in title I of the Farm Credit Act that govern Farm Credit System banks passing along cost of insurance premiums. We note that section 1.12(b) of the Act, as amended by the FCE Act, no longer specifies how the Farm Credit System banks pass the cost of premiums to associations and other financing institutions, but requires that the banks do so ''in an equitable manner, as determined by the Corporation.'' This change gives the Farm Credit System banks flexibility in allocating premium costs to associations and other financing institutions. At this time, the Corporation is not amending regulations concerning section 1.12(b) or the manner in which the cost of such premiums are passed to associations and other financing institutions.

List of Subjects in 12 CFR Part 1410

Banks, Banking, Insurance, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, part 1410 of chapter XIV, title 12 of the Code of Federal Regulations is amended as follows:

PART 1410—PREMIUMS

■ 1. The authority citation for part 1410 is revised to read as follows:

Authority: Secs. 12 U.S.C. 2020, 2277a–4, 2277a–5, 2277a–7.

■ 2. Amend § 1410.2 as follows:
■ a. Revise paragraph (b);
■ b. Add the words ''or investments'' after the words ''Government-guaranteed loans'' in the heading of paragraph (d); and
■ c. Add the words ''or investments'' after the words ''loans or credits'' each place they appear in the introductory text of paragraph (d); and
■ d. Remove the words ''the Federal Intermediate Credit Bank of Jackson and'' from paragraph (e).

The revision reads as follows:

§ 1410.2 Definitions.

* * * * *

(b) *Average principal outstanding* means the average annual principal outstanding on a daily basis using balances as of the close of each day. In computing the average annual principal outstanding in this manner, the closing balance of the most recent past business day shall be the closing balance for days when an institution is closed.

* * * * *

■ 3. Revise § 1410.3 to read as follows:

§ 1410.3 Calculation and reporting of premiums due.

(a) *Reporting.* For purposes of computing premiums, each insured bank shall, without limitation, report all information concerning the insured bank; each direct lending association that is receiving (or has received) funds provided through the insured bank; and each other financing institution that is receiving (or has received) funds provided through the insured bank; that the Corporation determines is necessary in order to compute the premiums due under the Act.

(b) *Calculating the premium payment for periods from July 1, 2008 through December 31, 2008.* (1) The premium payment for the 3rd Quarter 2008 (defined for purposes of this section as the period from July 1, 2008 through September 30, 2008) and the premium payment for the 4th Quarter 2008 (defined for purposes of this section as the period October 1, 2008, through December 31, 2008) shall be equal to 25 percent of the amount computed by applying the premium calculation formulas contained in sections 5.55 and 5.56 of the Act (unless reduced by the Corporation acting under section 5.55(a)(3) of the Act or under paragraph (d) of this section) to the insured bank during the 3rd Quarter 2008 or 4th Quarter 2008, respectively.

(2) In accord with paragraph (b)(1) of this section, the premium payment for the 3rd Quarter 2008 (having been reduced by the Corporation acting under section 5.55(a)(3) of the Act) shall be equal to 25 percent of the following amount:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2) of the Act, multiplied by 0.0015; and

(ii) The product obtained by multiplying—

(A) The sum of—

(*1*) The average principal outstanding for the period on loans made by the bank (computed in accord with section 5.55 of the Act) that are in nonaccrual status; and

(*2*) The average amount outstanding for the period of other-than-temporarily impaired investments made by the bank (computed in accord with section 5.55 of the Act);

(B) By 0.0010.

(3) In accord with paragraph (b)(1) of this section, the premium payment for the 4th Quarter 2008 (having been reduced by the Corporation acting under section 5.55(a)(3) of the Act) shall be equal to 25 percent of the following amount:

(i) The average outstanding insured obligations issued by the bank for the

[8] 12 CFR 1410.6.

period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2) of the Act, multiplied by 0.0018; and

(ii) The product obtained by multiplying—

(A) The sum of—

(*1*) The average principal outstanding for the period on loans made by the bank (computed in accord with section 5.55 of the Act) that are in nonaccrual status; and

(*2*) The average amount outstanding for the period of other-than-temporarily impaired investments made by the bank (computed in accord with section 5.55 of the Act);

(B) By 0.0010.

(c) *Calculating the premium payment for periods in 2009 and subsequent years.* (1) The premium payment for periods in calendar year 2009 and subsequent years shall be equal to the amount computed by applying the premium calculation formulas contained in sections 5.55 and 5.56 of the Act (unless reduced by the Corporation acting under section 5.55(a)(3) of the Act or under paragraph (d) of this section) to the insured bank during the period.

(2) In accord with paragraph (c)(1) of this section, the premium payment for the period shall (unless reduced by the Corporation acting under section 5.55(a)(3) of the Act or under paragraph (d) of this section) be equal to:

(i) The average outstanding insured obligations issued by the bank for the period, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in section 5.55(a)(2), multiplied by 0.0020; and

(ii) The product obtained by multiplying—

(A) The sum of—

(*1*) The average principal outstanding for the period on loans made by the bank (computed in accord with section 5.55 of the Act) that are in nonaccrual status; and

(*2*) The average amount outstanding for the period of other than temporarily impaired investments made by the bank (computed in accord with section 5.55 of the Act);

(B) By 0.0010.

(d) *Secure base amount.* In addition to the Corporation's authority to reduce premiums under section 5.55(a)(3) of the Act, upon reaching the secure base amount determined by the Corporation in accordance with section 5.55 of the Act, the annual premium to be paid by each insured bank, computed in accordance with paragraphs (b) and (c) of this section, shall be reduced by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the Farm Credit banks for the following calendar year is sufficient to ensure that the Insurance Fund balance is maintained at not less than the secure base amount. The Corporation shall announce any such percentage no later than December 31 of the year prior to the January in which such premiums are to be paid.

§ 1410.4 [Amended]

■ 4. Amend § 1410.4 as follows:

■ a. Remove paragraph (a);

■ b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

■ c. Remove the heading from newly designated paragraph (a) and add the word ''*Payments.*'' as the new heading; and

■ d. Add the words, ''sections 5.55 and 5.56 of the Act, and'' after the words ''in accordance with'' in the first sentence of newly designated paragraph (a).

§ 1410.6 [Amended]

■ 5. Amend § 1410.6(a) as follows:

■ a. Remove the words ''The following forms are available from the Corporation:'' from paragraph (a) introductory text; and

■ b. Remove paragraphs (a)(1) and (a)(2).

Dated: April 9, 2009.

Roland E. Smith,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. E9–8535 Filed 4–14–09; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE293; Special Conditions No. 23–233–SC]

Special Conditions: Spectrum Aeronautical, LLC Model Freedom S–40 Airplane Special Conditions for Flight Performance, Flight Characteristics, and Operating Limitations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Spectrum Aeronautical, LLC Model Freedom S–40 airplane. This airplane will have a novel or unusual design feature(s) associated with engine location, certain performance, flight characteristics and operating limitations necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 2, 2009. We must receive your comments by June 1, 2009.

ADDRESSES: Mail your comments in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, *Attn:* Rules Docket No. CE293, 901 Locust, Room 506, Kansas City, Missouri 64106; or deliver your comments in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE293. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ross Schaller, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4162, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, views, or arguments. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. Send us your written comments in duplicate.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to

review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 21, 2007, Spectrum Aeronautical, LLC applied for a type certificate for their new model, the Freedom S–40. The Freedom S–40 is an all-new, high-performance, low wing, twin turbofan powered airplane. Design features include turbofan engines, aft engine location, new avionics, and certain performance characteristics inherent in this type of airplane that were not envisioned by the existing regulations.

The Freedom S–40 will be a new airplane and will have the following significant features incorporated:

- Two GE–Honda HF–120 turbofan engines rated at 2,095 pounds of thrust with a Full Authority Digital Engine Control (FADEC) system.
- The aircraft's general configuration will be similar to other normal category jet airplanes, including a T-tail, and a low wing with slight leading edge wing sweep.
- The cabin will have a maximum seating configuration for 9 passengers.
- The preliminary operational design criteria are:

Parameter	Symbol	S–40
Limit Speeds	V_{MO} (S.L. to FL250)	300 KEAS.
	M_{MO} (above FL250)	0.77 Mach.
Max Takeoff Weight		9,550 lb.
Max Landing Weight		8,650 lb.
Max Zero Fuel Weight		7,240 lb.
Flap Speeds	Takeoff/Approach Flaps	165 KEAS.
	Landing Flaps	155 KEAS.
Landing Gear Operating Speeds	V_{LO} (Retracting)	165 KEAS.
	V_{LO} (Extending)	165 KEAS.
Maximum Altitude		45,000 ft.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Spectrum Aeronautical, LLC must show that the Freedom S–40 meets the applicable provisions of part 23, as amended by Amendment 23–1 through 23–57 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Freedom S–40 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Freedom S–40 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Spectrum Aeronautical, LLC Model S–40 will incorporate the following novel or unusual design features: aft-mounted engines, certain performance and flight characteristics, and operating limitations necessary for this type of airplane.

Applicability

As discussed above, these special conditions are applicable to the Freedom S–40. Should Spectrum Aeronautical, LLC apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Spectrum Aeronautical, LLC Model S–40 airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Spectrum Aeronautical, LLC Model S–40 series airplanes.

Several 14 CFR part 23 paragraphs have been replaced by or supplemented with special conditions. These special conditions have been numbered to match the 14 CFR part 23 paragraphs they replace or supplement. Additionally, many of the other applicable part 23 paragraphs cross-reference paragraphs that are replaced by or supplemented with special

conditions. It is implied that the special conditions associated with these paragraphs must be applied. This principal applies to all part 23 paragraphs that cross-reference paragraphs associated with special conditions.

1. SC 23.45 General

Instead of compliance with § 23.45, the following apply:

(a) Unless otherwise prescribed, the performance requirements of this part must be met for—

(1) Still air and standard atmosphere; and

(2) Ambient atmospheric conditions.

(b) Performance data must be determined over not less than the following ranges of conditions—

(1) Airport altitudes from sea level to 10,000 feet; and

(2) [Reserved]

(3) Temperature from standard to 30 °C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions of § 23.1041 to § 23.1047 is shown, if lower.

(c) Performance data must be determined with the cowl flaps or other means for controlling the engine cooling air supply in the position used in the cooling tests required by § 23.1041 to § 23.1047.

(d) The available propulsive thrust must correspond to engine power, not exceeding the approved power, less—

(1) Installation losses; and

(2) The power absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance, as affected by engine power or thrust, must be based on a relative humidity:

(1) Of 80 percent at and below standard temperature; and

(2) From 80 percent, at the standard temperature, varying linearly down to 34 percent at the standard temperature plus 50 °F.

(f) Unless otherwise prescribed, in determining the takeoff and landing distances, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service. These procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The following, as applicable, must be determined on a smooth, dry, hard-surfaced runway—

(1) [Reserved];

(2) Accelerate-stop distance of SC 23.55;

(3) Takeoff distance and takeoff run of SC 23.59; and

(4) Landing distance of § 23.75.

Note: The effect on these distances of operation on other types of surfaces (for example, grass, gravel) when dry, may be determined or derived and these surfaces listed in the Airplane Flight Manual in accordance with SC 23.1583(p).

(h) The following also apply:

(1) Unless otherwise prescribed, the applicant must select the takeoff, enroute, approach, and landing configurations for the airplane.

(2) The airplane configuration may vary with weight, altitude, and temperature, to the extent that they are compatible with the operating procedures required by paragraph (h)(3) of this special condition.

(3) Unless otherwise prescribed, in determining the critical-engine-inoperative takeoff performance, takeoff flight path, and accelerate-stop distance, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service.

(4) Procedures for the execution of discontinued approaches and balked landings associated with the conditions prescribed in SC 23.67(c)(4) and SC 23.77(c) must be established.

(5) The procedures established under paragraphs (h)(3) and (h)(4) of this special condition must—

(i) Be able to be consistently executed by a crew of average skill in atmospheric conditions reasonably expected to be encountered in service;

(ii) Use methods or devices that are safe and reliable; and

(iii) Include allowance for any reasonably expected time delays in the execution of the procedures.

2. SC 23.51 Takeoff Speeds

Instead of compliance with § 23.51, the following apply:

(a) [Reserved]

(b) [Reserved]

(c) The following apply:

(l) V_1 must be established in relation to V_{EF} as follows:

(i) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but it must not be less than 1.05 V_{MC} determined under § 23.149(b) or, at the option of the applicant, not less than V_{MCG} determined under § 23.149(f).

(ii) The takeoff decision speed, V_1, is the calibrated airspeed on the ground at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, V_1, must be selected by the applicant but must not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine is failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of SC 23.55.

(2) The rotation speed, V_R, in terms of calibrated airspeed, must be selected by the applicant and must not be less than the greatest of the following:

(i) V_1;

(ii) 1.05 V_{MC} determined under § 23.149(b);

(iii) 1.10 V_{S1}; or

(iv) The speed that allows attaining the initial climb-out speed, V_2, before reaching a height of 35 feet above the takeoff surface in accordance with SC 23.57(c)(2).

(3) For any given set of conditions, such as weight, altitude, temperature, and configuration, a single value of V_R must be used to show compliance with both the one-engine-inoperative takeoff and all-engines-operating takeoff requirements.

(4) The takeoff safety speed, V_2, in terms of calibrated airspeed, must be selected by the applicant so as to allow the gradient of climb required in SC 23.67(c)(1) and (c)(2) but must not be less than 1.10 V_{MC} or less than 1.20 V_{S1}.

(5) The one-engine-inoperative takeoff distance, using a normal rotation rate at a speed 5 knots less than V_R, established in accordance with paragraph (c)(2) of this section, must be shown not to exceed the corresponding one-engine-inoperative takeoff distance, determined in accordance with SC 23.57 and SC 23.59(a)(1), using the established V_R. The takeoff, otherwise performed in accordance with SC 23.57, must be continued safely from the point at which the airplane is 35 feet above the takeoff surface and at a speed not less than the established V_2 minus 5 knots.

(6) The applicant must show, with all engines operating, that marked increases in the scheduled takeoff distances, determined in accordance with SC 23.59(a)(2), do not result from over-rotation of the airplane or out-of-trim conditions.

3. SC 23.53 Takeoff Performance

Instead of compliance with § 23.53, the following apply:

(a) [Reserved]

(b) [Reserved]

(c) Takeoff performance, as required by SC 23.55 through SC 23.59, must be determined with the operating engine(s) within approved operating limitations.

4. SC 23.55 Accelerate-Stop Distance

Instead of compliance with § 23.55, the following apply:

The accelerate-stop distance must be determined as follows:

(a) The accelerate-stop distance is the sum of the distances necessary to—

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming the critical engine fails at V_{EF}; and

(3) Come to a full stop from the point at which V_1 is reached.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distances if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

5. SC 23.57 Takeoff Path

Instead of compliance with § 23.57, the following apply:

The takeoff path is as follows:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1500 feet above the takeoff surface at or below which height the transition from the takeoff to the enroute configuration must be completed; and

(1) The takeoff path must be based on the procedures prescribed in SC 23.45;

(2) The airplane must be accelerated on the ground to V_{EF} at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction must not be initiated until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section—

(1) The slope of the airborne part of the takeoff path must not be negative at any point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface, and must continue at a speed as close as practical to, but not less than V_2, until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb must not be less than—

(i) 1.2 percent;

(ii) [Reserved];

(iii) [Reserved]; and

(4) Except for landing gear retraction, the airplane configuration must not be changed, and no change in power that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path to 35 feet above the takeoff surface must be determined by a continuous demonstrated takeoff.

(e) The takeoff path to 35 feet above the takeoff surface must be determined by synthesis from segments; and

(1) The segments must be clearly defined and must be related to distinct changes in configuration, power, and speed;

(2) The weight of the airplane, the configuration, and the power must be assumed constant throughout each segment and must correspond to the most critical condition prevailing in the segment; and

(3) The takeoff flight path must be based on the airplane's performance without utilizing ground effect.

6. SC 23.59 Takeoff Distance and Takeoff Run

Instead of compliance with § 23.59, the following apply:

The takeoff distance and, at the option of the applicant, the takeoff run, must be determined.

(a) Takeoff distance is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface as determined under SC 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with SC 23.57.

(b) If the takeoff distance includes a clearway, the takeoff run is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface as determined under SC 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with SC 23.57.

7. SC 23.61 Takeoff Flight Path

Instead of compliance with § 23.61, the following apply:

The takeoff flight path must be determined as follows:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with SC 23.59.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths, as determined in accordance with SC 23.57 and with paragraph (a) of this section, reduced at each point by a gradient of climb equal to—

(1) 0.8 percent;

(2) [Reserved];

(3) [Reserved]

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

8. SC 23.63 Climb: General

Instead of compliance with § 23.63, the following apply:

(a) Compliance with the requirements of § 23.65, SC 23.67, § 23.69, and SC 23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1047 has been demonstrated; and

(3) Unless otherwise specified, with one engine inoperative, at a bank angle not exceeding 5 degrees.

(b) [Reserved]

(c) [Reserved]

(d) Compliance must be shown at weights as a function of airport altitude and ambient temperature within the operational limits established for takeoff and landing, respectively, with—

(1) SC sections 23.67(c)(1), 23.67(c)(2), and 23.67(c)(3) for takeoff; and

(2) SC sections 23.67(c)(3), 23.67(c)(4), and 23.77(c) for landing.

9. SC 23.66 Takeoff Climb: One Engine Inoperative

[Reserved]

10. SC 23.67 Climb: One Engine Inoperative

Instead of compliance with § 23.67, the following apply:

(a) [Reserved]

(b) [Reserved]

(c) The following apply:

(1) Takeoff; landing gear extended. The steady gradient of climb at the altitude of the takeoff surface must be measurably positive, with—

(i) The critical engine inoperative;

(ii) The remaining engine at takeoff power;

(iii) The landing gear extended, and all landing gear doors open;

(iv) The wing flaps in the takeoff position(s);
(v) The wings level; and
(vi) A climb speed equal to V_2.
(2) Takeoff; landing gear retracted. The steady gradient of climb at an altitude of 400 feet above the takeoff surface must be not less than 2.0 percent, with—
(i) The critical engine inoperative;
(ii) The remaining engine at takeoff power;
(iii) The landing gear retracted;
(iv) The wing flaps in the takeoff position(s);
(v) A climb speed equal to V_2.
(3) Enroute. The steady gradient of climb at an altitude of 1,500 feet above the takeoff or landing surface, as appropriate, must be not less than 1.2 percent, with—
(i) The critical engine inoperative;
(ii) The remaining engine at not more than maximum continuous power;
(iii) The landing gear retracted;
(iv) The wing flaps retracted; and
(v) A climb speed not less than 1.2 V_{S1}.
(4) Discontinued approach. The steady gradient of climb at an altitude of 400 feet above the landing surface must be not less than 2.1 percent, with—
(i) The critical engine inoperative;
(ii) The remaining engine at takeoff power;
(iii) Landing gear retracted;
(iv) Wing flaps in the approach position(s) in which V_{S1} for these position(s) does not exceed 110 percent of the V_{S1} for the related all-engines-operated landing position(s); and
(v) A climb speed established in connection with normal landing procedures but not exceeding 1.5 V_{S1}.

11. SC 23.73 Reference Landing Approach Speed

Instead of compliance with § 23.73, the following apply:
(a) [Reserved].
(b) [Reserved].
(c) The reference landing approach speed, V_{REF}, must not be less than the greater of 1.05 V_{MC}, determined in § 23.149(c), and 1.3 V_{SO}.

12. SC 23.77 Balked Landing

Instead of compliance with § 23.77, the following apply:
(a) [Reserved].
(b) [Reserved].
(c) Each airplane must be able to maintain a steady gradient of climb of at least 3.2 percent with—
(1) Not more than the power that is available on each engine eight seconds after initiation of movement of the power controls from the minimum flight idle position;
(2) Landing gear extended;
(3) Wing flaps in the landing position; and
(4) A climb speed equal to V_{REF}, as defined in SC 23.73(c).

13. SC 23.177 Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:
(a) The static directional stability, as shown by the tendency to recover from a wings level sideslip with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach, and landing configurations. This must be shown with symmetrical power up to maximum continuous power, and at speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate). The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip, up to that at which full rudder is used or a control force limit in § 23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{S1} to V_O, the rudder pedal force must not reverse.
(b) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for all landing gear and flap positions. This must be shown with symmetrical power up to 75 percent of maximum continuous power at speeds above 1.2 V_{S1} in the takeoff configuration(s) and at speeds above 1.3 V_{S1} in other configurations, up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate) for the configuration being investigated, in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be that necessary to maintain a 3 degree angle of descent in coordinated flight. The static lateral stability must not be negative at 1.2 V_{S1} in the takeoff configuration, or at 1.3 V_{S1} in other configurations. The angle of sideslip for these tests must be appropriate to the type of airplane, but in no case may the constant heading sideslip angle be less than that obtainable with a 10 degree bank, or if less, the maximum bank angle obtainable with full rudder deflection or 150-pound rudder force.
(c) Paragraph (b) of this special condition does not apply to acrobatic category airplanes certificated for inverted flight.
(d) In straight, steady slips at 1.2 V_{S1} for any landing gear and flap positions, and for any symmetrical power conditions up to 50 percent of maximum continuous power, the aileron and rudder control movements and forces must increase steadily, but not necessarily in constant proportion, as the angle of sideslip is increased up to the maximum appropriate to the type of airplane. At larger slip angles, up to the angle at which the full rudder or aileron control is used or a control force limit contained in § 23.143 is reached, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Rapid entry into, and recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

14. SC 23.201 Wings Level Stall

Instead of compliance with § 23.201, the following apply:
(a) It must be possible to produce and to correct roll by unreversed use of the rolling control and to produce and to correct yaw by unreversed use of the directional control, up to the time the airplane stalls.
(b) The wings-level stall characteristics must be demonstrated in flight as follows. Starting from a speed at least 10 knots above the stall speed, the elevator control must be pulled back so that the rate of speed reduction will not exceed one knot per second until a stall is produced, as shown by either:
(1) An uncontrollable downward pitching motion of the airplane;
(2) A downward pitching movement of the airplane that results from the activation of a stall avoidance device (for example, stick pusher); or
(3) The control reaching the stop.
(c) Normal use of elevator control for recovery is allowed after the downward pitching motion of paragraphs (b)(1) or (b)(2) of this section has unmistakably been produced, or after the control has been held against the stop for not less than the longer of two seconds or the time employed in the minimum steady flight speed determination of § 23.49.
(d) During the entry into and the recovery from the maneuver, it must be possible to prevent more than 15 degrees of roll or yaw by the normal use of controls.
(e) Compliance with the requirements of this section must be shown under the following conditions:
(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.
(2) [Reserved]
(3) [Reserved]
(4) Thrust:
(i) Idle; and
(ii) The thrust necessary to maintain level flight at 1.6V_{S1}. However, if the thrust-to-weight ratio at this condition will result in extreme nose-up attitudes, the test may be carried out with the

thrust required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{S0}, except that the thrust may not be less than 50 percent of maximum continuous thrust.

(5) Trim. The airplane trimmed at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

(6) [Reserved]

15. SC 23.203 Turning Flight and Accelerated Turning Stalls

Instead of compliance with § 23.203, the following apply:

Turning flight and accelerated turning stalls must be demonstrated in tests as follows:

(a) Establish and maintain a coordinated turn in a 30 degree bank. Reduce speed by steadily and progressively tightening the turn with the elevator until the airplane is stalled, as defined in SC 23.201(b). The rate of speed reduction must be constant, and—

(1) For a turning flight stall, may not exceed one knot per second; and

(2) For an accelerated turning stall, be 3 to 5 knots per second with steadily increasing normal acceleration.

(b) After the airplane has stalled, as defined in SC 23.201(b), it must be possible to regain wings level flight by normal use of the flight controls, but without increasing power and without—

(1) Excessive loss of altitude;

(2) Undue pitch-up;

(3) Uncontrollable tendency to spin;

(4) Exceeding a bank angle of 60 degrees in the original direction of the turn or 30 degrees in the opposite direction in the case of turning flight stalls;

(5) Exceeding a bank angle of 90 degrees in the original direction of the turn or 60 degrees in the opposite direction in the case of accelerated turning stalls; and

(6) Exceeding the maximum permissible speed or allowable limit load factor.

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) [Reserved]

(3) [Reserved]

(4) Thrust:

(i) Idle; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1}. However, if the thrust-to-weight ratio at this condition will result in extreme nose-up attitudes, the test may be carried out with the thrust required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{S0}, except that the thrust may not be less than 50 percent of maximum continuous thrust.

(5) Trim at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

(6) [Reserved]

16. SC 23.251 Vibration and Buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be demonstrated in flight to be free from any vibration and buffeting that would prevent continued safe flight in any likely operating condition.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration under any appropriate speed and thrust conditions up to V_{DF}/M_{DF}. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with SC 23.1505.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

17. SC 23.253 High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO}, without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D, V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) Maximum speed for stability characteristics, V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of § 23.175(b)(1), SC 23.177, and § 23.181 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

(c) [Reserved]

18. SC 25.255 Out of Trim Characteristics

Instead of compliance with § 25.255, the following apply:

(a) From an initial condition with the airplane trimmed at cruise speeds up to V_{MO}/M_{MO}, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and nose-down directions, which results from the greater of—

(1) A three-second movement of the longitudinal trim system at its normal rate for the particular flight condition with no aerodynamic load, except as limited by stops in the trim system, including those required by § 23.655(b); or

(2) The maximum mistrim that can be sustained by the autopilot while maintaining level flight in the high-speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this special condition, when the normal acceleration is varied from +1 g to the positive and

negative values specified in paragraph (c) of this special condition—

(1) The stick force vs. g curve must have a positive slope at any speed up to and including V_{FC}/M_{FC}; and

(2) At speeds between V_{FC}/M_{FC} and V_{DF}/M_{DF} the direction of the primary longitudinal control force may not reverse.

(c) Except as provided in paragraphs (d) and (e) of this special condition, compliance with the provisions of paragraph (a) of this special condition must be demonstrated in flight over the acceleration range—

(1) –1 g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to –1 g and +2.5 g

(d) If the procedure set forth in paragraph (c)(2) of this special condition is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this special condition.

(e) During flight tests required by paragraph (a) of this special condition, the limit maneuvering load factors prescribed in §§ 23.333(b) and 23.337, and the maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under SC 23.251(e), need not be exceeded. In addition, the entry speeds for flight test determinations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery, without exceeding V_{DF}/M_{DF}.

(f) In the out-of-trim condition specified in paragraph (a) of this special condition, it must be possible from an overspeed condition at V_{DF}/M_{DF} to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control alone or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at V_{DF}/M_{DF} that the longitudinal trim can be actuated in the airplane nose-up direction with primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that it is a strong deterrent to further application of primary longitudinal control force.

19. SC 23.703 Takeoff Warning System

Instead of compliance with § 23.703, the following apply:

Unless it can be shown that a lift or longitudinal trim device that affects the takeoff performance of the aircraft would not give an unsafe takeoff configuration when selection out of an approved takeoff position, a takeoff warning system must be installed and meet the following requirements:

(a) The system must provide to the pilots an aural warning that is automatically activated during the initial portion of the takeoff roll if the airplane is in a configuration that would not allow a safe takeoff. The warning must continue until—

(1) The configuration is changed to allow safe takeoff, or

(2) Action is taken by the pilot to abandon the takeoff roll.

(b) The means used to activate the system must function properly for all authorized takeoff power settings and procedures and throughout the ranges of takeoff weights, altitudes, and temperatures for which certification is requested.

20. SC 23.735 Brakes

Instead of compliance with § 23.735, the following apply:

(a) Brakes must be provided. The landing brake kinetic energy capacity rating of each main wheel brake assembly must not be less than the kinetic energy absorption requirements determined under either of the following methods:

(1) The brake kinetic energy absorption requirements must be based on a conservative rational analysis of the sequence of events expected during landing at the design landing weight.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula:

$$KE = 0.0443\ W\ V^2/N$$

Where—
KE = Kinetic energy per wheel (lb-ft);
W = Design landing weight (lb);
V = Airplane speed in knots. V must be not less than V_S, the power off stalling speed of the airplane at sea level, at the design landing weight, and in the landing configuration; and
N = Number of main wheels with brakes.

(b) Brakes must be able to prevent the wheels from rolling on a paved runway with takeoff power on the critical engine, but need not prevent movement of the airplane with wheels locked.

(c) During the landing distance determination required by § 23.75, the pressure on the wheel braking system must not exceed the pressure specified by the brake manufacturer.

(d) If antiskid devices are installed, the devices and associated systems must be designed so that no single probable malfunction or failure will result in a hazardous loss of braking ability or directional control of the airplane.

(e) In addition, the rejected takeoff brake kinetic energy capacity rating of each main wheel brake assembly must not be less than the kinetic energy absorption requirements determined under either of the following methods—

(1) The brake kinetic energy absorption requirements must be based on a conservative rational analysis of the sequence of events expected during a rejected takeoff at the design takeoff weight.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula—

$$KE = 0.0443\ W\ V^2/N$$

Where—
KE = Kinetic energy per wheel (lb-ft.);
W = Design takeoff weight (lb);
V = Ground speed, in knots, associated with the maximum value of V_1 selected in accordance with SC 23.51(c)(1);
N = Number of main wheels with brakes.

21. SC 23.1323 Airspeed Indicating System

Instead of compliance with § 23.1323, the following apply:

(a) Each airspeed indicating instrument must be calibrated to indicate true airspeed (at sea level with a standard atmosphere) with a minimum practicable instrument calibration error when the corresponding pitot and static pressures are applied.

(b) Each airspeed system must be calibrated in flight to determine the system error. The system error, including position error, but excluding the airspeed indicator instrument calibration error, may not exceed three percent of the calibrated airspeed or five knots, whichever is greater, throughout the following speed ranges:

(1) 1.3 V_{S1} to V_{MO}/M_{MO}, whichever is appropriate, with flaps retracted.

(2) 1.3 V_{SI} to V_{FE} with flaps extended.

(c) The design and installation of each airspeed indicating system must provide positive drainage of moisture from the pitot static plumbing.

(d) If certification for instrument flight rules or flight in icing conditions is requested, each airspeed system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

(e) In addition, the airspeed indicating system must be calibrated to determine the system error during the accelerate/takeoff ground run. The ground run calibration must be obtained between 0.8 of the minimum value of V_1, and 1.2 times the maximum value of V_1, considering the approved ranges of altitude and weight. The ground run calibration must be determined assuming an engine failure at the minimum value of V_1.

(f) Where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

22. SC 23.1505 Airspeed Limitations

Instead of compliance with § 23.1505, the following apply:

The maximum operating limit speed (V_{MO}/M_{MO}-airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary in the flight test conducted under SC 23.253.

23. SC 23.1583 Operating Limitations

Instead of compliance with § 23.1583, the following apply:

The Airplane Flight Manual must contain operating limitations determined under this part 23, including the following—

(a) *Airspeed limitations.* The following information must be furnished:

(1) Information necessary for the marking of the airspeed limits on the indicator as required in § 23.1545, and the significance of each of those limits and of the color-coding used on the indicator.

(2) The speeds V_{MC}, V_O, V_{LE}, and V_{LO}, if established, and their significance.

(3) In addition—

(i) The maximum operating limit speed, V_{MO}/M_{MO} and a statement that this speed must not be deliberately exceeded in any regime of flight (climb, cruise or descent) unless a higher speed is authorized for flight test or pilot training;

(ii) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures; and

(iii) The airspeed limits must be shown in terms of V_{MO}/M_{MO}.

(b) *Powerplant limitations.* The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments required by § 23.1549 through § 23.1553.

(c) *Weight.* The airplane flight manual must include—

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) [Reserved]

(4) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of SC 23.63(d)(1); and

(ii) The accelerate-stop distance determined under SC 23.55 is equal to the available runway length plus the length of any stopway, if utilized; and either:

(iii) The takeoff distance determined under SC 23.59(a) is equal to the available runway length; or

(iv) At the option of the applicant, the takeoff distance determined under SC 23.59(a) is equal to the available runway length plus the length of any clearway and the takeoff run determined under SC 23.59(b) is equal to the available runway length.

(5) The maximum landing weight for each airport altitude within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of SC 23.63(d)(2) for ambient temperatures within the range selected by the applicant; and

(ii) The landing distance determined under § 23.75 for standard temperatures is equal to the available runway length.

(6) The maximum zero wing fuel weight, where relevant, as established in accordance with § 23.343.

(d) *Center of gravity.* The established center of gravity limits.

(e) *Maneuvers.* The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section.

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) [Reserved]

(5) Maneuvers are limited to any maneuver incident to normal flying, stalls, (except whip stalls) and steep turns in which the angle of bank is not more than 60 degrees.

(f) *Maneuver load factor.* The positive limit load factors in g's.

(g) *Minimum flight crew.* The number and functions of the minimum flight crew determined under § 23.1523.

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been given.

(i) *Maximum operating altitude.* The maximum altitude established under § 23.1527.

(j) *Maximum passenger seating configuration.* The maximum passenger-seating configuration.

(k) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(l) *Baggage and cargo loading.* The following information for each baggage and cargo compartment or zone—

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(m) *Systems.* Any limitations on the use of airplane systems and equipment.

(n) *Ambient temperatures.* Where appropriate, maximum and minimum ambient air temperatures for operation.

(o) *Smoking.* Any restrictions on smoking in the airplane.

(p) *Types of surface.* A statement of the types of surface on which operations may be conducted. (See SC 23.45(g) and SC 23.1587(a)(4) and SC 23.1587(d)(4)).

24. SC 23.1585 Operating Procedures

Instead of compliance with § 23.1585, the following apply:

(a) Information concerning normal, abnormal (if applicable), and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance must be furnished, including—

(1) An explanation of significant or unusual flight or ground handling characteristics;

(2) The maximum demonstrated values of crosswind for takeoff and landing, and procedures and information pertinent to operations in crosswinds;

(3) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling);

(4) Procedures for restarting any turbine engine in flight, including the effects of altitude; and

(5) Procedures, speeds, and configuration(s) for making a normal approach and landing, in accordance with SC 23.73 and § 23.75, and a transition to the balked landing condition.

(6) [Reserved]

(b) [Reserved]

(c) In addition to paragraph (a) of this special condition, the following information must be furnished:

(1) Procedures, speeds, and configuration(s) for making an approach and landing with one engine inoperative;

(2) Procedures, speeds, and configuration(s) for making a balked landing with one engine inoperative and the conditions under which a balked landing can be performed safely, or a warning against attempting a balked landing;

(3) The V_{SSE} determined in § 23.149; and

(4) Procedures for restarting any engine in flight including the effects of altitude.

(d) [Reserved]

(e) [Reserved]

(f) In addition to paragraphs (a) and (c) of this section, the information must include the following:

(1) Procedures, speeds, and configuration(s) for making a normal takeoff.

(2) Procedures and speeds for carrying out an accelerate-stop in accordance with SC 23.55.

(3) Procedures and speeds for continuing a takeoff following engine failure in accordance with SC 23.59(a)(1) and for following the flight path determined under SC 23.57 and SC 23.61(a).

(g) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(h) For each airplane showing compliance with § 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(i) Information on the total quantity of usable fuel for each fuel tank, and the effect on the usable fuel quantity, as a result of a failure of any pump, must be furnished.

(j) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

25. SC 23.1587 Performance Information

Instead of compliance with § 23.1587, the following apply:

Unless otherwise prescribed, performance information must be provided over the altitude and temperature ranges required by SC 23.45(b).

(a) The following information must be furnished—

(1) The stalling speeds V_{SO} and V_{S1} with the landing gear and wing flaps retracted, determined at maximum weight under § 23.49, and the effect on these stalling speeds of angles of bank up to 60 degrees;

(2) The steady rate and gradient of climb with all engines operating, determined under § 23.69(a);

(3) The landing distance, determined under § 23.75 for each airport altitude and standard temperature, and the type of surface for which it is valid;

(4) The effect on landing distances of operation on other than smooth hard surfaces, when dry, determined under SC 23.45(g); and

(5) The effect on landing distances of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(b) [Reserved].

(c) [Reserved]

(d) In addition to paragraph (a) of this section, the following information must be furnished—

(1) The accelerate-stop distance determined under SC 23.55;

(2) The takeoff distance determined under SC 23.59(a);

(3) At the option of the applicant, the takeoff run determined under SC 23.59(b);

(4) The effect on accelerate-stop distance, takeoff distance and, if determined, takeoff run, of operation on other than smooth hard surfaces, when dry, determined under SC 23.45(g);

(5) The effect on accelerate-stop distance, takeoff distance, and if determined, takeoff run, of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component;

(6) The net takeoff flight path determined under SC 23.61(b);

(7) The enroute gradient of climb/descent with one engine inoperative, determined under § 23.69(b);

(8) The effect, on the net takeoff flight path and on the enroute gradient of climb/descent with one engine inoperative, of 50 percent of the headwind component and 150 percent of the tailwind component;

(9) Overweight landing performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights) as follows—

(i) The maximum weight for each airport altitude and ambient temperature at which the airplane complies with the climb requirements of SC 23.63(d)(2); and

(ii) The landing distance determined under § 23.75 for each airport altitude and standard temperature.

(10) The relationship between IAS and CAS determined in accordance with SC 23.1323(b) and (c).

(11) The altimeter system calibration required by § 23.1325(e).

Issued in Kansas City, Missouri on April 2, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8581 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE291; Special Conditions No. 23–231–SC]

Special Conditions: Spectrum Aeronautical, LLC Model 40; Lithium Polymer Battery Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Spectrum Aeronautical, LLC Model 40 (S–40) airplane. This airplane will have a novel or unusual design feature associated with the installation of lithium polymer (Li-Poly) batteries for emergency, main, and auxiliary power unit (APU) applications. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* April 7, 2009.

FOR FURTHER INFORMATION CONTACT: Jim Brady, Aerospace Engineer, Standards

Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 2007, Spectrum Aeronautical, LLC applied for a type certificate for their new model 40 airplane. The model 40 (S–40) airplane is a 2+9 (pilots + passengers) conventionally configured low wing normal category twin-engine jet airplane manufactured primarily from advanced carbon fiber composite materials. The model S–40 is designed to be certified for a single pilot operation for day, night, VFR, IFR and flight into known icing operations at altitudes up to 45,000 feet. The company will show compliance with Reduced Vertical Separation Minimums (RVSM) requirements. Spectrum proposes to utilize lithium polymer (Li-Poly) batteries for emergency, main, and auxiliary power unit (APU) on the model S–40 airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Spectrum Aeronautical, LLC must show that the model S–40 meets the applicable provisions of part 23, as amended by Amendments 23–1 through 23–57 thereto.

In addition, the certification basis includes certain special conditions, and exemptions that are not relevant to these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the S–40 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the model S–40 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Spectrum S–40 will incorporate the following novel or unusual design features: Spectrum proposes to utilize lithium polymer (Li-Poly) batteries for emergency, main, and auxiliary power unit (APU) on the Spectrum S–40 airplane model. This type of battery possesses certain failure and operational characteristics, and maintenance requirements that differ significantly from that of the nickel cadmium (Ni-Cd) and lead acid rechargeable batteries currently approved for installation in small airplanes. Current regulations in 14 CFR part 23 do not address installation of Li-Poly batteries. This special condition is being proposed to require that all characteristics of the Li-Poly battery and its installation that could affect safe operation of the Spectrum S–40 airplane are addressed, along with establishing that appropriate maintenance requirements must be provided to ensure electrical power is available from the batteries when needed.

Discussion of Comments

Notice of proposed special conditions No. 23–08–05–SC for the Spectrum Aeronautical, LLC Model 40 (S–40) airplanes was published on December 2, 2008 (73 FR 73195). No comments were received, and the special conditions are adopted as proposed except for paragraphs (8), (9), and (10). In paragraph (8), we added the words ''state of charge'' to indicate the condition of the batteries. In paragraph (9), we added the word ''manufacturer's'' to indicate which maintenance manual we were discussing. Finally, in paragraph (10), we reworded the paragraph to clarify the intent.

As discussed above, these special conditions are applicable to the Spectrum S–40. Should Spectrum Aeronautical LLC apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and Symbols.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Spectrum Aeronautical, LLC model S–40 airplanes.

Spectrum Aeronautical, LLC Model 40 Lithium Polymer Battery Installation

In lieu of the requirements of 14 CFR part 23, § 23.1353(a) through (e), lithium polymer batteries and battery installations on the Spectrum S–40 airplane must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any probable charging or discharging condition, or during any failure of the charging or battery monitoring system not shown to be extremely remote. The Li-Poly battery installation must be designed to preclude explosion or fire in the event of those failures.

(2) Li-Poly batteries must be designed to preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gasses emitted by any Li-Poly battery in normal operation or as the result of any failure of the battery charging or monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Li-Poly batteries that contain flammable fluids must comply with the flammable fluid fire protection requirements of 14 CFR part 23, § 23.863(a) through (d).

(5) No corrosive fluids or gasses that may escape from any Li-Poly battery may damage surrounding airplane structure or adjacent essential equipment.

(6) Each Li-Poly battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Li-Poly battery installations must have a system to control the charging

rate of the battery automatically, so as to prevent battery overheating or overcharging, and

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any Li-Poly battery installation whose function is required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers, whenever the capacity and state of charge of the batteries have fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness (ICAW) must contain recommended manufacturer's maintenance and inspection requirements to ensure that batteries, including single cells, meet a safety function level essential to the aircraft's continued airworthiness.

(i) The ICAW must contain operating instructions and equipment limitations in an installation maintenance manual.

(ii) The ICAW must contain installation procedures and limitation in a maintenance manual, sufficient to ensure that cells or batteries, when installed according to the installation procedures, still meet safety functional levels, essential to the aircraft's continued airworthiness. The limitation must identify any unique aspects of the installation.

(iii) The ICAW must contain corrective maintenance procedures to functionally check battery capacity at manufacturers recommended inspection intervals.

(iv) The ICAW must contain scheduled servicing information to replace batteries at manufacturers recommended replacement time.

(v) The ICAW must contain maintenance inspection requirements to visually check for a battery and/or charger degradation.

(10) The ICAW must contain maintenance procedures to check, at manufacturer's recommended inspection intervals, the function of any batteries in a rotating stock (spares) that experience degraded charge retention capability or other damage due to prolonged storage.

(11) System Safety Assessment process should address the software and complex hardware levels for the sensing, monitoring and warning systems, if these systems contain complex devices. The functional hazard assessment (FHA) for the system is required based on the intended functions described. The criticality of the specific functions will be determined by the safety assessment process for compliance with 14 CFR part 23, § 23.1309, and Advisory Circular 23.1309–1C contains acceptable means for accomplishing this requirement. For determining the failure condition, the criticality of a function will include the mitigating factors. The failure conditions must address the loss of function and improper operations.

It should be noted that these special conditions are not intended to replace 14 CFR part 23, § 23.1353 in the certification basis of the Spectrum model S–40 airplanes. The special conditions apply only to Li-Poly batteries and battery installations. The battery requirements of 14 CFR part 23, § 23.1353 would remain in effect for batteries and battery installations on the Spectrum airplane that do not utilize Li-Poly chemistry.

Issued in Kansas City, Missouri on April 7, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8582 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0347; Directorate Identifier 2009–CE–022–AD; Amendment 39–15883; AD 2009–08–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–12/47E Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. This condition has been reported to correct itself after several minutes.

This situation, if not corrected, could result in an undesired bank angle, which would constitute an unsafe condition.

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

DATES: This AD becomes effective April 20, 2009.

On April 20, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by May 15, 2009.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket 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 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.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone*: (816) 329–4059; *fax*: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On February 12, 2009, we issued AD 2009–04–14, Amendment 39–15820 (74 FR 7810; February 20, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009–04–14, we have received new MCAI that requires a revision of the operational procedures to be inserted into the pilot's operating handbook (POH).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency AD No. 2009–0080–E, dated April 3, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. This condition has been reported to correct itself after several minutes.
>
> This situation, if not corrected, could result in an undesired bank angle, which would constitute an unsafe condition.
>
> As an interim measure, EASA Emergency AD 2009–0028–E required the introduction of a maximum bank angle during climb. As a result of the ongoing investigation, the problem can be temporarily solved with some limitations in the take-off procedure.
>
> For the reason described above, this AD supersedes EASA AD 2008–0028–E and requires a revision of the operational procedures to be inserted into the POH. This action is still considered to be an interim solution and further AD action is likely to follow.

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

Relevant Service Information

Pilatus Aircraft Ltd. has issued Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the 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 have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the current FAA AD and the previous EASA emergency AD are not satisfying the unsafe condition. Operators must follow the new procedures to assure the unsafe condition is adequately addressed. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0347; Directorate Identifier 2009–CE–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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 39–15820 (74 FR 7810; February 20, 2009), and adding the following new AD:

2009–08–10 Pilatus Aircraft Ltd: Amendment 39–15883; Docket No. FAA–2009–0347; Directorate Identifier 2009–CE–022–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 20, 2009.

Affected ADs

(b) This AD supersedes AD 2009–04–14, Amendment 39–15820.

Applicability

(c) This AD applies to Models PC–12/47E airplanes, manufacturer serial numbers (MSN) 545 and MSN 1001 and subsequent, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 34: Navigation.

Reason

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

Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. This condition has been reported to correct itself after several minutes.

This situation, if not corrected, could result in an undesired bank angle, which would constitute an unsafe condition.

As an interim measure, EASA Emergency AD 2009–0028–E required the introduction of a maximum bank angle during climb. As a result of the ongoing investigation, the problem can be temporarily solved with some limitations in the take-off procedure.

For the reason described above, this AD supersedes EASA AD 2008–0028–E and requires a revision of the operational procedures to be inserted into the POH. This action is still considered to be an interim solution and further AD action is likely to follow.

Actions and Compliance

(f) Unless already done, before further flight as of April 20, 2009 (the effective date of this AD), do the following actions:

(1) Incorporate Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009, into the Pilatus PC–12/47E POH.

(2) Remove the information and/or the copy of AD 2009–04–14 required by AD 2009–04–14 to be inserted in the POH.

(3) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations 14 CFR 43.7 may do the actions required in this AD. Make an entry in the aircraft records showing compliance with this portion of the AD following 14 CFR 43.9.

FAA AD Differences

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

(1) Since we never allowed incorporating Temporary Revision No. 9, dated January 30, 2009, into the POH, we are not requiring the removal of Temporary Revision No. 9, dated January 30, 2009, as the MCAI requires.

(2) Current regulations (1 CFR 51.7) do not allow us to both incorporate by reference a service document and write the provisions of that document in the AD. We have chosen to incorporate by reference the temporary revision.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn*: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone*: (816) 329–4059; *fax*: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2009–0080–E, dated April 3, 2009, and Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009, for related information.

Material Incorporated by Reference

(i) You must use Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 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 Pilatus Aircraft Ltd., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0)41 619 62 08; fax: +41 (0)41 619 73 11; Internet: *www.pilatus-aircraft.com/*, or e-mail: *SupportPC12@pilatus-aircraft.com.* You may get Pilatus Aircraft Ltd. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009, from the Web site of the Swiss Federal Office of Civil Aviation (FOCA): *http://www.bazl.admin.ch/fachleute/lufttechnik/entwicklung/00677/index.html?lang=en.*

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

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

Issued in Kansas City, Missouri on April 8, 2009.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8516 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0124 Directorate Identifier 2009–CE–004–AD; Amendment 39–15882; AD 2009–08–09]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A damaged wiring harness which caused the air conditioning system circuit breaker to trip and evidencing a local overheating has been found on an in-service aircraft.

The investigation revealed that the damage (chafed wires) found on the wiring harness resulted from an interference with the under-floor attachment fittings of the cabin partition

net which was due to an incorrect routing of the harness while on the production line.

Such conditions could result in an electrical short and potential loss of several functions essential for the safety of flight.

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

DATES: This AD becomes effective May 20, 2009.

On May 20, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; 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 February 13, 2009 (74 FR 7194). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A damaged wiring harness which caused the air conditioning system circuit breaker to trip and evidencing a local overheating has been found on an in-service aircraft.

The investigation revealed that the damage (chafed wires) found on the wiring harness resulted from an interference with the under-floor attachment fittings of the cabin partition net which was due to an incorrect routing of the harness while on the production line.

Such conditions could result in an electrical short and potential loss of several functions essential for the safety of flight.

For the reason stated above, this AD mandates inspection of the electrical wiring harness, and if necessary a rework of its routing.

Comments

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

Comment Issue: Number of U.S.-Registered Airplanes

EADS SOCATA requests we change in the Costs of Compliance section the number of products affected on the U.S. registry from 45 products to 31 products. They state the airplanes listed in the U.S. registry are serial numbers 434, 435, 437 through 439, 441, 443 through 451, 458, 459, 461, 462, 465, 466, 468 through 474, and 476 through 478.

The FAA agrees. We will change the Costs of Compliance section in the final rule AD action to reflect the above comment.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 31 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,480 or $80 per product.

In addition, we estimate that any necessary follow-on actions would take about 1.5 work-hours for a cost of $120 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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–08–09 EADS SOCATA: Amendment 39–15882; Docket No. FAA–2009–0124; Directorate Identifier 2009–CE–004–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 20, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to TBM 700 airplanes, serial numbers 434 through 478, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 92: Wiring Elements.

Reason

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

A damaged wiring harness which caused the air conditioning system circuit breaker to trip and evidencing a local overheating has been found on an in-service aircraft.

The investigation revealed that the damage (chafed wires) found on the wiring harness resulted from an interference with the under-floor attachment fittings of the cabin partition net which was due to an incorrect routing of the harness while on the production line.

Such conditions could result in an electrical short and potential loss of several functions essential for the safety of flight.

For the reason stated above, this AD mandates inspection of the electrical wiring harness, and if necessary a rework of its routing.

Actions and Compliance

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

(1) Within the next 100 hours time-in-service after May 20, 2009 (the effective date of this AD) or within the next 12 months after May 20, 2009 (the effective date of this AD), whichever occurs first, inspect the electrical wiring harness at frame C14 and between frames C16 and C17 for wire chafing and incorrect routing following EADS SOCATA Mandatory Service Bulletin SB 70–163, dated November 2008.

(2) If any wire chafing and/or incorrect routing are found, before further flight, repair and reroute the electrical harness following EADS SOCATA Mandatory Service Bulletin SB 70–163, dated November 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0006, dated January 13, 2009; and EADS SOCATA Mandatory Service Bulletin SB 70–163, dated November 2008, for related information.

Material Incorporated by Reference

(i) You must use EADS SOCATA Mandatory Service Bulletin SB 70–163, dated November 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact SOCATA AIRCRAFT, INC., North Perry Airport, 7501 South Airport Rd., Pembrokes Pines, FL 33023; telephone: (954) 893–1400; fax: (954) 964–4141; Internet: *http://mysocata.com*.

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

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

Issued in Kansas City, Missouri, on April 3, 2009.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8527 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1140; Airspace Docket No. 08–ASW–24]

Amendment of Class D and Class E Airspace; Corpus Christi NAS/Truax Field, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the geographic coordinates of the Class D and E Airspace areas for Corpus Christi Naval Air Station (NAS)/Truax Field, Corpus Christi, TX. The FAA's National Aeronautical Charting Office is requesting this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Corpus Christi NAS/Truax Field.

DATES: *Effective Date*: 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Ft Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 26, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend the geographic coordinates of the Class D and E Airspace areas for Corpus Christi Naval Air Station (NAS)/Truax Field, Corpus Christi, TX. (73 FR 71966, Docket No. FAA–2008–1140). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated

by reference in 14 CFR Part 71.1. Class E airspace designations are published in paragraph 6004 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending the geographic coordinates of the Class D and E Airspace areas for Corpus Christi Naval Air Station (NAS)/ Truax Field, Corpus Christi, TX.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Corpus Christi NAS/Truax Field, Corpus Christi, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Corpus Christi NAS/Truax Field, TX [Amended]

Corpus Christi NAS/Truax Field, TX
(Lat. 27°41′34″ N., long. 97°17′25″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Corpus Christi NAS/Truax Field; excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASW TX E2 Corpus Christi NAS/Truax Field, TX [Amended]

Corpus Christi NAS/Truax Field, TX
(Lat. 27°41′34″ N., long. 97°17′25″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Corpus Christi NAS/Truax Field; excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ASW TX E4 Corpus Christi NAS/Truax Field, TX [Amended]

Corpus Christi NAS/Truax Field, TX
(Lat. 27°41′34″ N., long. 97°17′25″ W.)
Corpus Christi VORTAC
(Lat. 27°54′14″ N., long. 97°26′42″ W.)
Truax VORTAC
(Lat. 27°41′11″ N., long. 97°17′41″ W.)

That airspace extending upward from the surface within 1.3 miles each side of the 012° radial of the Truax VORTAC extending from the 4.3-mile radius of Corpus Christi NAS/ Truax Field to 5 miles north of the airport and within 2.1 miles each side of the 119° radial of the Truax VORTAC extending from the 4.3-mile radius to 6.2 miles southeast of the airport and within 2.3 miles each side of the 147° radial of the Corpus Christi VORTAC extending from the 4.3-mile radius of the airport to 6.3 miles southeast of the airport and within 2.1 miles each side of the 329° radial of the Truax VORTAC extending from the 4.3-mile radius of the airport to 6.2 miles northwest of the airport; excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area.

* * * * *

Issued in Fort Worth, TX, on April 2, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–8576 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1229; Airspace Docket No. 08–ASW–26]

Amendment of Class E Airspace; Natchitoches, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Natchitoches, LA. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Natchitoches Regional Airport, Natchitoches, LA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Natchitoches Regional Airport.

DATES: *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 16, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Natchitoches, LA, adding additional controlled airspace at Natchitoches Regional Airport, Natchitoches, LA. (74 FR 2909, Docket No. FAA–2008–1229). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Natchitoches, LA, adding additional controlled airspace at Natchitoches Regional Airport, Natchitoches, LA.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Natchitoches Regional Airport, Natchitoches, LA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW LA E5 Natchitoches, LA [Amended]

Natchitoches Regional Airport
(Lat. 31°44′09″ N., long. 93°05′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Natchitoches Regional Airport, and within 4 miles each side of the 166° bearing from the airport extending from the 6.6-mile radius to 11.4 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX, on April 2, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–8574 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1290; Airspace Docket No. 08–AGL–19]

Amendment of Class E Airspace; Battle Creek, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Battle Creek, MI. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at W.K. Kellogg Airport, Battle Creek, MI. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at W.K. Kellogg Airport.

DATES: *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Battle Creek, MI, adding additional controlled airspace at W.K. Kellogg Airport, Battle Creek, MI (74 FR 1652, Docket No. FAA–2008–1290). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Battle Creek, MI, adding additional controlled airspace extending upward from 700 feet or more above the surface at W.K. Kellogg Airport, Battle Creek, MI.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace in the Battle Creek, MI airspace area, at W.K. Kellogg Airport, Battle Creek, MI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL MI E5 Battle Creek, MI [Amended]

Battle Creek, W.K. Kellogg Airport, MI
(Lat. 42°18′26″ N., long. 85°15′05″ W.)
BATOL LOM/NDB
(Lat. 42°21′43″ N., long. 85°11′04″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of W.K. Kellogg Airport and within 4 miles each side of the 222° bearing from the airport extending from the 7-mile radius to 11.7 miles southwest of the airport, and within 4 miles each side of the 049° bearing from the airport extending from the 7-mile radius to 10.9 miles northeast of the airport, and within 7 miles northwest and 4.4 miles southeast of the Battle Creek ILS localizer northeast course extending from the 7-mile radius to 10.4 miles northeast of the BATOL LOM/NDB.

* * * * *

Issued in Fort Worth, TX, on April 2, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–8579 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1228; Airspace Docket No. 08–ACE–3]

Amendment of Class E Airspace; Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Omaha, NE. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Blair Municipal Airport, Blair, NE. This action also makes minor changes to the geographic coordinates of the existing airports in the Omaha, NE, airspace area. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Blair Municipal Airport.

DATES: *Effective Date*: 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On January 13, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Omaha, NE, adding additional controlled airspace at Blair Municipal Airport, Blair, NE. (74 FR 1651, Docket No. FAA–2008–1228). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Omaha, NE, adding additional controlled airspace at Blair Municipal Airport, Blair, NE. This action also updates s the geographic coordinates for Eppley Airfield, Offutt Air Force Base, and Council Bluffs Municipal Airport, to coincide with the National Aeronautical Charting Office.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Blair Municipal Airport, Blair, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE NE E5 Omaha, NE [Amended]

Omaha, Eppley Airfield, NE
(Lat. 41°18′11″ N., long. 95°53′39″ W.)
Omaha, Offutt AFB, NE
(Lat. 41°07′10″ N., long. 95°54′31″ W.)
Council Bluffs, Council Bluffs Municipal Airport, IA
(Lat. 41°15′36″ N., long. 95°45′31″ W.)
Blair, Blair Municipal Airport, NE
(Lat. 41°24′53″ N., long. 96°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eppley Airfield and within 3 miles each side of the Eppley Airfield Runway 14R ILS Localizer course extending from the 6.9-mile radius to 12 miles northwest of the airport and within a 7-mile radius of Offutt AFB and within 4.3 miles each side of the Offutt AFB ILS Runway 30 localizer course extending from the 7-mile radius to 7.4 miles southeast of Offutt AFB and within a 6.4-mile radius of the Council Bluffs Municipal Airport, and within a 6.4-mile radius of Blair Municipal Airport, and within 2 miles each side of the 317° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 11.6 miles, and within 2 miles each side of the 137° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 12.2 miles.

* * * * *

Issued in Fort Worth, TX, on March 24, 2009.

Ronnie L. Uhlenhaker,

Acting Manager, Operations Support Group, Central Service Center.

[FR Doc. E9–8577 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 40, 41, and 145

RIN 3038–AC44

Confidential Information and Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is adopting final rules to specify the exclusive procedures under which designated contract markets (DCMs), derivatives clearing organizations (DCOs) and derivatives transaction execution facilities (DTEFs) (collectively, ''regulated entities'') may request confidential treatment for products and rules submitted via certification procedures or for Commission review and approval under parts 40 and 41 of the Commission's regulations. The amendments also revise the Commission's part 145 regulations under the Freedom of Information Act by providing that the confidential treatment procedures specified in section 145.9 do not apply to information filed by regulated entities pursuant to parts 40 and 41.

DATES: May 15, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Senior Special Counsel, (202) 418–5133, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Procedural History

On July 20, 2007, the Commission requested comment from the public regarding its proposal to establish in part 40 of its regulations the exclusive procedure to be followed by regulated entities when requesting confidential treatment for information they are required to submit under parts 40 and 41 of the Commission's regulations,[1] and to clarify the standards under which requests for confidential treatment will be considered.[2] Three commenters responded to this proposal: the CME Group (''CME''), CBOE Futures Exchange (''CFE'') and the New York Mercantile Exchange (''NYMEX'').[3] While CFE generally supported the proposal, CME and NYMEX questioned the merits of the proposed amendments and the adequacy of the Commission's explanation for proposing the changes.

In light of the CME and NYMEX comments, the Commission re-proposed the rule amendments in order to (1) Clarify the procedure for seeking review of an adverse determination; (2) amend Commission regulation 145.9 to make clear that that process for requesting confidential treatment under the Commission's Freedom of Information Act regulations does not apply to submissions filed pursuant to parts 40 and 41; and (3) address more fully the reasons for proposing the amendments. The **Federal Register** release announcing the re-proposal fully addressed the substantive issues raised by the commenters and invited additional public comment on one issue raised by NYMEX: whether the Commission should honor requests for confidential treatment of algorithms or similar trading tools that are mechanisms for executing transactions.[4] CME submitted comments on this matter.

B. Confidential Treatment of Trading Mechanisms

1. Comments: Confidential Treatment of Information Made Public by Statute or Rule

The Commodity Exchange Act (''CEA'') and regulations promulgated thereunder require that substantial portions of the material filed pursuant to Parts 40 and 41 be made publicly available by the submitters. Section

[1] Part 40 of the Commission's regulations, 17 CFR part 40, specifies the standards and procedures to be followed by regulated entities for listing products for trading by certification to the Commission; voluntary submission of new products for Commission review and approval; amendments to terms or conditions of enumerated agricultural contracts; voluntary submission of rules for Commission review and approval; and self certification of rules by DCMs and DCOs. Part 41, 17 CFR part 41, contains the standards and procedures for filing required information with respect to security futures products.

[2] 72 FR 39764.

[3] In August 2008, subsequent to the Commission's Notice of Proposed Rulemaking in this matter, CME and NYMEX completed a merger. As a result, NYMEX is currently a wholly-owned indirect subsidiary of CME Group, Inc.

[4] 73 FR 44939 (Aug. 1, 2008).

5(d)(7) of the CEA—DCM Core Principle 7—requires that the terms and conditions of contracts and the ''mechanisms for executing transactions on or through'' a DCM be made available by the DCM to market authorities, market participants and the public.[5] Similarly, DTEF Core Principle 5 requires that boards of trade publicly disclose specified information, and Core Principle L requires that DCOs make available to market participants information concerning the rules and operating systems of clearing and settlement systems. Moreover, Commission regulations 40.3(a)(7) and 40.5(a)(8) specify that a product's terms and conditions become publicly available at the time of submission to the Commission.

The commenters' concerns focused on the Commission's proposal to amend part 40 by adding new paragraph (d) to regulation 40.8 to clarify that staff will not consider requests for confidential treatment of information that is considered publicly available pursuant to section 5(d)(7) of the CEA or regulations 40.3(a)(7) or 40.5(a)(8). In response to CME's concern that DCMs have legitimate commercial and competitive interests in maintaining the confidentiality of information about the contractual obligations of, and incentives offered to, their market makers, the Commission distinguished between the two types of information. The Commission noted that both market maker and incentive programs are considered ''rules'' under Commission regulations and thus are presumptively public. Compensation structures are properly made public because they may affect the quality of price quotations provided by market makers as well as liquidity in the market; because this material is routinely available, no exchange is at a competitive disadvantage. On the other hand, the Commission acknowledged that access to particular information related to incentive programs could give an unfair advantage to potential counterparties of market makers or to other markets. Incentive programs may, therefore, include information for which confidential treatment is appropriate. Commission staff has, for example, withheld information relating to participant names, bid-ask spreads and minimum size requirements because access to this information could unfairly advantage potential counterparties of market makers and provide other market makers with a competitive edge when setting up their own market maker programs. Thus, while incentive programs are presumptively public, these programs may include commercially valuable information which is entitled to protection. For this reason, the Commission believes it would be inappropriate to summarily deny confidential treatment to all information submitted in connection with incentive programs.

In its comment letter, NYMEX urged that the same reasoning should apply to confidential treatment for trading mechanisms, which it stated could include ''an algorithm or other similar proprietary trading tool'' for which a registered entity might seek patent or trademark protection.[6] Although trading mechanisms are required to be made publicly available pursuant to section 7(d)(8) of the CEA, and the Commission is unaware of any circumstance in which trading mechanisms warrant protection from public disclosure, the Commission in an abundance of caution invited further public comment with respect to whether specific types of trading tools should be considered for confidential treatment.

2. CME's September 15, 2008 Comment Letter.

In response to this invitation, CME submitted additional comments urging the Commission to (1) conclude that summary denial of confidential treatment to ''mechanisms for executing transactions, including trading algorithms or similar proprietary trading tools'' could cause competitive harm to the submitter, and is, therefore, inappropriate and (2) refrain from utilizing a rulemaking to determine blanket confidential treatment for specific types of trading tools. Rather, CME proposed that the Commission make confidentiality determinations on a case-by-case basis at the time of the initial request for confidential treatment.[7]

The Commission has carefully considered these comments and agrees that, to the extent that NYMEX's and CME's comments refer to specific hardware, software or ''code'' underlying a trading tool or algorithm, such hardware, software, or code may qualify for confidential treatment. The Commission does not consider such information to be part of the ''trading mechanism;'' it thus is not presumptively public and is accordingly outside the scope of this rulemaking.

The Commission wishes to emphasize that the purpose of the proposed amendments is to improve its ability to provide the public with immediate access to material filed under Parts 40 and 41 that does not warrant confidential treatment, i.e., that must be made publicly available by statute or rule. CME's suggestion of a case-by-case determination would preserve the *status quo* that the proposed amendments were intended to correct.

Accordingly, the proposed amendments are being adopted in the final rules.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (2000), requires federal agencies, in proposing regulations, to consider the impact of those regulations on small entities. The regulations proposed herein would affect derivatives transaction execution facilities, designated contract markets, and derivatives clearing organizations. The Commission previously has determined that the foregoing entities are not small entities for purposes of the RFA.[8] Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3504(h), the Commission submitted a copy of the proposed rule amendments to the Office of Management and Budget for its review. The Commission did not receive any public comments relative to its analysis of paperwork burdens associated with this rulemaking.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of a regulation outweigh its

[5] The CEA does not define the phrase ''mechanisms for executing transactions,'' but the Commission noted in its proposal and re-proposal that this generally includes such information as trading algorithms, market maker programs, and information from an exchange's rule book that pertains to or impacts trading. 72 FR 39764 (Jul. 20, 2007); 73 FR 44941 n.17 (Aug. 1, 2008).

[6] Letter from NYMEX dated Aug. 23, 2007, at 3.

[7] Letter from CME Group dated September 15, 2008, at 3.

[8] 47 FR 18618, 18619 (April 30, 1992) discussing contract markets; 66 FR 42256, 42268 (August 10, 2001), discussing exempt boards of trade, exempt commercial markets and derivatives transaction execution facilities; 66 FR 45605, 45609 (August 29, 2001), discussing derivatives clearing organizations.

costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions to accomplish any of the purposes of the Act.

The Commission published its analysis of the costs and benefits when it proposed and reproposed the rule amendments that have now been adopted.[9] It did not receive any public comments pertaining to the analysis.

List of Subjects

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 41

Security futures.

17 CFR Part 145

Commission records and information.

■ For the reasons stated in the preamble, the Commission amends 17 CFR parts 40, 41 and 145 as follows:

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

■ 1. The authority for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Public Law 106–554, 114 Stat. 2763A–365.

■ 2. Section 40.2 is amended by adding paragraph (a)(3)(v) to read as follows:

§ 40.2 Listing products for trading by certification.

(a) * * *

(3) * * *

(v) A request for confidential treatment as permitted under the procedures of 40.8

* * * * *

[9] 72 FR 39764 (July 20, 2007); 73 FR 44939 (August 1, 2008).

■ 3. Section 40.3 is amended by revising paragraph (a)(7) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) * * *

(7) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

■ 4. Section 40.5 is amended by revising paragraph (a)(8) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) * * *

(8) Include a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

■ 5. Section 40.6 is amended by adding new paragraph (a)(3)(vi) to read as follows:

§ 40.6 Self-certification of rules.

(a) * * *

(3) * * *

(vi) A request for confidential treatment as permitted under the procedures of 40.8.

* * * * *

■ 6. Section 40.8 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 40.8 Availability of public information.

* * * * *

(c) A registered entity's filing of new products under the self-certification procedures, new products for Commission review and approval, new rules and rule amendments for Commission review and approval, and new rules and rule amendments submitted under the self-certification procedures will be treated as public information unless covered by a request for confidential treatment. If a registered entity files a request for confidential treatment, the following procedures will apply:

(1) A detailed written justification of the confidential treatment request must be filed simultaneously with the request for confidential treatment. The form and content of the detailed written justification shall be governed by § 145.9 of this chapter;

(2) All material for which confidential treatment is requested must be segregated in an appendix to the submission;

(3) The submission itself must indicate that material has been segregated and, as appropriate, redacted;

(4) Commission staff may make an initial determination with respect to the request for confidential treatment without regard to whether a request for the information has been sought under the Freedom of Information Act;

(5) A submitter of information under this Part may appeal an adverse decision by staff to the Commission's Office of General Counsel. The form and content of such appeal shall be governed by § 145.9(g) of this chapter;

(6) The grant of any part of a request for confidential treatment under this section may be reconsidered if a subsequent request under the Freedom of Information Act is made for the information.

(d) Commission staff will not consider requests for confidential treatment of information that is required to be made public under section 5(d)(7) of the Act of Commission regulations § 40.3(a)(7) or § 40.5(a)(8).

7. Appendix D is amended by adding a new sentence to the end of the first paragraph of section 8, ''Other requirements,'' to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

* * * * *

(8) *Other requirements*— * * * Checking the box marked ''confidential treatment requested'' on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in rule 40.8(c) and, where appropriate, rule 145.9, and will not substitute for notice or full compliance with such requirements.

* * * * *

PART 41—SECURITY FUTURES PRODUCTS

■ 8. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763, 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a, 15 U.S.C. 78g(c)(2).

■ 9. Section 41.23 is amended by adding new paragraph (a)(7) to read as follows:

§ 41.23 Listing of security futures products for trading.

(a) * * *

(7) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

■ 10. Section 41.24 is amended by adding new paragraph (a)(6) to read as follows:

§ 41.24 Rule amendments to security futures products.

(a) * * *

(6) Includes a request for confidential treatment as permitted under the procedures of § 40.8.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

■ 11. The authority citation for part 145 continues to read as follows:

Authority: Public Law 99–570, 100 Stat. 3207; Public Law 89–554, 80 Stat. 383; Public Law 90–23, 81 Stat. 54; Public Law 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Public Law 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)), unless otherwise noted.

■ 12. Section 145.9 is amended by revising paragraph (b) to read as follows:

§ 145.9 Petition for confidential treatment of information submitted to the Commission.

* * * * *

(b) *Scope.* The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. See 40.8 for procedures to be utilized in connection with filing information required to be filed pursuant to 17 CFR parts 40 and 41.

* * * * *

Issued in Washington, DC on April 3, 2009 by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E9–8024 Filed 4–14–09; 8:45 am]

BILLING CODE 6351–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in May 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: *Effective Date:* May 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: The regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during May 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during May 2009.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for April 2009) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during May 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, the entry for Rate Set 187 is added to the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
187	5–1–09	6–1–09	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, the entry for Rate Set 187 is added to the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
187	5–1–09	6–1–09	3.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of April 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–8674 Filed 4–14–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0234]

Drawbridge Operation Regulations; Intracoastal Waterway (ICW); Albany Avenue, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the US40–322 Albany Avenue Bridge, at ICW mile 70.0, across Inside Thorofare at Atlantic City, NJ. This deviation is necessary to facilitate traffic control during the Atlantic City Air Show. This deviation will cause the bridge to be maintained in the closed-to-navigation position for a brief period of time.

DATES: This deviation is effective from 10 a.m. to 5 p.m. on August 19, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0234 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mrs. Sandra S. Elliott, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6557.

SUPPLEMENTARY INFORMATION:

The Greater Atlantic City Chamber of Commerce on behalf of the bridge owner, the New Jersey Department of Transportation, has requested a temporary deviation for the current operating regulation set out in 33 CFR 117.733 (f) to close the US40–322 (Albany Avenue) Bridge to navigation for the sole purpose of traffic control during the Atlantic City Air Show scheduled for Wednesday, August 19, 2009, from 10 a.m. to 5 p.m.

The US40–322 (Albany Avenue Bridge) at ICW mile 70.0, across Inside Thorofare at Atlantic City, NJ, is a lift drawbridge and has a vertical clearance in the closed position of 10 feet, above mean high water. The current operating regulation set out in 33 CFR 117.733 (f) requires the draw shall open on signal except that: Year-round from 11 p.m. to 7 a.m. and from November 1 through March 31 from 3 p.m. to 11 p.m., the draw need only open if at least four hours notice is given, From June 1 through September 30: from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw need only open on the hour and half hour; and from 4 p.m. to 6 p.m., the draw need not open.

During the event, vessel operators with mast height lower than 10 feet will continue to be able to transit through the drawbridge. The Atlantic Ocean is an alternate route for vessels with a mast height greater than 10 feet. In the event of a maritime emergency, the drawbridge will be available for vessel openings.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure period for the bridge so that vessels can arrange their transits and to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 1, 2009.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch Fifth Coast Guard District.

[FR Doc. E9–8618 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0225]

RIN 1625–AA11

Regulated Navigation Areas: Herbert C. Bonner Bridge, Oregon Inlet, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) on the waters of Oregon Inlet, North Carolina (NC). The RNA is needed to protect maritime infrastructure and the maritime public during fender repair work on the Herbert C. Bonner Bridge.

DATES: This rule is effective from 5 a.m. on April 16, 2009, through 8 p.m. on June 5, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0225 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0225 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone 252–247–4525, e-mail *Stephen.W.Lyons2@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect bridge repair workers and the maritime public from the hazards associated with this maintenance project. Fendering system repair workers will be on scaffolding in the navigation channel underneath the Herbert C. Bonner Bridge. Vessels transiting the channel could knock the workers off the scaffolding and into the water. Likewise, vessels could sustain damage by striking the scaffolding. It is imperative an RNA be established prior to fender repair work on the bridge which begins on April 16, 2009. Delaying fendering repair work on the bridge to complete an NPRM is impractical, unnecessary, and contrary to the public interest. For the safety concerns noted, it is in the public interest to have this regulation in place during the construction.

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

Background and Purpose

The State of North Carolina Department of Transportation awarded a contract to Marine Technologies, Inc. of Baltimore, MD to perform repair work on the Herbert C. Bonner Bridge located in Oregon Inlet, NC. The contract is for the repair of the existing fender system that protects the bridge piers located on either side of the navigation channel from vessel allision. The fender repairs are scheduled to begin on April 16, 2009, and continue through June 5, 2009. The contractor will utilize scaffolding hanging from the fender system to perform the repair work. During periods of work, the scaffolding will reduce the available horizontal clearance of the main navigational channel to 124′. Because of this construction, vessels over a certain size will be limited in their ability to transit the regulated area as described below.

Discussion of Rule

The RNA will encompass the area of the main navigational channel directly under the Herbert C. Bonner Bridge. All vessels of 100 gross tons and greater are not permitted to transit the waterway unless the vessel asks the District Commander or his representative for permission to transit. To seek permission to transit the area, mariners can contact Sector North Carolina at telephone number 252–247–4570.

Any vessel transiting the regulated area must do so at a no-wake speed during the effective period. Nothing in this proposed rule negates the requirement to operate at a safe speed as provided in the Navigational Rules and Regulations.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The regulated navigation area will be in effect for a limited duration of time, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) vessels of 100 gross tons or greater may be granted permission to transit the area by the District Commander or his representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Although the regulated area will apply to the waters of the Oregon Inlet, the area will not have significant impact on small entities because the area will only be in place for a limited duration of time and maritime advisories will be issued in advance to allow the public to adjust

their plans accordingly. In addition, vessels of 100 gross tons or greater may be granted permission to transit the area by the District Commander or his representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165–REGULATED NAVIGATION AREAS

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

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

■ 2. Add temporary § 165.T05–0225 to read as follows:

§ 165.T05–0225 Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon Inlet, NC.

(a) *Definitions.* For the purposes of this section, *District Commander* means the Commander, Fifth Coast Guard District. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, Fifth U.S. Coast Guard District, to act as a representative on his behalf.

(b) *Location.* The following area is a regulated navigation area: All waters of Oregon Inlet, between the fendered spans of the Herbert C. Bonner Bridge.

(c) *Regulations.* (1) The general regulations governing regulated

navigation areas found in § 165.13 of this part apply to the regulated navigation area described in paragraph (b).

(2) All vessels of 100 gross tons and greater are not permitted to transit the regulated area without permission from the District Commander or his representative. To seek permission to transit the area, mariners can contact Sector North Carolina at telephone number (252) 247–4570.

(3) Any vessel transiting the regulated area must do so at a no-wake speed during the effective period. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the District Commander or his representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 5 a.m. on April 16, 2009, through 8 p.m. on June 5, 2009.

Dated: April 6, 2009.

F.M. Rosa, Jr.,

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

[FR Doc. E9–8610 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Letter-Sized Booklets

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service adopts new *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to reflect changes to the construction and sealing of letter-sized booklets mailed at automation, presorted machinable or carrier route letter prices. We also adopt a definition of booklets and clarify weight standards for letter-sized mail.

DATES: *Effective Date:* September 8, 2009.

FOR FURTHER INFORMATION CONTACT: Krista Finazzo, 202–268–7304; Bill Chatfield, 202–268–7278; or Susan Thomas, 202–268–7268.

SUPPLEMENTARY INFORMATION: On December 29, 2008, a proposed rule was published in the **Federal Register** (73 FR 79430–79435), that provided information on changes to tab placement and construction of folded self-mailers and booklets. The proposed rule followed two years of collaborative work with mailers to analyze and test a wide variety of letter-size booklets and other letter-size mailpiece designs. In response to the proposed rule, the Postal Service received more than 900 comments.

On February 3, 2009, a revision to our original proposal was announced in the *DMM Advisory* and *PCC Insider* indicating that the design and tab placement changes for folded self-mailers would become optional recommendations instead of requirements. Current standards for folded self-mailers will remain in effect and we will continue to work with the mailing community to test various folded self-mailer designs. Mailers' Technical Advisory Committee (MTAC) member associations that have an interest in folded self-mailers will coordinate the opportunity to participate in our research. We will publish recommendations regarding folded self-mailers in September 2009. An additional proposed rule for folded self-mailers will be published upon completion of the test of mailer-supplied sample pieces.

Changes for Booklets

General

This final rule includes the new required DMM standards for design, preparation, and sealing of machinable and automation letter-size booklets. We also describe in this final rule, recommended upgrades to the new requirements. We base these recommendations on observations of a wide variety of booklets tested and observed over the past several years. Following these recommendations will minimize mailpiece damage and maximize the efficient processing of booklets.

Definition

Booklets consist of bound sheets or pages. Binding methods that are compatible with machinable processing include perfect binding, permanent fastening with at least two staples in the manufacturing fold (saddle stitched), pressed glue, or another binding method that creates a nearly uniformly thick mailpiece. Spiral bindings are not machinable so booklets prepared with spiral bindings do not qualify for automation prices. Large booklets may be folded to letter-size for mailing if the final mailpiece remains uniform in thickness.

Physical Characteristics

The maximum height for all machinable and automation booklets is six inches and the maximum length can vary between 9 and 10½ inches, depending on the booklet design. The minimum thickness for booklets is 0.009 inch and the maximum thickness is 0.25 inch regardless of size. Thickness is measured at the spine of the mailpiece.

The current maximum weight of 3 ounces has not changed and is applicable to all mailpieces prepared without envelopes. However, to improve machinability we recommend reducing the length of 3-ounce booklets to a final trim size of 9 inches.

Cover stock requirements vary with 40-pound minimum basis weight for folded booklet designs and 60- or 70-pound minimum basis weight for pieces longer than 9 inches. Lighter-weight paper tends to be easily damaged in processing equipment. The use of paper that is 10 pounds heavier than the required minimum basis weight is recommended for better processing performance. We strongly recommend using a minimum of 70-pound paper as cover stock on mailpiece designs that approach maximum booklet dimensions. References to paper weights are for book-grade paper unless otherwise specified. A paper grade conversion table is included in DMM Exhibit 201.3.2 for reference.

The bottom edge of booklets must be a bound edge or fold unless the mailpiece is prepared as an oblong booklet. Oblong booklets must be prepared with a spine on the leading edge. Booklets with a spine on the trailing edge are nonmachinable.

Tabs used to seal booklets must not have perforations. Generally, booklets need three 1½-inch tabs as closures. For larger or heavier booklets, we recommend 2-inch paper tabs. Glue spots or a continuous glue line may be used to seal some booklet designs.

Booklets that do not comply with the new standards will not be eligible for machinable or automation letter prices. Nonmachinable booklets will be assessed a surcharge (for First-Class Mail®), pay nonmachinable prices (for Standard Mail®), or pay nonbarcoded prices (for Periodicals).

Overview of Comments

We received more than 900 customer comments in response to the proposed standards. Of these, 79 noted concerns

about booklet design changes. Many commenters expressed concerns about multiple issues. Below we describe all comments and not those exclusively about booklets.

There were 442 comments concerning tabs without perforations. Of these, 287 were form letters or parts of form letters stating that tabs without perforations would make mailpieces hard to open for the elderly and infirm. Six came from manufacturers of tabs. Two mail preparers claim that mail with solid tabs went unread. At the request of a group of mail owners, one mail preparer completed a 6-month study of response rates to mailpieces prepared with three solid tabs. No appreciable change in response rate occurred.

Booklets with tabs that fail during high-speed processing sustain damage and cause damage to other mailpieces. Our tests revealed that tabs with perforations are easily broken, often do not maintain their integrity, and are damaged in transport prior to entering the mailstream. To minimize tab failure, tabs used to seal booklets claiming automation or machinable prices may not be perforated. Solid tabs made of plastic, vinyl, translucent paper, opaque paper, or cellophane tape is acceptable.

Tab placement generated 401 responses. Commenters cited the lack of machinery capable of applying two tabs on the leading edge and one tab on the trailing edge of each booklet, the cost of upgrading existing tabbing equipment, and the amount of extra space required to install upgrades as reasons why they objected to the proposed standards for tab placement. Three commenters stated that the tabbing systems they purchased would become obsolete because they can only apply tabs on the top open edges. There were 170 mailers concerned about tab size. They objected to the introduction of minimum tab sizes that exceed one inch because their equipment couldn't apply tabs larger than one inch.

We realize that using different size tabs on booklets, adding an additional tab to the leading edge, and affixing them in locations that were until now optional, will require some adjustments to customer manufacturing processes. Some customers are already producing and mailing booklets with the tabbing configurations required by the new standards despite the obstacles mentioned. In addition, at least one manufacturer of tabbing machines is advertising a unit with the capability of tabbing mail in the proposed locations.

Mailer and controlled tests demonstrate that using 1½-inch tabs to seal booklets in place of the smaller 1-inch tabs improved the productivity of processing. Sorting booklets sealed with 1½-inch tabs still reduced machine throughput compared to processing other letter-size pieces. To improve productivity and processing, 1½-inch tabs are required. We will continue to monitor booklet processing performance.

The increase in the number of tabs required to seal booklets generated 179 comments. Remarks focused on the absence of notification, with some commenters stating that the mailings they present now are not generating error reports from the plants that process them. As booklet volumes increase in the mailstream, processing operations must divert these mailings to manual or flat mail operations to avoid mailpiece damage and machine down time. The USPS generated numerous irregularity reports concerning poorly prepared booklets over the past several years. These reports have documented instances of jammed machines and torn mailpieces. Our experiences processing booklets as live mailpieces and in a variety of controlled and customer-supplied mailpiece tests show that the new standards are needed. Customers who observed their own booklets being tested acknowledged that although their mail is currently being charged automation or machinable prices, it cannot be machine sorted.

A number of commenters stated that we did not justify the amount of added workload applying additional tabs would impose on the customer. Testing demonstrated that the machine throughput when processing booklets with two 1-inch tabs on the top edge was half the throughput for booklets with two 1½-inch tabs on the lead edge and one tab on the trailing edge, and almost one fourth the throughput for enveloped letter mail. Therefore, we believe this warrants the changes.

Many commenters objected to the definition of a folded self-mailer. The definition of folded self-mailers will be refined in conjunction with a subsequent phase of testing customer-supplied samples and will be published at a later date as part of the changes to folded self-mailer standards indicated by test results.

Only 31 customers expressed concerns about standards for static charge and coefficient of friction. Some commenters wanted to know where to buy paper that conformed to the standards while others asked how mail would be tested for these characteristics in the acceptance units. We recommend this requirement while further methods are explored to measure these standards. We recommend testing your mailpieces for static charge and coefficient of friction when possible.

Forty-nine commenters asked that we delay changing standards for booklets and folded self-mailers until the economy turns around. We believe that implementing standards for booklets will improve the processing and cost effective handling of these pieces. However, we will work with the mailing community to further refine standards for folded self-mailers.

Some commenters wondered how they could determine if their mailpiece was made of high tear strength paper. Paper distributors generally recognize which of their products have high tear strength, and most papers sold in office supply stores have adequate tear strength. High tear strength paper has properties like a high fiber length, a low degree of beating, and for machine-made papers, fiber orientation. Mailpieces made of high tear strength paper can be sorted on automated processing equipment without tearing or shattering.

Some commenters objected to the increase in required paper grade for the covers of booklets. Paper values published in the DMM varied by product. Our new booklet illustrations and descriptions are based on book-grade paper. Paper grades are printed on the packaging of reams, boxes, and rolls of paper.

The maximum weight of automation letters was a concern for some customers. The proposal did not change the maximum allowable weight for booklets. According to current standards in DMM 201.3.14.4, letters that weigh more than 3 ounces must be prepared in a sealed envelope, therefore booklets weighing more than 3 ounces must be prepared in sealed envelopes. Our standards reflect this required mailpiece characteristic.

Based on the results of continued testing, a modification to the standards was published in the **Federal Register** on December 29, 2008, increasing the amount of acceptable tab overhang from 1/32 of an inch to 1/16 of an inch.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

* * * * *

1.1.3 All Machinable Letters

[*Revise the first sentence of 1.1.3 as follows:*]

All pieces of First-Class Mail and Standard Mail machinable letters must meet the standards for automation-compatible letters in 201.3.0. * * *

* * * * *

3.0 Physical Standards for Automation Letters and Cards

[*Revise text of 3.1 as follows:*]

3.1 Basic Standards Automation Letters and Cards

Letters and cards claimed at any machinable, automation, or Standard Mail carrier route price, must meet the standards in 3.0. Unless prepared as a folded self-mailer, booklet, or postcard under 3.14 through 3.16, each machinable or automation letter must be a sealed envelope (the preferred method) or, if unenveloped, must be sealed or glued completely along all four sides.

[*Delete current 3.4 through 3.6 in their entirety.*]

[*Renumber current 3.2 through 3.3 as new 3.3 through 3.4.*]

[*Add new 3.2 as follows:*]

3.2 Paper Weight

Mailpieces should be constructed from high tear strength paper stock. All references in 3.0 to paper basis weight are for book-grade paper unless otherwise stated. The conversion table in Exhibit 3.2 provides a paper basis weight cross-reference.

Exhibit 3.2 Paper Basis Weight Conversion Table

Note: Paper basis weight is based on the weight of 500 sheets of: 25 x 38 inch sheets of book-grade paper, 17 x 22 inch bond-grade paper, 20 x 26 inch sheets of cover-grade paper, 24 x 36 inch sheets of newsprint. For example, if 500 sheets of book-grade paper weigh 39 pounds, the paper is considered 39-pound book paper.

Book wt.	Bond wt.	Cover wt.	Newsprint wt.
39	15	21	35
40	16	22	36
50	20	27	45
55	22	30	50
60	24	33	55
70	28	40	64
75	30	41	68
80	31	44	73
90	36	50	82
100	40	56	91
110	44	60	100
128	50	70	116

[*Revise heading and introductory text of renumbered 3.3 as follows:*]

3.3 Dimensions and Shape

Each machinable or automation letter-sized piece must be rectangular (see 1.1.1) and must meet the following standards (see 3.15 for booklets):

* * * * *

[*Add new 3.5 as follows:*]

3.5 Maximum Weight, Machinable and Automation Letters and Cards

The following maximum weight limits apply:

a. Booklets and folded self-mailers—3 ounces.

b. Machinable enveloped letters and cards—3.3 ounces.

c. Automation enveloped letters and cards—3.5 ounces (see 3.6 for pieces over 3 ounces.)

[*Renumber current 3.14.4 as new 3.6 and revise heading and text as follows:*]

3.6 Heavy Letter Mail (Over 3 Ounces)

Heavy letter mail (letter-size pieces over 3 ounces) must be prepared in a sealed envelope, may not contain stiff enclosures, and must have an 11-digit delivery point POSTNET or an Intelligent Mail barcode with a routing code in the address block (see 202.5.0).

* * * * *

[*Revise heading and text of 3.11 as follows:*]

3.11 Tabs, Tape, and Glue

Tabs on booklets must be at least 1½ inches in width. The tab placement standards in 3.15 are subject to ¼-inch variance in either direction. Tabs may be made of opaque paper, translucent paper, vinyl or plastic, and must not contain perforations. Cellophane tape may also be used as a closure. The following standards also apply:

a. Translucent paper tabs should be made of paper with a minimum of 40-pound basis weight.

b. Opaque paper tabs should be made of a minimum of 60-pound basis weight paper with a tear strength of at least 56 grams of force in the machine direction (MD) and 60 grams of force in the cross direction (CD).

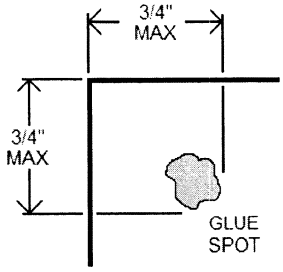
c. Tabs in the barcode clear zone must have a paper face meeting the standards for background reflectance and, if the barcode is not preprinted by the mailer, the standards for acceptance of water-based ink.

d. Vinyl tabs and cellophane tape closures are not acceptable within the barcode clear zone.

e. Tabs must be tight against the edge of the mailpiece. A maximum 1/16-inch overhang is recommended.

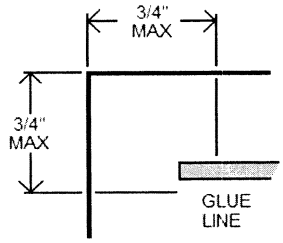
f. Glue spots may be used in lieu of tabs and must be placed within ¾-inch of the open edges (see Exhibit 201.3.11.f).

Exhibit 201.3.11.f Glue Spot Placement



g. Continuous glue lines may be used as cover-to-cover seals and must be placed along the entire length of the open edge and end no more than ¾-inch from the open ends (see Exhibit 201.3.11.g).

Exhibit 201.3.11.g Glue Line Placement



* * * * *

[*Revise the title of 3.14 and restructure as follows:*]

3.14 Folded Self-Mailers

[*Add new 3.14.1 to read as follows:*]

3.14.1 General

The standards in 3.14.2 for folded self-mailers are basic requirements.

[*Renumber current 3.14.1 as new 3.14.2.*]

[*Renumber current 3.14.2 as new 3.15 and revise as follows:*]

3.15 Booklets

3.15.1 Definition

Booklets must have a bound edge. Sheets that are fastened with at least two staples in the manufacturing fold (saddle stitched), perfect bound, pressed-glued, or joined together by another binding method that produces an end where pages are attached together are considered booklets. Booklets are open on three sides before sealing, similar in design to a book. In general, booklets must be uniformly thick. Large bound booklets that are folded for mailing qualify for automation and machinable prices if the final mailpiece remains nearly uniform in thickness.

3.15.2 Paper

Booklet covers generally must be made with a minimum paper basis weight of 60-pounds or equivalent. Minimum basis weights are higher for some designs (see 3.15.4).

3.15.3 Physical Standards for Booklets

Booklets must be:

a. Height: Not more than 6 inches or less than 3.5 inches high.

b. Length: Not more than 10.5 inches or less than 5 inches long. See Exhibit 3.15.4 for some booklet designs with shorter maximum lengths.

c. Thickness: Not more than 0.25 inch or less than 0.009 inch thick.

d. Weight: Not more than 3 ounces.

e. Aspect ratio: Within 1.3 to 2.5 (see 201.3.1).

3.15.4 Booklet Design and Sealing

Booklets may be designed with the spine or final fold at the bottom or on the leading edge. See Exhibit 3.15.4 for design and sealing standards.

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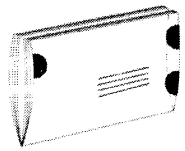
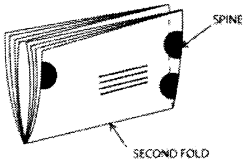
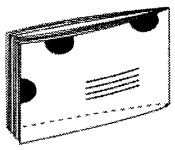
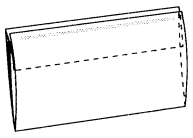
Exhibit 3.15.4 Booklet Design

If the spine or final fold is...		And the length is...	The cover stock must be at least...	Mailers must seal the piece with...	And place the tabs in these locations...
	Spine or fold on the bottom (longer) edge	5" to 9" long	50-pound	Three 1.5" non-perforated tabs	Two tabs on leading edge; one tab on trailing edge. Position lower leading tab 0.5 inch from the bottom edge. Position upper tabs 1 inch from the top edge.
		Over 9", up to 10.5" long	60-pound		
	Final fold on the bottom (longer) edge, with the folded spine on the leading or trailing (shorter) edge	5" to 10.5" long	40-pound	Three 1.5" non-perforated tabs	Folded Booklet Two tabs on leading edge; one tab on trailing edge. Position lower leading tab 0.5 inch from the bottom edge. Position upper tabs 1 inch from the top edge.
	Spine on the leading (shorter) edge	5" to 9" long	60-pound	Three 1.5" non-perforated tabs	Two tabs on top edge; one tab on trailing edge. Position top tabs 1 inch from left and right edge. Position trailing tab in the middle.
		Over 9", up to 10.5" long	70-pound		
	Spine on bottom (longer) edge, non-perforated inner flap on top (upper) edge	5" to 9.5" long	80-pound	Continuous glue line or glue spots	Perfect bound or saddle stitched with a continuous glue line along flap preferred, minimum 1inch glue spots acceptable if placed within ¾ inch of right and left edges.

[*Renumber current 3.14.3 as new 3.16.*]

[*Renumber current 3.14.4 as new 3.6.*]

[*Renumber current 3.15 as new 3.17.*]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–8532 Filed 4–14–09; 8:45 am]

BILLING CODE 7710–12–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA–HQ–OW–2006–0765; FRL–8792–3]

RIN 2040–AE99

Withdrawal of NPDES Voluntary Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on withdrawal of a regulation revising the allotment formula contained in EPA's Clean Water Act (CWA) Section 106 Water Pollution Control grant regulations. The current regulations include a financial incentive for States to voluntarily collect adequate National Pollutant Discharge Elimination System (NPDES) permit fees. This final rule withdraws the financial incentive for States to voluntarily collect permit fees.

DATES: This rule is effective on April 15, 2009 without further notice.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2006–0765. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available,

e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is publicly available only in hard copy. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Robyn Delehanty, Office of Water, Office of Wastewater Management, 4201M, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–3880; fax number: (202) 501–2346; e-mail address:*delehanty.robyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

Affected Entities: State Agencies that are eligible to receive grants under Section 106 of the Clean Water Act (CWA).

II. Background

Section 106 of the CWA authorizes the EPA to provide grants to State and interstate agencies [footnote 1 (CWA Sections 106 and 518 authorize EPA to award such grants to eligible Indian Tribes, but this rule does not affect those grants)] to administer programs for the prevention, reduction, and elimination of water pollution, including the development and implementation of groundwater protection strategies. Section 106(b) of the CWA directs the EPA Administrator to make allotments ''in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States.'' EPA's regulations implementing Section 106 can be found at 40 CFR 35.160 *et seq*. EPA's current allotment formula for Section 106 grants includes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. These six components are surface water area, ground water use, water quality impairment, potential point sources, nonpoint sources, and the population of urbanized areas. 40 CFR 35.162(b)(1)(i). By including a component related to point sources, EPA recognizes the important role they play in determining the extent of pollution in a State.

EPA proposed a rule amending the CWA Section 106 allotment formula on January 4, 2007 (72 FR 293) and requested comments from interested parties. EPA received 717 comments on the proposed rule. A summary of the significant public comments and the Agency's responses can be found at Docket No. EPA–HQ–OW–2006–0765. There were also two changes to the final rule which EPA determined necessary. These changes involved delaying implementation of the rule until FY 2009 and changing the base fiscal year which the Agency would use to determine if an allotment for this purpose should be made. EPA's responses to all comments received on the rulemaking are included in the docket described above.

The final rule promulgated September 10, 2008 (73 FR 52584) amended the State allotment formula to incorporate financial incentives for States to implement adequate NPDES fee programs. The Agency recognizes the importance of States' flexibility in program management. Therefore, the final rule was purely an incentive; it was voluntary and would not have impacted States' base funds. The incentive allotment could only be funded after an increase above the FY 2008 level in the total amount of funds allotted to States under 40 CFR 35.162(b). Additionally, the Agency had discretion regarding whether to fund the incentive allotment.

Today's final rule withdraws the ''Permit Fee Rule'' promulgated on September 10, 2008.

The Clean Water Act prohibits the discharge of any pollutant from point sources to waters of the U.S. except in compliance with other provisions of the statute. 33 U.S.C. 1311(a). One of these provisions is CWA Section 402, under which pollutant discharges can be authorized by an NPDES permit. 33 U.S.C. 1342(a). EPA oversees the NPDES program and also approves applications from States to administer and enforce the NPDES program in those States. Currently, 46 States are authorized by EPA to administer all or some parts of the NPDES program.

Federal funds under the Water Pollution Control grants, together with State resources, are used to establish and maintain adequate measures to prevent, reduce and eliminate water pollution. As State agencies carry out most of the day-to-day aspects of water quality functions, their responsibilities are expanding while they are simultaneously facing increasingly severe funding constraints. The growing complexity of water quality issues has prompted more States to implement NPDES permit fee programs. An estimated 42 States currently have permit fee programs in place, with such fees paying for all or a portion of the cost of the State's permit program.

A number of States still operate their permit programs with little or no reliance on permit fees. States can address permit program budget shortfalls through the implementation of permit fee programs that collect funds to cover the cost of issuing and administering permits. Funding permit programs with the support of permit fees allows States to use CWA Section 106 funds for other critical water quality programs, which address the prevention, reduction, and elimination of water pollution.

Conclusion

After careful evaluation, EPA is withdrawing the Permit Fee Rule. EPA has maintained an on-going discussion with the States throughout the rulemaking process and has heard the States' concern with the rule. EPA respects and values this feedback from the States and looks forward to continuing the successful partnership with them. EPA also notes the lack of congressional support for the rule. The FY 2008 Congressional Budget language directed EPA to use the same allocation method as used in prior years and the Conference Report for the Omnibus Appropriations Act for 2009 includes language stating Congress does not support the creation of an incentive pool with 2009 funds. At a time when State budgets are already strained, EPA continues to encourage States to develop sustainable programs that share the cost with those who benefit from NPDES permits. The Agency applauds the 42 States that already collect some form of fees for NPDES permits.

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this rule is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). Today's rule contains no Federal mandates (under the regulatory provisions of Title 2 of the Unfunded Mandates Reform Act of 1999 (UMRA)) for State, local, or tribal governments or the private sector that would subject the rule to Sections 202 and 205 of the UMRA) (Pub. L. 104–4). The rule imposes no enforceable duty on any

State, local, or Tribal governments or the private sector. In addition, this rule does not significantly or uniquely affect small governments. This rule does not create new binding legal requirements and does not substantially and directly affect Indian Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it is a grant rule that does not affect the level of protection provided to human health or the environment. This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects. This rule does not involve technical standards; 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. This rule does not impose an additional 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.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on April 15, 2009.

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 9, 2009.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Water.

■ EPA amends 40 CFR part 35 as follows:

PART 35–[AMENDED]

■ 1. The authority for citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Public Law 104–134, 110 Stat. 1321, 1321–299 (1966); Public Law 105–65, 111 Stat. 1344, 1373 (1997).

§ 35.162 [Amended]

■ 2. Section 35.162 is amended by removing paragraph (e).

[FR Doc. E9–8644 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1170; FRL–8410–1]

Modification of Pesticide Tolerance Revocation for Diazinon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule resolves an objection filed by the California Grape and Tree Fruit League in response to a final rule on diazinon tolerances published on September 10, 2008 (73 FR 52607) by granting the objection and modifying the revocation of the diazinon tolerance on grapes to expire on September 10, 2010.

DATES: This final rule is effective April 15, 2009.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1170. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; fax number: (703) 308–8005; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action apply to me?

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

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

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

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

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document

electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

II. Prior Diazinon Tolerance Rulemaking

On May 21, 2008 (73 FR 29456) (FRL–8362–1), EPA proposed the revocation of the tolerance for residues of diazinon, O, O-diethyl O-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate; (CAS Reg. No. 333–41–5), in or on the food commodity grape at 0.75 parts per million (ppm) in 40 CFR 180.153(a) because the use on grapes had been canceled. The proposal neither discussed nor took into account the fact that an existing stocks provision in the cancellations allowed continued use of existing diazinon stocks until December 2008. No comments were received in response to the proposal expressing objections to the revocation of the diazinon tolerance on grapes. EPA published a final rulemaking on September 10, 2008 (73 FR 52607) (FRL–8379–3) revoking the diazinon tolerance on grapes.

III. The California Grape and Tree Fruit League Objection

On November 10, 2008, the California Grape and Tree Fruit League filed an objection to the tolerance rulemaking pursuant to 21 U.S.C. 346a(g)(2)(A), objecting to the revocation of the diazinon tolerance on grapes. The basis of the California Grape and Tree Fruit League objection is that although the use on grapes has been canceled the tolerance is ''still necessary to allow for the orderly exhaustion of existing stocks.'' The California Grape and Tree Fruit League argued that a tolerance is therefore required for grapes treated with existing stocks of diazinon to allow the legally treated commodity to clear the channels of trade and preventing seizure of the treated grapes by the Food and Drug Administration.

IV. Order on Objection

Despite the fact that the California Grape and Tree Fruit League did not comment on this issue with respect to the proposed rule, because the proposal erroneously failed to take into account the existing stock provision, EPA in its discretion has considered the objection and found it to be sound. Accordingly, EPA, by this rule and order, and pursuant to section 408(g)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA), is amending the diazinon tolerance in 40 CFR 180.153(a) to add a tolerance for grape at at 0.75 ppm. The tolerance will remain in effect until September 10, 2010. The Agency anticipates this should allow a reasonable period of time for the depletion of existing diazinon stocks and the clearance of diazinon treated grapes from the channels of trade.

V. Conclusion

Therefore, pursuant to section 408(g)(2)(C) of FFDCA, a tolerance for the residues of diazinon, O, O-diethyl O-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate; (CAS Reg. No. 333–41–5), in or on the food commodity grapes is added at 0.75 ppm until September 10, 2010.

VI. Statutory and Executive Order Reviews

EPA included the required statutory discussion in the September 10, 2008 final rule (72 FR 52610).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 2, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.153, is amended by alphabetically adding the commodity to the table in paragraph (a) to read as follows:

§ 180.153 Diazinon; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Grape[2]	0.75
* * *	* *

* * * * *

[FR Doc. E9–8117 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2008–0745; FRL–8791–2]

Ocean Dumping; Designation of Ocean Dredged Material Disposal Site Offshore of the Rogue River, OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 14, 2008, EPA published a proposed rule at 73 FR 60662 to designate an ocean dredged material disposal site located offshore of the Rogue River, Oregon, and simultaneously withdrew an earlier proposal. EPA observed a typographical error in the proposed rule as published. In proposed rule, FR Doc. EPA–R10–OW–2008–0745, on page 60670 in the issue of October 14, 2008, in the first column, the very first coordinate was published as 42°24′5.40″ N, but should have been published as 42°24′15.40″ N. The coordinate was published correctly on page 60664 in the first column as 42°24′15.40″ N. EPA received no comments on the proposed rule. EPA did receive one letter, dated November 12, 2008, from the Department of the Interior (DOI) stating that DOI had no comments. This action finalizes the designation of the Rogue River ocean dredged material disposal site, with the correct coordinates, pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The new site is needed primarily to serve as a long-term location for the disposal of material dredged from the Rogue River navigation channel. The new site will also serve to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated site will be subject to ongoing monitoring and management as specified in this rule and in the Site Management and Monitoring Plan, which is also finalized as part of this action. The monitoring and management requirements will help to ensure continued protection of the marine environment.

DATES: *Effective Date:* This final rule will be effective May 15, 2009.

ADDRESSES: For more information on this final rule, Docket ID No. EPA–R10–OW–2008–0745, use one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for accessing the docket and materials related to the final rule.
- *E-mail: Freedman.Jonathan@epa.gov*
- *Mail:* Jonathan Freedman, US Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the US Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553–1289, between the hours of 9 a.m. to 11:30 a.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Jonathan Freedman, US Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–0266, e-mail: *freedman.jonathan@epa.gov*, or contact Jessica Winkler, US Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–083), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–7369, e-mail: *winkler.jessica@epa.gov*.

SUPPLEMENTARY INFORMATION:

1. Potentially Affected Persons

Persons potentially affected by this final action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. sections 1401 to 1445. EPA's action is relevant to persons, including organizations and government bodies, seeking to dispose of dredged material in ocean waters offshore of the Rogue River, Oregon. Currently, the US Army Corps of Engineers (Corps) will be most impacted by this final action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	US Army Corps of Engineers Civil Works Projects, and other Federal Agencies
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. Background

a. History of Disposal Site Offshore of the Rogue River, Oregon

The final Rogue River ocean dredged material disposal site, or areas in the same vicinity, were used by the Corps beginning in 1962. When the MPRSA was enacted, the site became an ''interim'' site under the ocean dumping regulations, a status superseded by later statutory changes to the MPRSA. The site was selected for use by the Corps under Section 103 of the MPRSA. That authority allows the Corps to select a site for disposal when a site has not been designated. EPA concurred on that selection and in 2003 approved the Corps' request to continue to use the site through the end of the 2008 dredging season.

From 1986 through 2006, over 1.1 million cubic yards (cy) of dredged material were placed at the Rogue River site. A uniform placement strategy, rather than point dumping, was applied to the disposal of material at the site and regular bathymetric surveys were conducted. Data collected from those surveys showed that persistent mounding did not occur within the site or in the vicinity of the site. Over the long-term, site capacity appears to be unconstrained based on the historical and anticipated disposal volumes because material placed redistributes out of the site, feeding the littoral cell.

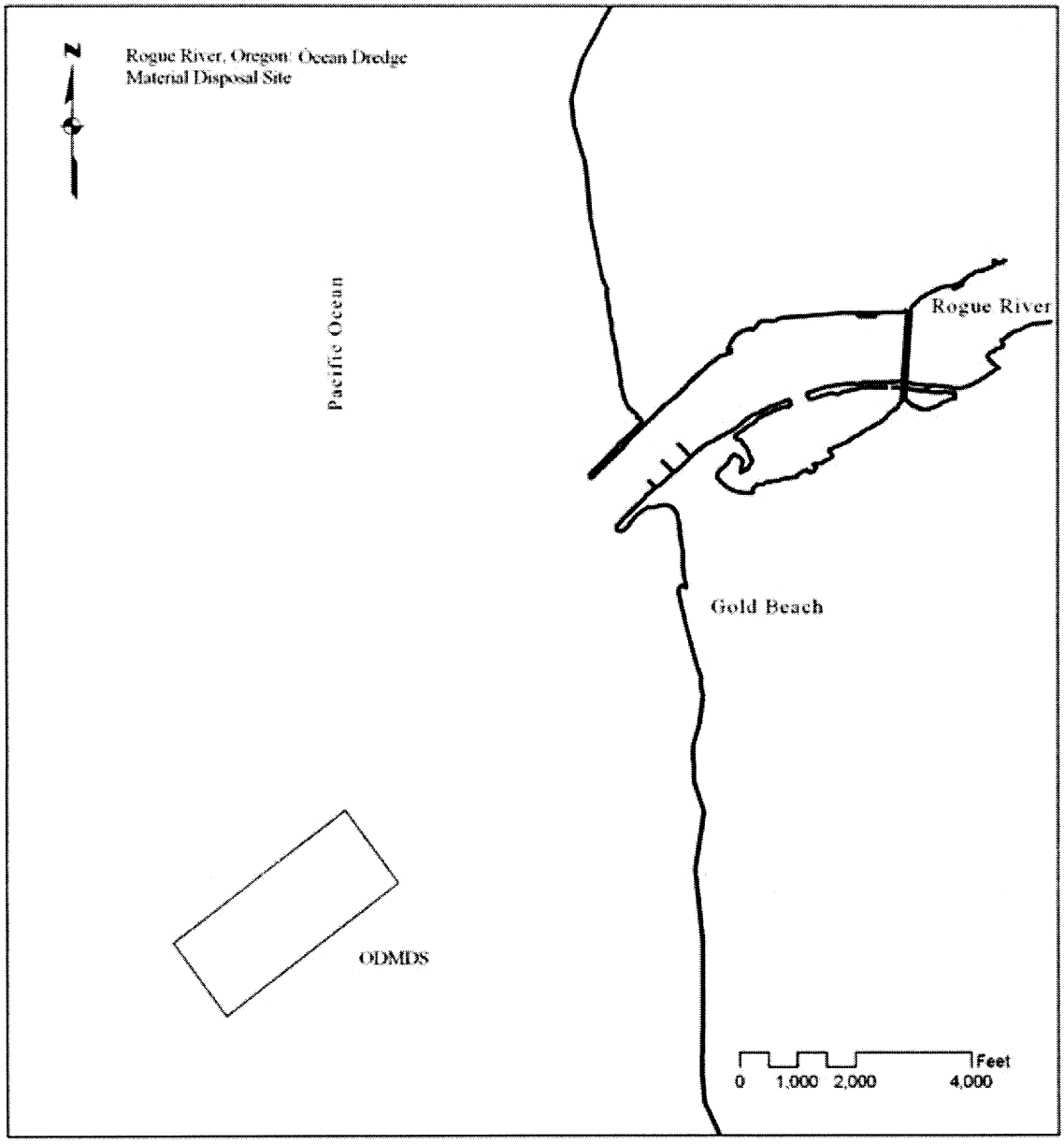


Figure 1. Diagram of the Final Rogue River Ocean Dredged Material Disposal Site.

b. Location and Configuration of Final Rogue River Ocean Dredged Material Disposal Site

Figure 1, above, shows the Rogue River ocean dredged material disposal site (Rogue River ODMDS or Site) EPA designates in this action. The Site's configuration is expected to allow dredged material disposed in shallower portions of the Site to naturally disperse into the littoral zone without creating mounding conditions that could contribute to adverse impacts to navigation. This final Site configuration will allow EPA to ensure that disposal of dredged material into the Site will be managed so that as much material as possible is retained in the active littoral drift area to augment shoreline building processes.

The coordinates for the Rogue River ODMDS as finalized in this action are, in North American Datum 83 (NAD 83):

42°24′15.40″ N, 124°26′52.39″ W
42°24′03.40″ N, 124°26′39.39″ W
42°23′39.40″ N, 124°27′17.40″ W
42°23′51.40″ N, 124°27′30.40″ W

The Site occupies approximately 116 acres. The Site's final dimensions are: 1,400-feet wide by 3,600-feet long, with Site depth ranging from approximately 50 to 90 feet. The Site generally lies on bottom contours sloping at a rate of 8/1000 feet to the west-southwest. The disposal area, placement area, and drop zone for the Site are identical.

c. Management and Monitoring of the Final Site

The final Rogue River ODMDS is expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at the Rogue River, Oregon, and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Site. The ocean dumping regulations do not require a modification of any existing permits issued before this final action. All persons using the Site are required to follow the final Site Management and

Monitoring Plan (SMMP) for the Rogue River ODMDS which is available to the public as part of this action. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the Site are suitable for disposal in the ocean. The final SMMP addresses the timing of disposal events to minimize interference with other uses of ocean waters in the vicinity of the Site.

d. MPRSA Criteria

EPA assessed this final action against the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR Part 228, and determined that the final site designation satisfies those criteria.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

EPA's assessment of information available at the time of this final rule included a review of the potential for interference with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas. While limited overlap was found to exist between disposal operations and salmon fishing, no observable conflicts were identified. No evidence was found to suggest that the final Site would cause interference with fisheries or with navigation in the Rogue River navigation channel. The final Site has been used over the past decades for dredged material disposal, most recently pursuant to Section 103 of the MPRSA, as a site selected by the Corps with EPA's concurrence. Mariners in this area are accustomed to Site use.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

Based on EPA's review of modeling, monitoring data and history of use, there is no indication that detectable contaminant concentrations or water quality effects would reach any beach, shoreline, or other area outside of the final Site. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b), must be further tested as required by 40 CFR 227.13(c). Suitable material can be disposed of at the Site. Modeling work performed by the Corps at the Umpqua River, demonstrates that water column turbidity, a temporary perturbation during disposal, would dissipate for an anticipated 97% of coarser material within a few minutes of disposal. The remaining 3% of the material, which would be classified as fine-grained, would dissipate within a half hour. Over time, some of the suitable disposed material would be expected to migrate into the active littoral drift system.

(3) If Site designation studies show that any interim disposal sites do not meet the site selection criteria, use of such sites shall be terminated as soon as any alternate site can be designated (40 CFR 228.5(c)).

EPA's recent final rule at 73 FR 74983 (December 10, 2008) repealed obsolete regulations under the MPRSA regarding interim ocean dumping sites and interim ocean dumping criteria. EPA stated in the proposed rule that there are no interim sites near the Rogue Site, however, the category of ''interim site'' has since been removed from the ocean dumping criteria.

(4) The sizes of disposal sites will be limited in order to localize for identification and control of any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA sized the final Site to meet this criterion. The final Site tends to be moderately dispersive in the near-shore area and tends to be less dispersive farther from shore. The overall stability of the Site, as indicated by the lack of adverse mounding, is a significant component of the justification for the size of the Site. Data collected by the Corps through bathymetric monitoring show the spread and movement of material after placement. The data establish that material from the Site eventually disperses over the footprint of the site and with seasonal movement disperses into the littoral system. Monitoring of the final Site is required in the SMMP and effective monitoring of the Site is anticipated based on past practice and current ability to monitor the location and conduct surveillance.

(5) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

The final Site is located where historic disposal occurred with a history of minimal impact to the environment, and minimal impact to other uses and amenities. Locations off the continental shelf in the Pacific Ocean are generally inhabited by stable benthic and pelagic ecosystems on steeper gradients that are not well adapted to frequent disturbance events such as occur with the disposal of dredged material. Monitoring and surveillance of the final Site do not pose the challenges inherent in a site located beyond the edge of the continental shelf. Material disposed beyond the edge of the continental shelf would not be available to the littoral system.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

Based on the data available, the geographical position, including the depth of the final Site, bottom topography and distance from the coastline in the vicinity of the final Site, indicates that designation of the final Site will not cause adverse effects to the marine environment. EPA understands that the currents at the final Site and their influence on the movement of material in the area suggest there is a high likelihood that much of the material disposed at the Site will be transported to the littoral sediment circulation system. Limited onshore transport of material disposed of at the Site is not expected because of the nature of the prevailing currents and because wave transport in the vicinity of the Site trends alongshore. Net predicted material transport at the Site is southward in the summer months and northward during the remainder of the year. These transport mechanisms are expected to move material into the active littoral drift area. This movement is expected to allow for long-term disposal without creation of adverse mounding conditions.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The final Site is not located in exclusive breeding, spawning, nursery or feeding areas for adult or juvenile phases of living resources. Modeling of the water column, which indicates that turbidity from a disposal event would

be expected to dissipate fairly rapidly, indicates that avoidance behavior by any species at the final Site would be short-term.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The final Site, although located in close proximity to the Rogue River navigation channel, is located a sufficient distance offshore to avoid adverse impacts to beaches and other amenity areas. Transportation of dredges or barges to and from the final Site to dispose of dredged material is expected to be coordinated so as to avoid disturbance of other activities near the Rogue River entrance channel.

(4) Types and Quantities of Wastes Final to be Disposed of, and Final Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Dredged material characterized by chemical and biological testing and found suitable for disposal into ocean waters will be the only material allowed to be disposed of at the final Site. No material defined as ''waste'' under the MPRSA will be allowed to be disposed of at the final Site. The dredged material expected to be disposed of at the Site will be predominantly marine sand, far removed from known sources of contamination.

With respect to final methods of releasing material at the final Site, material will be released just below the surface from dredges while the dredges are under power and slowly transiting the final Site. This method of release is expected to spread material at the Site to minimize mounding and to minimize impacts to the benthic community and other species in, or near, the Site at the time of a disposal event.

(5) Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

Monitoring and surveillance at the final Site are expected to be feasible and easily performed from small surface research vessels. The final Site is accessible for bathymetric and side-scan sonar surveys. At a minimum, annual bathymetric surveys will be conducted at the final Site to confirm that no unacceptable mounding is taking place within the Site or its immediate vicinity. Routine monitoring is expected to concentrate on examining how the distribution of material in the near-shore portions of the Site augment littoral processes and how distribution of material in the deeper portions of the Site avoid or minimize mounding.

(6) Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Dispersal, horizontal transport and vertical mixing characteristics of the area at and in the vicinity of the final Site are complex. This complexity is partly a result of rocky reefs to the north of the final Site which appear to influence mass transport, and in part the complexity can be attributed to prevailing wave-induced motion and currents moving towards the north during much of the year. Wave-induced motion appears to cause near-constant mobilization of bottom sediment. The overall regional mass transport trend suggests that net littoral transport of material is to the north from the final Site. That overall littoral transport appears to be balanced by offshore transport from the mouth of the Rogue River to the north of the final Site such that there is shoreline accretion to the north and relative equilibrium of the shoreline to the south.

(7) Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).

The approximate annual loading volume of dredged material placed at the final Site is expected to equal 54,000 cubic yards (cy) of material. This average was calculated by averaging seasonal material placement over disposal seasons from the time the site became a selected site. Annual monitoring of the Site is required in the final SMMP for the Site. The final SMMP includes requirements for managing the Site to address mounding issues if mounding occurs.

(8) Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

Disposals at the final Site will be managed through the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the near-shore and deeper portions of the final Site.

(9) The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).

EPA did not identify any adverse water quality impacts or adverse impacts to overall ecology from the historic use of the final Site.

(10) Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the final Site. The final SMMP includes specific biological monitoring requirements, which would act to identify any nuisance species, and management requirements, which would allow EPA to direct special studies and/or operational changes to address nuisance species.

(11) Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

The final Site is located about two nautical miles south-southeast of the Rogue Reef complex, an ecologically unique feature among a system of neritic reefs off the Oregon coast. Dredged material disposed at the final Site is generally expected to settle to the seafloor quickly. Naturally occurring littoral transport, which would not be expected to adversely affect aquatic communities in the reef areas, is anticipated on a small scale. No significant cultural features were identified at, or in the vicinity of, the final Site. As discussed below, EPA coordinated with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the final Site to identify any cultural features. None were identified. No shipwrecks were observed or documented within the final Site or its immediate vicinity.

e. National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

(1) NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. EPA's NEPA regulations are found at 40 CFR Part 6. NEPA does not apply to EPA designations of ocean disposal sites because the courts have exempted EPA's actions under the MPRSA from the procedural requirements of NEPA through application of the functional equivalence doctrine. EPA has, by policy, determined that the preparation of non-EIS NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' (Voluntary NEPA Policy), 63 FR 58045,

(October 29, 1998), sets out both the policy and procedures EPA uses when preparing such environmental review documents. EPA's 2007 revisions to 40 CFR Part 6 provided the framework EPA used to prepare the voluntary NEPA documents for this final action.

EPA's primary voluntary NEPA document for designating the final Site is the *Rogue River, Oregon Ocean Dredged Material Disposal Site Evaluation Study and Environmental Assessment, 2009* (EA), jointly prepared by EPA and the Corps. The final EA and its Technical Appendices, are part of the docket for this final action, and provide the threshold environmental review for the Site designation. The information from the final EA is used extensively, above, in the discussion of the ocean dumping criteria.

(2) MSA and MMPA

In the spring of 2008, EPA initiated consultation with the National Marine Fisheries Service (NMFS) concerning essential fish habitat and protected marine mammals. EPA prepared an essential fish habitat (EFH) assessment pursuant to section 305(b) of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d. NMFS reviewed EPA's EFH assessment and ESA Biological Assessment for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389.

With respect to marine mammals, NMFS found that all potential adverse effects to ESA-listed marine mammals are discountable or insignificant. Those findings are documented in Appendix A. Marine Mammal Determinations of the Biological Opinion issued by NMFS to EPA on March 19, 2009. With respect to EFH, NMFS found that disposal of dredge material, an indirect effect of EPA's action to designate the Rogue River ODMDS, will not alter the habitat value of the designated EFH at and in the vicinity of the Site. NMFS also concluded that impacts to forage base would be highly localized and any potential decrease in forage abundance is considered insignificant to the total food resources available to EFH management species. Finally, NMFS concluded that the safe passage of the EFH managed species will not be functionally changed by EPA's Site designation and the subsequent disposal of dredged material. Those findings are documented in the Magnuson-Stevens Fishery Conservation and Management Act section of the NMFS Biological Opinion. NMFS included a ''conservation recommendation'' to study fish behavior and interactions with disposed material at the Site. EPA will respond in a separate written response to NMFS' recommendation.

(3) CZMA

EPA initiated consultation with the state of Oregon on coastal zone management issues in summer of 2008. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP) to meet the requirements of the Coastal Zone Management Act, as amended, (CZMA), 16 U.S.C. 1451 to 1465, and submitted that determination formally to the Oregon Department of Land Conservation and Development (DLCD) in November. DLCD publicly noticed EPA's consistency determination and took comments on the action until January 2, 2009. DLCD received one comment from the Oregon Department of Fish and Wildlife (ODFW) expressing support for the designation of the Rogue River Site and supporting ocean disposal of dredged material as the best alternative. ODFW also characterized disposal of material in the littoral zone as a beneficial use. ODFW did express concern with the relationship of the Site to rocky terrain and with the potential impacts of uniform disposal.

DLCD concurred on EPA's determination of consistency with one condition. The condition calls for the SMMP to assure that monitoring measures for the Rogue River Site are reasonably likely to identify significant unanticipated adverse effects on renewable marine resources, biological diversity of marine life and the functional integrity of the marine ecosystem at the site, and further asks that the SMMP include adaptive management measures to avoid significant impairment of the Site and significant decreases in abundance of commercial or recreational caught species from direct or indirect effects on important or essential habitat at the Site. DLCD responded to the concerns expressed by ODFW by including the condition, above, in its consistency concurrence. DLCD also recommended that EPA and ODFW coordinate on issues that might involve adjustments in Site management to avoid unanticipated adverse effects on important habitat and renewable marine resources. The final SMMP in this final designation provides the assurance and adaptive management measures requested.

(4) ESA

EPA initiated informal consultation in the spring of 2008 with NMFS and the U.S. Fish and Wildlife Service pursuant to section 7(a)(2) of the ESA on EPA's action to designate the Rogue River ODMDS. EPA prepared a Biological Assessment to assess the potential effects of the Site designation on aquatic and wildlife species. EPA found that its action would not be likely to adversely affect (NLAA) aquatic or wildlife species listed as endangered or threatened pursuant to the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, or the critical habitat of such species. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered.

The US Fish and Wildlife Service (USFWS) concurred with EPA's finding that EPA's action to designate the final Rogue River ODMDS would not likely adversely affect listed species or critical habitat. Consultation with the USFWS for this final action was completed on July 29, 2008.

The National Marine Fisheries Service (NMFS) did not concur on EPA's NLAA finding and subsequently prepared a Biological Opinion (BO), issued March 19, 2009. NMFS concluded that EPA's site designation is not likely to jeopardize the continued existence of Southern Oregon/Northern California Coasts (SONCC) coho salmon or southern Distinct Population Segment (DPS) green sturgeon and is not likely to destroy or adversely modify SONCC coho salmon designated critical habitat or proposed southern DPS green sturgeon habitat. However, NMFS found that the indirect effects of the Site designation related to the exposure fish could experience from the disposal of dredged material could have consequences for listed fish. Based on NMFS' estimate of ensuing indirect effects of the Site designation, NMFS estimated that injury and death of as many as 476 yearling SONCC coho salmon and a smaller number of small sub-adult southern DPS green sturgeon could occur. For Steller sea lions, blue whales, fin whales, humpback whales, and Southern Resident Killer whales, NMFS concurred in the BO with EPA's determination of ''may affect, not likely to adversely affect.'' For four species of sea turtles, sperm whales, and sei whales, assessed by EPA in its determination of NLAA, NMFS found no effect because NMFS did not anticipate the species would be present in the action area.

NMFS acknowledged in the BO that EPA's action, the Site designation, does not authorize and will not itself result in disposal of dredged material. NMFS stated that it does not anticipate any take will be caused by the Site designation and adoption of the SMMP.

Consequently, NMFS did not include an incidental take statement in the BO. Rather, NMFS stated that any further analysis of the effects of disposal of dredged material at the disposal site and issuance of an incidental take statement with reasonable and prudent measures and non-discretionary terms and conditions to minimize take would be prepared when a disposal permit is requested by the action agency. NMFS did include one discretionary conservation recommendation in the BO seeking a study of fish interactions with disposed material. Such recommendations are purely advisory in nature. While EPA appreciates that such a study might be beneficial to the scientific knowledge base, EPA believes that such a study would be most helpful if carried out by NMFS, the expert Federal agency on fish behavior.

(5) NHPA

EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a–2. The NHPA requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. EPA determined that no historic properties were affected, or would be affected, by the final designation of the Site. EPA did not find any historic properties within the geographic area of the final Site. This determination was based on an extensive review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of cultural resources near the final Site. Side scan sonar of the final Site did not reveal the presence of any shipwrecks or other cultural or historic properties. The SHPO responded to EPA's determination on September 11, 2008, without objection and clarified on October 13, 2008 that the Site designation did not require further archeological investigation to proceed.

f. Action

EPA designates the Rogue River ODMDS as an EPA-approved dredged material ocean disposal Site in this action. The monitoring and management requirements that will apply to this site are described in the final SMMP. EPA received no comments on the proposed rule other than one letter, dated November 12, 2008, from the Department of the Interior (DOI) stating that DOI had no comments. It should be emphasized that an ocean disposal site designation does not constitute or imply Corps or EPA approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence by any person, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA independently evaluates proposed dumping in accordance with those criteria pursuant to 40 CFR part 225. EPA has the right to disapprove of the actual disposal of dredged material if EPA determines that environmental requirements under the MPRSA have not been met.

3. Statutory and Executive Order Reviews

This final rule designating the Rogue River ODMDS pursuant to Section 102 of the MPRSA complies with applicable executive orders and statutory provisions as follows:

(1) Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one 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. EPA determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

(2) Paperwork Reduction Act

This final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this final rule does not establish or modify any information or recordkeeping requirements for the regulated community.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR Part 9.

(3) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA determined that this final action will not have a significant economic impact on small entities because the final rule only has the effect of regulating the location of a site to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

(4) Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title

II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local, or tribal government or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

(5) Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.'' This rule does not have federalism implications. It does 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

(6) Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications, as specified in Executive Order 13175 because the designation of this dredged material disposal Site will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this final rule, EPA consulted with tribal officials in the development of this rule, particularly as it relates to potential impacts to historic or cultural resources.

(7) Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The final action concerns the designation of an ocean disposal Site for dredged material and provides a designated location to use for ocean disposal of dredged material pursuant to section 102 (c) of the MPRSA.

(8) Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

(9) National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The final action includes environmental monitoring and measurement as described in EPA's final SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the final Site once designated. The Agency will allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the final SMMP.

(10) Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order (EO) 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA assessed the overall protectiveness of designating the final disposal Site against the criteria established pursuant to the MPRSA to ensure that any adverse impact on the environment will be mitigated to the greatest extent practicable.

(11) Congressional Review Act

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

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: April 3, 2009.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418

■ 2. Section 228.15 is amended by adding paragraph (n)(6) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(6) Rogue River, OR—Dredged Material Site

(i) *Location:* 42° 24′15.40″ N, 124° 26′52.39″ W; 42° 24′03.40″ N, 124° 26′39.39″ W; 42° 23′39.40″ N, 124° 27′17.40″ W; 42° 23′51.40″ N, 124° 27′30.40″ W (NAD 83)

(ii) *Size:* Approximately 1.1 kilometers long and 0.4 kilometers wide

(iii) *Depth:* Ranges from approximately 15 to 27 meters

(iv) *Primary Use:* Dredged material

(v) *Period of Use:* Continuing Use

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Rogue River navigation channel and adjacent areas;

(B) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(C) Monitoring, as specified in the SMMP, is required.

* * * * *

[FR Doc. E9–8660 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0456; SW–FRL–8787–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by BAE Systems, Inc. (BAE) to exclude (or delist) the waste filter cake from its waste water treatment plant generated by BAE Sealy, Texas from the lists of hazardous wastes. This final rule responds to the petition submitted by BAE to delist F019 waste filter cake generated from the facility's waste water treatment plant. After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 1,200 cubic yards per year of the F019 waste filter cake. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

DATES: *Effective Date*: April 15, 2009.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2008–0456. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Wendy Jacques, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–F), Dallas, Texas 75202, at (214) 665–7395, or *jacques.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition, EPA proposed, on September 23, 2008, to exclude the waste filter cake from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 73 FR 54760). EPA is finalizing the decision to grant BAE's delisting petition to have its waste filter cake managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

B. Why is EPA approving this action?

BAE's petition requests a delisting from the F019 waste listing under 40 CFR 260.20 and 260.22. BAE does not believe that the petitioned waste meets the criteria for which EPA listed it. BAE also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste as originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste

generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from BAE's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Sealy, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will BAE manage the waste if it is delisted?

The waste filter cake from BAE will be disposed of in a RCRA Subtitle D landfill.

E. When is the final delisting exclusion effective?

This rule is effective April 15, 2009. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1) allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA delisting program in place of the Federal program; that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If BAE transports the petitioned waste to or manages the waste in any state with delisting authorization, BAE must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. Based on the information supplied by the generator, the Administrator must determine whether factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste. The generator must also supply information to demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21–§ 261.24.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did BAE petition EPA to delist?

On December 23, 2005, BAE petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, waste filter cake (F019) generated from its facility located in Sealy, Texas. The waste falls under the classification of listed waste pursuant to § 261.31.

B. How much waste did BAE propose to delist?

Specifically, in its petition, BAE requested that EPA grant a standard exclusion for 1,200 cubic yards per year of waste filter cake resulting from the treatment of waste waters from the manufacturing processes at its facility.

C. How did BAE sample and analyze the waste data in this petition?

To support its petition, BAE submitted:

- Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semi volatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for seven filter cake samples;
- Analytical results from multiple pH leaching of metals; and
- Descriptions of the waste water treatment process.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

No comments were received during the comment period. However, the EPA received a Freedom of Information request for BAE's original delisting petition and all supporting documents from Arnold & Porter LLP. The EPA submitted BAE's original delisting petition and all supporting documents, excluding all confidential material, to Arnold & Porter LLP.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). 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.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility,

it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'', (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. 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. This rule does not involve technical standards; 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, ''Civil Justice Reform'' (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.

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: March 16, 2009.

Carl Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
BAE Systems, Inc,	Sealy, TX	Filter Cake (EPA Hazardous Waste Number F019) generated at a maximum rate of 1,200 cubic yards per calendar year after April 15, 2009. For the exclusion to be valid, BAE must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Filter Cake Leachable Concentrations (mg/l): Acetone—3211; Arsenic—0.052; Barium—100; Bis(2-ethylhexyl)phthalate—103; Cadmium—0.561; Chloroform—0.4924; Chromium—5.0; Copper—149; Cyanide—19; Furans—3.57; Hexavalent Chromium—5.0; Lead—3.57; Lindane—0.4; Methyl Ethyl Ketone—200; Nickel—82.2; Selenium—1.0; 2,4,5–TP (Silvex)—1.0; 2,4–D—6.65; Tin—9001; Tetrachlorodibenzo-p-dioxin—249; Tetrachloroethylene—0.125685; Zinc—1240. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for filter cake has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by BAE exceed any of the delisting levels set in paragraph (1) for the filter cake, BAE must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) manage and dispose the filter cake as hazardous waste generated under Subtitle C of RCRA.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) Testing Requirements: Upon this exclusion becoming final, BAE may perform quarterly analytical testing by sampling and analyzing the filter cake as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the filter cake at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling must be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the filter cake must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, BAE will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the filter cake do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, BAE can manage and dispose the non-hazardous filter cake according to all applicable solid waste regulations. (B) Annual Testing: (i) If BAE completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), BAE may begin annual testing as follows: BAE must test two representative composite samples of the filter cake for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the BAE filter cake are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If BAE significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. BAE must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: BAE must submit the information described below. If BAE fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). BAE must: (A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." (6) Reopener (A) If, anytime after disposal of the delisted waste BAE possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1), BAE must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If BAE fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements BAE Systems must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and possible revocation of the decision.
* *	* *	* * *

[FR Doc. E9–8646 Filed 4–14–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0457; SW–FRL–8787–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by Cooper Crouse-Hinds to exclude (or delist) the sludge and filter sand (called sludge hereinafter) from its wastewater treatment plant (WWTP) generated by Cooper Crouse-Hinds in Amarillo, Texas from the lists of hazardous wastes. This final rule responds to the petition submitted by Cooper Crouse-Hinds, to delist the WWTP sludge with Hazardous Waste Number, F006. After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 816 cubic yards per year of the WWTP sludge with Hazardous Waste Number: F006. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

DATES: *Effective Date:* April 15, 2009.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2008–0457. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Youngmoo Kim, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–C), Dallas, Texas 75202, at (214) 665–6788, or *kim.youngmoo@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition, EPA proposed on September 23, 2008, to exclude the WWTP sludge from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 73 FR 54770). EPA is finalizing the decision to grant Cooper Crouse-Hinds' delisting petition to have its WWTP sludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

B. Why is EPA approving this action?

Cooper Crouse-Hinds' petition requests a delisting from the F006 waste listing under 40 CFR 260.20 and 260.22. Cooper Crouse-Hinds does not believe that the petitioned waste meets the criteria for which EPA listed it. Cooper Crouse-Hinds also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a) (2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste as originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from Cooper Crouse-Hinds' facility is based on the

information submitted in support of this rule, including descriptions of the wastes and analytical data from the Amarillo, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will Cooper Crouse-Hinds manage the waste if it is delisted?

The sludge from Cooper Crouse-Hinds will be disposed of in a RCRA Subtitle D landfill.

E. When is the final delisting exclusion effective?

This rule is effective April 15, 2009. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1) allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions will be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA delisting program in place of the Federal program; that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Cooper Crouse-Hinds transports the petitioned waste to or manages the waste in any state with delisting authorization, Cooper Crouse-Hinds must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. Based on the information supplied by the generator, the Administrator must determine whether factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste. The generator must also supply information to demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21–§ 261.24.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did Cooper Crouse-Hinds petition EPA to delist?

On March 13, 2008, Cooper Crouse-Hinds petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31 and 261.32, WWTP sludge listed as F006 generated by its facility located in Amarillo, Texas. The waste falls under the classification of listed waste pursuant to § 261.31.

B. How much waste did Cooper Crouse-Hinds propose to delist?

Specifically, in its petition, Cooper Crouse-Hinds requested that EPA grant an exclusion for 816 cubic yards per year of WWTP sludge.

C. How did Cooper Crouse-Hinds sample and analyze the waste data in this petition?

To support its petition, Cooper Crouse-Hinds submitted:

- Historical information on waste generation and management practices;
- Results of the total constituents list for 40 CFR part 264, Appendix IX volatile and semi-volatile organic compounds and metals. These wastes were also analyzed for cyanide and sulfide.
- Results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semi-volatiles, and metals.
- Results from total oil and grease analyses and multiple pH measurements, and
- Results from four samples for total concentrations of compounds of concern (COCs).

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

No comments were received on the Proposed Rule during the comment period.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review '' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). 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.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this

final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'', (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. 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. This rule does not involve technical standards; 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, ''Civil Justice Reform'', (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.

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001 (f) RCRA, 42 U.S.C. 6921(f).

Dated: March 13, 2009.

Connie Suttice,

Acting Director, Multimedia Planning and Permitting Division Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of Part 261, add the following waste stream (in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * * *
Cooper Crouse-Hinds	Amarillo, TX	Wastewater Treatment Sludge (Hazardous Waste No. F006) generated at a maximum annual rate of 816 cubic yards per calendar year after April 15, 2009 and disposed in Subtitle D Landfill. For the exclusion to be valid, Cooper Crouse-Hinds must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. WWTP Sludge Leachable Concentrations (mg/l): (i) Inorganic Constituents: Arsenic-0.0759; Barium-100; Cadmium-0.819; Copper-216; Iron-1.24; Manganese-145; Nickel-119; Zinc-18. (ii) Organic Constituents: Benzene-0.5. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for WWTP sludge has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by Cooper Crouse-Hinds exceed any of the delisting levels set in paragraph (1) for the WWTP sludge, Cooper Crouse-Hinds must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose WWTP sludge as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, Cooper Crouse-Hinds may perform quarterly analytical testing by sampling and analyzing the WWTP sludge as follows: (A) Quarterly Testing:

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(i) Collect two representative composite samples of the sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling must be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, Cooper Crouse-Hinds will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Cooper Crouse-Hinds can manage and dispose the non-hazardous WWTP sludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If Cooper Crouse-Hinds completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Cooper Crouse-Hinds may begin annual testing as follows: Cooper Crouse-Hinds must test two representative composite samples of the WWTP sludge for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the WWTP sludge is representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed as non-hazardous waste during the calendar year. (4) Changes in Operating Conditions: If Cooper Crouse-Hinds significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. Cooper Crouse-Hinds must submit a modification to the petition, complete with full sampling and analysis, for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream, if it wishes to dispose of the material as non-hazardous. (5) Data Submittals: Cooper Crouse-Hinds must submit the information described below. If Cooper Crouse-Hinds fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Cooper Crouse-Hinds must: (A) Submit the data obtained through paragraph (3) to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas, 75202, within the time specified. All supporting data can be submitted on CD–ROM or comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. ''As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		''If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Re-opener: (A) If, anytime after disposal of the delisted waste Cooper Crouse-Hinds possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1), Cooper Crouse-Hinds must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Cooper Crouse-Hinds fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: Cooper Crouse-Hinds must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2008–0711; FRL–8788–9]

Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting Wisconsin final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The agency published a proposed rule on November 24, 2008 at 73 FR 70931 and provided for public comment. The public comment period ended on December 24, 2008. We received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes. This final rule authorizes the renumbering and revision of Wisconsin's previously authorized regulations.

DATES: The final authorization will be effective on April 15, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–RCRA–2008–0711. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some of the 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 at *http://www.regulations.gov* or in hard copy. You may view and copy Wisconsin's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA, Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Jean Gromnicki (312) 886–6162; or Wisconsin Department of Natural Resources, 101 S. Webster Street, Madison, Wisconsin, contact: Patricia Chabot (608) 264–6015.

FOR FURTHER INFORMATION CONTACT: Jean Gromnicki, Wisconsin Regulatory Specialist, U.S. EPA, Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6162, e-mail *gromnicki.jean@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 Wisconsin's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Wisconsin final authorization to operate its hazardous waste program with the changes described in the authorization application. Wisconsin has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) 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 Wisconsin, 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 Wisconsin 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. Wisconsin 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:

1. Do inspections, and require monitoring, tests, analyses or reports.
2. Enforce RCRA requirements and suspend or revoke permits.
3. 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 Wisconsin is being authorized by today's action are already effective, and are not changed by today's action.

D. Proposed Rule

On November 24, 2008 (73 FR 70931), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Wisconsin's hazardous waste program and opened our decision to public comment. The agency received no comments on this proposal.

E. What Has Wisconsin Previously Been Authorized for?

Wisconsin initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3783) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on May 23, 1989, effective June 6, 1989 (54 FR 15029), on November 22, 1989, effective January 22, 1990 (54 FR 48243), on April 24, 1992, effective April 24, 1992 (57 FR 15029), on June 2, 1993, effective August 2, 1993 (58 FR 31344), on August 4, 1994, effective October 4, 1994 (59 FR 39971), on August 5, 1999, effective October 4, 1999 (64 FR 42630), and on June 26, 2002, effective June 26, 2002 (67 FR 43002).

F. What Changes Are We Authorizing With This Action?

On April 29, 2008, Wisconsin submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We have determined that Wisconsin's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we are granting Wisconsin final authorization for the following program changes:

Federal provision	Former NR provision	Recodified NR provision
40 CFR 260.1	NR 600.01	NR 660.01.
40 CFR 260.2	NR 600.06	NR 660.02.
40 CFR 260.3	§§ 227.27(1) & 990.001(1) & (2), Stats	§§ 227.27(1) & 990.001(1) & (2), Stats.
40 CFR 260.10	NR 600.03	NR 660.10.
40 CFR 260.11	NR 600.10	NR 660.11.
40 CFR 260.20	NR 605.10(6)	NR 660.20.
40 CFR 260.21	None	NR 660.21.
40 CFR 260.22	NR 605.10(1), (2) & (4)	NR 660.22.
40 CFR 260.23	NR 605.10(7)	NR 660.23.
40 CFR 260.30	None	NR 660.30.
40 CFR 260.31	None	NR 660.31.
40 CFR 260.32	None	NR 660.32.
40 CFR 260.33	None	NR 660.33.
40 CFR 260.40	NR 625.10	NR 660.40.
40 CFR 260.41	None	NR 660.41.
40 CFR 261.1	NR 600.03 & 605.01–605.03	NR 661.01.
40 CFR 261.2	NR 605.05(1)(m), (2)(a) & (f)–(i), (3) & (4)	NR 661.02.
40 CFR 261.3	NR 605.04	NR 661.03.
40 CFR 261.4	NR 600.03(107) & 605.05 & § 289.01(33), Stats	NR 661.04.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 261.5	NR 610.06, 610.07(1)–(4) & 610.09	NR 662.220.
40 CFR 261.6	NR 605.05(1)(q) & (2)(a)–(d), 625.01–625.09 & 625.11	NR 661.06.
40 CFR 261.7	NR 605.06 & 610.04(4)	NR 661.07.
40 CFR 261.8	NR 605.13	NR 661.08.
40 CFR 261.9	NR 605.05(12)	NR 661.09.
40 CFR 261.10	NR 605.07(1)	NR 661.10.
40 CFR 261.11	NR 605.07(2)	NR 661.11.
40 CFR 261.20	NR 605.08(1)	NR 661.20.
40 CFR 261.21	NR 605.08(2)	NR 661.21.
40 CFR 261.22	NR 605.08(3)	NR 661.22.
40 CFR 261.23	NR 605.08(4)	NR 661.23.
40 CFR 261.24	NR 605.08(5)	NR 661.24.
40 CFR 261.30	NR 605.09(1)	NR 661.30.
40 CFR 261.31	NR 605.09(2)(a) & 605.14	NR 661.31.
40 CFR 261.32	NR 605.09(2)(b)	NR 661.32.
40 CFR 261.33	NR 605.09(3)	NR 661.33.
40 CFR 261.35	NR 605.05(6)	NR 661.35.
40 CFR 261.38	None	NR 661.38.
40 CFR 261 Appendix I	NR 605 Appendix I	NR 661 Appendix I.
40 CFR 261 Appendix II	None	NR 661 Appendix II.
40 CFR 261 Appendix III	NR 605 Appendix II	NR 661 Appendix III.
40 CFR 261 Appendix VII	NR 605 Appendix III	NR 661 Appendix VII.
40 CFR 261 Appendix VIII	NR 605 Appendix IV	NR 661 Appendix VIII.
40 CFR 262.10	NR 610.01, 610.02, 610.04(2) & (3), 615.01, 615.02, 615.04(2) & 615.05(1)(c).	NR 662.010 & 662.190(2).
40 CFR 262.11	NR 610.05(1)–(5) & 615.06(1)–(4) & (6)	NR 662.011 & 662.190(2).
40 CFR 262.12	NR 610.08(1)(b) & (c) & 615.07	NR 662.012 & 662.190(2).
40 CFR 262.20	NR 610.08(1)(d) & (e), 615.08(1), (3)–(5), (8) & (9) & 615.09(1)	NR 662.020 & 662.191.
40 CFR 262.21	NR 610.08(1)(d) & 615.08(2)	NR 662.021 & 662.190(2)(a).
40 CFR 262.22	NR 610.08(1)(d) & 615.08(6)	NR 662.022 & 662.190(2)(a).
40 CFR 262.23	NR 610.08(1)(d) & 615.08(6), (11), (12) & (15)	NR 662.023 & 662.190(2)(a).
40 CFR 262.30	NR 610.08(1)(j), 615.05(4)(a)2.a. & 615.10(1)	NR 662.030 & 662.190(2).
40 CFR 262.31	NR 610.08(1)(k)(intro.), 615.05(4)(a)2.a. & 615.10(2)(intro.)	NR 662.031 & 662.190(2).
40 CFR 262.32	NR 610.08(1)(k)(intro.) & 2., 615.05(4)(a)2.a. & 615.10(2)(intro.) & (b)	NR 662.032 & 662.190(2).
40 CFR 262.33	NR 610.08(1)(L), 615.05(4)(a)2.a. & 615.10(3)	NR 662.033 & 662.190(2).
40 CFR 262.34	NR 615.05(4)(a)2.–6. & 10., (b) & (c) & 610.08(intro.), (1)(k)1., (n)–(q), (u), (w) & (x), (2) & (5)(a) & (c).	NR 662.034 & 662.192.
40 CFR 262.40	NR 615.06(5), 615.08(7) & 615.11(1)(c) & (2)(c)	NR 662.040.
40 CFR 262.41	NR 615.11(1)	NR 662.041.
40 CFR 262.42	NR 615.11(2)	NR 662.042.
40 CFR 262.43	NR 615.11(3)	NR 662.043.
40 CFR 262.44	NR 610.05(6), 610.08(1)(d), (h)1. & (i) & 615.08(7)	NR 662.193.
40 CFR 262.50	NR 610.08(1)(m) & 615.12(intro.)	NR 662.050 & 662.190(2).
40 CFR 262.51	NR 600.03(41), (70), (180), (184) & (234)	NR 662.051 & 662.190(2).
40 CFR 262.52	NR 610.08(1)(m) & 615.12(1i)–(1m)	NR 662.052 & 662.190(2).
40 CFR 262.53	NR 610.08(1)(m) & 615.12(1)	NR 662.053 & 662.190(2).
40 CFR 262.54	NR 610.08(1)(m) & 615.12(1c)–(1g), (1k), (1p) & (1r)	NR 662.054 & 662.190(2).
40 CFR 262.55	NR 610.08(1)(m) & 615.12(2)	NR 662.055 & 662.190(2).
40 CFR 262.56	NR 610.08(1)(m) & 615.12(1t)	NR 662.056 & 662.190(2).
40 CFR 262.57	NR 610.08(1)(m) & 615.12(1u)–(1z)	NR 662.057 & 662.190(2).
40 CFR 262.58	NR 615.14	NR 662.058 & 662.190(2).
40 CFR 262.60	NR 615.13	NR 662.060 & 662.190(2).
40 CFR 262.70	NR 610.04(2) & (3) & 615.04(2)	NR 662.070 & 662.190(2).
40 CFR 262.80	None	NR 662.080 & 662.190(2).
40 CFR 262.81	None	NR 662.081 & 662.190(2).
40 CFR 262.82	None	NR 662.082 & 662.190(2).
40 CFR 262.83	None	NR 662.083 & 662.190(2).
40 CFR 262.84	None	NR 662.084 & 662.190(2).
40 CFR 262.85	None	NR 662.085 & 662.190(2).
40 CFR 262.86	None	NR 662.086 & 662.190(2).
40 CFR 262.87	None	NR 662.087 & 662.190(2).
40 CFR 262.89	None	NR 662.089 & 662.190(2).
40 CFR 262 Appendix	NR 610.08(1)(d) & 615.08(8)(intro.) & (9)(intro.)	NR 662.020(1) & 662.190(2)(a).
40 CFR 263.10	NR 620.01, 620.04(1) & 620.05(2) & (5)	NR 663.10.
40 CFR 263.11	NR 620.05(4) & 620.06	NR 663.11.
40 CFR 263.12	NR 620.14(intro.), (3), (5)(a) & (14)	NR 663.12.
40 CFR 263.20	NR 620.07	NR 663.20.
40 CFR 263.21	NR 620.08	NR 663.21.
40 CFR 263.22	NR 620.09	NR 663.22.
40 CFR 263.30	NR 620.10	NR 663.30.
40 CFR 263.31	NR 620.10	NR 663.31.
40 CFR 264.1	NR 630.01, 630.02, 630.04(1), (2), (4)–(7), (9), (11)–(14), (16) & (17), 635.04(1), 636.04(1), 640.04(1)–(5) & (9)–(11), 645.04(1)–(5), 656.04(2), 660.04(2) & 665.05(2).	NR 664.0001.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 264.3	NR 630.04(8), 640.04(7) & 660.04(4)	NR 664.0003.
40 CFR 264.4	§ 291.85, Stats	NR 664.0004.
40 CFR 264.10	NR 630.02	NR 664.0010.
40 CFR 264.11	NR 630.11	NR 664.0011.
40 CFR 264.12	NR 630.10	NR 664.0012.
40 CFR 264.13	NR 630.12 & 630.13(1)	NR 664.0013.
40 CFR 264.14	NR 630.14	NR 664.0014.
40 CFR 264.15	NR 630.15	NR 664.0015.
40 CFR 264.16	NR 630.16	NR 664.0016.
40 CFR 264.17	NR 630.17(1) & (2)	NR 664.0017.
40 CFR 264.18	NR 600.04(5) & 630.18(2) & (3)	NR 664.0018.
40 CFR 264.19	NR 655.07(7) & 660.13(6)–(9) & 660.16	NR 664.0019.
40 CFR 264.30	NR 630.02	NR 664.0030.
40 CFR 264.31	NR 630.21(1)	NR 664.0031.
40 CFR 264.32	NR 630.21(2)	NR 664.0032.
40 CFR 264.33	NR 630.21(4)	NR 664.0033.
40 CFR 264.34	NR 630.21(3)	NR 664.0034.
40 CFR 264.35	NR 630.21(5)	NR 664.0035.
40 CFR 264.37	NR 630.21(6)	NR 664.0037.
40 CFR 264.50	NR 630.02	NR 664.0050.
40 CFR 264.51	NR 630.22(1)(a)	NR 664.0051.
40 CFR 264.52	NR 630.22(1)(e) & (g)	NR 664.0052.
40 CFR 264.53	NR 630.22(1)(b)	NR 664.0053.
40 CFR 264.54	NR 630.22(1)(c)	NR 664.0054.
40 CFR 264.55	NR 630.22(1)(d)	NR 664.0055.
40 CFR 264.56	NR 630.22(2)	NR 664.0056.
40 CFR 264.70	NR 630.02	NR 664.0070.
40 CFR 264.71	NR 630.30(4)–(5m) & (7)	NR 664.0071.
40 CFR 264.72	NR 600.03(147) & (203) & 630.30(6)	NR 664.0072.
40 CFR 264.73	NR 630.31(1)	NR 664.0073.
40 CFR 264.74	NR 630.31(2)–(4)	NR 664.0074.
40 CFR 264.75	NR 630.40(1)	NR 664.0075.
40 CFR 264.76	NR 630.40(2)	NR 664.0076.
40 CFR 264.77	NR 630.40(3)	NR 664.0077.
40 CFR 264.90	NR 635.02, 635.04(1)(a) & 635.05(1)(intro.), (a), (b) & (d) & (2) & 680.04.	NR 664.0090.
40 CFR 264.91	NR 635.06	NR 664.0091.
40 CFR 264.92	NR 635.07	NR 664.0092.
40 CFR 264.93	NR 635.08	NR 664.0093.
40 CFR 264.94	NR 635.09	NR 664.0094.
40 CFR 264.95	NR 635.10	NR 664.0095.
40 CFR 264.96	NR 635.11(1) & (2)	NR 664.0096.
40 CFR 264.97	NR 635.12	NR 664.0097.
40 CFR 264.98	NR 635.13	NR 664.0098.
40 CFR 264.99	NR 635.14	NR 664.0099.
40 CFR 264.100	NR 635.15	NR 664.0100.
40 CFR 264.101	NR 635.17	NR 664.0101.
40 CFR 264.110	NR 680.04, 685.02 & 685.06(1)	NR 664.0110.
40 CFR 264.111	NR 685.05(1)(a)–(c)	NR 664.0111.
40 CFR 264.112	NR 685.05(2)–(5)	NR 664.0112.
40 CFR 264.113	NR 685.05(6) & (7)	NR 664.0113.
40 CFR 264.114	NR 685.05(8)	NR 664.0114.
40 CFR 264.115	NR 685.05(10)(a) & (b)	NR 664.0115.
40 CFR 264.116	NR 685.05(10)(c)	NR 664.0116.
40 CFR 264.117	NR 685.06(2)–(4)	NR 664.0117.
40 CFR 264.118	NR 685.06(5) & (6)	NR 664.0118.
40 CFR 264.119	NR 660.17, 660.24(10) & 685.06(8)	NR 664.0119.
40 CFR 264.120	NR 685.06(9)	NR 664.0120.
40 CFR 264.140	NR 680.04 & 685.07(1)(a) & (b)	NR 664.0140.
40 CFR 264.141	NR 600.03(3), (15), (23m), (33), (35), (52), (53), (116), (137), (139), (144), (154), (155), (162), (168), (218), (219) & (224) & 685.03.	NR 664.0141.
40 CFR 264.142	NR 685.07(3)(a), (b)1. & 4. & (c)	NR 664.0142.
40 CFR 264.143	NR 685.07(5)(a)–(i) & (9)(a)	NR 664.0143.
40 CFR 264.144	NR 685.07(4)(a), (b)1. & 4. & (c)	NR 664.0144.
40 CFR 264.145	NR 685.07(5)(a)–(i) & (9)(b)	NR 664.0145.
40 CFR 264.146	NR 680.04	NR 664.0146.
40 CFR 264.147	NR 680.04 & 685.08(1)–(3), (4)(c), (6), (8), (9)(a) & (b), (10)(a)–(c), (11)(a)–(d) & (12)(a)–(d).	NR 664.0147.
40 CFR 264.148	NR 685.07(10) & 685.08(13)	NR 664.0148.
40 CFR 264.151	NR 685.08(7)(a) & (b), (8)(d)1., (9)(c), (10)(f), (11)(e) & (12)(e) & DNR Forms 4430–022—4430–026.	NR 664.0151.
40 CFR 264.170	NR 640.02	NR 664.0170.
40 CFR 264.171	NR 640.09	NR 664.0171.
40 CFR 264.172	NR 640.10	NR 664.0172.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 264.173	NR 640.11(2) & (3)	NR 664.0173.
40 CFR 264.174	NR 640.12(1)	NR 664.0174.
40 CFR 264.175	NR 640.13(1)	NR 664.0175.
40 CFR 264.176	NR 640.14	NR 664.0176.
40 CFR 264.177	NR 640.15	NR 664.0177.
40 CFR 264.178	NR 640.16(1)	NR 664.0178.
40 CFR 264.179	NR 640.13(4)	NR 664.0179.
40 CFR 264.190	NR 645.02 & 645.09(1) & (2)	NR 664.0190.
40 CFR 264.191	NR 645.07(1)–(4)	NR 664.0191.
40 CFR 264.192	NR 645.08	NR 664.0192.
40 CFR 264.193	NR 645.09(3)–(11)	NR 664.0193.
40 CFR 264.194	NR 645.10(1)–(3)	NR 664.0194.
40 CFR 264.195	NR 645.11	NR 664.0195.
40 CFR 264.196	NR 645.12	NR 664.0196.
40 CFR 264.197	NR 645.17(1)(a)	NR 664.0197.
40 CFR 264.198	NR 645.13	NR 664.0198.
40 CFR 264.199	NR 645.14	NR 664.0199.
40 CFR 264.200	NR 645.10(6)	NR 664.0200.
40 CFR 264.220	NR 660.02	NR 664.0220.
40 CFR 264.221	NR 660.18(11)(a)–(d), (38) & (39), 660.24(11)(b)1.–5. & 680.04	NR 664.0221.
40 CFR 264.222	NR 660.18(11)(f)	NR 664.0222.
40 CFR 264.223	NR 660.18(11)(g)–(i)	NR 664.0223.
40 CFR 264.226	NR 660.18(13), (31)(b) & (c) & (32)	NR 664.0226.
40 CFR 264.227	NR 660.18(33)–(37)	NR 664.0227.
40 CFR 264.228	NR 660.20(1)(a)1. & (d), 660.21(1)(a) & (4), 660.22 & 660.24(14) & (15)	NR 664.0228.
40 CFR 264.229	NR 660.18(3) & 660.24(11)(a)	NR 664.0229.
40 CFR 264.230	NR 660.18(4)	NR 664.0230.
40 CFR 264.231	NR 660.25	NR 664.0231.
40 CFR 264.232	NR 660.18(40)	NR 664.0232.
40 CFR 264.250	NR 655.02 & 655.05(2)(intro.) & (a)–(e)	NR 664.0250.
40 CFR 264.251	NR 655.07(2), (3) & (5) & 680.04	NR 664.0251.
40 CFR 264.252	NR 655.07(2) & 660.18(11)(f)	NR 664.0252.
40 CFR 254.253	NR 655.07(2) & 660.18(11)(g)–(i)	NR 664.0253.
40 CFR 264.254	NR 655.08	NR 664.0254.
40 CFR 264.256	NR 655.09	NR 664.0256.
40 CFR 264.257	NR 655.10(1)	NR 664.0257.
40 CFR 264.258	NR 655.11(2)(a), (b) & (d)	NR 664.0258.
40 CFR 264.259	NR 655.12	NR 664.0259.
40 CFR 264.270	NR 600.04(2)	NR 664.0270.
40 CFR 264.271	None	None.
40 CFR 264.272	None	None.
40 CFR 264.273	None	None.
40 CFR 264.276	None	None.
40 CFR 264.278	None	None.
40 CFR 264.279	None	None.
40 CFR 264.280	None	None.
40 CFR 264.281	None	None.
40 CFR 264.282	None	None.
40 CFR 264.283	None	None.
40 CFR 264.300	NR 660.02	NR 664.0300.
40 CFR 264.301	NR 660.18(11)(a)–(d), (12), (16) & (29) & 680.04	NR 664.0301.
40 CFR 264.302	NR 660.18(11)(f)	NR 664.0302.
40 CFR 264.303	NR 660.18(13) & (31)(a) & (c)	NR 664.0303.
40 CFR 264.304	NR 660.18(11)(g)–(i)	NR 664.0304.
40 CFR 264.309	NR 660.18(14)	NR 664.0309.
40 CFR 264.310	NR 660.20(1)(a)1., 660.21(1)(a) & 660.22(2)	NR 664.0310.
40 CFR 264.312	NR 660.18(3)	NR 664.0312.
40 CFR 264.313	NR 660.18(4)	NR 664.0313.
40 CFR 264.314	NR 660.18(6)–(8) & (9)(b) & (d)	NR 664.0314.
40 CFR 264.315	NR 660.18(9)(a)	NR 664.0315.
40 CFR 264.316	NR 660.18(9)(c)	NR 664.0316.
40 CFR 264.317	NR 660.25	NR 664.0317.
40 CFR 264.340	NR 665.02	NR 664.0340.
40 CFR 264.341	NR 665.09(14)	NR 664.0341.
40 CFR 264.342	NR 665.08	NR 664.0342.
40 CFR 264.343	NR 665.09(13)	NR 664.0343.
40 CFR 264.344	NR 665.05(3)	NR 664.0344.
40 CFR 264.345	NR 665.09(12), (14), (15) & (17)–(19)	NR 664.0345.
40 CFR 264.347	NR 665.09(11)(a)–(f)	NR 664.0347.
40 CFR 264.351	NR 665.10(1)	NR 664.0351.
40 CFR 264.550	None	NR 664.0550.
40 CFR 264.551	NR 600.03(49) & 636.40	NR 664.0551.
40 CFR 264.552	None	NR 664.0552.
40 CFR 264.553	NR 636.41	NR 664.0553.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 264.554	None	NR 664.0554.
40 CFR 264.555	None	NR 664.0555.
40 CFR 264.570	NR 656.02, 656.03, 656.04(3) & 656.07(1)	NR 664.0570.
40 CFR 264.571	NR 656.07(2)	NR 664.0571.
40 CFR 264.572	NR 656.07(3)	NR 664.0572.
40 CFR 264.573	NR 656.07(4)	NR 664.0573.
40 CFR 264.574	NR 656.07(5)	NR 664.0574.
40 CFR 264.575	NR 656.08(1)(a), (b) & (c)1.–3	NR 664.0575.
40 CFR 264.600	NR 670.02	NR 664.0600.
40 CFR 264.601	NR 670.08	NR 664.0601.
40 CFR 264.602	NR 670.09	NR 664.0602.
40 CFR 264.603	NR 670.10(2)	NR 664.0603.
40 CFR 264.1030	NR 631.02	NR 664.1030.
40 CFR 264.1031	NR 600.03(9), (30), (47), (63), (66), (84), (86), (90), (112), (113), (179), (209), (214), (222) & (230) & 631.03(1)–(15) & (18)–(25).	NR 664.1031.
40 CFR 264.1032	NR 631.06(1)	NR 664.1032.
40 CFR 264.1033	NR 631.06(2)	NR 664.1033.
40 CFR 264.1034	NR 631.03(26) & 631.07	NR 664.1034.
40 CFR 264.1035	NR 631.08	NR 664.1035.
40 CFR 264.1036	NR 631.09	NR 664.1036.
40 CFR 264.1050	NR 632.02	NR 664.1050.
40 CFR 264.1051	NR 632.03	NR 664.1051.
40 CFR 264.1052	NR 632.06(1)	NR 664.1052.
40 CFR 264.1053	NR 632.06(2)	NR 664.1053.
40 CFR 264.1054	NR 632.06(3)	NR 664.1054.
40 CFR 264.1055	NR 632.06(4)	NR 664.1055.
40 CFR 264.1056	NR 632.06(5)	NR 664.1056.
40 CFR 264.1057	NR 632.06(6)	NR 664.1057.
40 CFR 264.1058	NR 632.06(7)	NR 664.1058.
40 CFR 264.1059	NR 632.06(8)	NR 664.1059.
40 CFR 264.1060	NR 632.06(9)	NR 664.1060.
40 CFR 264.1061	NR 632.07(1)	NR 664.1061.
40 CFR 264.1062	NR 632.07(2)	NR 664.1062.
40 CFR 264.1063	NR 631.03(26) & 632.08	NR 664.1063.
40 CFR 264.1064	NR 632.09	NR 664.1064.
40 CFR 264.1065	NR 632.10	NR 664.1065.
40 CFR 264.1080	NR 633.02	NR 664.1080.
40 CFR 264.1081	NR 631.03(14) & 633.03	NR 664.1081.
40 CFR 264.1082	NR 633.05	NR 664.1082.
40 CFR 264.1083	NR 633.06	NR 664.1083.
40 CFR 264.1084	NR 633.07	NR 664.1084.
40 CFR 264.1085	NR 633.08	NR 664.1085.
40 CFR 264.1086	NR 633.09	NR 664.1086.
40 CFR 264.1087	NR 633.10	NR 664.1087.
40 CFR 264.1088	NR 633.11	NR 664.1088.
40 CFR 264.1089	NR 633.12	NR 664.1089.
40 CFR 264.1090	NR 633.13	NR 664.1090.
40 CFR 264.1100	NR 655.02 & 655.05(2)(intro.), (a), (g)(intro.) & 1, (k) & (L)	NR 664.1100.
40 CFR 264.1101	NR 655.05(2)(j) & (L) & 655.07(5) & (6)	NR 664.1101.
40 CFR 264.1102	NR 655.11(2)(a)–(c)	NR 664.1102.
40 CFR 264.1200	None	NR 664.1200.
40 CFR 264.1201	None	NR 664.1201.
40 CFR 264.1202	None	NR 664.1202.
40 CFR 264 Appendix I	None	NR 664 Appendix I.
40 CFR 264 Appendix IV	None	NR 664 Appendix IV.
40 CFR 264 Appendix V	None	NR 664 Appendix V.
40 CFR 264 Appendix VI	None	None. See NR 664.0018, 1st Note.
40 CFR 264 Appendix IX	NR 635 Appendix I	NR 664 Appendix IX.
40 CFR 265.1	NR 635.04(1), 645.04(1)–(5), 656.04(2) & 680.22	NR 665.0001.
40 CFR 265.4	§ 291.85, Stats	NR 665.0004.
40 CFR 265.10	None	NR 665.0010.
40 CFR 265.11	NR 630.11 & 680.22(3)	NR 665.0011.
40 CFR 265.12	NR 630.10(1) & (2) & 680.22(4)	NR 665.0012.
40 CFR 265.13	NR 630.12, 630.13(1) & 680.22(5) & (6)	NR 665.0013.
40 CFR 265.14	NR 630.14 & 680.22(12)	NR 665.0014.
40 CFR 265.15	NR 630.15 & 680.22(16)	NR 665.0015.
40 CFR 265.16	NR 630.16 & 680.22(14)	NR 665.0016.
40 CFR 265.17	NR 630.17(1) & (2) & 680.22(10)	NR 665.0017.
40 CFR 265.18	NR 600.04(5), 630.18(2) & (3) & 680.22(2) & (11)	NR 665.0018.
40 CFR 265.19	NR 655.07(7), 660.13(6)–(9), 660.16 & 680.22(24), (25) & (26)	NR 665.0019.
40 CFR 265.30	None	NR 665.0030.
40 CFR 265.31	NR 630.21(1) & 680.22(13)	NR 665.0031.
40 CFR 265.32	NR 630.21(2) & 680.22(13)	NR 665.0032.
40 CFR 265.33	NR 630.21(4) & 680.22(13)	NR 665.0033.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 265.34	NR 630.21(3) & 680.22(13)	NR 665.0034.
40 CFR 265.35	NR 630.21(5) & 680.22(13)	NR 665.0035.
40 CFR 265.37	NR 630.21(6) & 680.22(13)	NR 665.0037.
40 CFR 265.50	None	NR 665.0050.
40 CFR 265.51	NR 630.22(1)(a) & 680.22(13)	NR 665.0051.
40 CFR 265.52	NR 630.22(1)(e) & (g) & 680.22(13)	NR 665.0052.
40 CFR 265.53	NR 630.22(1)(b) & 680.22(13)	NR 665.0053.
40 CFR 265.54	NR 630.22(1)(c) & 680.22(13)	NR 665.0054.
40 CFR 265.55	NR 630.22(1)(d) & 680.22(13)	NR 665.0055.
40 CFR 265.56	NR 630.22(2) & 680.22(13)	NR 665.0056.
40 CFR 265.70	None	NR 665.0070.
40 CFR 265.71	NR 630.30(4)–(5m) & (7) & 680.22(15)	NR 665.0071.
40 CFR 265.72	NR 630.030(6) & 680.22(15)	NR 665.0072.
40 CFR 265.73	NR 630.31(1)(a)–(i) & (k)–(o) & 680.22(15)	NR 665.0073.
40 CFR 265.74	NR 630.31(2)–(4) & 680.22(15)	NR 665.0074.
40 CFR 265.75	NR 630.40(1) & 680.22(15)	NR 665.0075.
40 CFR 265.76	NR 630.40(2) & 680.22(15)	NR 665.0076.
40 CFR 265.77	NR 630.40(3) & 680.22(15)	NR 665.0077.
40 CFR 265.90	NR 635.02, 635.04(1)(a) & 635.05(1)(intro.), (a), (b) & (d) & (2) & 680.22(28).	NR 665.0090.
40 CFR 265.91	NR 635.12(1), (3) & (8)(e)–(g) & 680.22(28)	NR 665.0091.
40 CFR 265.92	NR 635.12(9) & (12)(intro.) & (a)–(c), 635.16(1)–(4) & 680.22(28)	NR 665.0092.
40 CFR 265.93	NR 635.16(5) & (7)–(16) & 680.22(28)	NR 665.0093.
40 CFR 265.94	NR 635.16(6) & (17) & 680.22(28)	NR 665.0094.
40 CFR 265.110	NR 680.22(18) & 685.06(1)	NR 665.0110.
40 CFR 265.111	NR 680.22(17) & 685.05(1)(a)–(c)	NR 665.0111.
40 CFR 265.112	NR 680.22(17) & 685.05(2)(intro.), (a)–(f) & (k) & (3)–(5)	NR 665.0112.
40 CFR 265.113	NR 680.22(17) & 685.05(6) & (7)	NR 665.0113.
40 CFR 265.114	NR 680.22(17) & 685.05(8)	NR 665.0114.
40 CFR 265.115	NR 680.22(17) & 685.05(10)(a) & (b)	NR 665.0115.
40 CFR 265.116	NR 680.22(17) & 685.05(10)(c)	NR 665.0116.
40 CFR 265.117	NR 680.22(18) & 685.06(2)–(4)	NR 665.0117.
40 CFR 265.118	NR 680.22(18) & 685.06(5)–(7)	NR 665.0118.
40 CFR 265.119	NR 660.17, 680.22(18) & (27) & 685.06(8)	NR 665.0119.
40 CFR 265.120	NR 680.22(18) & 685.06(9)	NR 665.0120.
40 CFR 265.121	None	NR 665.0121.
40 CFR 265.140	NR 680.22(19) & 685.07(1)(a) & (b)	NR 665.0140.
40 CFR 265.141	None	NR 665.0141.
40 CFR 265.142	NR 680.22(19) & 685.07(3)(a), (b)1. & 4. & (c)	NR 665.0142.
40 CFR 265.143	NR 680.22(19) & 685.07(5)(a)–(d) & (f)–(i) & (9)(a)	NR 665.0143.
40 CFR 265.144	NR 680.22(19) & 685.07(4)(a), (b)1. & 4. & (c)	NR 665.0144.
40 CFR 265.145	NR 680.22(19) & 685.07(5)(b)–(i) & (9)(b)	NR 665.0145.
40 CFR 265.146	None	NR 665.0146.
40 CFR 265.147	NR 680.22(20) & 685.08(1)–(3), (4)(c), (6), (8), (9)(a) & (b), (10)(a)–(c), (11)(a)–(d) & (12)(a)–(d).	NR 665.0147.
40 CFR 265.148	NR 680.22(19) & (20) & 685.07(10) & 685.08(13)	NR 665.0148.
40 CFR 265.170	None	NR 665.0170.
40 CFR 265.171	NR 640.09 & 680.22(23)	NR 665.0171.
40 CFR 265.172	NR 640.10 & 680.22(23)	NR 665.0172.
40 CFR 265.173	NR 640.11(2) & (3) & 680.22(23)	NR 665.0173.
40 CFR 265.174	NR 640.12(1) & 680.22(21)	NR 665.0174.
40 CFR 265.176	NR 640.14 & 680.22(23)	NR 665.0176.
40 CFR 265.177	NR 640.15 & 680.22(21) & (23)	NR 665.0177.
40 CFR 265.178	None	NR 665.0178.
40 CFR 265.190	NR 645.02 & 645.09(1) & (2) & 680.22(22)	NR 665.0190.
40 CFR 265.191	NR 645.07(1)–(4) & 680.22(22)	NR 665.0191.
40 CFR 265.192	NR 645.08 & 680.22(22)	NR 665.0192.
40 CFR 265.193	NR 645.09(3)–(10) & (11)(a), (b), (d) & (e), 680.22(22) & 680.24(6)	NR 665.0193.
40 CFR 265.194	NR 645.10(1)–(3) & 680.22(30)	NR 665.0194.
40 CFR 265.195	NR 645.11 & 680.22(22)	NR 665.0195.
40 CFR 265.196	NR 645.12 & 680.22(22)	NR 665.0196.
40 CFR 265.197	NR 645.17(1)(a) & 680.22(17)	NR 665.0197.
40 CFR 265.198	NR 645.13 & 680.22(22)	NR 665.0198.
40 CFR 265.199	NR 645.14 & 680.22(22)	NR 665.0199.
40 CFR 265.200	NR 645.15 & 680.22(22)	NR 665.0200.
40 CFR 265.201	NR 610.08(1)(p)	NR 662.194.
40 CFR 265.202	NR 645.10(6) & 680.22(30)	NR 665.0202.
40 CFR 265.220	None	NR 665.0220.
40 CFR 265.221	NR 660.18(2)(b), (11)(a)–(d), (16) & (38) & 680.22(25) & (31)	NR 665.0221.
40 CFR 265.222	NR 660.18(11)(f) & 680.22(25) & (31)	NR 665.0222.
40 CFR 265.223	NR 660.18(22) & 680.22(25) & (31)	NR 665.0223.
40 CFR 265.223	NR 660.18(11)(g)–(i) & 680.22(25) & (31)	NR 665.0224.
40 CFR 265.225	NR 660.18(10) & 680.22(25) & (31)	NR 665.0225.
40 CFR 265.226	NR 660.18(31)(c) & 680.22(25) & (31)	NR 665.0226.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 265.228	NR 660.20(1)(a)1. & (d), 660.21(1)(a) & (4), 660.22 & 660.24(14) & (15) & 680.22(17), (18), (26), (27), & (31).	NR 665.0228.
40 CFR 265.229	NR 660.18(3), 660.24(11)(a) & 680.22(25) & (31)	NR 665.0229.
40 CFR 265.230	NR 660.18(4) & 680.22(25) & (31)	NR 665.0230.
40 CFR 265.231	NR 660.18(40) & 680.22(25) & (31)	NR 665.0231.
40 CFR 265.250	NR 655.02 & 680.22(24)	NR 665.0250.
40 CFR 265.251	NR 655.07(5) & 680.22(24)	NR 665.0251.
40 CFR 265.252	NR 655.10(2) & 680.22(24)	NR 665.0252.
40 CFR 265.253	NR 655.07(4) & 680.22(24)	NR 665.0253.
40 CFR 265.254	NR 655.07(2), 660.18(2)(b) & 680.22(24)	NR 665.0254.
40 CFR 265.255	NR 655.07(2), 660.18(11)(f) & 680.22(24), (25) & (31)	NR 665.0255.
40 CFR 265.256	NR 655.09 & 680.22(24)	NR 665.0256.
40 CFR 265.257	NR 655.10(1) & 680.22(24)	NR 665.0257.
40 CFR 265.258	NR 655.11(2)(a) & (b) & 680.22(24)	NR 665.0258.
40 CFR 265.259	NR 655.07(2) & 660.18(11)(g)–(i) & 680.22(24), (25) & (31)	NR 665.0259.
40 CFR 265.260	NR 655.08(3) & 680.22(24)	NR 665.0260.
40 CFR 265.270	NR 600.04(3) & 680.22(2)	NR 665.0270.
40 CFR 265.272	None	None.
40 CFR 265.273	None	None.
40 CFR 265.276	None	None.
40 CFR 265.278	None	None.
40 CFR 265.279	None	None.
40 CFR 265.280	None	None.
40 CFR 265.281	None	None.
40 CFR 265.282	None	None.
40 CFR 265.300	None	NR 665.0300.
40 CFR 265.301	NR 660.18(2)(b), (11)(a)–(d), (12), (16) & (29) & 680.22(25) & (31)	NR 665.0301.
40 CFR 265.302	NR 660.18(11)(f) & 680.22(25) & (31)	NR 665.0302.
40 CFR 265.303	NR 660.18(11)(g)–(i) & 680.22(25) & (31)	NR 665.0303.
40 CFR 265.304	NR 660.18(31)(c) & 680.22(25) & (31)	NR 665.0304.
40 CFR 265.309	NR 660.18(14) & 680.22(25) & (31)	NR 665.0309.
40 CFR 265.310	NR 660.20(1)(a)1., 660.21(1)(a) & 660.22(2)(a), (b) & (d)–(f) & 680.22(17), (18), (26) & (27).	NR 665.0310.
40 CFR 265.312	NR 660.18(3) & 680.22(25) & (31)	NR 665.0312.
40 CFR 265.313	NR 660.18(4) & 680.22(25) & (31)	NR 665.0313.
40 CFR 265.314	NR 660.18(6)–(8) & (9)(b) & (d) & 680.22(25) & (31)	NR 665.0314.
40 CFR 265.315	NR 660.18(9)(a) & 680.22(25) & (31)	NR 665.0315.
40 CFR 265.316	NR 660.18(9)(c) & 680.22(25) & (31)	NR 665.0316.
40 CFR 265.340	None	NR 665.0340.
40 CFR 265.341	NR 665.09(16)(a)1., 3. & 4. & 680.22(29)	NR 665.0341.
40 CFR 265.345	NR 665.09(5) & 680.22(29)	NR 665.0345.
40 CFR 265.347	NR 665.09(11)(d) & 680.22(29)	NR 665.0347.
40 CFR 265.351	NR 665.10(1) & 680.22(17)	NR 665.0351.
40 CFR 265.352	NR 665.09(13)(b) & (16) & 680.22(29)	NR 665.0352.
40 CFR 265.370	None	NR 665.0370.
40 CFR 265.373	None	NR 665.0373.
40 CFR 265.375	None	NR 665.0375.
40 CFR 265.377	None	NR 665.0377.
40 CFR 265.381	None	NR 665.0381.
40 CFR 265.382	NR 630.20(1) & 680.22(7)	NR 665.0382.
40 CFR 265.383	None	NR 665.0383.
40 CFR 265.400	None	NR 665.0400.
40 CFR 265.401	None	NR 665.0401.
40 CFR 265.402	None	NR 665.0402.
40 CFR 265.403	None	NR 665.0403.
40 CFR 265.404	None	NR 665.0404.
40 CFR 265.405	None	NR 665.0405.
40 CFR 265.406	None	NR 665.0406.
40 CFR 265.430	NR 600.04(1) & (2) & 680.22(2)	NR 665.0430.
40 CFR 265.440	NR 656.02, 656.03, 656.04(3) & 656.07(1) & 680.22(33)	NR 665.0440.
40 CFR 265.441	NR 656.07(2) & 680.22(33)	NR 665.0441.
40 CFR 265.442	NR 656.07(3) & 680.22(33)	NR 665.0442.
40 CFR 265.443	NR 656.07(4)(a)–(m) & (o) & 680.22(33)	NR 665.0443.
40 CFR 265.444	NR 656.07(5) & 680.22(33)	NR 665.0444.
40 CFR 265.445	NR 656.08(1)(a), (b) & (c)1.–3. & 680.22(33)	NR 665.0445.
40 CFR 265.1030	NR 631.02(1) & (2) & 680.22(34)	NR 665.1030.
40 CFR 265.1031	NR 631.03(1)–(15) & (18)–(25) & 680.22(34)	NR 665.1031.
40 CFR 265.1032	NR 631.06(1) & 680.22(34)	NR 665.1032.
40 CFR 265.1033	NR 631.06(2)(a)–(h) & (j)–(o) & 680.22(34)	NR 665.1033.
40 CFR 265.1034	NR 631.03(26), 631.07 & 680.22(34)	NR 665.1034.
40 CFR 265.1035	NR 631.08 & 680.22(34)	NR 665.1035.
40 CFR 265.1050	NR 632.02(1), (2), (4) & (5) & 680.22(35)	NR 665.1050.
40 CFR 265.1051	NR 632.03 & 680.22(35)	NR 665.1051.
40 CFR 265.1052	NR 632.06(1) & 680.22(35)	NR 665.1052.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 265.1053	NR 632.06(2) & 680.22(35)	NR 665.1053.
40 CFR 265.1054	NR 632.06(3) & 680.22(35)	NR 665.1054.
40 CFR 265.1055	NR 632.06(4) & 680.22(35)	NR 665.1055.
40 CFR 265.1056	NR 632.06(5) & 680.22(35)	NR 665.1056.
40 CFR 265.1057	NR 632.06(6) & 680.22(35)	NR 665.1057.
40 CFR 265.1058	NR 632.06(7) & 680.22(35)	NR 665.1058.
40 CFR 265.1059	NR 632.06(8) & 680.22(35)	NR 665.1059.
40 CFR 265.1060	NR 632.06(9) & 680.22(35)	NR 665.1060.
40 CFR 265.1061	NR 632.07(1) & 680.22(35)	NR 665.1061.
40 CFR 265.1062	NR 632.07(2) & 680.22(35)	NR 665.1062.
40 CFR 265.1063	NR 631.03(26), 632.08 & 680.22(35)	NR 665.1063.
40 CFR 265.1064	NR 632.09 & 680.22(35)	NR 665.1064.
40 CFR 265.1080	NR 633.02 & 680.22(36)	NR 665.1080.
40 CFR 265.1081	NR 631.03(14), 633.03 & 680.22(36)	NR 665.1081.
40 CFR 265.1082	NR 633.04 & 680.22(36)	NR 665.1082.
40 CFR 265.1083	NR 633.05 & 680.22(36)	NR 665.1083.
40 CFR 265.1084	NR 633.06 & 680.22(36)	NR 665.1084.
40 CFR 265.1085	NR 633.07 & 680.22(36)	NR 665.1085.
40 CFR 265.1086	NR 633.08 & 680.22(36)	NR 665.1086.
40 CFR 265.1087	NR 633.09 & 680.22(36)	NR 665.1087.
40 CFR 265.1088	NR 633.10 & 680.22(36)	NR 665.1088.
40 CFR 265.1089	NR 633.11 & 680.22(36)	NR 665.1089.
40 CFR 265.1090	NR 633.12 & 680.22(36)	NR 665.1090.
40 CFR 265.1100	NR 655.02 & 680.22(24)	NR 665.1100.
40 CFR 265.1101	NR 655.07(5) & (6) & 680.22(24)	NR 665.1101.
40 CFR 265.1102	NR 655.11(2)(a)–(c) & 680.22(17)	NR 665.1102.
40 CFR 265.1200	None	NR 665.1200.
40 CFR 265.1201	None	NR 665.1201.
40 CFR 265.1202	None	NR 665.1202.
40 CFR 265 Appendix I	None	NR 665 Appendix I.
40 CFR 265 Appendix III	None	NR 665 Appendix III.
40 CFR 265 Appendix IV	None	NR 665 Appendix IV.
40 CFR 265 Appendix V	None	NR 665 Appendix V.
40 CFR 265 Appendix VI	NR 633 Appendix I	NR 665 Appendix VI.
40 CFR 266.20	None	NR 666.020.
40 CFR 266.21	None	NR 666.021.
40 CFR 266.22	None	NR 666.022.
40 CFR 266.23	NR 600.04(4)	NR 666.023.
40 CFR 266.70	None	NR 666.070.
40 CFR 266.80	NR 610.04(1), 615.04(3), 620.04(2) & 625.12	NR 666.080.
40 CFR 266.100	None	NR 666.100.
40 CFR 266.101	None	NR 666.101.
40 CFR 266.102	None	NR 666.102.
40 CFR 266.103	None	NR 666.103.
40 CFR 266.104	None	NR 666.104.
40 CFR 266.105	None	NR 666.105.
40 CFR 266.106	None	NR 666.106.
40 CFR 266.107	None	NR 666.107.
40 CFR 266.108	None	NR 666.108.
40 CFR 266.109	None	NR 666.109.
40 CFR 266.110	None	NR 666.110.
40 CFR 266.111	None	NR 666.111.
40 CFR 266.112	None	NR 666.112.
40 CFR 266.200	None	NR 666.200.
40 CFR 266.201	None	NR 666.201.
40 CFR 266.202	None	NR 666.202.
40 CFR 266.203	None	NR 666.203.
40 CFR 266.204	None	NR 666.204.
40 CFR 266.205	None	NR 666.205.
40 CFR 266.206	None	NR 666.206.
40 CFR 266.210	None	NR 666.210.
40 CFR 266.220	None	NR 666.220.
40 CFR 266.225	None	NR 666.225.
40 CFR 266.230	None	NR 666.230.
40 CFR 266.235	None	NR 666.235.
40 CFR 266.240	None	NR 666.240.
40 CFR 266.245	None	NR 666.245.
40 CFR 266.250	None	NR 666.250.
40 CFR 266.255	None	NR 666.255.
40 CFR 266.260	None	NR 666.260.
40 CFR 266.305	None	NR 666.305.
40 CFR 266.310	None	NR 666.310.
40 CFR 266.315	None	NR 666.315.
40 CFR 266.320	None	NR 666.320.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 266.325	None	NR 666.325.
40 CFR 266.330	None	NR 666.330.
40 CFR 266.335	None	NR 666.335.
40 CFR 266.340	None	NR 666.340.
40 CFR 266.345	None	NR 666.345.
40 CFR 266.350	None	NR 666.350.
40 CFR 266.355	None	NR 666.355.
40 CFR 266.360	None	NR 666.360.
40 CFR 266 Appendix I	None	NR 666 Appendix I.
40 CFR 266 Appendix II	None	NR 666 Appendix II.
40 CFR 266 Appendix III	None	NR 666 Appendix III.
40 CFR 266 Appendix IV	None	NR 666 Appendix IV.
40 CFR 266 Appendix V	None	NR 666 Appendix V.
40 CFR 266 Appendix VI	None	NR 666 Appendix VI.
40 CFR 266 Appendix VII	None	NR 666 Appendix VII.
40 CFR 266 Appendix VIII	None	NR 666 Appendix VIII.
40 CFR 266 Appendix IX	None	NR 666 Appendix IX.
40 CFR 266 Appendix XI	None	NR 666 Appendix XI.
40 CFR 266 Appendix XII	None	NR 666 Appendix XII.
40 CFR 266 Appendix XIII	NR 605 Appendix V	NR 666 Appendix XIII.
40 CFR 268.1	NR 675.01, 675.02, 675.03(1m), 675.04(3) & (4) & 675.05(3)	NR 668.01.
40 CFR 268.2	NR 600.03(177) & 675.03	NR 668.02.
40 CFR 268.3	NR 675.06	NR 668.03.
40 CFR 268.4	NR 675.04(1) & (5)	NR 668.04.
40 CFR 268.5	NR 675.05(1)	NR 668.05.
40 CFR 268.6	NR 675.05(2)	NR 668.06.
40 CFR 268.7	NR 675.07	NR 668.07.
40 CFR 268.9	NR 675.09	NR 668.09.
40 CFR 268.14	None	NR 668.14.
40 CFR 268.30	None	NR 668.30.
40 CFR 268.31	NR 675.12	NR 668.31.
40 CFR 268.32	None	NR 668.32.
40 CFR 268.33	None	NR 668.33.
40 CFR 268.34	None	NR 668.34.
40 CFR 268.35	None	NR 668.35.
40 CFR 268.36	None	NR 668.36.
40 CFR 268.37	NR 675.18	NR 668.37.
40 CFR 268.38	NR 675.19(1)	NR 668.38.
40 CFR 268.39	NR 675.19(2)	NR 668.39.
40 CFR 268.40	NR 675.20	NR 668.40.
40 CFR 268.41	NR 675.21	NR 668.41.
40 CFR 268.42	NR 675.22	NR 668.42.
40 CFR 268.43	NR 675.23	NR 668.43.
40 CFR 268.44	NR 675.24	NR 668.44.
40 CFR 268.45	NR 675.25	NR 668.45.
40 CFR 268.46	NR 675.26	NR 668.46.
40 CFR 268.48	NR 675.28	NR 668.48.
40 CFR 268.49	None	NR 668.49.
40 CFR 268.50	NR 675.30	NR 668.50.
40 CFR 268 Appendix III	NR 675 Appendix II	NR 668 Appendix III.
40 CFR 268 Appendix IV	NR 675 Appendix III	NR 668 Appendix IV.
40 CFR 268 Appendix VI	NR 675 Appendix V	NR 668 Appendix VI.
40 CFR 268 Appendix VII	NR 675 Appendix VI	NR 668 Appendix VII.
40 CFR 268 Appendix VIII	NR 675 Appendix VII	NR 668 Appendix VIII.
40 CFR 268 Appendix IX	None	NR 668 Appendix IX.
40 CFR 268 Appendix XI	NR 675 Appendix IX	NR 668 Appendix XI.
40 CFR 270.1	NR 610.07(5), 610.08(5)(a) & (d), 615.05(6)(a) & (c), 620.14(intro.), 640.05, 640.06(1)(intro.), 645.05(1), 645.06(1)(intro.), 655.05(1), 655.06(intro.), 656.05, 656.06(intro.), 660.09(intro.), 660.12, 660.24(7) & (8)(intro.), 665.06(1)(intro.), 670.06(intro.), 680.01, 680.02, 680.24(2) & (4), 680.30, 680.31(1) & 680.43(6).	NR 670.001.
40 CFR 270.2	NR 600.03(14), (32), (49), (54), (61), (62), (68), (69), (71), (76), (78), (81), (94), (95), (98), (103), (111), (120), (146), (164), (166), (167), (170), (182), (195), (200), (215), (233), (238), (240), (244), (261), (263) & (266) & 680.03(3m).	NR 660.10 & 670.002.
40 CFR 270.4	NR 680.40	NR 670.004.
40 CFR 270.5	None	NR 670.005.
40 CFR 270.6	NR 600.10	NR 660.11.
40 CFR 270.10	NR 680.06(3)(a), (4) & (5), 680.10, 680.21(3), 680.31(1) & (2) & 680.45(6)(intro.) & (b).	NR 670.010.
40 CFR 270.11	NR 680.05(2) & 680.41	NR 670.011.
40 CFR 270.12	NR 600.06	NR 670.012.
40 CFR 270.13	None	NR 670.013.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 270.14	NR 632.11(1)(b)3., 640.06(1)(e), (2)(e)2. & (f) & (3)(d)4., 640.07(3)(a)10., 12. & 13., 645.06(1)(e), (2)(e)2. & (f) & (3)(e), 645.16(3)(a)11., 13. & 14., 660.09(9)–(12), 660.13(3)(a) & (b) & (4), 680.05(1)(c)1., 680.06(3)(a)–(L) & (n), (4) & (5)(a), 685.07(2)(b) & 685.08(5)(a) & (b).	NR 670.014.
40 CFR 270.15	NR 640.06(2)(a)–(c) & (h) & 640.07(3)(a)7., 8. & 11	NR 670.015.
40 CFR 270.16	NR 645.06(1)(i) & 645.16(3)(a)8.c.–e., 9. & 12	NR 670.016.
40 CFR 270.17	NR 660.09(5), (7), (8) & (14), 660.13(1), (2) & (7) & 660.24(8) & (9)	NR 670.017.
40 CFR 270.18	NR 655.06	NR 670.018.
40 CFR 270.19	NR 665.06(1)(d)–(f)	NR 670.019.
40 CFR 270.20	NR 600.04(3) & 680.22(2)	NR 664.0270 & 665.0270.
40 CFR 270.21	NR 660.09(5), (7), (8) & (14) & 660.13(1), (2) & (7)	NR 670.021.
40 CFR 270.22	None	NR 670.022.
40 CFR 270.23	NR 670.06 & 670.07	NR 670.023.
40 CFR 270.24	NR 632.11(2)	NR 670.024.
40 CFR 270.25	NR 632.11(3)	NR 670.025.
40 CFR 270.26	NR 656.06	NR 670.026.
40 CFR 270.27	NR 632.11(4)	NR 670.027.
40 CFR 270.28	None	NR 670.028.
40 CFR 270.29	None	NR 670.029.
40 CFR 270.30	NR 680.42(1)–(8), (10), (11)(a) & (c)–(f), (12)–(15) & (17)–(18m)	NR 670.030.
40 CFR 270.31	NR 680.42(11)(b)	NR 670.031.
40 CFR 270.32	NR 680.42(19)	NR 670.032.
40 CFR 270.33	None	NR 670.033.
40 CFR 270.40	NR 680.44	NR 670.040.
40 CFR 270.41	NR 680.07(2)(b), (d), (e) & (g) & (3)(a)	NR 670.041.
40 CFR 270.42	NR 680.07(1), (2)(intro.), (3)(intro.), (5), (6)(d) & (e) & (7) & 680 Appendix I.	NR 670.042 & 670 Appendix I.
40 CFR 270.43	NR 680.43(1) & (2)	NR 670.043.
40 CFR 270.50	NR 680.45(6) & (8)	NR 670.050.
40 CFR 270.51	NR 680.45(7)	NR 670.051.
40 CFR 270.60	None	NR 670.001(3)(b)9.
40 CFR 270.61	NR 600.09	NR 670.061.
40 CFR 270.62	NR 665.06(1)(d) & (2)–(4) & 665.07(1)–(3)	NR 670.062.
40 CFR 270.63	NR 600.04(3) & 680.22(2)	NR 664.0270 & 665.0270.
40 CFR 270.64	NR 600.04(1) & (2) & 680.22(2)	NR 665.0430.
40 CFR 270.65	NR 680.51	NR 670.065.
40 CFR 270.66	None	NR 670.066.
40 CFR 270.68	None	NR 670.068.
40 CFR 270.70	NR 680.20(1) & (3), 680.21(1)(a), 680.22(3) & 680.24(1) & (2)	NR 670.070.
40 CFR 270.71	NR 680.23	NR 670.071.
40 CFR 270.72	NR 680.03(4) & 680.07(3)(e) & (4)	NR 670.072.
40 CFR 270.73	NR 680.43(3) & (4)	NR 670.073.
40 CFR 270.79	None	None.
40 CFR 270.80	NR 680.50(intro.)	NR 670.079(1).
40 CFR 270.85	None	None.
40 CFR 270.90	None	None.
40 CFR 270.95	None	None.
40 CFR 270.100	None	None.
40 CFR 270.105	None	None.
40 CFR 270.110	NR 680.50(2)	NR 670.079(3).
40 CFR 270.115	None	None.
40 CFR 270.120	NR 680.50(2)(intro.)	NR 670.079(1).
40 CFR 270.125	None	None.
40 CFR 270.130	NR 680.50(3)	NR 670.079(4).
40 CFR 270.135	NR 680.50(1)(e)	NR 670.079(2)(e).
40 CFR 270.140	None	None.
40 CFR 270.145	None	NR 670.079(3).
40 CFR 270.150	NR 680.50(4)	NR 670.079(4).
40 CFR 270.155	None	None.
40 CFR 270.160	None	None.
40 CFR 270.165	None	None.
40 CFR 270.170	NR 680.50(1)(c)	NR 670.079(2)(c).
40 CFR 270.175	None	None.
40 CFR 270.180	NR 680.50(1)(d)	NR 670.079(2)(d).
40 CFR 270.185	None	None.
40 CFR 270.190	None	None.
40 CFR 270.195	NR 680.50(1)(b)	NR 670.079(2)(b).
40 CFR 270.200	NR 680.50(1)(c)	NR 670.079(2)(c).
40 CFR 270.205	None	None.
40 CFR 270.210	None	None.
40 CFR 270.215	None	None.
40 CFR 270.220	None	None.
40 CFR 270.225	None	None.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 270.230	None	None.
40 CFR 270.235	None	NR 670.235.
40 CFR 124.1	None	NR 670.401.
40 CFR 124.3	NR 640.06(4)(a), 640.07(3)(b), 645.06(4)(a), 645.16(3)(b), 660.10, 660.14, 660.15, 665.06(5) & 680.06(9)(a).	NR 670.403.
40 CFR 124.4	None	NR 670.404.
40 CFR 124.5	NR 680.07(6)(a) & (f)	NR 670.405.
40 CFR 124.6	None	NR 670.406.
40 CFR 124.8	NR 680.06(10)(b), (11)(b) & (12)(b) & 680.07(6)(c)	NR 670.408.
40 CFR 124.9	NR 680.06(10)(e), (11)(i) & (12)(e) & 680.07(6)(f)	NR 670.409.
40 CFR 124.10	NR 680.06(10)(a), (11)(a) & (12)(a) & 680.07(6)(b)	NR 670.410.
40 CFR 124.11	NR 680.06(10)(c)3., (11)(c) & (12)(c)3. & 680.07(6)(d)3	NR 670.411.
40 CFR 124.12	NR 680.06(10)(c), (11)(f) & (12)(c) & 680.07(6)(d)	NR 670.412.
40 CFR 124.15	NR 640.06(4)(b), 645.06(4)(b), 660.11 & 665.06(6)	NR 670.415.
40 CFR 124.17	NR 680.06(10)(d), (11)(h) & (12)(d) & 680.07(6)(e)	NR 670.417.
40 CFR 124.31	NR 680.06(1m)	NR 670.431.
40 CFR 124.32	NR 680.06(8m)	NR 670.432.
40 CFR 124.33	NR 680.06(15)	NR 670.433.
40 CFR 273.1	NR 690.04	NR 673.01.
40 CFR 273.2	NR 690.05	NR 673.02.
40 CFR 273.3	NR 690.06	NR 673.03.
40 CFR 273.4	NR 690.07	NR 673.04.
40 CFR 273.5	None	NR 673.05.
40 CFR 273.8	NR 690.08	NR 673.08.
40 CFR 273.9	NR 690.03	NR 673.09.
40 CFR 273.10	NR 690.10	NR 673.10.
40 CFR 273.11	NR 690.11	NR 673.11.
40 CFR 273.12	NR 690.12(2)	NR 673.12.
40 CFR 273.13	NR 690.13	NR 673.13.
40 CFR 273.14	NR 690.14	NR 673.14.
40 CFR 273.15	NR 690.15	NR 673.15.
40 CFR 273.16	NR 690.16	NR 673.16.
40 CFR 273.17	NR 690.17	NR 673.17.
40 CFR 273.18	NR 690.18	NR 673.18.
40 CFR 273.19	NR 690.19	NR 673.19.
40 CFR 273.20	NR 690.20	NR 673.20.
40 CFR 273.30	NR 690.30	NR 673.30.
40 CFR 273.31	NR 690.31	NR 673.31.
40 CFR 273.32	NR 690.12(1) & 690.32	NR 673.32.
40 CFR 273.33	NR 690.33	NR 673.33.
40 CFR 273.34	NR 690.34	NR 673.34.
40 CFR 273.35	NR 690.35	NR 673.35.
40 CFR 273.36	NR 690.36	NR 673.36.
40 CFR 273.37	NR 690.37	NR 673.37.
40 CFR 273.38	NR 690.38	NR 673.38.
40 CFR 273.39	NR 690.39	NR 673.39.
40 CFR 273.40	NR 690.40	NR 673.40.
40 CFR 273.50	NR 690.50	NR 673.50.
40 CFR 273.51	NR 690.51	NR 673.51.
40 CFR 273.52	NR 690.52	NR 673.52.
40 CFR 273.53	NR 690.53	NR 673.53.
40 CFR 273.54	NR 690.54	NR 673.54.
40 CFR 273.55	NR 690.55	NR 673.55.
40 CFR 273.56	NR 690.56	NR 673.56.
40 CFR 273.60	NR 690.60	NR 673.60.
40 CFR 273.61	NR 690.61	NR 673.61.
40 CFR 273.62	NR 690.62	NR 673.62.
40 CFR 273.70	NR 690.70	NR 673.70.
40 CFR 273.80	NR 690.80	NR 673.80.
40 CFR 273.81	NR 690.81	NR 673.81.
40 CFR 279.1	NR 590.03	NR 679.01.
40 CFR 279.10	NR 590.02(1), (4) & (5), 590.04(1)(a)–(d) & (2)(b)–(e), 590.05(2)(c), 590.10(2)–(4) & 590.11(1).	NR 679.10.
40 CFR 279.11	NR 590.09(1)	NR 679.11.
40 CFR 279.12	NR 590.05(1), (4) & (7)	NR 679.12.
40 CFR 279.20	NR 590.02(7), 590.04(1)(a) & (d)–(f) & 590.12	NR 679.20.
40 CFR 279.21	NR 590.04(2)(f)	NR 679.21.
40 CFR 279.22	NR 590.13	NR 679.22.
40 CFR 279.23	NR 590.14(1)	NR 679.23.
40 CFR 279.24	NR 590.15	NR 679.24.
40 CFR 279.30	NR 590.20(1)	NR 679.30.
40 CFR 279.31	NR 590.20(1)	NR 679.31.
40 CFR 279.32	NR 590.20(1)	NR 679.32.
40 CFR 279.40	NR 590.30–590.33	NR 679.40.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 279.41	NR 590.34 & 590.50(4)	NR 679.41.
40 CFR 279.42	NR 590.07	NR 679.42.
40 CFR 279.43	NR 590.35	NR 679.43.
40 CFR 279.44	NR 590.11	NR 679.44.
40 CFR 279.45	NR 590.36	NR 679.45.
40 CFR 279.46	NR 590.37	NR 679.46.
40 CFR 279.47	NR 590.38	NR 679.47.
40 CFR 279.50	NR 590.50(1) & (2) & 590.51	NR 679.50.
40 CFR 279.51	NR 590.07	NR 679.51.
40 CFR 279.52	NR 590.52	NR 679.52.
40 CFR 279.53	NR 590.11(1)–(3)	NR 679.53.
40 CFR 279.54	NR 590.53	NR 679.54.
40 CFR 279.55	NR 590.54	NR 679.55.
40 CFR 279.56	NR 590.55	NR 679.56.
40 CFR 279.57	NR 590.56	NR 679.57.
40 CFR 279.58	NR 590.57	NR 679.58.
40 CFR 279.59	NR 590.58	NR 679.59.
40 CFR 279.60	NR 590.70 & 590.71	NR 679.60.
40 CFR 279.61	NR 590.72	NR 679.61.
40 CFR 279.62	NR 590.07	NR 679.62.
40 CFR 279.63	NR 590.11	NR 679.63.
40 CFR 279.64	NR 590.73	NR 679.64.
40 CFR 279.65	NR 590.74	NR 679.65.
40 CFR 279.66	NR 590.75	NR 679.66.
40 CFR 279.67	NR 590.76	NR 679.67.
40 CFR 279.70	NR 590.80, 590.82 & 590.83	NR 679.70.
40 CFR 279.71	NR 590.81	NR 679.71.
40 CFR 279.72	NR 590.84	NR 679.72.
40 CFR 279.73	NR 590.07	NR 679.73.
40 CFR 279.74	NR 590.85	NR 679.74.
40 CFR 279.75	NR 590.86	NR 679.75.
40 CFR 279.80	None	NR 679.80.
40 CFR 279.81	NR 590.04(2)(c) & 590.05(2)(a) & (b)	NR 679.81.
40 CFR 279.82	NR 590.05(4)	NR 679.82.

G. Where Are the Revised State Rules Different From the Federal Rules?

These practices are prohibited in Wisconsin: Underground Injection (40 CFR Part 144), and Land Treatment (40 CFR 270.20) of hazardous waste. Wisconsin also does not provide for Permit by Rule (40 CFR 270.60). Wisconsin does not allow automatic authorization under the permit modification regulations found in 40 CFR 270.42 (b)(6). The 10 year Remedial Action Plan, or RAP (40 CFR 270.79–270.230) is replaced by a 5 year Remediation Variance (NR 670.079) (See 66 FR 28397, (2001) for a discussion on Wisconsin Variance authority.).

These Wisconsin regulations are more stringent: 662.220(5)(c,d), 662.220(6)(c,d,f), and 670.030(10)(i) (annual report required instead of a biennial report).

Wisconsin maintains different financial regulations, that allow for additional equivalent financial mechanisms (664.0143), do not allow the net worth test for closure under Part 665, and maintain some more stringent insurance requirements under 664.0143(5)(h), 664.0147(1)(a)(3), and 665.0147(1)(a)(3).

The following Wisconsin regulations have no Federal counterpart: 666.900 through 666.910. There are no Wisconsin provisions for 40 CFR 268.5, 268.44 (other than 268.44(h)), and 270.3 as these are Federal non-delegable provisions.

H. Who Handles Permits After the Authorization Takes Effect?

Wisconsin 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 new 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 Wisconsin is not yet authorized.

I. How Does This Action Affect Indian Country (18 U.S.C. 1151) in Wisconsin?

Wisconsin is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Wisconsin;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, this action has no effect on Indian Country. EPA will continue to implement and administer the RCRA program in Indian Country.

J. What Is Codification and Is EPA Codifying Wisconsin'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. Wisconsin's rules, up to and including those revised June 7, 1991, as corrected August 19, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162). We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Wisconsin's program changes until a later date.

K. Statutory and Executive Order Reviews

This final rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB.

2. Paperwork Reduction Act

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.*).

3. Regulatory Flexibility Act

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 rule 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.*).

4. Unfunded Mandates Reform Act

Because this rule approves 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).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, 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).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (i.e., substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.)

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets 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 to this rule.

10. Executive Order 12988

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.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 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.

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

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the 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).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-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, 6974(b).

Dated: March 20, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–8616 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–11

[FTR Amendment 2009–03; FTR Case 2009–303; Docket Number 2009–0001, Sequence 3]

RIN 3090–AI88

Federal Travel Regulation (FTR); FTR Case 2009–303, Furnished Meals at Conferences and Other Events

Correction

In rule document E9–8176 beginning on page 16327 in the issue of Friday, April 10, 2009 make the following correction:

§301–11.18 [Corrected]

On page 16328, in the §301–11.18, in the table, in the sixth column, in the second entry, ''1'' should read ''11''.

[FR Doc. Z9–8176 Filed 4–14–09; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 74, No. 71
Wednesday, April 15, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE294; Notice No. 23–09–01–SC]

Special Conditions: Cessna Aircraft Company, Model 525C; Single Point Refuel/Defuel System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Cessna Model 525C airplane. This airplane will have a novel or unusual design feature(s) associated with a Single Point Refuel/Defuel system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by May 15, 2009.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, *Attention*: Rules Docket, Docket No. CE294, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE294. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment period closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 9, 2006, Cessna Aircraft Company applied for an amendment to Type Certificate Number A1WI to include the new model 525C (CJ4). The model 525C (CJ4), which is a derivative of the model 525B (CJ3) currently approved under Type Certificate Number A1WI, is a commuter category, low-winged monoplane with ''T'' tailed vertical and horizontal stabilizers, retractable tricycle type landing gear and twin turbofan engines mounted on the aircraft fuselage. The maximum takeoff weight is 16,650 pounds, the V_{MO}/M_{MO} is 305 KIAS/M 0.77 and maximum altitude is 45,000 feet.

The model 525C fuel system will incorporate a Single Point Refuel/Defuel system. The model 525C Single Point Refuel/Defuel system is used to pressure refuel and defuel the left and right wing fuel tanks from a single refuel/defuel adapter. The system is operated by fuel level and positive refuel or negative defuel pressure. This system is similar in design to other 14 CFR part 25 Cessna Citation airplanes and uses many of the same components that are used in these other airplanes. The components for the model 525C refuel/defuel system include a refuel/defuel adapter, a precheck valve, various other check valves, a high level pilot valve, a refuel valve, a defuel valve, and a positive/negative relief valve. Single point refueling is accomplished by connecting the refuel equipment to the refuel/defuel adapter and applying positive pressure. Fuel is directed through a common manifold to each wing tank's fuel shutoff (refuel) valve. Single point defueling is accomplished by connecting defuel equipment to the refuel/defuel adapter and applying negative pressure. Defueling is controlled by fuel level and negative pressure from the defuel equipment.

The incorporation of a pressure defueling system was not considered when 14 CFR part 23 was created; thus, there are no applicable certification requirements for this novel and unusual design feature. Pressure defueling systems are more common on part 25 airplanes, and the applicable certification requirements are contained in part 25, section 25.979(e), which states: ''The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.'' With the pressure defueling system design incorporated on the model 525C it is necessary to apply a special condition to this novel and unusual design feature.

Type Certification Basis

Under the provisions of section 21.101, Cessna Aircraft Company must show that the model 525C meets the applicable provisions of the regulations incorporated by reference in Type Certificate Number A1WI or the applicable regulations in effect on the date of application for the change to the model 525B. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' In addition, the certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special

condition adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations in part 23 do not contain adequate or appropriate safety standards for the model 525C because of a novel or unusual design feature, special conditions are prescribed under the provisions of section 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model 525C must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as appropriate, as defined in section 11.19, under section 11.38, and they become part of the type certification basis under section 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of section 21.101.

Novel or Unusual Design Features

The model 525C will incorporate the following novel or unusual design features:

A single point refuel/defuel system.

Applicability

As discussed above, these special conditions are applicable to the model 525C. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Cessna Aircraft Company model 525C airplanes.

1. SC25.979(e)

The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.

Issued in Kansas City, Missouri on April 8, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. E9–8583 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0051; Airspace Docket No. 09–ASW–3]

Proposed Amendment of Class E Airspace; Ada, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Ada, OK. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Ada Municipal Airport, Ada, OK. This action would also update the geographic coordinates of the airport to coincide with the FAAs National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Ada Municipal Airport.

DATE: Comments must be received on or before June 1, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0051/Airspace Docket No. 09–ASW–3, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; *telephone*: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0051/Airspace Docket No. 09–ASW–3.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this

notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace for SIAPs operations at Ada Municipal Airport, Ada, OK, and would update the geographic coordinates to coincide with the FAAs National Aeronautical Charting Office. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Ada Municipal Airport, Ada, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Ada, OK [Amended]

Ada Municipal Airport, OK
(Lat. 34°48′15″ N., long. 96°40′16″ W.)
Ada VOR
(Lat. 34°48′09″ N., long. 96°40′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ada Municipal Airport and within 4 miles each side of the 000° bearing from the airport extending from the 6.5-mile radius to 10.3 miles north of the airport, and within 4 miles each side of the 180° bearing from the airport extending from the 6.5-mile radius to 10.9 miles south of the airport, and within 1.6 miles each side of the 354° radial of the Ada VOR extending from the 6.5-mile radius to 11 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX on April 2, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–8578 Filed 4–14–09; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1367; Airspace Docket No. 09–ASW–1]

Proposed Establishment of Class E Airspace; Floydada, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Floydada, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Floydada Municipal Airport, Floydada, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Floydada Municipal Airport.

DATES: Comments must be received on or before June 1, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1367/Airspace Docket No. 09–ASW–1, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; *telephone*: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–1367/Airspace Docket No. 09–ASW–1.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace for SIAPs operations at Floydada Municipal Airport, Floydada, TX. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Floydada Municipal Airport, Floydada, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Floydada, TX [New]

Floydada Municipal Airport, TX
(Lat. 34°00′06″ N., long. 101°19′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Floydada Municipal Airport.

* * * * *

Issued in Fort Worth, TX on April 2, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–8585 Filed 4–14–09; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0253; Airspace Docket No. 09–ANM–2]

Proposed Modification of Class E Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Twin Falls, ID. Additional controlled airspace is necessary to accommodate aircraft using a new VHF Omni-Directional Radio Range (VOR) Standard Instrument Approach Procedure (SIAP) at Twin Falls Joslin Field-Magic Valley Regional, Twin Falls, ID. This action would enhance the safety and management of aircraft operations at the airport. This action would also amend the airport name to Twin Falls Joslin Field-Magic Valley Regional, from Twin Falls-Sun Valley Regional, Joslin Field.

DATES: Comments must be received on or before June 1, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0253; Airspace Docket No. 09–ANM–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–0253 and Airspace Docket No. 09–ANM–2) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0253 and Airspace Docket No. 09–ANM–2''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Twin Falls, ID. Controlled airspace is necessary to accommodate aircraft using the new VOR SIAP at Twin Falls Joslin Field-Magic Valley Regional, Twin Falls, ID. This action would enhance the safety and management of aircraft operations at Twin Falls Joslin Field-Magic Valley Regional, Twin Falls, ID.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Twin Falls Joslin Field-Magic Valley Regional, Twin Falls, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Twin Falls, ID [Modified]

Twin Falls Joslin Field-Magic Valley Regional, ID
(Lat. 42°28′55″ N., long. 114°29′16″ W.)
Twin Falls VORTAC
(Lat. 42°28′47″ N., long. 114°29′22″ W.)

That airspace extending upward from 700 feet above the surface within 10.5 miles north and 4.3 miles south of the Twin Falls VORTAC 086° radial extending 26.1 miles east, and within 4.3 miles each side of the VORTAC 156° radial extending from the VORTAC to 8.3 miles southeast of the VORTAC, and within 10.3 miles north and 7.3 miles south of the VORTAC 281° radial extending 20 miles west; that airspace extending upward from 1,200 feet above the surface bounded on the northeast by a line beginning at the intersection of long.114°01′03″ W. and V–500, extending south along long. 114°01′03″ W. to V–500, to V–269, southwest along V–269 to the 18.3-mile radius of the Twin Falls VORTAC, thence clockwise via the 18.3-mile radius to V–484, northwest along V–484 to the 14.4-mile radius of the Twin Falls VORTAC, thence clockwise along the 14.4-mile radius to V–293, southwest along V–293 to the intersection of V–293 and long. 115°00′00″ W., thence north along long. 115°00′00″ W. to a point 7.9 miles southwest of V–253,

thence northwest and parallel to V–253 for 25.9 miles, thence to the intersection of V–4, V–253, and V–330, east along V–330 to V–293, north along V–293 to V–500, then to the point of beginning; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on April 7, 2009.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–8584 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0196; Airspace Docket No. 09–AAL–3]

Proposed Establishment of Class E Airspace; Oooguruk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at the two heliport landing sites servicing aviation operations at Oooguruk, AK. The privately funded Special instrument approaches serving these helipads at Oooguruk, AK have been drafted. The FAA's policy is to provide controlled airspace at airports serviced by instrument procedures. The adoption of this proposal would result in establishing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the two heliports servicing operations at Oooguruk, AK.

DATES: Comments must be received on or before June 1, 2009.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0196/ Airspace Docket No. 09–AAL–3, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; *fax*: (907) 271–2850; *e-mail: gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0196/Airspace Docket No. 09–AAL–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish Class E airspace at the two heliports servicing Oooguruk, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the two heliports servicing Oooguruk, AK.

Two Special IFR arrival procedures have been developed for two heliports, designated at Ooguruk Drill Site Helipad and Oooguruk Tie-In Helipad, AK. It is FAA policy to provide controlled airspace at airports serviced by instrument procedures. This action would provide sufficient airspace to contain aircraft executing the instrument procedures at these two heliports.

This action would result in the establishment of Class E airspace depicted on affected aeronautical charts. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

therefore —(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace at the two heliports servicing Oooguruk, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Oooguruk Drill Site Helipad, AK [New]

Oooguruk, Oooguruk Drill Site Helipad, AK
(Lat. 70°29′44″ N., long. 150°15′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Oooguruk Drill Site Helipad, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Oooguruk Drill Site Helipad, AK.

* * * * *

AAL AK E5 Oooguruk Tie-in Helipad, AK [New]

Oooguruk, Oooguruk Tie-in Helipad, AK
(Lat. 70°24′51″ N., long. 150°01′07″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Oooguruk Tie-in Helipad AK, excluding that portion within R2204 when R2204 is active; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Oooguruk Tie-in Helipad, AK, excluding that portion within R2204 when R2204 is active.

* * * * *

Issued in Anchorage, AK, on April 2, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–8586 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 104, 105, and 106

[Docket No. USCG–2007–28915]

RIN 1625–AB21

Transportation Worker Identification Credential (TWIC)—Reader Requirements

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces the location for a public meeting to receive comments on an advanced notice of proposed rulemaking (ANPRM) entitled Transportation Worker Identification Credential (TWIC)—Reader Requirements that was published in the **Federal Register** on March 27, 2009. As stated in that document, the ANPRM discusses the Coast Guard's preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities regulated by the Coast Guard under 33 CFR chapter I, subchapter H, for use of electronic readers designed to work with TWICs as an access control measure.

DATES: A public meeting will be held on Wednesday, May 6, 2009. We expect the meeting will run from 9 a.m. to 5 p.m. to provide an opportunity for oral comments. The meeting may end early if all comments are received prior to 5 p.m. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. The comment period for the proposed rule closes May 26, 2009. All comments and related material submitted after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before May 26, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held at The Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

You may submit written comments identified by docket number USCG–2007–28915 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2007–28915.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the ANPRM, please call or e-mail LCDR Jonathan Maiorine, Coast Guard; telephone 1–877–687–2243, e-mail *Jonathan.H.Maiorine@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published an ANPRM in the **Federal Register** on March 27, 2009 (74 FR 13360), entitled ''Transportation Worker Identification Credential

(TWIC)—Reader Requirements.'' In it we stated our intention to hold a public meeting, and to publish a notice announcing the location and date. 74 FR 13360. On April 9, 2009, we published a notice announcing the date for that meeting, and that it would be held in the Washington DC area. 74 FR 16161. This document is the notice of the exact location for that meeting.

In the ANPRM, we discuss the United States Coast Guard's preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities regulated by the Coast Guard under 33 CFR chapter I, subchapter H, for use of electronic readers designed to work with TWICs as an access control measure. It discusses additional potential requirements associated with TWIC readers, such as recordkeeping requirements for those owners or operators required to use an electronic reader, and amendments to security plans previously approved by the Coast Guard to incorporate TWIC requirements.

This rulemaking action, once final, would enhance the security of ports and vessels by ensuring that only persons who hold valid TWICs are granted unescorted access to secure areas on vessels and port facilities. It would also complete the implementation of the Maritime Transportation Security Act of 2002 transportation security card requirement, as well as the requirements of the Security and Accountability for Every Port Act of 2006, for regulations on electronic readers for use with Transportation Worker Identification Credentials.

You may view the ANPRM in our online docket, and comments submitted thus far by going to *http://www.regulations.gov*. Once there, select the Advanced Docket Search option on the right side of the screen, insert USCG–2007–28915 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket in person by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Maiorine at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding its Transportation Worker Identification Credential (TWIC)—Reader Requirements ANPRM on Wednesday, May 6, 2009 from 9 a.m. until 5 p.m. at The Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting may end early if all comments are received prior to 5 p.m. We plan to have a transcript of the meeting available on our online docket soon after the public meeting.

For details on the hotel and surrounding area, including directions, you may visit The Sheraton Crystal City Hotel Web site, *http://www.sheraton.com/crystalcity*. The hotel is metro accessible and provides shuttle service from Reagan National Airport. Additionally, self and valet parking is available in the hotel's parking garage at a daily rate. There is also metered parking along the street outside of the hotel.

Dated: April 10, 2009.

Mark E. Hammond,

Commander, U.S. Coast Guard, Acting Chief, Ports and Facilities Activities.

[FR Doc. E9–8606 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, and 307

RIN 0970–AC01

State Parent Locator Service; Safeguarding Child Support Information: Proposed Delay of Effective Date

AGENCY: Administration for Children and Families (ACF), Department of Heath and Human Services.

ACTION: Proposed delay of effective date.

SUMMARY: In accordance with the Memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff entitled ''Regulatory Review'' [74 FR 4435], the Department published a document in the **Federal Register** on March 3, 2009 [74 FR 9171], seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled ''State Parent Locator Service; Safeguarding Child Support Information,'' published in the **Federal Register** on September 26, 2008 [73 FR 56422]. That rule addresses requirements for State Parent Locator Service responses to authorized location requests, State IV–D program safeguarding of confidential information, authorized disclosures of this information, and restrictions on the use of confidential data and information for child support purposes with exceptions for certain disclosures permitted by statute. In response to comments, the Department issued a document March 20, 2009 [74 FR 11880] delaying the effective date of the rule by 60 days until May 22, 2009, in order to permit officials of the new Administration an opportunity to review and approve the policies in the regulation.

The Department is currently reviewing questions of law and policy raised by the rule. However, based upon the review that has been conducted to date and the nature of the comments received in response to the March 3, 2009 document, it appears that further revisions to the final rule may be warranted in one or more areas. In response to these comments and in order to afford officials an opportunity to review and consider further the provisions of the September 26, 2008 final rule, the Department is considering delaying the effective date to December 30, 2010.

The Department solicits comments specifically on the contemplated delay in effective date.

DATES: Comments must be received on or before May 5, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Interested persons are invited to submit written comments via regular postal mail to: Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447, Attention: Division of Policy; *Mail Stop*: ACF/OCSE/DP.

FOR FURTHER INFORMATION CONTACT: Yvette Riddick, Office of Child Support Enforcement, Division of Policy, (202) 401–4885.

SUPPLEMENTARY INFORMATION:

I. Background

On September 26, 2008, a final rule following notice and comment period entitled ''State Parent Locator Service; Safeguarding Child Support Information'' [73 FR 56422], was published in the **Federal Register** to address requirements for State Parent Locator Service, State IV–D program safeguarding and authorized disclosure of confidential information, and restrictions on the use of confidential data and information for child support purposes with exceptions for certain disclosures permitted by statute. The effective date given for the final rule was March 23, 2009.

In accordance with the Memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff entitled ''Regulatory Review'' [74 FR 4435], on March 3, 2009, we published a notice in the **Federal Register** [74 FR 9171] on a contemplated delay of 60 days in the effective date of the safeguarding. In response to comments, the Department issued a subsequent notice on March 20, 2009 [74 FR 11880] delaying the effective date of the September 26, 2008 final rule for 60 days until May 22, 2009, in order to permit officials of the new Administration an opportunity to review and approve the policies in the regulation.

We now believe additional time is needed for Department officials to complete their review of the rule and to assess fully the comments received in response to the March 3, 2009 notice. Although the Notice invited comments generally on whether a delay in effective date was needed ''to allow Department officials the opportunity for further review and consideration,'' it also generated focused comments recommending changes to several particular substantive areas of the final rule. In addition to supporting a delay in the effective date, the commenters raised a number of serious questions that warrant further consideration by the Administration.

For example, one commenter indicated that the final rule appeared to prohibit the State IV–D agency from disclosing confidential information, such as child support payment records to other State agencies, including the State food assistance (Food Stamps) program and the State revenue (Tax) program. Another commenter stated that a delay in the effective date would give the Administration an opportunity to conduct a review of the child welfare data exchange provisions of the rule to ensure that the provisions of the rule conform with The Fostering Connections to Success and Increasing Adoptions Act (Pub. L. 110–351), signed into law on October 7, 2008, after the rule was finalized.

Several commenters raised specific policy objections to the September 26, 2008 final rule including concerns about the rules for disclosure of confidential location information. Another commenter stated that the regulations need to be reviewed and revised to assure significantly greater protection of that information from use for non-child support purposes.

Additionally, a number of commenters focused on the disclosure of information to an ''agent of a child'' and raised concerns that some private collection agencies may not actually serve the child's best interests and raised concerns that these private entities are not subject to ethics and confidentiality rules such as those governing State agencies and attorneys and there may be unintended adverse consequences of such disclosures.

Department officials need time to complete their review of the policies contained in the September 26, 2008, final rule and to consider fully the concerns raised by commenters. Should Department officials determine that it is necessary and appropriate to make any changes to the provisions of the September 26, 2008, final rule, HHS will provide the public with notice of and an opportunity to comment on any proposed changes. Accordingly, we are considering delaying the effective date of the September 26, 2008, final rule until December 30, 2010.

II. Provisions of This Action

The contemplated delay in the effective date would give Department officials the opportunity for further review of the issues of law and policy raised by the rule. The Department is inviting comments on the contemplated extension of the effective date of the regulation to December 30, 2010.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement)

Dated: April 9, 2009.

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–8542 Filed 4–10–09; 11:15 am]

BILLING CODE

Notices

Federal Register
Vol. 74, No. 71
Wednesday, April 15, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 10, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Debt Settlement Policies and Procedures.

OMB Control Number: 0560–0146.

Summary of Collection: Debt Collection Improvement Act (DCIA) of 1996 and 4 CFR part 102, Federal Claim Collection standard and other applicable regulation require each Federal agency to collect debts owed it, and to employ a cost effective and efficient procedures and methods to identify, report and collect debts. Provisions under the Federal Claims Collection Standards and the DCIA allow the debtor upon receiving a notification letter and unable to pay debt owed to the Federal Government in one lump sum, to forward a written request and financial statement to Farm Service Administration (FSA) and Commodity Credit Corporation (CCC) for establishing an agreed repayment plan in the promissory note using form CCC–279, *Promissory Note*.

Need and Use of the Information: FSA will collect information on the debtor's assets, liabilities, income and expenses when a debtor requests to enter into an installment agreement to settle their debt. Based on that information a determination can be made on whether the debtor can pay the debt in one lump sum or an installment is necessary. Without this financial information FSA/CCC would have no method of allowing debtor's to pay their debts in installments while still ensuring that the government's financial interests are protected.

Description of Respondents: Individuals or households; Farms.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 200.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–8643 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 10, 2009.

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.

Forest Service

Title: Forest Landscape Value and Special Area Place Mapping for National Forest Planning.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest Service (FS) is authorized under the

1976 National Forest Management Act (NFMA) (16 U.S.C., Sec. 1600–1614), the National Environmental Policy Act of 1969, and the proposed 2008 NFMA Planning Rule (36 CFR, part 219) to collect information pertaining to national forest values for use in the preparation of land management plans. The purpose of landscape value and special-place mapping as a part of the public participation process is to provide national forest land managers and planners with scientifically credible information about forest values from a broad representation of the public and from citizens who express interest in a national forest's planning process.

Need and Use of the Information: The national forests will invite the public to share values regarding specific forest landscapes and special places. Forest planners and managers will use the information in the revision of specific national forest plans and to develop land management plans that are consistent with public values, while working within the regulatory framework. This information will be collected using an Internet-based geographic information system (GIS) and a comparable paper-based system provided to individuals without access to the Internet.

Description of Respondents: Individuals or households.

Number of Respondents: 5,500.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 2,685.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–8648 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

PowerSouth Energy Cooperative Incorporated: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment for Public Review.

SUMMARY: The Rural Utilities Service (RUS) has prepared an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA) and the Agency's environmental policies and procedures (7 CFR 1794) related to possible financial assistance to PowerSouth Energy Cooperative Incorporated (PowerSouth). PowerSouth is requesting financial assistance for the construction of a new 360-megawatt (MW) peaking-load gas-fired generation facility at the existing McIntosh Power Plant in Washington County, Alabama. The proposed new unit is needed to provide additional electric generating capacity that would allow PowerSouth to meet its projected electrical peaking demand in 2010.

DATES: Written comments on this Notice must be received on or before May 15, 2009.

FOR FURTHER INFORMATION CONTACT: Contact Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, DC 20250–1571, or e-mail *stephanie.strength@wdc.usda.gov*.

ADDRESSES: Comments may be submitted to Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, DC 20250–1571, or e-mail *stephanie.strength@wdc.usda.gov*.

A copy of the EA may be viewed online at the Agency's Web site: *http://www.usda.gov/rus/water/ees/ea.htm* or at PowerSouth Energy Cooperative, Inc., 2027 East Three Notch Street, Andalusia, Alabama 36420 and at the following libraries:

McIntosh Branch Library, 83 Olin Road, McIntosh, AL 36553, (251) 944–2047.

Washington Public Library, 14102 St. Stephens Avenue, Chatom, AL 36515, (251) 847–2097.

SUPPLEMENTARY INFORMATION: PowerSouth Energy Cooperative, Inc. proposes to construct a new 360-megawatt peaking-load gas-fired generation facility at the existing McIntosh Power Plant in Washington County, Alabama with an in-service date of late 2010. The existing plant includes a compressed air energy storage (CAES) unit and two gas-fired combustion turbines (CTs) with a combined total capacity of 348 MW. The proposed 360 MW generating facility will consist of two simple-cycle combustion turbines, Siemens SCT6–5000F units, and generators plus associated support facilities. The site will be connected to the existing on-site transmission system. The existing substation will be rebuilt on the existing plant site to handle the three existing units and the two new units. The existing plant plus the new equipment, structures and other facilities will occupy the majority of the existing 42-acre power plant site. The CTs would operate on natural gas as a fuel source. The construction of the proposal is tentatively scheduled to begin in 2009 with an estimated duration of two years.

A Notice of Intent to Prepare an EA and Hold a Scoping Meeting was published in the **Federal Register** at 73 FR 65830, on November 5, 2008, *Mobile Press Register* on November 6, 2008, *The Washington County News* on November 6, 2008, *The South Alabamian* on November 6, 2008, and *The Clarke County Democrat* on November 6, 2008. A public meeting was held on November 20, 2008, at the McIntosh Elementary School, 8945 Highway 43 North, McIntosh, Alabama. A summary of public comments can be found at the Web site listed in the **ADDRESSES** section of this notice.

As part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during section 106 review. Accordingly, comments submitted in response to this notice will assist RUS in meeting its section 106 review obligations. Any party wishing to participate more directly with RUS as a ''consulting party'' in the section 106 review process may submit a written request to the contact provided in the **ADDRESSES** section of this notice.

Alternatives considered by RUS and PowerSouth included for the CTs were: (a) No action, (b) alternate sources of power, (c) load management, (d) renewable energy sources, (e) non-renewable energy sources, and (f) alternate sites. An Environmental Report that describes the proposal in detail and discusses its anticipated environmental impacts has been prepared by PowerSouth. The Rural Utilities Service has independently reviewed and accepted the document as its EA of the proposal. The EA is available for public review at the addresses provided in the **ADDRESSES** section of this notice.

Questions and comments should be sent to RUS at the mailing or e-mail addresses provided in the **ADDRESSES** section of this notice. RUS should receive comments on the EA in writing by May 15, 2009 to ensure that they are considered in its environmental impact determination.

Should RUS determine, based on the EA, that the impacts of the construction

and operation of the proposal would not have a significant environmental impact, it will prepare a Finding of No Significant Impact. Public notification of a Finding of No Significant Impact will be published in the **Federal Register** and in newspapers with circulation in the proposal area.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR part 1794).

Dated: March 30, 2009.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E9–8546 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Raccoon Island Shore Protection/ Marsh Creation Project—Phase B (TE–48–B) Terrebonne Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Phase B portion of the Raccoon Island Shore Protection/Marsh Creation Project (TE–48–B), Terrebonne Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Kevin D. Norton, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: A supplemental environmental assessment of the Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kevin D. Norton, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will protect the Raccoon Island rookery and seabird colonies threatened by a retreating shoreline by reducing the rate of erosion along the northern end of the island by creating additional wetlands and avian habitat within the back bay area. The proposed project consists of creating approximately 68 acres of new habitat for bird species on the northeast portion of the island by backfilling open water areas with suitable dredged material and planting appropriate woody and herbaceous species.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Kevin D. Norton.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Kevin D. Norton,

State Conservationist.

[FR Doc. E9–8534 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be conducting two monthly meetings for project presentations and will hold a short public forum (question and answer session). The meetings are being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 106–939) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meetings are open to the public.

DATES: The meetings will be held on April 27–28, 2009, 6:30 p.m.

ADDRESSES: The meetings will be held at the Bitterroot National Forest, Supervisor Office, Conference Room, 1801 North First Street, Hamilton, Montana. Send written comments to Daniel Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Daniel Ritter, Stevensville District Ranger and Designated Federal Officer, *Phone*: (406) 777–5461.

Dated: April 8, 2009.

Julie K. King,

Deputy Forest Supervisor.

[FR Doc. E9–8469 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on air quality issues relating to agriculture.

DATES: The meeting will convene at 8 a.m. on Wednesday and Thursday, May 6–7, 2009, and conclude at 5:15 p.m. and 6 p.m., respectively. A public comment period will be held on May 6, 2009. Individuals making oral presentations should register in person at the meeting site and must bring 50 copies of any material they would like distributed. Written materials for AAQTF's consideration prior to the meeting must be received by Michele Laur (address given below) no later than April 20, 2009.

ADDRESSES: The meeting will be held at the Radisson Hotel located at 2233 Ventura Street, Fresno, California 93721; telephone: (800) 617–1335 or (559) 268–1000.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Michele Laur, Designated Federal Official. Ms. Laur may be contacted at NRCS, Post Office Box 2890, Room 6165–S, Washington, DC 20013; telephone: (202) 720–1858; e-mail: *michele.laur@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF, may be located on the Web site at *http://www.airquality.nrcs.usda.gov/AAQTF/.*

Draft Agenda of the May 6, 2009, Meeting of AAQTF*

Wednesday, May 6, 2009

A. Welcome to Fresno.

B. Discussion of California Air Quality Issues.

C. Discussion of Greenhouse Gas.

D. Public Comments.

(Time will be reserved on May 6 to receive public comment. Individual presentations will be limited to 5 minutes).

Thursday, May 7, 2009

D. Discussion of Engine Emissions and Regulations.

E. Discussion of Reactive Nitrogen.

F. Discussion of Subcommittee Recommendations

G. Next Meeting, Time and Place.

**Please note that the timing of events in the agenda is subject to change to accommodate changing schedules of expected speakers.*

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Those persons wishing to make oral presentations should register in person at the meeting site. Those wishing to distribute written materials at the meeting (in conjunction with spoken comments) must bring 50 copies of the materials with them. Written materials for distribution to AAQTF members prior to the meeting must be received by Ms. Laur no later than April 20, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Ms. Laur. The Department of Agriculture (USDA) prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on March 25, 2009.

Dave White,

Acting Chief.

[FR Doc. E9–8538 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Anaerobic Digester (Code 366); Anionic Polyacrylamide (PAM) Application (Code 450); Brush Management (Code 314); Fish Raceway or Tank (Code 398); Irrigation Ditch Lining (Code 428); Irrigation Pipeline (Code 430); Irrigation Reservoir (Code 436); Surface Drain, Field Ditch (Code 607); Surface Drainage, Main or Lateral (Code 608); Roof Runoff Structure (Code 558); and Surface Roughening (Code 609). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides. These practices may be used in conservation systems that treat highly erodible land or on land determined to be a wetland.

DATES: *Effective Dates*: Comments will be received for a 30-day period, commencing with this date of publication. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

ADDRESSES: Comments should be submitted by one of the following methods:

1. *In Writing to*: National Agricultural Engineer, NRCS, Post Office Box 2890, Washington, DC 20013–2890; or

2. *Electronically via e-mail to: Wayne.Bogovich@wdc.usda.gov.*

FOR FURTHER INFORMATION: Copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/.* Single copies of paper versions of these standards also are available from NRCS in Washington, DC. Submit individual inquiries in writing to Wayne Bogovich, National Agricultural Engineer, NRCS, Post Office Box 2890, Room 6139-South, Washington, DC 20013–2890; or *e-mail: wayne.bogovich@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the Conservation Practice Standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version shown at: *http://www.nrcs.usda.gov/technical/Standards/nhcp.html.* To aid in this comparison, following are highlights of the proposed revisions to each standard:

Anaerobic Digester (Code 366)—Two existing practice standards were combined (Anaerobic Digester—Ambient Temperature (Code 365) and Anaerobic Digester—Controlled Temperature (Code 366) into a revised 366 Anaerobic Digester standard. Every section of this standard has been edited to ensure that it addresses all types of anaerobic digesters.

Anionic Polyacrylamide (PAM) Application (Code 450)—The title was changed from ''PAM Erosion Control.'' Safety and Health considerations and references were added.

Brush Management (Code 314)—Substantial changes are proposed to this practice standard. Prescribed burning is removed as a brush management treatment. Only chemical, mechanical, and biological treatments are included. Prescribed burning for brush management purposes is covered in the Prescribed Burning (Code 338) standard. In the Purpose Section, wildfire hazard reduction has changed to be more comprehensive. In the criteria section, use of Ecological Site Descriptions has been added as a requirement. Further, the criteria section was enhanced to specifically address wildlife concerns. The plans and specifications section has been expanded to include requirements for monitoring.

Fish Raceway or Tank (Code 398)—For the most part, only minor editorial or grammatical changes have been made to this standard. The only significant change within the standard was to remove the exclusion of hatchery operations from the Conditions Where Practice Applies section. NRCS reviews standards periodically to ensure they are still current; this was primarily the situation for this standard.

Irrigation Ditch Lining (Code 428)—The title changed from ''Irrigation Water Conveyance, Ditch and Canal Lining,'' combining the three previous separate standards for Plain Concrete (A), Flexible Membrane (B), and Galvanized Steel (C). Criteria for Chemical Linings and references were added.

430 Irrigation Pipeline (Code 430)—The title was changed from ''Irrigation Water Conveyance, Pipeline, (various),'' combining six previous separate standards for Aluminum Tubing (AA), Nonreinforced Concrete (CC), High-Pressure, Underground Plastic (DD), Low-Pressure, Underground Plastic (EE), Steel (FF), and Reinforced Plastic Mortar (GG). The standard for Asbestos-Cement Pipe (BB) was deleted. Criteria in NEH–636, Chapter 52 ''Structural Design of Flexible Conduits'' are referenced. Langelier Saturation Index equation and references were added.

436 Irrigation Reservoir (Code 436)—The titles were changed and standards combined for ''Irrigation Regulating Reservoir'' (552) and ''Irrigation Storage Reservoir'' (436). Considerations were expanded and references added.

Surface Drain (Code 607)—The title was changed from ''Surface Drainage, Field Ditch.'' Criteria for capacity was added, considerations expanded, and references were added.

Surface Drainage, Main or Lateral (Code 608)—The text was streamlined and references were added.

Roof Runoff Structure (Code 558)—No significant changes are proposed to this practice standard. NRCS reviews standards periodically to ensure they are still current; this was the situation for this standard.

Surface Roughening (Code 609)—No significant technical changes are proposed to this practice standard; however, significant edits and grammatical changes have been made. The Purposes section has been edited for clarity, and as a result, the number of purposes has been reduced. However, the intent of the edits was to exclude previous purposes, just merge existing ones into more clearly worded statements. In the criteria section, procedure type narratives were removed. In the considerations section, additional considerations were added to address emergency tillage, the initial tillage operation, and the direction of tillage.

Section 343 of the Federal Agriculture Improvement and Reform Act of 1996, requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of changes will be made.

Signed in Washington, DC, on March 25, 2009.

Dave White,

Acting Chief.

[FR Doc. E9–8536 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST), Department of Commerce.

Title: NIST Construction Grant Program Application Requirements.

OMB Control Number: None.

Form Number(s): NIST–1101, NIST–1101A, NIST–1101B.

Type of Request: Emergency submission.

Burden: 250,000.

Number of Respondents: 500.

Average Hours per Response: 500.

Needs and Uses: The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) requires NIST to conduct a ''competitive construction grant program for research science buildings.'' The NIST Construction Grant Program is a competitive financial assistance (grant) program for research science buildings through the construction of new buildings or expansion of existing buildings. For purposes of this program, ''research science building'' means a building or facility whose purpose is to conduct scientific research, including laboratories, test facilities, measurement facilities, research computing facilities, and observatories. In addition, ''expansion of existing buildings'' means that space to conduct scientific research is being expanded from what is currently available for the supported research activities.

To receive funding, applicants must submit proposals addressing the NIST Construction Grant Program evaluation criteria. This request is for the information collection requirements associated with applying for funding. The information is used to perform the requisite technical and construction reviews of the proposals to determine if an award should be granted.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, U.S. Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by April 20, 2009 to Jasmeet Seehra, OMB Desk Officer, Fax number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: April 10, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–8580 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 15, 2009.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro at (202) 482–0238, David Layton at (202) 482–0371, or Joseph Shuler at (202) 482–1293; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2009, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on certain

cased pencils from the People's Republic of China, covering the period December 1, 2006 through November 30, 2007. *See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 673 (January 7, 2009) (''*Preliminary Results*''). The current deadline for the final results of this administrative review is May 7, 2009.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of an administrative review within 120 days of the publication of the preliminary results. 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 this deadline to a maximum of 180 days.

Extension of Time Limit for Final Results

The Department requires additional time to complete this review because it conducted verifications after the *Preliminary Results*. The Department needs to allow time for parties to brief the issues, provide rebuttal comments, conduct a hearing, if requested, and for the Department to consider all the issues raised, including possible complex issues regarding factors of production and surrogate values. Consequently, it is not practicable to complete this review within the original 120-day time limit (*i.e.*, by May 7, 2009). Therefore, the Department is extending the time limit for completion of the final results to not later than July 6, 2009, which is 180 days from the date of publication of the *Preliminary Results*, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 9, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–8652 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–2009]

Foreign-Trade Zone 21—Charleston, SC; Area Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, requesting authority to reorganize and expand the zone project within and adjacent to the Charleston Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of 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 April 8, 2009.

FTZ 21 was approved on June 12, 1975 (Board Order 106, 40 FR 25613, 6/17/75) and expanded on February 28, 1995 (Board Order 734, 60 FR 12735, 3/8/95); June 20, 1996 (Board Order 832, 61 FR 33491, 6/27/96); October 23, 1996 (Board Order 850, 61 FR 57383, 11/6/96); June 20, 1997 (Board Order 905, 62 FR 36044, 7/3/97); September 5, 1997 (Board Order 918, 62 FR 48591, 9/16/97); and, July 25, 2000 (Board Order 1112, 65 FR 47953, 8/4/00).

The zone project consists of fourteen sites (9,025 acres total) in the Charleston area: *Site 1* (134 acres)—Tri-County Industrial Park, 2725 West 5th Street, Summerville; *Site 2* (57 acres)—Cainhoy Industrial Park, 10 Cainhoy Park Road, Wando; *Site 3* (160 acres)—Crowfield Corporate Center, 754 College Park Road, Goose Creek; *Site 4* (998 acres)—Low Country Regional Industrial Park, Highway 68 North, Early Branch; *Site 5* (2,040 acres total, 12 parcels)—SCSPA's terminal complex at the Port of Charleston; *Site 6* (19 acres)—Meadow Street Business Park, Loris; *Site 7* (1,758 acres total)—Myrtle Beach International Airport (1,247 acres) and the former Myrtle Beach Air Force Base (511 acres), Myrtle Beach; *Site 9* (548 acres)—within the 993-acre Charleston Business Park on Clements Ferry Road, Charleston; *Site 10* (105 acres)—within the 133-acre Ashley Industrial Park, 3045 Ashley Phosphate Road, North Charleston; *Site 11* (459 acres)—within the 500-acre Charleston International Commerce Park, 5500 International Blvd., Charleston; *Site 12* (1,133 acres, 2 tracts)—within the Palmetto Commerce Park, Ladson Road, North Charleston; *Site 13* (76 acres)—North Charleston Convention Center complex, 500 Coliseum Drive, North Charleston; *Site 14* (1,514 acres)—the former Charleston Naval Base and Shipyard, Cosgrove Avenue, North Charleston; and, *Site 15* (24 acres total, 2 parcels)—located at 3298 Benchmark Drive (15 acres) and 4597 Appian Way (9 acres) Charleston. (Site 8 was deleted in 2008.)

The applicant is now requesting authority for a reorganization and expansion of the zone, which includes both additions and deletions with an overall increase of 431 acres in total zone space as described below:

—Delete Site 3 (Crowfield Corporate Center) in its entirety due to changed circumstances;
—Modify Site 5 (Port of Charleston) by deleting 1,773 acres (new total acreage—267 acres);
—Modify Site 7 (Myrtle Beach International Airport/former Air Force Base) by deleting 98 acres (new total acreage—1,660 acres);
—Delete Site 10 (Ashley Industrial Park) in its entirety due to changed circumstances;
—Proposed Site 16 (343 acres)—within the 1,343-acre Bushy Park, 1588 Bushy Park Road, Goose Creek;
—Proposed Site 17 (190 acres)—Jedburg Industrial Park, 1090 Newton Way, Summerville;
—Proposed Site 18 (291 acres)—within the 400-acre Rockefeller Foreign Trade Zone, located at Drop Off Road and Interstate 26, Summerville;
—Proposed Site 19 (742 acres)—Charleston Trade Center—Hillwood, located at Old Dairy Road and Interstate 26, Summerville;
—Proposed Site 20 (94 acres)—within the 97-acre Omni Commerce Center, 990 Drop Off Lane, Summerville;
—Proposed Site 21 (445 acres)—Orangeburg City/County Industrial Park, 348 Millennium Drive, Orangeburg;
—Proposed Site 22 (284 acres)—Southern Patio Industrial Park, 1000 Southern Patio Parkway, Rowesville; and,
—Proposed Site 23 (178 acres)—within the 183-acre Colleton County Commerce Park, located at Interstate 95 and McLeod Road, Walterboro.

The sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ staff is designated examiner to investigate the application and report 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 June 15, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 29, 2009.

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 *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille_Evans@ita.doc.gov* or (202) 482–2350.

Dated: April 8, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–8636 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Gray's Reef National Marine Sanctuary (GRNMS or sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (council):

K–12 education and non-living resources research.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the council's Charter.

DATES: Applications are due by May 29, 2009.

ADDRESSES: Application kits may be obtained from Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov*, 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381). Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Becky Shortland, Council Coordinator (*becky.shortland@noaa.gov*, 10 Ocean Science Circle, Savannah, GA 31411; 912–598–2381).

SUPPLEMENTARY INFORMATION: The sanctuary advisory council was established in August 1999 to provide advice and recommendations on management and protection of the sanctuary. The advisory council, through its members, also serves as liaison to the community regarding sanctuary issues and represents community interests, concerns, and management needs to the sanctuary and NOAA.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 7, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–8539 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for Final Results of the Second New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 15, 2009.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0219.

Background

On January 28, 2009, the Department of Commerce (''Department'') published the preliminary results of the second new shipper review for the period February 1, 2007, through January 31, 2008. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the Second New Shipper Review,* 74 FR 4923 (January 28, 2009) (''*Preliminary Results*''). The final results are currently due on April 16, 2009.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.214(i)(1) require the Department to issue the final results in a new shipper review of an antidumping duty order 90 days after the date on which the preliminary results are published. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days after the date on which the preliminary results are published if it determines that the review is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including the intermediate input methodology. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results by 60 days, until no later than Monday, June 15, 2009.

This notice is published in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

Dated: April 9, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–8626 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 13–2009]

Foreign-Trade Zone 33—Pittsburgh, PA; Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting authority to reorganize and expand its zone in the Pittsburgh, Pennsylvania, area, adjacent to the Pittsburgh CBP port of entry. The application was submitted pursuant to the provisions of 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 April 7, 2009.

FTZ 33 was approved on November 9, 1977 (Board Order 124, 42 FR 59398, 11/17/77). The zone was expanded on March 16, 1981 (Board Order 172, 46 FR 18063, 3/23/81) and on May 14, 1998 (Board Order 981, 63 FR 29179, 5/28/98).

The general-purpose zone currently consists of 5 sites (5,616 acres) in the Pittsburgh, Pennsylvania, area: *Site 1* (49 acres)—within the 500-acre RIDC Park West, Park West Drive, Findlay Township, Allegheny County; *Site 2* (5,352 acres)—within the 10,000-acre Pittsburgh International Airport complex (includes an aviation fuel depot), Pittsburgh; *Site 3* (140 acres)—Leetsdale Industrial Park, First and Center Avenues, Leetsdale; *Site 4* (60 acres, 3 parcels) located at 115 & 400 Hunt Valley Road within the Westmoreland Business and Research Park in Upper Burrell and Washington Townships, Westmoreland County; and, *Site 5* (15 acres) warehouse facilities located at 154 Keystone Drive, New Castle.

The applicant is now requesting authority to reorganize and expand its zone, which includes both additions and deletions with an overall increase of 1,576 acres in total zone space as described below: *Site 1* (*RIDC Park West*)—modify existing Site 1 by removing 21 acres due to changed circumstances and expand to include an additional 27 acres, 7 parcels (new site total—55 acres). The applicant is also requesting that the Board grant permanent authority for Sites 4 and 5, which were granted temporary designation through administrative actions with authority expiring 5/1/11.

In addition, twelve new sites (1,549 acres) are proposed as follows: *Proposed Site 6* (73 acres, 10 parcels)—warehouse facilities within the 240-acre City Center Duquesne property, located at South Linden Street, Duquesne, Allegheny County; *Proposed Site 7* (65 acres, 13 parcels)—within the 135-acre Industrial Center of McKeesport, 200 Center Street, McKeesport, Allegheny County; *Proposed Site 8* (67 acres, 9 parcels)—within the 925-acre Thorn Hill Industrial Park, 119–151 Commonwealth Drive, Warrendale, Butler & Allegheny Counties; *Proposed Site 9* (13 acres, 1 parcel)—Lawrenceville Technology Center, Hatfield & 45th Street, Lawrenceville, Allegheny County; *Proposed Site 10* (17 acres, 5 parcels)—within the 600-acre Allegheny County Industrial Park, 560–570 Alpha Drive, O'Hara Township, Allegheny County; *Proposed Site 11* (38 acres, 7 parcels)—within the 92-acre Keystone Commons, 200–700 Braddock Avenue, Turtle Creek, Allegheny County; *Proposed Site 12* (53 acres, 2 parcels)—South Hills Industrial Park, 1200 Lebanon Road, West Mifflin, Allegheny County; *Proposed Site 13* (737 acres, 2 parcels)—West Port Industrial Park, PA Route 576 & Burgettstown, Imperial, Allegheny County; *Proposed Site 14* (74 acres, 1 parcel)—Hopewell Business & Industrial Park, Gringo-Clinton Road & PA Rt. # 151, Aliquippa, Beaver County; *Proposed Site 15* (222 acres)—within the Westgate Business Park, PA Rt. # 18 & Eastwood Road, Homewood, Beaver County; *Proposed Site 16* (111 acres, 9 parcels)—within the 372-acre Aliquippa Industrial Park, 101–601.

Steel Street, Aliquippa, Beaver County; and, *Proposed Site 17* (80 acres, 10 parcels)—Ambridge Regional Center, 2301 Duss Avenue, Ambridge, Beaver County.

No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to investigate the application and report 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 June 15, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 29, 2009).

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 Kathleen Boyce at 202–482–1346 or *Kathleen_Boyce@ita.doc.gov*.

Dated: April 7, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–8637 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(32c)–01–2009]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Scope Clarification Request—Foreign-Trade Zone 7I; Abbott Pharmaceuticals P.R. Ltd.—Barceloneta, Puerto Rico (Pharmaceutical Products)

A request for clarification of scope has been submitted to the Foreign-Trade Zones Board (the Board) by Abbott Pharmaceuticals P.R. Ltd. (Abbott), operator of Foreign-Trade Subzone 7I at Abbott's pharmaceutical manufacturing plant in Barceloneta, Puerto Rico.

A grant of authority for Abbott's subzone was issued on December 23, 2005, with manufacturing authority for certain antibiotics and Depakote, a treatment for epilepsy, migraines, and bipolar disease (duty free), utilizing the foreign materials Beta Carb, hexamethyldisilozine, and hypromellose phthalate (duty rates: 3.7%—5.2%). Abbott has informed the Board that it now plans to produce other related pharmaceutical products that were listed in the application as finished pharmaceutical products, intermediates and chemical inputs for possible future production (Board Order 1432, 12/23/2005, 71 FR 1733, 1/11/2006).

Specifically, the company plans to make a HIV–AIDS protease inhibitor (HTSUS 3004.90—duty free) from the foreign materials sodium stearyl fumarate and copovodine (HTSUS 2917.19—duty rate 6.5% and HTSUS 3905.91—5.3%, respectively). Abbott also plans to make choline fenofibrate, a pharmaceutical intermediate (HTSUS 3003.90—duty free), from the foreign input choline hydroxide (HTSUS 2923.10—duty rate 3.7%).

The FTZ staff invites the comments of interested parties for consideration in its review. Submissions shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is May 15, 2009.

A copy of the request 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 Diane Finver at *Diane_Finver@ita.doc.gov,* or (202) 482–1367.

Dated: April 9, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–8635 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Site Renumbering Notice; Foreign-Trade Zone 23—Buffalo, NY

Foreign-Trade Zone 23 was approved by the FTZ Board on March 31, 1976 (Board Order 110, 41 FR 14824, 4/7/76), and expanded on November 2, 1979 (Board Order 148, 44 FR 65802, 11/15/79), April 16, 1982 (Board Order 187, 47 FR 18014, 4/27/82), February 7, 1985 (Board Order 291, 50 FR 6372 2/15/85), October 30, 1989 (Board Order 445, 54 FR 46431, 11/3/89), and June 25, 1993 (Board Order 645, 58 FR 36390; 7/7/93).

FTZ 23 currently consists of the following sites: Site 1: (225 acres) within the Gateway Trade Center, Buffalo; Site 2: (298 acres)—Wehrle International Business Park, Amherst, adjacent to the Greater Buffalo International Airport; and, Site 2—Parcel A: (189 acres)—Aero and Airport Business Parks, Cheektowaga, New York, immediately adjacent to the airport; Site 2—Parcel B (194 acres)—the airport's air cargo facility and Airport Commerce Park, Cheektowaga; Site 3: (13 acres)—within the Oak-Michigan Industrial Corridor, Buffalo; Site 4: (22 acres)—at the former American Standard plant, Rano and Tonawanda Streets, Buffalo; Site 5: (55 acres)—within the 80-acre Grand Island Industrial Park, Grand Island; Site 5—Parcel A: (5 acres) located at 3036 Alt Boulevard, Grand Island; Site 6: (11 acres) located at 2299 Kenmore Avenue, Tonawanda, New York, operated by Speed Transportation.

The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering of some of the zone sites for record-keeping purposes. Under this revision, the site list for FTZ 23 will be as follows: *Site 1*: (225 acres) within the Gateway Trade Center, Buffalo; *Site 2*: (298 acres)—Wehrle International Business Park, Amherst, adjacent to the Greater Buffalo International Airport; *Site 3*: (13 acres)—within the Oak-Michigan Industrial Corridor, Buffalo; *Site 4:* (22 acres)—at the former American Standard plant, Rano and Tonawanda Streets, Buffalo; *Site 5*: (55 acres)—within the 80-acre Grand Island Industrial Park, Grand Island; *Site 6*: (11 acres) located at 2299 Kenmore Avenue, Tonawanda, New York, operated by Speed Transportation; *Site 7:* (189 acres)—Aero and Airport Business Parks, Cheektowaga, New York, immediately adjacent to the Greater Buffalo International Airport; *Site 8*: (194 acres)—the Greater Buffalo International Airport's air cargo facility and Airport Commerce Park, Cheektowaga; and, *Site 9*: (5 acres) located at 3036 Alt Boulevard, Grand Island.

For further information, contact Elizabeth Whiteman at *Elizabeth_Whiteman@ita.doc.gov* or (202) 482–0473.

Dated: April 7, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–8633 Filed 4–14–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of a Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR), Draft Air Quality Conformity Determination (CD), and Section 404 Clean Water Act for the Port of Los Angeles Channel Deepening Project, Los Angeles, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Corps) and the Los Angeles Harbor Department (LAHD) have prepared a joint Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR) for the Port of Los Angeles Channel Deepening Project, Los Angeles County, California. The Corps and the LAHD have reviewed the written and oral comments received during the August 6, 2008 public hearing and during the public comment period for the Draft SEIS/SEIR. The Corps is publishing a Notice of Availability for the Final SEIS/EIR and Draft CD in the **Federal Register** for public review. The document will also be placed at public libraries in the vicinity of the project area and distributed to the concerned resource agencies and the public who has provided comment on the Draft SEIS/SEIR.

DATES: Submit comments on or before May 17, 2009.

ADDRESSES: U.S. Army Corps of Engineers, Los Angeles District, CESPL–PD–RN, c/o Joy Jaiswal, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Jaiswal, Chief, Ecosystem Planning Section, at (213) 452–3851 (voice), (213) 452–4204 (fax), or by e-mail at *Jyotsna.I.Jaiswal@usace.army.mil*. You may also contact Ms. Megan Wong, Project Environmental Coordinator, at (213) 452–3859 (voice) or by e-mail at *Megan.T.Wong@usace.army.mil*.

SUPPLEMENTARY INFORMATION: This Final SEIS/SEIR and the Draft CD have been filed with the Environmental Protection Agency to be published in the **Federal Register** and is available for a thirty-day (30) public review period. Review period for the Final SEIS/EIR and Draft CD will begin from the date of publishing the Notice of Availability in the **Federal Register**, which is on April 17, 2009. Please forward your comments on the Final SEIS/SEIR and/or the Draft CD by mail, e-mail, or fax to the contacts listed below by May 17, 2009.

(A) *Notice for Final SEIS/EIR:* The Corps and Port have reviewed all the comments received during 45-day public review period and Public Hearing on the Draft SEIS/EIR. Based on public comments, eelgrass habitat area has been eliminated as one of the disposal sites from Alternatives 1 and 2. Alternative 1, Port Development and Environmental Enhancement, was developed with a focus on beneficial use of dredge material for port development and environmental enhancement and disposal sites analyzed in the Final SEIS/EIR are: Berths 243–245, the Northwest Slip, CSWH Expansion, and LA–2. Alternative 2, Environmental Enhancement and Ocean Disposal, was developed with a focus on environmental enhancement related uses of the remaining material and does not include any disposal options associated with port development. Under Alternative 2, dredge material would be disposed at the CSWH Expansion, LA–2, LA–3 and the Anchorage Road Soil Storage Site. Under Alternative 3, the No Action Alternative, no further dredging would take place and the Channel Deepening Project would not be completed.

(B) A Draft Conformity Determination (CD) has been prepared for the Proposed Action, which is located in Appendix M of the Final SEIS/EIR. This notice also serves as review of the Draft CD. The Corps is publishing a Notice of Availability for the Final SEIS/EIR and

Draft CD in the **Federal Register** for public review. The document will also be placed at public libraries in the vicinity of the project area and distributed to the concerned resource agencies and the public who has provided comment on the Draft SEIS/SEIR. Revisions to the text made in the Final SEIS/SEIR are marked with underline and the deleted text is marked with strikeout.

This Final SEIS/SEIR describes the affected resources and evaluates the potential impacts to those resources as a result of the Proposed Action and alternatives. The purpose of the Proposed Action is to dispose of up to 3.0 million cubic yards of dredge material required to complete the Channel Deepening Project and to beneficially reuse the dredge material within the Port of Los Angeles (Port).

(C) This announcement also serves as the Public Notice/Notice of Availability for the Section 404 Permit under the Clean Water Act (CWA). An application has been received for a Department of the Army permit for the activity described herein. The Corps is considering an application submitted by the LAHD for a permit, in accordance with Section 404 of the CWA, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, to complete dredging activities outside of the Federal Channel and placement of the dredge material in waters of the United States in the Port of Los Angeles and at designated ocean disposal sites (LA–2 and LA–3).

This SEIS/SEIR will be used by the Corps as part of their application review process. The Corps and the LAHD independently determined under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), respectively, that there were potential significant environmental impacts associated with the proposed action, and an Environmental Impact Statement and Environmental Impact Report was required.

1. Authorization

By Water Resources Development Act of (WRDA) 2000, the Port of Los Angeles Channel Deepening Project was authorized for construction. The project is a continuation of the navigation channel optimization that began with the 1994 Deep Draft Navigation Improvement (DDNI) project.

2. Background

The proposed project area is located at the Port of Los Angeles, California. This SEIS/SEIR is a supplement to the 2000 SEIS/SEIR that was prepared for the Channel Deepening Project, which was a supplement to the 1998 Channel Deepening Project EIR and the 1992 Deep Draft Navigation Improvements Project EIS/EIR the modifications required to complete disposal of dredged material from the authorized project. This SEIS/SEIR addresses impacts associated with providing additional disposal capacity of approximately 3 mcy required to complete the Channel Deepening Project. Additional disposal capacity is required to complete the deepening of the navigation channel and berthing areas to –53 feet Mean Lower Low Water (MLLW) at container terminals along the deepened channel and the removal of dredge material that was temporarily used as surcharge at the Southwest Slip. This project meets a public need for safe and efficient commercial navigation.

3. Availability of the Final SEIS/SEIR and Draft CD

The Final SEIS/SEIR and the Draft CD for the Proposed Action are being distributed directly to agencies, organizations, and interested groups and persons for comment during the 30-day formal review period in accordance with Section 1506.10 of the Council on Environmental Quality NEPA Regulations and Section 176 of the Clean Air Act for CD, and Section 404 of Clean Water Act. During the 30-day public review period, which begins on April 17, 2009 and ends on May 17, 2009, the Final SEIS/SEIR is available for general public review at the following locations:

U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 915 Wilshire Blvd., 14th Floor, Los Angeles, CA 90053

Los Angeles Public Library, San Pedro Branch, 921 South Gaffey Street, San Pedro, CA 90731

Los Angeles Public Library, Central Branch, 630 West 5th Street, Los Angeles, CA 90071

Port of Los Angeles, Environmental Management Division, 425 South Palos Verdes Street, San Pedro, CA 90731

Los Angeles Public Library, Wilmington Branch, 1300 North Avalon Boulevard, Wilmington, CA 90744

Dated: April 1, 2009.

Thomas H. Magness,

Colonel, U.S. Army, District Commander.

[FR Doc. E9–8614 Filed 4–14–09; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Notice Concerning Nationwide Permit 46

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In response to a memorandum opinion issued on March 26, 2008, in litigation relating to Nationwide Permit (NWP) 46, the U.S. Army Corps of Engineers (Corps) is removing a sentence in the preamble that was published in the March 12, 2007, final notice for the reissuance of the Nationwide Permits and replacing that sentence and providing additional clarification. The preamble language at issue concerns when a pre-construction notification is required in connection with NWP 46, and we are soliciting comments on the removed sentence, the replacement sentences, and the additional clarification provided in this notice. The Corps is not proposing any changes to the terms and conditions of NWP 46.

DATES: Submit comments by May 15, 2009.

ADDRESSES: You may submit comments, identified by docket number COE–2009–0019, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2009–0019, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: CECW–CO (David B. Olson), 441 G Street, NW., Washington, D.C. 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2009–0019. 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 commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means

we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil*.

SUPPLEMENTARY INFORMATION: In the March 12, 2007, issue of the **Federal Register** (72 FR 11092), the U.S. Army Corps of Engineers (Corps) issued Nationwide Permit (NWP) 46, a new NWP that authorizes discharges of dredged or fill material into non-tidal ditches that are: (1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States. To be authorized by the NWP, the discharge cannot cause the loss of greater than one acre of waters of the United States. The terms and conditions of NWP 46 require pre-construction notification for all activities authorized by that NWP.

After NWP 46 was issued, the National Association of Home Builders filed a complaint in the United States District Court for the District of Columbia, making a facial challenge to the issuance of the NWP, claiming that it is beyond the authority granted to Corps under Section 404 of the Clean Water Act. In a memorandum opinion issued on March 26, 2008, the Court denied the Corps' motion to dismiss the action on the grounds that the plaintiff lacks constitutional standing. In that opinion, the Court cited preamble language in the March 12, 2007, **Federal Register** notice that discussed the pre-construction notification requirements for NWP 46 (see 72 FR 11142, first column, first full paragraph, third sentence: ''To ensure that this NWP is used only to authorize discharges into those types of ditches, and to ensure that those activities result in minimal adverse effects on the aquatic environment, we are requiring pre-construction notification for all activities.'').

The reference to ''all activities'' in the sentence quoted in the preceding paragraph was intended to refer to, and in fact applies to, only those activities for which some person voluntarily elects to seek authorization under NWP 46, and to activities that qualify for authorization under NWP 46, because those activities satisfy all of the terms and conditions of NWP 46 (*e.g.*, activities involving discharges of dredged or fill material to ditches meeting all of the criteria listed in the first paragraph of NWP 46). The pre-construction notification requirement in NWP 46 does not apply to any person who does not voluntarily elect to seek authorization under NWP 46, nor to any activity not satisfying all of the terms and conditions of NWP 46, nor to any ditch not meeting each of the four criteria listed in the first paragraph of NWP 46.

The purpose of today's notice is twofold: (1) To remove the sentence identified above that was published at 72 FR 11142 and replace it with new sentences that provide a more accurate explanation of the circumstances under which NWP 46 requires the submission of pre-construction notifications, and (2) to provide an opportunity for the interested public to submit comments on the replacement sentence and the additional clarification provided by this notice.

The new sentences that replace the removed sentence read as follows: ''To ensure that this NWP authorizes only those activities that result in minimal adverse effects on the aquatic environment, we are requiring that persons who voluntarily choose to seek authorization under NWP 46 provide pre-construction notification prior to commencing the activity for which that person is seeking authorization, where the activity would satisfy all of the terms and conditions of NWP 46. Nationwide permit 46, like every other Corps general permit, does not make, and does not imply, any sort of assertion of geographic jurisdiction over any aquatic area or over any category of aquatic areas, nor does it make or imply any sort of assertion of activity-based jurisdiction over any activity or category of activities.'' These replacement sentences are intended to avoid any inference that NWP 46 requires any person to submit a PCN unless that person is voluntarily seeking permit authorization under NWP 46, and believes that his proposed activity would satisfy all the terms and conditions of NWP 46.

If a project proponent believes that, for any reason, his proposed activities do not require authorization under CWA Section 404, he need not choose to seek authorization for his activities under NWP 46. Moreover, if a project proponent does not wish to voluntarily make use of an NWP, or if he believes that his proposed activity does not satisfy all terms and conditions of an NWP, any person who voluntarily wishes to obtain a Department of the Army permit authorization can apply for an individual permit or can make use of another applicable type of general permit, such as a regional general permit.

By its terms, NWP 46 authorizes discharges of dredged or fill material into non-tidal ditches that meet all of the following criteria: They are ''(1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) are determined to be waters of the United States.'' Authorization under NWP 46 is subject to a pre-construction notification requirement, as stated in the ''Notification'' paragraph of NWP 46: ''The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.)'' (72 FR 11190). This pre-construction notification requirement applies only to those particular discharges of dredged or fill material, for which some person voluntarily elects to seek permit authorization under NWP 46, where those particular discharges of dredged or fill material would go into the specific category of non-tidal ditches identified in the text of the NWP itself, *i.e.*, into ditches that meet each of the four criteria identified in NWP 46.

If a project proponent believes, for any reason, his proposed activities do not require authorization under the

CWA, or believes that NWP 46 does not apply to his or her particular proposed activity, and thus does not choose to voluntarily seek NWP 46 authorization for that activity, he or she is not required to submit an NWP 46 pre-construction notification to the appropriate Corps district office prior to commencing that activity. One reason why a landowner or other project proponent may choose not to make use of NWP 46, and thus may choose not to send in a pre-construction notification for NWP 46, could be that the project proponent believes that the ditch in question is not subject to CWA jurisdiction, or for any other reason believes that his proposed activities do not require authorization under CWA Section 404. In such a situation, there is nothing in NWP 46 that would require that project proponent to send in a pre-construction notification or to seek any form of CWA Section 404 permit authorization.

A person may desire to obtain a Corps Section 404 permit authorization, such as NWP 46, before discharging dredged or fill material into aquatic areas that may arguably be jurisdictional waters of the United States to avoid a citizens lawsuit seeking to enjoin his proposed activities, and/or avoid civil penalties. A citizens lawsuit challenging unpermitted discharges of dredged or fill material would be based on the application of the relevant Federal statutes and regulations relating to jurisdiction, and would not be based on or affected in any way by the terms or conditions of any NWP or other general permit, including NWP 46. A landowner or other person can voluntarily choose to avail himself of the legal protection from a possible citizens lawsuit that a permit authorization under NWP 46 can provide. If so, that person has the right to make use of NWP 46 if he voluntarily chooses to use it, and if his proposed activity meets all the terms and conditions of that NWP.

For any sort of water body that is subject to the geographic jurisdiction of the CWA, and for any proposed activity that would constitute or involve the discharge of dredged or fill material into that jurisdictional water body, said geographic or activity-based jurisdiction is derived from the relevant statute (*e.g.*, the CWA) and its implementing regulations that specifically address jurisdiction. No NWP or any other form of general permit asserts jurisdiction in any way, either explicitly or by implication.

It follows from the principles explained above that the issuance of NWP 46 did not and does not involve, and does not result in, any assertion of Clean Water Act jurisdiction over any particular aquatic area or over any category of aquatic habitats, or over any particular activity or over any category of activities. Instead, issuance of NWP 46 or any other NWP is merely one means of providing permit authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, if a landowner or other person voluntarily elects to make use of that form of permit authorization, whatever his reason for doing so may be.

Dated: April 9, 2009. Approved by:

Steven L. Stockton,

Director of Civil Works.

[FR Doc. E9–8611 Filed 4–14–09; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974 or send an e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 9, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package.

Frequency: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 9,000.

Abstract: This application package invites small business concerns to submit a Phase I application for the Small Business Innovation Research (SBIR) Program (CFDA 84.133). This is in response to Public Law 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5667'' (the ''Act'') enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED) to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development through a uniform, highly competitive, three-phase process each fiscal year.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3978. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department

of Education, 400 Maryland Avenue, SW., LBJ, Washington, D.C. 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–8545 Filed 4–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–6974 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 10, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Documents Associated with the Notice of Terms and Conditions of Additional Purchase of Loans under the ''Ensuring Continued Access to Student Loans Act of 2008''.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 14,780.

Burden Hours: 14,780.

Abstract: The Ensuring Continued Access to Student Loans Act of 2008 (Pub. L. No. 110–227) (the ECASLA) which was signed into law on May 7, 2008, amended the Higher Education Act of 1965, as amended (the HEA) by adding a new Section 459A that provides the U.S. Department of Education (the Department) with temporary authority to purchase student loans from Federal Family Education Loan (FFEL) Program lenders. The documents included with this submission establish the terms and conditions that will govern certain loan purchases through the replication for the 2009–2010 academic year of the Loan Participation Purchase Program and the Loan Purchase Commitment Program that have been established for the 2007–2008 and 2008–2009 academic years.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3940. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–8619 Filed 4–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974 or send an e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or

reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 9, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Small Business Innovation Research (SBIR) Program—Phase II—Grant Application Package.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 3,750.

Abstract: This application package invites small business concerns to submit a Phase II application for the Small Business Innovation Research (SBIR) Program (CFDA 84.133). This is in response to Public Law 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5667'' (the ''Act'') enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED) to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development through a uniform, highly competitive, three-phase process each fiscal year.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3979. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–8568 Filed 4–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–351]

Application To Export Electric Energy; DC Energy Dakota, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: DC Energy Dakota LLC (DCE Dakota) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before May 15, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On April 7, 2009, DOE received an application from DCE Dakota for authority to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. DCE Dakota does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which DCE Dakota proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. DCE Dakota has requested an electricity export authorization with a 5-year term.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by DCE Dakota has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with sections 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the DCE Dakota application to export electric energy to Canada should be clearly marked with Docket No. EA–351. Additional copies are to be filed directly with Stephen C. Palmer, Alston & Bird LLP, The Atlantic Building, 950 F Street, NW., Washington, DC 20004–1404. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov*.

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

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–8488 Filed 4–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Conservation Block Grant Program—State, Local and Tribal Allocation Formulas

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

ACTION: Notice.

SUMMARY: The Department of Energy (DOE or Department) is today publishing three formulas used to distribute funds allocated to (1) local government, (2) States, and (3) Indian tribes for the Energy Efficiency and Conservation Block Grant Program, as required by the Program's authorizing legislation, Title V, Subtitle E of the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The purpose of Energy Efficiency and Conservation Block Grant Program is to assist eligible local governments, States, and Indian tribes in implementing strategies to reduce fossil fuel emissions, to reduce total energy use, and improve energy efficiency. This notice provides the allocation formulas that are used to distribute funds to eligible entities. The formulas in today's notice were previously provided as part of the funding opportunity announcement issued for the Energy Efficiency and Conservation Block Grant Program.

FOR FURTHER INFORMATION CONTACT: EERE's Information Center, at *http://www1.eere.energy.gov/informationcenter/*, or call toll-free at 1–877–EERE–INFO (1–877–337–3463), between 9 a.m. and 7 p.m. EST, Monday–Friday.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE or Department) is publishing the formulas for allocation to States, units of local government, and Indian tribes established for the Energy Efficiency and Conservation Block Grant Program (EECBG Program or Program), as required by section 543(e) of the Program's authorizing legislation, Title V, Subtitle E of the Energy Independence and Security Act of 2007, Public Law 110–140 (EISA), as amended. In fiscal year 2009, the Program is funded with appropriations from the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (ARRA).

ARRA appropriated $3.2 billion for the EECBG Program. The EECBG Program provides Federal grants to States, units of local government, Indian tribes, and consortia of these entities to reduce energy use and fossil fuel emissions, and for energy efficiency programs and projects. Grants to local governments are made in two allocations—(1) cities with populations of at least 35,000 or are one of the top ten highest populated cities and counties with a population of over 200,000 or counties of any size population that are one of the ten highest-populated cities or counties of the State in which they are located (''local government-alternative 1''); (2) or cities with populations of at least 50,000 and counties of at least 200,000 (''local government-alternative 2''). The Program is administered by the Office of Energy Efficiency and Renewable Energy (EERE) of the U.S. Department of Energy.

Of amounts appropriated by ARRA, DOE will allocate $2.741 billion as described in section 543 of EISA, using the most recent and accurate population data available:

- 34 percent to eligible units of local government-alternative 1 through formula grants;
- 34 percent to eligible units of local government-alternative 2 through formula grants
- 28 percent to States through formula grants;
- 2 percent to Indian through formula grants; and
- 2 percent for competitive grants to ineligible cities, counties, and Indian tribes.

Of the remaining amounts provided by ARRA, DOE will allocate $398 million in competitive grants to all entities eligible for Program funds as described above, and $61 million will be set aside by the Department for technical assistance to grantees and administrative costs.

The funding allocations will be as follows:

- $3,200,000,000 Appropriation in ARRA;
  - $61,000,000 Available to DOE for technical assistance to grantees and administrative costs;
  - $398,000,000 Competitive funds for all entities eligible for Program funds;
  - $2,741,180,000 EISA funds;
- $1,863,880,000 Available for local governments;
- $931,940,000 Available for 34% to Alternative 1;
- $931,940,000 Available for 34% to Alternative 2;
- $767,480,000 Available for 28% for States;
- $54,820,000 Available for 2% to Indian tribes; and
- $54,820,000 Available for 2% to competitive grants to ineligible cities, counties, and Indian tribes.

EISA directs that the formula for grants to eligible units of local government are to be established by the Department according to the population served by the eligible unit of local government, the daytime population of the eligible unit of local government and other similar factors determined by Department (section 543(b)). EISA directs that of the amount allocated for States, the Department is to provide not less than 1.25 percent to each State, with the remainder distributed among the States based on a formula established by the Department. EISA directs the State formula to take into account the population of each State and any other criteria that the Department determines to be appropriate (section 543(c)). EISA directs that the amounts made available for Indian tribes is to be distributed based on a formula, which is to be established by the Department, taking into account any factors that the Department determines to be appropriate (section 543(d)).

The first part of today's notice describes the State and local government funding allocation formulas and data sources. The second part of today's notice describes the Indian tribe funding allocation formula and data sources.

Part One: EECBG State and Local Allocation Formulas

I. Definitions

While EISA directs the Department to provide grants to cities and counties that qualify as eligible units of local government, EISA does not define ''city,'' ''county,'' or related terms. For the purposes of the EECBG Program, DOE is defining ''city'' to include certain city-equivalent units of local government. Specifically, a city-equivalent unit of local government such as a town, village or other municipality will be considered eligible if it is listed in the most recent Census of Governments as a currently incorporated entity, has a governance structure consisting of an elected official and governing body, is capable of carrying out the activities set forth in EISA, and meets the required population thresholds described above. Additionally, consolidated city-county governments will be considered as cities.

For the purposes of the EECBG Program, a county will be considered eligible for direct formula grants from DOE if it is listed in the most recent Census of Governments as a currently incorporated county, has a governance structure with an elected official and governing body, is capable of carrying out the activities set forth in EISA, and

meets the required population thresholds. To meet the population requirement, the county population must be at least 200,000 or the county must be within the 10 most populated counties of the State in which it is located.

In evaluating county populations for eligibility for direct formula grants, DOE will not include the populations of cities located within county boundaries that are eligible for direct formula grants from DOE. For the purposes of this program, this population is referred to as the ''county balance population.'' In determining the formulas for funding distribution, DOE has determined that the EECBG Program achieves the most equitable funding allocations if done on a per capita basis. By removing the population of an eligible city from a county population, DOE has reduced the instances of double-counting persons who live in both an eligible city, which is located in an eligible county. DOE's implementation approach is consistent with the approach developed by the Community Development Block Grant Program (CDBG) administered by the Department of Housing and Urban Development (HUD). This program allocation process is modeled after the CDBG program because EECBG addresses similar issues as a formula grant program using population and additional energy-specific data to determine allocations to local governments.

For the purposes of this program, ''balance population'' is the population that resides outside the jurisdictions of eligible local governments. City and county governments that do not meet the eligibility requirements described above for direct formula grants from DOE are eligible for program funds through the State in which they are located.

For the purposes of the EECBG Program, ''States'' are the 50 United States, the District of Columbia and the following Territories of the United States: Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

DOE is not including the territories of Palmyra Atoll and Wake Atoll in its definition of ''States.'' The territories of Palmyra Atoll and Wake Atoll do not have significant permanent populations to warrant inclusion in the Program. Palmyra Atoll is a national Wildlife Refuge and access to Wake Atoll is restricted. (See, *http://www.doi.gov/oia/Firstpginfo/islandfactsheet.htm*, last visited March 26, 2009.) The absence of permanent populations on Palmyra Atoll and Wake Atoll would make the inclusion of these Atolls superfluous.

II. Population Data

DOE relied on the most recent and accurate population data from the U.S. Census to determine eligibility and allocate funds under the formula. DOE used and modified, for program purposes, a database of publicly available Census data created for HUD's CDBG Program that, pursuant to statutory requirement, was updated by the U.S. Census with annual population estimates for 2007. DOE modified HUD's database to accommodate program requirements specific to EECBG Program as explained below.

Determining the Population of Eligible Cities. In order to determine the identity of all eligible cities, DOE constructed a database using Census designated places (CDPs). CDPs are delineated for each decennial census as the statistical counterparts of incorporated places. DOE used the Census 2007 file of CDPs with updates to reflect challenges to the 2007 population estimates submitted to and accepted by the Census Bureau. The list of successful challenges can be found at *http://www.census.gov/popest/archives/2000s/vintage_2007/07s_challenges.html*.

For the purposes of this program, DOE includes the following clarifications to the records used to calculate the universe of cities that are eligible for this program:

- In the Commonwealth of Puerto Rico, Municipios are treated as cities. Though designated as counties by the Census, governments of Municipios have the functionality of city governments.
- Towns, townships, and boroughs that are incorporated places are treated as cities. The governments of these places have the functionality of city governments.
- For those populations residing in one incorporated place that is within another incorporated place, DOE credits that population to the first incorporated place. For example, in a State in which a *town* government has incorporated *villages* with the same authorities afforded city-equivalent governments within their geographic boundaries, the *villages* in *towns* are treated as cities. Since villages are recognized as potentially eligible units of local government, DOE subtracts their population from the total population of the town in which they lie. This is to avoid double-counting of populations.
- A consolidated or unified city-county government in which a city and a county overlap geographically and govern as one consolidated government, is considered by DOE as an eligible city. City-county governments have the functionality of city governments.

Determining the Population of Eligible Counties. To determine the counties eligible for this program, DOE used the county balance population. Successful challenges to U.S. Census 2007 county population data were incorporated. DOE reconciled the 2007 Census of Governments Directory listing of County Governments with the list of counties used for the CDBG Program. Doing this captured only those counties with functional governments and without double-counting the population of consolidated city-county governments.

In determining county balance populations, DOE identified a number of cities with geographic boundaries that cross the borders of multiple counties. In calculating county balance populations for those counties which contain only a part of an eligible city, DOE subtracted the portion of the eligible city's population living within that county.

For the purposes of this program, DOE includes the following clarifications to the records used to calculate the universe of counties that are eligible for this program:

- The updated 2007 County file contains population estimates for counties and equivalents, including Alaska's Boroughs and Louisiana's Parishes. Counties that are not a part of the Census of Governments and are without governmental authority are not a part of the database, and are thus not eligible for direct formula grants. This pertains to some counties in Massachusetts, and Alaska, as well as all counties in Connecticut and Rhode Island. As defined by the Census of Governments, county governments in Maine, Massachusetts, New Hampshire, and Vermont perform only limited functions, and thus all counties in these States were determined to be ineligible for Program funds. There are also no counties in the District of Columbia.
- Two counties—Arlington, VA and Menominee, WI—that have city-county consolidated governments were exceptions that were included in the county data files and were relocated to the city list, because, as explained above, city-county governments have the functionality of city governments.
- DOE used the County Governments file from the 2007 Governments Integrated Directory (GID) from the U.S. Census Bureau to identify the county-equivalents with governments (available at *http://harvester.census.gov/gid/gid_07/options.html*).

Determining State Population. In order that State allocations are based on

the most accurate data, DOE incorporated and aggregated successful challenges to 2007 County Population to determine State population as was done for county population. DOE used the Census 2007 file of Census designated places (CDPs) with updates to reflect challenges to the 2007 population estimates submitted to and accepted by the Census Bureau.

Incorporating Daytime Population. EISA directs DOE to include considerations of ''daytime population'' in the allocation formula for city and county calculations. The concept of the daytime population refers to the number of people who are present in an area during normal business hours, including workers. This is in contrast to the ''resident'' population present during the evening and nighttime hours. The Census Bureau creates estimates of daytime population by adding the total number of workers working in the place minus workers who live and work in the same place with the total resident population. The Census Bureau estimate of daytime population adjusts only for work-related travel, *i.e.*, incommuters to an area and outcommuters from an area. Data necessary to adjust for shopping, school, recreation, tourism, etc. are not available.

For EECBG Program purposes, the weighted population is comprised of 29.75% daytime population and 70.25% resident population. DOE determined this weighting scheme based on an estimated 50 working hours out of a total 168 hours in a week (50/168 is equal to approximately 29.75%). Working hours are used because daytime population estimates are based on working commutes.

In places where Census Daytime Population Estimates are not consistently available the following three guidelines were observed to make the data consistent over time:

1. Where possible, the 2005–2007 American Community Survey (ACS) was used to compute daytime population figures.

2. In places where 2005–2007 ACS data are not available, DOE used daytime population data from the 2000 decennial census.

3. In places where no Census Daytime Population Estimates were available, 2007 Census Population estimates were used. This applies to 24 locations, in three States: MI, NY, and VT.

Since Census data for different resident population sources vary slightly from the 2007 population estimates and even more significantly from the 2000 census, DOE used a ratio process to make the differences consistent. This process applied the ratio of the resident population for the 2007 Census estimate to the resident population that formed the basis for the particular daytime estimate. This calculation corrects data inconsistencies caused by using data from different years between the 2007 estimates used for allocation and the source of the data.

- Using the 2007 population estimate as a base, this process calculates an estimated daytime population for 2007.
- The ratio of the best available daytime population estimate to the resident population used in forming that daytime estimate is multiplied by the 2007 population estimate.
- The ratio of resident population to daytime population is therefore consistent between the 2007 estimates used for allocation and the source of the data.

This process for cities is applied to counties and the city parts which lie in different counties to determine their balance daytime population. The American Community Survey does not have data available for these smaller areas, so the resident population ratio is again used to superimpose the daytime estimates on the smaller areas, which can then be subtracted from the respective counties.

III. Local Governments and State Formulas

Determining City Eligibility According to Section 543 of Title V, Subtitle E of EISA. In addition to the factors considered in the previous sections, EISA provides population thresholds to determine city eligibility. DOE determined whether a city meets the population criteria for eligibility by ranking each city based on its population, as determined in the previous section, relative to all other cities in its State. Cities were added to the allocation table according to the following:

- A city with a population above 50,000 is eligible for both Alternative 2 and Alternative 1 funding.
- If a city's population is above 35,000 but below 50,000, it is eligible for Alternative 1 funding only.
- A city with a population that ranks within the ten highest populated cities in the State is eligible for Alternative 1 funding, even if the city population is below 35,000.

Determining County Eligibility According to Section 543 of Title V, Subtitle E of EISA. EISA provides population thresholds to determine eligibility in addition to the population data considerations in the previous section. DOE ranked each eligible county relative to all other counties in its State. Counties were added to the allocation table according to the following:

- A County with a population of 200,000 or more is eligible for both Alternative 1 and Alternative 2 funding.
- A County with a population that ranks within the ten highest populated counties in the State is eligible for Alternative 1 funding only, even if the population is below 200,000.

Determining State Eligibility and Weighted Population. The 2007 State file by HUD includes 2007 Population Estimates for the 50 United States, Washington, DC and Puerto Rico. According to Sec. 541(6) the term 'State' is defined as:

- A State;
- The District of Columbia;
- The Commonwealth of Puerto Rico; and
- Any other territory or possession of the United States (as discussed previously, DOE is only including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).

As stated in Sec. 543(c)(2), the formula for determining allocations to States is required to consider:

- The population of each State;
- Any other criteria that the Secretary determines to be appropriate.

Three factors that are considered with equal weight in the formula are:

- The total population for the State;
- The population of the State after subtracting the populations of all eligible entities;
- Total Energy Consumption, less consumption in the industrial sector.

Total population is based on the 2007 U.S. Census Population Estimate. For the U.S. Territories other than Puerto Rico, 2000 Census population data was used because the U.S. Census Bureau does not provide interim population estimates for U.S. Territories, with the exception of Puerto Rico. The remaining population of the State is calculated by subtracting the populations for all eligible cities and all eligible counties in each State. Total Energy Consumption is compiled from 2006 per capita energy use by sector data, the most recent available, from the EIA. For the U.S. Territories, consumption by sector data was unavailable. For each State and for each factor, the percent of total compared to all the States is calculated. The three percentages are then averaged and multiplied by the total population in the United States based on the 2007 U.S. Census estimates data. This calculation results in a new population distribution that gives equal weight to the three factors mentioned above. The calculation is formally described in Appendix B.

Funding Allocation Design. The EECBG Funding Allocation Calculator (hereafter referred to as ''the calculator'') is a computer program which computes the pro-rata allocation levels for each eligible State and unit of local government. The total funds available for units of local government will be $931,940,000 under Alternative 1 and $931,940,000 under Alternative 2. The total funds available for States will be $767,480,000.

Alternative 1 Funding—34%. First, the calculator uses an iterative algorithm to determine Alternative 1 of EISA. Then, thirty-four percent of the funds are allocated to local governments eligible under definition Alternative 1. The funds are apportioned to each local government according to their share of population relative to the entire set of eligible entities. A minimum level of funding is set at $50,000. The calculator then checks if any city or county was allocated less than $50,000. Governments which are (1) funded below the minimum amount and (2) are not eligible under the definition of Alternative 2, are allocated the minimum amount. The remaining funds are apportioned in the same manner to all other governments. Cities that fall below the $50,000 minimum on reapportionment are increased to the minimum level. This process repeats itself until no local government is funded at a level below the minimum. For more detail on this calculation see Appendix A.

Alternative 2 Funding—34%. Another thirty-four percent of funds is allocated to those governments that are eligible under the definition of Alternative 2. The process is the same as the apportionment for those eligible under the definition of Alternative 1. In Alternative 2, funding allocations from Alternative 1 are included in the total used to check the minimum amount. The calculator adds Alternative 2 funding to the amount received under Alternative 1 for any eligible entity receiving funding under Alternative 2. For more detail on this calculation see Appendix A.

State Funding—28%. The process for allocating funds to States is nearly identical to the allocation algorithm for Alternative 1. EISA provides a statutory minimum funding allocation for States of 1.25% of the State allocation. At the level of funding established in ARRA, this minimum is $9,593,500. Using the iterative process, DOE calculates which States should be receiving the minimum amount of funding. DOE makes the minimum allocations. The remaining funds are then distributed pro rata based on the weighted population of States that are not designated to receive the minimum amount. For more detail on the math of this calculation see Appendix B.

Final Output. Once calculations have been completed for the two alternative definitions, the amounts allocated to each eligible entity are summed, and two spreadsheets are written to an allocation file. The first contains all eligible units of local government and the second contains all States. The spreadsheets contain all relevant data used in the calculation including each final allocation rounded to the nearest one hundred dollars. A summary text file is also written containing the total of all grants to be received by each State.

Appendix A: Local Government Allocation Formulas

ALTERNATIVE 1:

$$A_{i1} = \begin{cases} \text{if receiving minimum amount of funding} & m \\ \text{else} & \dfrac{|WP|_i \times \left[(l_1 \times F) - (M \times m) \right]}{|WP|_T} \end{cases}$$

$$|WP|_i = \begin{cases} \text{if daytime population estimates available} & dE_i + (1-d) D_i \\ \text{else} & E_i \end{cases}$$

$$D_i = \frac{E_i \times (P_i + w_i - W_i)}{P_i}$$

$$|WP|_T = \sum_{Ak\ 1 \neq m}^{n} |WP|_k$$

ALTERNATIVE 2:

$$A_{i2} = A_{i1} + \frac{|WP|_i \times (l_2 \times F)}{|WP|_{T2}}$$

$$m = \$50,000$$

$$F = \$2,741,000,000]$$

$$l_1 = l_2 = 0.34$$

$$d = 118/168$$

A_{i1} = Total amount of funding allocated to Government i under Definition Alternative 1

F = Total amount of EECBGP program formula funding allocation

l_1 = Percentage of total allocations available to Local Governments eligible under definition Alternative 1

l_2 = Percentage of total allocations available

to Local Governments eligible under definition Alternative
$\backslash WP\backslash_i$ = Weighted populations average used to allocate funding
$\backslash WP\backslash_T$ = Sum of all weighted populations for which the minimum funding level is not designated
D_i = Daytime Population estimate normalized to 2007 Population estimate
d = daytime coefficient
E_i = 2007 Population Estimate for Government i
M = number of governments receiving minimum funding level m
m = minimum amount of funding each entity must receive
n = number of eligible local governments
n_2 = number of local governments eligible under Alternative 2 only
P_i = Total residential population based on ACS 2005–2007 or Census 2000
W_i = Workers working in the jurisdiction of government i based on ACS 2005–2007 or Census 2000
W_i = Workers living in the jurisdiction of government i based on ACS 2005–2007 or Census 2000

Note: For Counties, all population figures are adjusted to reflect only the balance of their population excluding the populations of any eligible entities therein. For a local government that is eligible under only Alternative 1 and with a weighted population (|WP|) above 12,000, this works out to:

$$A_{i1} = \frac{\left\{\left(\frac{118\times E_i}{168}\right)+\left[\left(\frac{50\times E_i\times\left(P_i+w_i-W_i\right)}{168\times P_i}\right)\right]\right\}\times\left[(0.34\times F)-(M\times m)\right]}{\sum_{Ak\,1\neq m}^{n}\left\{\left(\frac{118\times E_k}{168}\right)+\left(\frac{50\times E_k\times\left(P_k+w_k-W_k\right)}{168\times P_k}\right)\right\}}$$

For a local government receiving funding under alternative 2, this works out to:

$$A_{i2} = \left[\frac{\left\{\left(\frac{118\times E_i}{168}\right)+\left[\left(\frac{50\times E_i\times\left(P_i+w_i-W_i\right)}{168\times P_i}\right)\right]\right\}\times\left[(0.34\times F)-(M\times m)\right]}{\sum_{Ak\,1\neq m}^{n}\left\{\left(\frac{118\times E_k}{168}\right)+\left(\frac{50\times E_k\times\left(P_k+w_k-W_k\right)}{168\times P_k}\right)\right\}}\right]$$

$$+\left[\frac{\left\{\left(\frac{118\times E_i}{168}\right)+\left[\left(\frac{50\times E_i\times\left(P_i+w_i-W_i\right)}{168\times P_i}\right)\right]\right\}\times(0.34\times F)}{\sum^{n2}\left\{\left(\frac{118\times E_k}{168}\right)+\left(\frac{50\times E_k\times\left(P_k+w_k-W_k\right)}{168\times P_k}\right)\right\}}\right]$$

Appendix B: State Allocation Formulas

State Formula:

$$A_{i1} = \begin{cases} \text{if receiving minimum amount of funding} & \dfrac{|WP|_i\times\left[\left(l_1\times F\right)-\left(M\times m\right)\right]}{|WP|_T} \\ \text{else} & \end{cases}$$

$$|WP|_i = \left(\frac{1}{3}\right)\times\left(\frac{C_i}{C_T}+\frac{B_i}{B_T}+\frac{E_i}{E_T}\right)\times E_T$$

$$|WP|_T = \sum_{Ak\neq m}^{n}|WP|_k$$

$$C_T = \sum C_i$$

$$B_T = \sum B_i$$

$$E_T = \sum E_i$$

$$m = 0.0125\times s\times F$$

$$F = \$2,741,000,000$$

$$s = 0.28$$

s = Percentage of total allocations available to State Governments
M = number of governments receiving minimum funding level m
m = minimum amount of funding each entity must receive
n = number of State Governments
$/WP/_T$ = Sum of all weighted populations for which the minimum funding level is not designated
$/WP/_i$ = Weighted population which accounts for one third total population, one third balance population (those living in ineligible entities), and one third non-industrial energy consumption
C_i = Energy consumption less the industrial sector's consumption for State i
E_i = 2007 Population Estimate for State i
B_i = Balance Population for State i after subtracting the populations of eligible cities and counties in State i
E_T = Sum of all Population 2007 Estimates for States, or in the case of territories 2000 Census population
C_T = Sum of energy Consumption minus industrial use for all States, except in U.S. territories where total energy Consumption is included due to lack of data
B_T = Sum of all Balance Populations for the States

For a State not receiving the minimum amount of funding, the equation looks like:

$$A_i = \frac{\left(\frac{E_T}{3}\right) \times \left(\frac{C_i}{C_T} + \frac{B_i}{B_T} + \frac{E_i}{E_T}\right) \times \left[(s \times F) - (M \times m)\right]}{\sum_{Ak\,1 \neq m}^{n} |WP|_k}$$

Part Two: EECBG Indian Tribe Allocation Formula

I. EECBG Tribal Allocation

Section 543(d) of Title V, Subtitle E of EISA provides that, ''of amounts available for distribution to Indian tribes under subsection (a)(3), the Secretary shall establish a formula for allocation of the amounts to Indian tribes, taking into account any factors that the Secretary determines to be appropriate.''

Part Two of this notice applies specifically to the Tribal Allocation, as described in section 543(a)(3), for which the total funds available will be $54,820,000.

II. Energy Efficiency and Conservation Block Grant Tribal Formula

Defining Eligible Indian Tribes

As defined by section 541(4) of Title V, Subtitle E of EISA, '' 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act.'' The Indian Self-Determination and Education Assistance Act states that, '' 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians'' (25 U.S.C. 450b).

The Tribal Allocation for the EECBG Program will be distributed among the 562 Federally recognized Indian tribes, listed in *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs* published by Department of Interior's Bureau of Indian Affairs in the **Federal Register** on April 4, 2008, 73 FR 18553; and the 12 Alaska Native regional corporations established pursuant to the Alaska Native Claims Settlement Act (33 U.S.C. 1601 *et seq.*).

Formula Methodology. Given the relatively broad nature of the statutory language (*e.g.,* ''taking into account any factors that the Secretary determines to be appropriate''), the Department has taken the opportunity with the Tribal Allocation to improve upon a formula based solely on population and tailor the distribution of funds to have the greatest impact in meeting the needs of Indian tribes most affected. However, the formula will draw heavily on relevant existing formulas and data sources, which were developed and are used by the Department of Housing and Urban Development's (HUD) Office of Native American Programs' (ONAP) Indian Housing Block Grant Program (IHBG), and EERE's Office of Weatherization and Intergovernmental Program's (WIP) Weatherization Assistance Program (WAP).

Summary of Formula. An explanation of the allocation formula is set forth below. The formula is calculated based on population data from the 2000 U.S. Decennial Census, as adjusted for birth and death rates provided by the National Center of Health Statistics used by the Indian Health Service, and heating and cooling degree day data from the National Oceanic and Atmospheric Administration (NOAA).

Formula Factors: The formula is composed of two weighted factors. The first factor (F1) is the Tribal Population Factor. The next factor, The Tribal Climate Factor (F2), represents the climatic conditions in each Indian tribe's State, derived from heating and cooling degree days.

F1 Tribal Population Factor. The first factor in the formula is the Tribal Population Factor. This allocates more funds to Tribes with larger populations. In the formula, the Tribal Population Factor is represented as the ratio of each Indian tribe's American Indian and Alaska Native (AIAN) population to the National Total Tribal AIAN population. This factor is weighted at 0.75. For an explanation of the weighting scheme, please see *Weighting of the Formula Factors* below.

The Tribal Population Factor is expressed,

F1 = WF1 × (Indian Tribe's AIAN Persons/Sum of all Tribes' AIAN Persons)

Where,

WF1 = Population Weighting Factor (0.75)

Accumulating population data for Indian tribes presents many obstacles, including but not limited to questions regarding coordinating an Indian tribe's geographic area with available data sources and inaccuracies in available data. Fortunately, HUD maintains a database for the need-based portion of the IHBG formula, which includes AIAN population data by Formula Area and as adjusted for birth and death rates provided by the National Center of Health Statistics used by the Indian Health Service, as defined in the IHBG regulations (see 24 CFR 1000, Subpart D for a definition of Formula Area and the methodology used under HUD's IHBG Program). The EECBG Program uses this HUD database in its calculation of the Tribal Allocation formula. The data that is used is that which HUD used in its allocation of IHBG fiscal year 2008 funds. This is the most recent version of this data and includes population estimates for 2007, with updates based on successful challenges from that year. Using this database allows DOE to comply with the legislative change in ARRA, which requires that the most

recent accurate population updates be used.

Following HUD IHBG precedent, Indian tribes with populations of ''zero'' are considered eligible for Tribal Allocation funds. This is due to the fact that Census data often does not accurately reflect true AIAN populations in a Formula Area.

The U.S. Census Bureau tracks two sets of population numbers for all Indian tribes—single-race and multi-race. An Indian tribe's single-race population number includes people who identify themselves only as an American Indian and Alaska Native (AIAN) person. The multi-race population number includes people who identify themselves only as an AIAN person and those who identify as AIAN in combination with one or more additional races. Since the definition of multi-race includes all single race American Indian and Alaska Native persons, the multi-race population of any given tribe is always larger than or equal to the single race population. But, the allocation formula compares a tribe's population to the National Total AIAN population.

The single race population of each tribe is compared to the total single race nationally. The multi-race of each tribe is compared to the total multi-race population nationally. In some cases the single race to national total single race for a given tribe will produce a larger ratio than the comparison of multi-race population and vice versa. To ensure that each Indian tribe receives the greatest allocation possible the tribal allocation formula is calculated twice, first using single-race population data and second using multi-race population data. The greater of the two allocations is then selected for each Indian tribe.

The Department uses a methodology whereby the population value that leads to the greatest funding level for each Indian tribe is included in the calculation. HUD's IHBG Program has incorporated such a modification into its formula, to ensure that each Indian tribe receives the greatest allocation possible. The EECBG Program will also use this methodology in making its tribal formula allocations. A full explanation of this method is provided below at *Single- Versus Multi-Racial Population Modification.*

F2 Tribal Climate Factor. The second factor, the Tribal Climate Factor, addresses the need for energy generated by weather conditions and the disparity of climatic conditions in different regions. Building retrofits and other energy efficiency and conservation measures can have a greater impact in regions experiencing severe climatic conditions relative to regions experiencing mild seasonal variations. Given that more than half of all eligible Indian tribes are located within the State of Alaska and the extreme climatic conditions experienced in that State, addressing climate disparity is of particular importance. Energy consumption data, which was selected by the Department as a criterion for the State allocation formula, was considered for use in the Tribal formula. However, tribal-specific energy use data is unavailable, and State energy consumption on a per capita basis is not comparable to tribal energy consumption on a per capita basis. Thus, climate data is the best indicator available to account for disparities in energy demand.

The Tribal Climate Factor is obtained by adding the heating degree days (HDD) and cooling degree days (CDD) for each Indian tribe's State, treating the energy needed for heating and cooling proportionately. State data are used due to the lack of verifiable site-specific data. The calculation of this factor is based largely on the climate factor developed for EERE's WAP formula allocation. The Tribal Climate Factor is weighted at 0.25. For an explanation of the weighting scheme, please see Weighting of the Formula Factors below.

The Tribal Climate Factor is expressed,

F2 = WF2 × (Indian Tribe's State Climate Factor/Sum of All Tribes' State Climate Factors)

Where,
WF2 = Climate Weighting Factor (0.25)
and State Climate Factor is given by,
State Climate Factor = (HDD State Ratio + CDD State Ratio)
The State HDD and CDD Ratios are expressed,
State HDD Ratio = State HDD/National Median HDD
State CDD Ratio = (State CDD/National Median) × 0.1
Where,
Cooling Consumption (0.49 Quadrillion Btu)/ Heating Consumption (4.79 Quadrillion Btu) = 0.1

The ratio of cooling to heating energy consumption reflects the fact that nationally households use, on average, one tenth as much energy for cooling as for heating. National heating consumption equals 4.79 quadrillion British Thermal Units (Btu) and air conditioning (cooling) consumption equals 0.49 quadrillion Btu. Cooling consumption divided by heating consumption rounds to 0.1. National data are used because of the absence of complete State-specific data.

In order to account for the variation in weather in a simple but equitable manner, DOE compares each Indian tribe's State's (or States') climate to the National Median. Each State's HDD and CDD are divided by the series' median values. Using the median as the denominator ensures that half of the States would fall above 1 and half would fall below 1. A State HDD Ratio (HDD divided by the median) greater than 1 indicates a State with relatively cold winters, while a value greater than 1 for a State CDD Ratio indicates a State with a relatively warmer summer. To find the median of any odd series of numbers, the series is arranged in ascending order and the value that occurs in the middle of series is chosen as the median. The series relevant to the Tribal Climate Factor is odd because it consists of the 50 States and the District of Columbia. The median value occurs at the 26th observation (State). The median was chosen, rather than the mean, because of its characteristic of being ''insensitive'' to extreme heating and cooling values, such as those found in States like Alaska and Florida which tend to skew or pull the mean or average towards one extreme or another. Each State CDD Ratio is multiplied by 0.1. The final State Climate Factor for each State is then the sum of the State HDD and CDD Ratios. The final Tribal Climate Factor for each Indian tribe is the result of dividing each Indian tribe's corresponding State Climate Factor by the sum of all Indian tribes' State Climate Factors. This step normalizes the climate factor, so that the sum of all Tribal Climate Factors will now equal 1. For those Indian tribes whose Formula Areas are found in more than one State, an average of the State Climate Factors is used.

The formula uses the thirty year averages (1971–2000) of heating and cooling degree days as reported by NOAA to account for climatic conditions. Heating and cooling consumption data were obtained from Table 28 of the Energy Information Administration's (EIA) Household Energy Consumption and Expenditures 1990.

Weighting of the Formula Factors. In the allocation formula, the Tribal Population Factor is weighted at 0.75 and the Tribal Climate Factor is weighted at 0.25. This weighting scheme was designed to ensure that the tribal formula is consistent with other EECBG formulas (local governments and State), in that population will play the predominant role in determining an entity's allocation. As with the State formula, the factor related to energy (in the case of Indian tribes climatic

conditions, and in the case of States energy use) is given a lesser, though still significant, weight. This allows the formula to adjust allocations based on the variations in energy demand nationwide, without skewing them dramatically away from a per capita basis.

Formula Share. The above factors are combined into a single formula by summing the Tribal Population Factor (F1) and the Tribal Climate Factor (F2) to find each Indian tribe's formula share.

The Tribal Formula Share is expressed,

Tribal Formula Share = Tribe's F1 + Tribe's F2

Where,

The Sum of All Tribal Formula Shares = 1

Each Indian tribe's share of the Tribal Allocation is then calculated by multiplying the total Tribal Allocation by each Indian tribe's formula share.

The Tribal Formula Allocation is given by,

Tribal Formula Allocation = Tribal Allocation × Indian Tribe's Tribal Formula Share

Minimum Level of Funding. The minimum level of funding for Tribal Formula Allocations is $25,000. This is based on the total amount of available funding and HUD IHBG precedent. Though currently the need-based portion of the IHBG allocation formula is a set percentage of funds, for many years a minimum amount of $25,000 was employed and deemed adequate by HUD as well as the Indian tribes.

A direct computation of the allocation formula will produce an allocated amount for each Indian tribe, in which some tribes may receive an allocation value less than $25,000. To resolve this, an algorithm is used to make multiple passes through the list of Indian tribes, to check if any were allocated less than $25,000. If a Tribal Formula Allocation is calculated to be below $25,000, this algorithm assigns the tribe the minimum value, subtracts this value from the total Tribal Allocation, and then locks-out the Indian tribe from further passes. Because some Indian tribes may fall close to the minimum funding mark in the first pass, when reallocating funds, they may fall below the $25,000 minimum. The algorithm makes another pass of the remaining Indian tribes, calculating the new Tribal Formula Allocation and checking again for levels below $25,000. This process repeats itself until no Indian tribe is funded at a level below the minimum.

Single- Versus Multi-Racial Population Modification. As discussed above at *F1 Tribal Population Factor,* since differences in single-race and multi-race populations may lead to significantly different funding levels, it is important to incorporate into the overall calculation a selection process whereby the population value that leads to the greatest funding level for each tribe is chosen. Therefore, the EECBG Program will use the following method, modeled after that of HUD's IHBG Program, in calculating the final Tribal Formula Allocations:

1. The Tribal Formula Allocations are calculated using both the Single-Race AIAN Persons data and the Multi-Race AIAN Persons numbers for each Indian tribe.

2. The higher of the two Tribal Formula Allocations is selected for each Indian tribe.

3. The sum of the allocations resulting from the selection process described in Step 2 will be greater than the total funds available for Tribal Allocation. Therefore, an across the board reduction of the Tribal Formula Allocations is made to ensure that the sum of all allocations is within appropriation levels.

4. A pro-rata reduction factor is calculated by subtracting the total funds available to the Tribal Allocation from the sum described in Step 3, and then dividing the remainder by that same sum. The pro-rata factor is applied to each Tribal Formula Allocation.

5. As a result of the calculation described in Step 4, some Tribal Formula Allocations will drop below the minimum of $25,000. These Indian tribes are assigned the minimum value, a sum of all minimums assigned is subtracted from the total Tribal Allocation, and the tribes receiving the minimum are removed from further calculations. This produces a new total funds available to the Tribal Allocation and a new sum of allocations.

6. For the remaining Indian tribes, a new pro-rata reduction factor is calculated using the new Tribal Allocation and sum of allocations figures described in Step 5, and then applied to each remaining allocation as described in Step 4.

7. Steps 5–6 are repeated, until eventually, no Indian tribes are below the minimum allocation after the pro-rata reduction factor is applied. At this point the process stops, as all Tribal Formula Allocations have been calculated.

Final Output.

Once calculations have been completed for the Single- Versus Multi-Racial Population Modification, the amounts allocated are rounded to the nearest one hundred dollars. These are the final Tribal Formula Allocations. For a complete version of the formula detailed in Part II, see Appendix C.

Appendix C: Tribal Allocation Formula

$$A_i = \left\{ WF_1 \frac{P_i}{\sum_{\text{Indian tribes}} P_i} + WF_2 \left\lfloor \frac{\left(\frac{HDD_s}{|HDD|} + 0.1 \frac{CDD_s}{|CDD|} \right)}{\sum_{\text{Indian tribes}} \left(\frac{HDD_s}{|HDD|} + 0.1 \frac{CDD_s}{|CDD|} \right)} \right\rfloor \right\} F$$

A_i = Indian tribe i's Tribal Formula Allocation
WF_1 = Population Weighting Factor
P_i = Indian tribe i's AIAN Persons
$\Sigma_{\text{Indian tribes}} P_i$ = Sum of all Tribes' AIAN Persons
WF_2 = Climate Weighting Factor
HDD_s = Heating Degree Days for States
CDD_s = Cooling Degree Days for States
$|HDD|$ = National Median HDD
$|CDD|$ = National Median CDD

$$\sum_{\text{Indian tribes}} \left(\frac{HDD_s}{|HDD|} + 0.1 \frac{CDD_s}{|CDD|} \right) = \text{Sum of all Tribes' Climate Factors}$$

F = Tribal Allocation

Approval of the Office of the Secretary. The Secretary of Energy has approved publication of this notice.

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

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–8609 Filed 4–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13342–000]

Hydro Energy Technologies, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 8, 2009.

On December 9, 2008, Hydro Energy Technologies, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Berlin Lake Hydroelectric Project, to be located on the Mahoning River, in Portage and Mahoning Counties, Ohio.

The proposed Berlin Lake Project would be located at: (1) The existing U.S. Army Corps of Engineers Berlin Lake Dam, which is 663.5 feet long and 96 feet high; and (2) an existing 5,500-acre reservoir with a water surface elevation of 1,032 feet mean sea level.

The proposed project would consist of: (1) A new powerhouse containing one or more turbine/generators with a total installed capacity of 2.5 megawatts; (2) a new 90-inch-diameter, 250-foot-long penstock; (3) a new 0.5-mile-long, 12.5-kilovolt transmission line; and (4) appurtenant facilities. The Berlin Lake Project would have an estimated average annual generation of 12,155 megawatts-hours, which would be sold to a local utility.

Applicant Contact: Mr. Anthony J. Marra Jr., Managing Partner, 31300 Solon Rd., Suite 12, Solon, Ohio 44139, (440) 498–1000.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13342) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8557 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–111–000]

Texas Eastern Transmission, LP; Notice of Application

April 8, 2009.

Take notice that on April 7, 2009, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations, for an order granting the authorization to abandon in place approximately 25.43 miles of Line 3, consisting of 19.80 miles of 26-inch pipeline and 5.63 miles of 20-inch pipeline, beginning at the Summerfield Compressor Station at milepost (MP) 31.52 in Noble County, Ohio, and ending at MP 56.95, approximately 160-feet upstream of the Meter and Regulatory Station 70004/74040 in Monroe County, Ohio. In addition, Texas Eastern proposes to remove a launcher barrel and mainline valve at MP 51.31 located at a fenced valve site along the 25.43-mile segment of Line 3, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Garth Johnson, General Manager, Rates and Certificates, Texas Eastern Transmission, LP, PO Box 1642, Houston, Texas 77251–1642, at (713) 627–5415.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings

associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8564 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13368–000]

Blue Heron Hydro, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 8, 2009.

On February 6, 2009, Blue Heron Hydro, LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Townsend Dam Hydroelectric Project, to be located on the West River, in Windham County, Vermont.

The proposed Townsend Dam Hydroelectric Project would be located at: (1) The existing 1,700-foot-long U.S. Army Corps of Engineers Townsend Dam; (2) an existing Corps intake tower and control works, and (3) an existing 735-acre reservoir with 32,800 acre-feet of storage.

The project would consist of: (1) Six new turbine generating units connected to the intake tower with a total installed capacity of 0.96 megawatts; (2) a new 1-mile-long, 45 kilovolt, 3 phase transmission line and transformer connected to an existing above ground distribution system; and (3) appurtenant facilities. The Townsend Dam Project would have an estimated average annual generation of 3,605 megawatt-hours, which would be sold to local utilities.

Applicant Contact: Ms. Lori Barg, Blue Heron Hydro, LLC, 113 Bartlett Rd., Plainfield, VT 05667, phone (802) 454–1874.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13368) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8560 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13367–000]

Community Hydro, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 8, 2009.

On February 6, 2009, Community Hydro, LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Littleville Dam Hydroelectric Project, to be located on the Middle Branch of the Westfield River, in Hampshire and Hampden Counties, Massachusetts.

The proposed Littleville Dam Hydroelectric Project would be located at: (1) The existing 1,360-foot-long U.S. Army Corps of Engineers Littleville Dam; (2) an existing Corps intake tower and control works; and (3) an existing 584-acre reservoir with 31,200 acre-feet of storage.

The proposed project would consist of: (1) Six new turbine generating units attached to the intake tower with a total installed capacity of 0.85 megawatts; (2) a new 3-phase transmission line and transformer connected to an existing above ground distribution system; and (3) appurtenant facilities. The Littleville Dam Project would have an estimated average annual generation of 3,000 megawatt-hours, which would be sold to local utilities.

Applicant Contact: Ms. Lori Barg, Community Hydro, LLC, 113 Bartlett Rd., Plainfield, VT 05667, phone (802) 454–1874.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at

http://www.ferc.gov/filing-comments.asp. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13367) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8559 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13355–000]

Middlebury Electric, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

April 8, 2009.

On January 22, 2009, Middlebury Electric, LLC, filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Middlebury Upper East Bank Hydroelectric Project, to be located on Otter Creek, in Addison County, Vermont.

The proposed Upper East Bank Hydroelectric Project consists of: (1) A refurbished abandoned mill structure including a new intake structure, penstock, tailrace and appurtenant facilities; (2) the millhouse would contain one or more turbine generating units with a total installed capacity of 0.4 megawatts; (3) a direct connection to an existing Central Vermont Public Service (CVPS) transmission line; and (4) appurtenant facilities. The Middlebury Upper Bank Project would have an estimated average annual generation of 3,400 megawatt-hours, which would be sold to CVPS.

Applicant Contact: Dr. Anders Holm, 1330 Exchange Street, Middlebury, VT 05445, phone (802) 233–9606.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13355) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8558 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–904–000]

PPL New Jersey Biogas, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 8, 2009.

This is a supplemental notice in the above-referenced proceeding of PPL New Jersey Biogas, 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 April 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8555 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–946–000]

Beech Ridge Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 8, 2009.

This is a supplemental notice in the above-referenced proceeding of Beech Ridge 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 April 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8556 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–903–000]

PPL New Jersey Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 8, 2009.

This is a supplemental notice in the above-referenced proceeding of PPL New Jersey Solar, 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 April 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8554 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–89–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

April 8, 2008.

Take notice that on March 26, 2009, CenterPoint Energy Gas Transmission Company (CenterPoint), 1111 Louisiana Street, Houston, Texas, filed in Docket No. CP09–89–000 a prior notice request pursuant to sections 157.205 of the Commission's regulations under the Natural Gas Act (NGA), and CenterPoint's blanket certificate issued in Docket No. CP82–384–000 on September 1, 1982,[1] and amended in Docket No. CP82–384–001 on February 10, 1983.[2] CenterPoint seeks authorization to install approximately 5.6 mile of 16-inch pipe, Line F–625, and an 8-inch delivery meter in Caddo Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Specifically, CenterPoint proposes to install approximately 5.6 miles of 16-inch diameter steel pipe, Line 625, extending from a 16-inch tap on CenterPoint's existing Line F-West at 372+00, and an 8-inch ultrasonic meter skid at the terminus of Line F–625 located within the Arsenal Hills Plant facilities. The 8-inch meter station will consist of ultrasonic and low flow turbine meters, worker and monitor regulators, and a control/gas chromatograph package which includes a Daniel gas chromatograph, moisture analyzer and Bristol electronic gas measurement. Additional auxiliary materials will be installed including filter separators, a 25 barrel drain tank, a 24-volt DC battery system, marshalling panels, SCADA and communications package, transmitters, yard piping and valves. The proposed facilities will be designed for a maximum allowable operating pressure of 1000 psig and a 650 psig delivery pressure with a capacity of 80,000 Dth/d. The estimated

[1] 20 FERC ¶ 62,408 (1982).

[2] 22 FERC ¶ 61,148 (1983).

cost of the project is $15.0 million. The proposed project will allow CenterPoint to provide firm transportation service to meet the needs of a new power generation unit being installed at the Arsenal Hill Plant facility by American Electric Power's Southwestern Electric Power Company.

Any questions regarding this application should be directed to Larry Thomas, Director, Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P. O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: May 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8550 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–900–000]

Victory Garden Phase IV, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 8, 2009.

This is a supplemental notice in the above-referenced proceeding of Victory Garden Phase IV, 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 April 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8551 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–902–000]

FPL Energy Cabazon Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 8, 2009.

This is a supplemental notice in the above-referenced proceeding of FPL Energy Cabazon Wind, 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 April 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St. NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8553 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–901–000]

Sky River, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 8, 2009.

This is a supplemental notice in the above-referenced proceeding of Sky River, 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 April 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8552 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX02–1–002]

Pinnacle West Capital Corporation; Notice of Filing

April 7, 2009.

Take notice that on March 27, 2009, Electrical District 3 of Pinal County, State of Arizona filed additional information to its application filed with the Commission on July 15, 2008, in compliance with the Commission's March 2, 2009 letter order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8549 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD09–6–000]

North American Electric Reliability Corporation; Notice of Filing

April 8, 2009.

Take notice that on March 5, 2009, pursuant to section 215(d)(1) of the Federal Power Act and part 39.5 of the Federal Energy Regulatory Commission's Regulations, The North American Electric Reliability Corporation (NERC) filed a petition seeking approval for interpretations of Requirement R11 in its Commission-approved NERC Reliability Standard, TOP–002–2—Normal Operations Planning, designated as TOP–002–2a.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8563 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD09–5–000]

North American Electric Reliability Corporation; Notice of Filing

April 8, 2009.

Take notice that on March 5, 2009, pursuant to section 215(d)(1) of the Federal Power Act and part 39.5 of the Federal Energy Regulatory Commission's Regulations, The North American Electric Reliability Corporation (NERC) filed a petition seeking approval for interpretations of requirements in its Commission-approved NERC Reliability Standard, VAR–002–1a—Generator Operation for Maintaining Network Voltage Schedules, designated as VAR–002–1.1b.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8562 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD09–4–000]

North American Electric Reliability Corporation; Notice of Filing

April 8, 2009.

Take notice that on October 24, 2008, pursuant to Section 215(d)(1) of the Federal Power Act and Part 39.5 of the Federal Energy Regulatory Commission's Regulations, The North American Electric Reliability Corporation (NERC) filed a petition seeking approval for interpretations of requirements in two of its Commission-approved NERC Reliability Standards, TPL–002–0 System Performance Following Loss of a Single Bulk Electric System Element (Category B), Requirements R1.2.3 and R1.2.12 and TPL–003–0—System Performance Following Loss of a Two or More Bulk Electric System Elements (Category C), Requirements R1.3.2 and R1.3.12.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8561 Filed 4–14–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8406–9]

Access to Confidential Business Information by Computer Sciences Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Computer Sciences

Corporation (CSC) of Falls Church, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than April 22, 2009.

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

For technical information contact: Scott M. Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you are conducting, or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket Facility is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number GS00T99ALD0203, Order Number 0038, contractor CSC of 3170 Fairview Park Drive, Falls Church, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in processing outstanding audit cases; analyze, standardize and streamline Audit Policy life cycle business processes; and identify processes with the potential for leveraging CDX technologies to reduce manual effort and provide a cost savings.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS00T99ALD0203, Order Number 0038, CSC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CSC personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and CSC's site located at 6101 Stevenson Avenue, Alexandria, VA.

CSC will be authorized access to TSCA CBI at EPA Headquarters and its Alexandria, VA location provided they comply with the provisions of the EPA *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until September 27, 2009. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CSC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: March 12, 2009.

Matthew Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–8344 Filed 4–14–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004]; FRL–8408–3]

Access to Confidential Business Information by Computer Sciences Corporation and its Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized contractor Computer Sciences Corporation (CSC) of Falls Church, VA and its subcontractors, Insight Global of McLean, VA and KForce, Incorporated of Reston, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than April 22, 2009.

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

For technical information contact: Scott M. Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you are conducting, or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket Facility is (202) 566–0280. Docket visitors are required to show a photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number (EP–W–08–034), contractor (CSC) of 15000 Conference Center Drive, Chantilly, VA; Insight Global of 1420 Spring Hill Road, Suite 130, McLean, VA; and KForce, Incorporated of 12010 Sunset Hill Road, Suite 200, Reston, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in providing services and support to meet the needs of management, research, programmatic, and administrative staff (users) located at Headquarters office in Washington, D.C. metropolitan area and other locations. Service will also be provided to employees at alternate work locations. The contractor will also assist in acquisition, configuration, installation, management, support, redeployment/refresh/replacement, and coordination of disposal of personal computers (PCs), USB Notes drives, and networked printers for each supported end user. Furthermore, they will assist in coordinating the acquisition of, configuring, installing, managing, supporting, and coordinating disposal of peripherals, personal digital assistants (PDAs), AAA tokens, software and Blackberrys. Finally, they will be supporting tasks associated with provisioning and maintaining hardware and software that is to be provisioned on a per seat basis (ITS-UP seat), specifically computers with operating systems and networked printing services, installation, configuration, upgrading; coordination with other service providers; and ensuring proper operations.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number (EP–W–08–034), CSC and its subcontractors will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CSC and its subcontractors' personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CSC and subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters; Regional EPA Offices; Field Offices; and EPA at Research Triangle Park, NC.

CSC and its subcontractors will be authorized access to TSCA CBI at EPA Headquarters; Regional EPA Offices; Field Offices; and EPA at Research Triangle Park, NC, provided they comply with the provisions of the EPA *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until May 1, 2012. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CSC and its subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: March 18, 2009.

Matthew Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–8341 Filed 4–14–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1081; FRL–8412–2]

Agency Information Collection Activities; Submission To OMB for Review and Approval; Comment Request; Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP); EPA ICR No. 2249.01, OMB Control No. 2070–New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This request involves a new collection activity. The ICR, which is abstracted in this document, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before May 15, 2009.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2007–1081: (1) to EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, *and* (2) to OMB at: Office of

Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Wooge, Office of Science Coordination and Policy (OSCP), Mailcode 7201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8482; e-mail address: *wooge.william@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 13, 2007 (72 FR 70839), EPA sought comments on the draft ICR pursuant to 5 CFR 1320.8(d), and received several comments during the comment period. EPA has responded to the comments on the ICR by incorporating changes into the ICR and has also prepared a separate response to comment document that is available in the docket for this ICR. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

Docket Information: EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2007–1081, which is available for online viewing at *http://www.regulations.gov*, or in person at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OPPT Docket is 202–566–0280.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing the contents of the docket, and to access those documents in the docket that are available electronically. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Tier 1 Screening of Certain Chemicals under the Endocrine Disruptor Screening Program (EDSP).

ICR Numbers: EPA ICR No. 2249.01, OMB Control No. 2070-new.

ICR Status: This ICR is for a new information collection activity that is not contained in a regulation. Under the PRA, an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control number for this ICR will appear in the **Federal Register** when approved, and will be displayed on the related collection instruments, *i.e.*, the Tier 1 Order and Initial Response Forms.

Abstract: This ICR covers the information collection activities associated with Tier 1 screening of the first group of chemicals under the Endocrine Disruptor Screening Program (EDSP). The EDSP is established under section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which requires endocrine screening of all pesticide chemicals. The Agency established the EDSP in 1998 (63 FR 71541, December 28, 1998) to consist of a two-tiered approach for evaluating all pesticide chemicals for potential endocrine disrupting effects. The purpose of Tier 1 screening (referred to as ''screening'') is to identify substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems using a battery of assays. The purpose of Tier 2 testing (referred to as ''testing''), is to identify and establish a dose-response relationship for any adverse effects that might result from the interactions identified through the Tier 1 assays. Additional information about the EDSP is available through the Agency's Web site at *http://www.epa.gov/scipoly/oscpendo/index.htm*.

The focus of this ICR is on the information collection activities associated with the Tier 1 screening of the first group of chemicals identified for initial screening under the EDSP. After an opportunity for public comment on a draft list, the Agency has identified a final list of chemicals to be the first to undergo Tier 1 screening. (This list appears in a separate notice published in today's **Federal Register**.) This list should not be construed as a list of known or likely endocrine disruptors. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list these chemicals are suspected to interfere with the endocrine systems of humans or other species, and it would be inappropriate to do so. The first group of chemicals identified for testing includes pesticide active ingredients and High Production Volume (HPV) chemicals used as pesticide inerts. More information on the EPA's priority setting approach and the list of chemicals is available at *http://www.epa.gov/scipoly/oscpendo/prioritysetting*.

This ICR does not cover the information collection activities related to Tier 2 testing because that testing is not expected to occur until the Tier 2 tests complete validation as required by FFDCA. EPA will prepare a separate ICR to address the information collection activities associated with Tier 2 testing. In addition, subsequent Tier 1 screening of additional chemicals not selected for the initial round will be addressed separately, either in a separate ICR or in an amendment to this ICR. In either case, EPA will follow the notice and comment process prescribed by the Paperwork Reduction Act (PRA) to first seek public comment on the new or revised ICR before submitting it to OMB for review and approval under the PRA.

Burden Statement: The annualized public reporting and recordkeeping burden for this collection of information is estimated to average 1003 hours per response, although individual respondent burden varies based on their individual activities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are those entities that may receive an EDSP test order issued by the Agency. Under FFDCA section 408(p)(5)(A), EPA ''shall issue'' EDSP test orders ''to a registrant of a substance for which testing is required * * * or to a person who manufactures or imports a substance for which testing is required.'' Using the North American Industrial

Classification System (NAICS) codes, the Agency has determined that potential respondents to this ICR may include, but is not limited to:

- Chemical manufacturing (NAICS code 325), *e.g.*, persons who manufacture, import or process chemical substances.
- Agricultural chemical manufacturing (NAICS code 3253), *e.g.*, persons who manufacture, import or process pesticide, fertilizer and agricultural chemicals.
- Scientific research and development services (NAICS code 5417), *e.g.*, persons who conduct testing of chemical substances for endocrine effects.

Estimated Total Number of Potential Respondents: 390.

Frequency of Response: On occasion.

Estimated Total Average Number of Responses for Each Respondent: Two or three responses per chemical: An initial response, an interim study report, if applicable, and the final data submission. All respondents will provide an initial response. Some respondents may form a consortium to provide the data, in which case the consortium will also provide an initial response. Only those respondents that generate the data, either individually or through the consortium, will complete an interim study report and the final data submission.

Estimated Total Annual Burden Hours: 108,364 hours.

Estimated Total Annual Costs: $7,478,116. This includes an estimated annualized cost of $236 for non-burden hour or delivery costs.

Changes in Burden Estimates: This is a new collection.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 8, 2009.

Robert Gunter,

Acting Director, Collection Strategies Division.

[FR Doc. E9–8676 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8791–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2263.02; NSPS for Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced after May 14, 2007 (Final Rule); in 40 CFR part 60, subpart Ja; was approved 03/11/2009; OMB Number 2060–0602; expires 12/31/2011.

EPA ICR Number 2303.02; NESHAP for Ferroalloys Production Area Source Facilities (Final Rule); in 40 CFR part 63, subpart YYYYYY; was approved 03/23/2009; OMB Number 2060–0625; expires 03/31/2012.

EPA ICR Number 1983.05; NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (Renewal); in 40 CFR part 63, subpart YY; was approved 03/23/2009; OMB Number 2060–0489; expires 03/31/2012.

EPA ICR Number 0229.19; National Pollutant Discharge Elimination System (NPDES) Program (Renewal); in 40 CFR 122.21, 122.26, 122.41, 122.42, 122.44, 122.45, 122.47, 122.48, 122.62, 122.63, 123.21–123.29, 123.35, 123.43–123.45, 123.62–123.64, 124.5, 124.53, 123.54, 131.1, 131.5, 131.21, part 132, 403.17, 403.18, part 423, part 430, part 434, part 435, part 439, 465.03, 466.03, 467.03 and part 501; was approved 03/30/2009; OMB Number 2040–0004; expires 03/31/2012.

EPA ICR Number 0270.43; Public Water System Supervision Program (Renewal); in 40 CFR parts 141 and 142; was approved 03/30/2009; OMB Number 2040–0090; expires 03/31/2012.

Short Term Extension of Expiration Date

EPA ICR Number 1911.02; Data Acquisition for Anticipated Residue and Percent of Crop Treated; a short term extension of the expiration date was granted by OMB on 03/23/2009; OMB Number 2070–0164; expires 06/30/2009.

EPA ICR Number 1504.05; Data Generation for Pesticide Reregistration; a short term extension of the expiration date was granted by OMB on 03/23/2009; OMB Number 2070–0107; expires 06/30/2009.

EPA ICR Number 0922.07; Data Call-ins for the Special Review and Registration Review Programs; a short term extension of the expiration date was granted by OMB on 03/23/2009; OMB Number 2070–0057; expires 06/30/2009.

EPA ICR Number 2097.05; The National Primary Drinking Water Regulations; Long Term 2 Enhanced Surface Water Treatment Rule; a short term extension of the expiration date was granted by OMB on 03/31/2009; OMB Number 2040–0266; expires 06/30/2009.

EPA ICR Number 1426.09; EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response; a short term extension of the expiration date was granted by OMB on 03/30/2009; OMB Number 2050–0105; expires 06/30/2009.

OMB Comments Filed

EPA ICR Number 2336.01; Turbidity Monitoring Requirements for Construction Sites Regulated by the Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (Proposed Rule); on 03/27/2009, OMB filed comment.

Dated: April 9, 2009.

Robert Gunter,

Acting Director, Collection Strategies Division.

[FR Doc. E9–8669 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0639; FRL–8352–8]

Final Test Guidelines; Notice of Availability of Several Revised Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this notice, EPA is announcing the availability of several revised or updated test guidelines for the unified library of harmonized test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS). The OPPTS Harmonized Test Guidelines are for use in the testing of chemical substances or pesticides where appropriate to develop

data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, EPA is announcing the availability of revised test guidelines under Series 830–Product Performance Test Guidelines, Series 835–Fate, Transport and Transformation Test Guidelines, and Series 860–Residue Chemistry Test Guidelines.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Melissa Chun, Regulatory Coordination Staff (7101M), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1605; e-mail address: *chun.melissa@epa.gov*.

For technical information contact: Dana Spatz, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6063; e-mail address: *spatz.dana@epa.gov* or Robert S. Boethling, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8533; e-mail address: *boethling.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances or pesticides where appropriate under TSCA, FIFRA, or FFDCA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this document under docket identification (ID) number EPA–HQ–OPP–2007–0639. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. For additional information about OPPTS Harmonized Guidelines and to access the test guidelines, please go to *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' on the left side menu. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

The Office of Prevention, Pesticides and Toxic Substances (OPPTS) has a unified library of harmonized test guidelines that are made available for use in the testing of pesticides and toxic substances, and the development of test data to meet the data requirements of the Agency or for voluntary testing purposes. Test guidelines are documents that specify methods that EPA recommends be used to generate data to support the registration of a pesticide, setting of a tolerance or tolerance exemption for pesticide residues, or the decisionmaking process for an industrial chemical. These data are used by the Agency to perform risk assessments and make regulatory decisions.

Studies conducted according to these test guidelines may be required under FIFRA (7 U.S.C. 136) for pesticide registration. The test guidelines may also be useful for satisfying FIFRA data requirements in 40 CFR part 158, data-call-ins issued pursuant to FIFRA section 3(c)(2)(B), as needed to satisfy data requirements appropriate for specific pesticide registration applications, or for satisfying data requirements to demonstrate the safety of a tolerance or tolerance exemption under FFDCA section 408 (21 U.S.C. 346a).

Test guidelines used in regulatory actions as bases for test standards under TSCA (15 U.S.C. 2601) are typically promulgated in 40 CFR part 799, or may be written into specific TSCA rules (such as test rules under TSCA section 4). The test guidelines may also be used as part of voluntary testing. Note that where data will be required under a TSCA rule (such as a test rule under TSCA section 4), a TSCA-specific version of the applicable test guideline may be promulgated as a rule. Examples may be found at 40 CFR part 799, subparts E and H.

III. What Action is EPA Taking?

EPA is announcing the availability of several revised or updated test guidelines for the OPPTS unified library of harmonized test guidelines. Specifically, EPA is announcing the availability of revised test guidelines under Series 830–Product Performance Test Guidelines, Series 835–Fate, Transport and Transformation Test Guidelines, and Series 860–Residue Chemistry Test Guidelines.

A. Updated Delivery Address in OPPTS Test Guidelines 830.1900 and 860.1650

The Agency is correcting the mailing addresses that appear in OPPTS Test Guideline 830.1900–Submittal of Samples and OPPTS Test Guideline 860.1650–Submittal of Analytical Reference Standards because the test guidelines, which were issued in August 1996, reference addresses that have since changed due to facility moves.

B. Supplemental Guidance for OPPTS Test Guideline 860.1000

In June 2008, the Agency announced the release of revisions of Table 1 feedstuffs of OPPTS Test Guideline 860.1000–Background and the availability of guidance to aid reviewers in the construction of livestock diets adjusted for today's commercial practices. The changes in Table 1 include revised definitions of reference animals, updated percentages of feedstuffs in livestock diets, reduction of the ''Nu (not used)'' level to <5% of the diet, a list of alternative feedstuffs, and classification of feedstuffs into three categories (roughage [R], carbohydrate concentrate [CC], protein concentrate [PC]). The guidance on ''maximum reasonably balanced diets'' (MRBD) represents a shift from the past practice of using ''maximum theoretical dietary burdens'' (MTDB) to assess maximum potential residues in livestock commodities. The revised data for Table 1 feedstuffs and use of MRBD are to be implemented immediately. If this revised table is referenced in any memorandum, it should be cited as: ''Table 1 Feedstuffs (June 2008).'' There have been no changes made with regard to the human foods in Table 1 as of this time. Therefore, the raw agricultural commodities (RACs) and processed commodities which are not livestock feeds remain as specified in Table 1 of OPPTS Test Guideline 860.1000 (published in 1996).

C. Updated OPPTS Test Guidelines for Series 835

EPA is announcing the availability of updated test guidelines for the OPPTS Test Guideline Series 835–Fate, Transport and Transformation Test Guidelines. Many of these guidelines are based upon, and bring up to date, the 1982 Pesticide Assessment Guidelines–Subdivision N protocols that were presented to the Scientific Advisory Panel (SAP) in the late 1970s and are currently being used to perform environmental fate testing to support the registration of pesticides under FIFRA. These test guidelines are a [non-regulatory] companion to 40 CFR Part 158–Pesticides; Data Requirement for Conventional Chemicals. Eight such Subdivision N guidelines have been reformatted, including insertion of clarifying guidance, and assigned an OPPTS 835 designation. The test guidelines in this group are:

- 835.2240–Photodegradation in Water.
- 835.2410–Photodegradation in Soil.
- 835.2370–Photodegradation in Air.
- 835.1410–Laboratory Volatility.
- 835.8100–Field Volatility.
- 835.6200–Aquatic (Sediment) Field Dissipation.
- 835.6300–Forestry Dissipation.
- 835.6400–Combination and Tank Mixes Field Dissipation.

One Subdivision N guideline, 835.1240–Leaching Studies, has been updated based on the test guideline harmonization efforts of the Organization for Economic Cooperation and Development (OECD). The Office of Pesticide Programs (OPP) played a major role in the OECD harmonization effort.

Six test guidelines were harmonized at OECD for use with pesticides or industrial chemicals: Both OPP and the Office of Pollution Prevention and Toxics (OPPT) played major roles in the OECD harmonization effort. The test guidelines in this group are:

- 835.2120–Hydrolysis.
- 835.4100–Aerobic Soil Metabolism.
- 835.4200–Anaerobic Soil Metabolism.
- 835.4300–Aerobic Aquatic Metabolism.
- 835.4400–Anaerobic Aquatic Metabolism.
- 835.1230–Adsorption/Desorption (Batch Equilibrium).

OPPTS 835.2120 supersedes OPPTS 835.2110–Hydrolysis as a Function of pH.

The test guideline for Terrestrial Field Dissipation (OPPTS 835.6100) is the result of a harmonization effort with Canada's Pest Management Regulatory Agency (PMRA) and was completed under the auspices of the North American Free Trade Agreement (NAFTA) Technical Working Group on Pesticides, established under NAFTA. This guideline was peer-reviewed by FIFRA SAP.

OPPT has played a key role in the OECD harmonization effort responsible for eight other OPPTS 835 Series guidelines, for testing of industrial chemicals. The eight test guidelines are:

- 835.0001–Principles and Strategies Related to Biodegradation Testing of Organic Chemicals under the Toxic Substances Control Act (TSCA).
- 835.3140–Ready Biodegradability—CO_2 in Sealed Vessels (Headspace Test).
- 835.3190–Aerobic Mineralization in Surface Water—Simulation Biodegradation Test.
- 835.3215–Inherent Biodegradability—Concawe Test.
- 835.3240–Simulation Test—Aerobic Sewage Treatment: A. Activated Sludge Units.
- 835.3260–Simulation Test—Aerobic Sewage Treatment: B. Biofilms.
- 835.3280–Simulation Tests to Assess the Primary and Ultimate Biodegradability of Chemicals Discharged to Wastewater.
- 835.3420–Anaerobic Biodegradability of Organic Compounds in Digested Sludge: By Measurement of Gas Production.

Of these eight test guidelines, three are updated versions that supersede existing OPPTS guidelines. The three are OPPTS 835.3140 (supersedes OPPTS 835.3120–Sealed-Vessel CO_2 Production Test); OPPTS 835.3240 (supersedes OPPTS 835.3220–Porous Pot Test); and OPPTS 835.3420 (supersedes OPPTS 835.3400–Anaerobic Biodegradability of Organic Chemicals). The other five test guidelines are also based on the test guideline harmonization efforts of OECD, but reflect the development of new test methods that has occurred since the OPPTS 835 Series guidelines for industrial chemicals were last updated in the 1990s. In addition to these five, OPPTS 835.4100, 835.4200, 835.4300, and 835.4400 are similarly based on OECD test methods developed and adopted since the mid 1990s.

List of Subjects

Environmental protection, Chemical testing, Test guideline.

Dated: March 10, 2009.

James Jones,

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

[FR Doc. E9–8484 Filed 4–14–09; 8:45 am]

BILLING CODE: 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0260; FRL–8892–4]

Board of Scientific Counselors Executive Committee Meeting—May 2009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting (via conference call) of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The conference call will be held on Monday, May 4, 2009 from 3 p.m. to 5 p.m. eastern time, and may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the calls from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0260 by one of the following methods:

- *http://www.regulations.gov:* Follow the On-Line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2009–0260.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2009–0260.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Executive Committee Meeting—May 2009 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2009–0260.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/

DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2009–0260.

Note: This is not a mailing 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–HQ–ORD–2009–0260. 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 at the Board of Scientific Counselors (BOSC) Executive Committee Meeting—May 2009 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the conference call may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section. In general, each individual making an oral presentation will be limited to a total of three minutes.

The agenda items for this conference call include, but are not limited to: (1) Discuss a committee proposal to revise the format of BOSC mid-cycle and program review reports, and (2) receive an update on the Value of Information workgroup. The conference call is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 8, 2009.

Mary Ellen Radzikowski,

Acting Director, Office of Science Policy.

[FR Doc. E9–8639 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8892–6]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board Integrated Nitrogen Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Integrated Nitrogen Committee (INC) to discuss the committee's draft report.

DATES: The SAB INC will conduct a public meeting on May 14–15, 2009. The meeting will begin at 9 a.m. Eastern Time on May 14, 2009 and adjourn no later than 5:30 p.m. The meeting will begin at 8:30 a.m. on May 15, 2009 and adjourn no later than 3 p.m.

ADDRESSES: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at *nugent.angela@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB INC is studying the need for integrated research and strategies to reduce reactive nitrogen in the environment. At the global scale, reactive nitrogen from human activities now exceeds that produced by natural terrestrial ecosystems. Reactive nitrogen both benefits and impacts the health and welfare of people and ecosystems. Scientific information suggests that reactive nitrogen is accumulating in the environment and that nitrogen cycling through biogeochemical pathways has a variety of consequences. Information about the committee's previous

meetings is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Nitrogen%20Project*.

The purpose of the meeting is for the SAB INC to discuss the committee's draft report addressing the environmental problems presented by reactive nitrogen and providing recommendations related to an integrated nitrogen management strategy.

Availability of Meeting Materials: Agendas and materials in support of the meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of each teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB INC to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public face-to-face meeting will be limited to three minutes per speaker, with no more than a total of one hour for all speakers. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact the DFO, in writing (preferably via e-mail) at the contact information noted above, by May 7, 2009 to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by May 7, 2009 so that the information may be made available to the Committee members for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov*. To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconferences to give EPA as much time as possible to process your request.

Dated: April 9, 2009.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–8654 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0044; FRL–8790–9]

Method and Format for Submitting Risk Management Plans (RMPs) Under Section 112(r) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice provides information on the method and format for submitting risk management plans (RMPs) under EPA's Chemical Accident Prevention regulations. These regulations require owners and operators of stationary sources subject to the regulations to submit RMPs on their processes in a method and format specified by EPA. A new RMP submission method, called RMP*eSubmit, should be used by facilities submitting their RMPs electronically beginning March 13, 2009. The new submission method will be On-line via EPA's secure Web site.

FOR FURTHER INFORMATION CONTACT: Armando Santiago, Evaluation and Communications Division, Office of Emergency Management (Mail Code 5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 564–8002 or e-mail address: *Santiago.Armando@epa.gov*, or contact Peter Gattuso, Regulation and Policy Development Division, Office of Emergency Management (Mail Code 5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 564–7993 or e-mail address: *Gattuso.Peter@epa.gov*.

I. General Information

A. What Are the Affected or Regulated Entities?

Entities affected by this action are those stationary sources that are subject to the chemical accident prevention requirements in 40 CFR part 68. Affected categories and entities include, but are not limited to, chemical manufacturers, refineries, other manufacturers, agricultural retailers, public sources, utilities, cold storage facilities, warehouses, wholesalers, and Federal sources.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0044. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the reading room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

SUPPLEMENTARY INFORMATION: The chemical accident prevention regulations in 40 CFR part 68 require stationary sources to submit their RMPs to a central location in a method and format specified by EPA. EPA has now developed a new system for facilities to submit their RMPs. The new system, called RMP*eSubmit, is an on-line submission system. EPA's existing system for accepting RMPs on diskette, called RMP*Submit, has been in place since early 1999 for the first submission deadline, June 21, 1999, and will be discontinued. Those facilities that are unable to submit RMPs using the on-line submission system may still submit their RMPs in paper form.

Beginning March 13, 2009, EPA will ask facilities to submit their RMPs Online via EPA's secure Web site, *https://cdx.epa.gov*. This secure portal manages thousands of data submissions from States and industry. For sources that have submitted an RMP previously, EPA will mail them a letter with directions on how to submit their RMPs Online. For sources that are submitting an RMP for the first time, EPA will provide instructions for using the Online system via the Agency's public Web site at *http://www.epa.gov/emergencies/rmp*. EPA has also developed a user's manual to provide additional information on using the new reporting system. The user's manual will also be available at the above public Web site.

EPA is not requiring any new data elements with this new reporting system. The current requirements are approved by the Office of Management and Budget (OMB) under the paperwork

reduction act (PRA). The current Information Collection Request (ICR) required under the PRA and approved by OMB is available at www.regulations.gov, EPA docket number, EPA–HQ–OAR–2003–0052.

Dated: March 30, 2009.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. E9–8653 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0224; FRL–8892–5]

Ocean Acidification and Marine pH Water Quality Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: This NODA provides interested parties with information submitted to EPA on ocean acidification and solicits additional pertinent data or information that may be useful in addressing this issue. In addition, EPA is notifying the public of its intent to review the current aquatic life criterion for marine pH to determine if a revision is warranted to protect the marine designated uses of States and Territories pursuant to Section 304(a)(1) of the Clean Water Act. The NODA also solicits additional scientific information and data, as well as ideas for effective strategies for Federal, State, and local officials to address the impacts of ocean acidification. This information can then be used as the basis for a broader discussion of ocean acidification and marine impacts. EPA also requests information pertaining to monitoring marine pH and implementation of pH water quality standards.

DATES: Comments must be received on or before June 15, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0224, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW–Docket@epa.gov.*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0224. 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 docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket/EPA/DC, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Lisa Huff, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–0787; *huff.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

1. This information may be useful to scientists involved in studying mechanisms of carbon dioxide absorption, conversion, and retention in marine waters as well as those studying the effects of the formation of carbonic acids and lowered pH on altered carbon cycles and carbonate structures necessary to aquatic life.

2. This information may be useful to Federal, State, Tribal, and Territorial managers of water quality programs.

3. This information may be useful to ocean and coastal managers.

B. What Should I Consider as I Prepare My Comments for EPA?

Information submitted in response to this NODA should address the nature and characteristics of altered carbon chemistry in marine waters, including changes in pH and biological calcification processes. It should also address the significance of potential modification to the national marine pH criterion for State and Federal Water Programs authorized by the Clean Water Act. EPA is soliciting additional scientific information, data and ideas for effective strategies for Federal, State, and local officials to use to address the potential impacts of ocean acidification. Specifically:

1. EPA is soliciting technical information on measurement of ocean acidification in marine coastal waters, including:

a. Technological advances in rapid, continuous, or remote measurement of pH;

b. Long-term empirical pH data and carbon chemistry measurements, especially those that may demonstrate ocean acidification;

c. Empirical data to demonstrate spatial and temporal variability of pH in near-coastal waters;

d. Methods to statistically evaluate variability of pH in near-coastal waters;

e. Other approaches (*e.g.*, carbon chemistry), methods and indicators that could reflect ocean acidification.

2. EPA is soliciting technical information on effects of ocean acidification on marine biota, including:

a. Survival, growth, reproduction, and recruitment of reef-building corals and crustose coralline algae;

b. Anticipated persistence of coral reef communities under future pH scenarios;

c. Survival, growth, reproduction, and recruitment of other (non-coral) marine calcifying organisms;

d. Potential changes in community structure and marine trophic links;

e. Variability of effects in tropical, temperate and polar regions;

f. Estimates of response rates (*e.g.*, rapid, gradual, non-linear) of populations and communities to ocean acidification;

g. Adaptability to ocean acidification and broad implications for ecosystem resilience;

h. Methods or estimates of the combined and relative importance of ocean acidification in concert with other natural and anthropogenic stressors (*e.g.*, storm damage, pollution, overfishing).

3. EPA is soliciting scientific views on the information presented in the bibliography of this notice.

4. EPA is soliciting information related to EPA's current CWA 304(a) recommended pH criterion for marine waters, including how the criterion could be best expressed, particularly with respect to natural variability.

5. EPA is soliciting information regarding State and Territorial implementation of the pH criterion related to new information on ocean acidification.

6. EPA is soliciting potential strategies for State and Federal water programs to coordinate and enhance Federal data collection efforts, including:

a. Approaches to designated uses for water quality standards that account for different pH regimes (*e.g.*, specific designated uses for areas with organisms that may be more sensitive to significant pH fluctuations such as coral, shellfish, other calcifying organisms) (CFR 131.10, for additional information on designated uses *http://www.epa.gov/waterscience/standards/about/uses.htm)*;

b. Scientifically defensible approaches to set and monitor pH criteria.

7. EPA is soliciting information that may be used to develop guidance and information on ocean acidification pursuant to Clean Water Act Section 304(a)(2) for States and the public. This information may include information on the mechanisms of ocean acidification, methodology development for analysis, and statistical analysis.

II. Background on Ocean Acidification

Ocean acidification refers to the decrease in the pH of the Earth's oceans caused by the uptake of carbon dioxide (CO_2) from the atmosphere. Oceans have been absorbing about one-third of the anthropogenic CO_2 emitted into the atmosphere since pre-industrial times. As more CO_2 dissolves in the ocean, it reduces ocean pH, which changes the chemistry of the water. These changes present potential risks across a broad spectrum of marine ecosystems.

Biological effects are projected based on models that predict lower pH regimes in marine waters over the next 50–100 years. Using these predictions, reduced pH conditions and/or increased CO_2 saturation have been simulated in the lab and have shown the potential to impact marine life. The majority of the effects observed in lab studies have occurred at pH levels beyond the allowed variability of 0.2 units in the CWA 304(a) recommended criteria for marine pH. For instance, ocean acidification related reductions in pH is forecast to reduce calcification rates in corals and may affect economically important shellfish species including oysters, scallops, mussels, clams, sea urchins, crabs, and lobsters. A recent field study on marine plankton described reduced shell weight over time ''consistent with reduced calcification today induced by ocean acidification'' (Moy et al. 2009). One study demonstrated effects at pH changes of less than 0.2, describing effects on squid metabolism (0.2 is the allowed pH variation from normal conditions under current EPA criteria recommendation) (Portner 2008). Impacts to shellfish and other calcifying organisms that represent the base of the food web may have implications for larger organisms that depend on shellfish and other calcifying organisms for prey.

Current research indicates the impact of ocean acidification on marine organisms will largely be negative, and the impacts may differ from one life stage to another. There may be interactions between CO_2 saturation, temperature, and other stressors which are not fully understood. Preliminary projections indicate that oceans will become more acidic over time and overall, the net effect is likely to disrupt the normal functioning of many marine and coastal ecosystems.

The first comprehensive national study of how CO_2 emissions are absorbed into the oceans has been commissioned by the National Oceanic and Atmospheric Administration (NOAA). The National Academies' Committee on the Development of an Integrated Science Strategy for Ocean Acidification Monitoring, Research, and Impacts Assessment is charged with recommending priorities for a national research, monitoring, and assessment plan to advance understanding of the biogeochemistry of carbon dioxide uptake in the ocean and the relationship to atmospheric levels of carbon dioxide, and to reduce uncertainties in projections of increasing ocean acidification and the potential effects on living marine resources and ocean ecosystems. The 18-month project started on September 16, 2008 (*http://dels.nas.edu/osb/acidification.shtml*).

A. Examples of EPA Activities and Publications Related to Ocean Acidification

EPA is currently involved in a number of initiatives both solely and in partnership with other Federal agencies. Below is a list of current and future projects related to the issue of ocean acidification, the development of biocriteria to help classify and protect marine resources, and tools for the assessment of potential impacts to marine resources that comprise marine designated uses.

- EPA released the ''Stony Coral Rapid Bioassessment Protocol'' (RBP); EPA/600/R–06/167, July 2007, which provides a methodology for assessing the health and condition of stony corals, calcifying organisms that are sensitive to ocean acidification. Use of the RBP by interested States and Territories provides the ability to establish a baseline for coral reef structural health, provides the capacity to derive biocriteria for corals and reef structures, and provides a scientifically defensible method for assessing use attainment in marine waters, as well as evaluating the impact of stressors, such as ocean acidification on corals and coral reef structures. *http://www.epa.gov/bioiweb1/coral/coral biocriteria.html.*
- EPA is also developing a technical guidance framework to aid States and Territories in their development, adoption, and implementation of coral reef biocriteria in their respective water quality standards. EPA plans to publish this coral biocriteria framework document by December 2009 to assist in this effort. This document will complement the ''Stony Coral Rapid Bioassessment Protocol'' (RBP) described above.
- EPA has supported the development of the Coral Mortality and Bleaching Output (COMBO) model to project the effects of climate change on coral reefs by calculating impacts from changing sea surface temperature and CO_2 concentration, and from episodic high temperature bleaching events. Having been applied to Hawaii and the Eastern Caribbean, the model is intended to serve as a tool for climate

change policy analysis, and for use by resource managers and biologists in projecting coral reef impacts at local-to-regional scales.

• The Coastal Research and Monitoring Strategy presents a basic assessment of the Nation's coastal research and monitoring needs, and recommends an integrated framework to address the needs of the Nation and the coastal States and Tribes in order to protect vital coastal resources. *http://www.epa.gov/owow/oceans/nccr/H2Ofin.pdf*.

• The National Coastal Condition Report III (NCCR III), December 2008, is the third in a series of reports describing the ecological health of U.S. coastal waters at a regional and national scale. First issued in 2001 and updated periodically thereafter, the NCCR is one of only a few statistically-significant measures of U.S. water quality on a nationwide basis. NCCR III assesses the condition of the Nation's coastal waters, including Alaska and Hawaii, based primarily on coastal monitoring data collected in 2001 and 2002. It presents an analysis of temporal changes in estuarine condition from 1990 to 2002 for the Nation's coastal waters and by region. *http://www.epa.gov/owow/oceans/nccr3/downloads.html*.

• EPA, working with other Federal agencies, as well as State, regional, and local partners, undertakes site-specific monitoring of coastal and ocean waters. For example, EPA and the State of Florida, in consultation with NOAA, implement the Water Quality Protection Program (WQPP) for the Florida Keys National Marine Sanctuary. The WQPP includes a water quality monitoring program which has funded three long-term monitoring projects: overall water quality; coral reef and hardbottom community health; and seagrass community health. *http://www.epa.gov/region4/water/coastal/index.html*.

III. What Are Water Quality Criteria?

Water quality criteria are scientifically derived values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water.

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish and, from time to time, revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a)(2) requires EPA to develop and publish and, from time to time, revise, information, including information on factors necessary to restore and maintain the integrity of navigable waters, ground waters, waters of the contiguous zone, and the oceans; protection and propagation of shellfish, fish, and wildlife; and measurement and classification of water quality.

Section 304(a) recommended criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating Federal regulations under section 303(c) when such action is necessary.

Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (*e.g.*, public water supply, recreational use, industrial use). EPA's section 304(a) recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality standards that differ from these recommendations.

A. Why Is EPA Reviewing the Aquatic Life Criteria for pH for Marine Waters?

EPA's current CWA 304(a) recommended criterion for marine pH states: ''pH range of 6.5 to 8.5 for marine aquatic life (but not varying more than 0.2 units outside of the normally occurring range)''. This criterion applies to open-ocean waters within 3 miles of a State or Territory's shoreline where the depth is substantially greater than the euphotic zone.

On December 17, 2007, EPA received a petition from the Center for Biological Diversity asking EPA to revise its recommended national marine pH water quality criterion for the protection of aquatic life and also asked EPA to publish information and provide guidance on ocean acidification.

Following careful consideration of the petitioner's request and supporting information, EPA is issuing this notice to solicit additional scientific information and data to fill data gaps to inform EPA's next steps and determine whether changes in existing criteria are warranted.

In this NODA, EPA is only requesting information and data relevant to addressing ocean acidification under the CWA. After the comment period closes on this NODA, EPA plans to evaluate the information received in considering whether the revision of the recommended marine pH criterion is warranted at this time. EPA intends to make final its decision regarding the evaluation of the information received within one year. If necessary, additional public review and comment will be requested during revision of the pH criterion.

IV. References Related to Ocean Acidification

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Dated: April 9, 2009.

Michael H. Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. E9–8638 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8409–7]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 15, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance Exemption

1. *PP 9E7525* (EPA–HQ–OPP–2009–0098). The Joint Inerts Task Force, Cluster Support Team 14, EPA Company Number 84946, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance under 40 CFR 180.920 for residues of sodium salts of *N*–alkyl (C_8–C_{18})–β–iminodipropionic acid where the C_8–C_{18} is linear and may be saturated and/or unsaturated including CAS Reg. Nos. 3655–00–3, 61791–56–8, 14960–06–6, 26256–79–1, 90170–43–7, 91696–17–2, 97862–48–1 when used as inert ingredients in pesticide formulations. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Kerry Leifer, 703–308–8811, *leifer.kerry@epa.gov*.

2. *PP 9E7524* (EPA–HQ–OPP–2009–0099). The Joint Inerts Task Force, Cluster Support Team 10, EPA Company Number 84915, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance under 40 CFR 180.910 and 180.930 for residues of sodium alkyl naphthalenesulfonates including CAS Reg. Nos. 68909–83–1, 68909–84–2, 68909–82–0, 27213–90–7, 26264–58–4, 27178–87–6, 111163–74–7, 908356–16–1, 25417–20–3, 25638–17–9, 145578–88–7, 1322–93–6, 1323–19–9, 7403–47–6, 68442–09–1, 127646–44–0, 908356–18–3 when used as inert ingredients in pesticide formulations. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Kerry Leifer, (703) 308–8811, *leifer.kerry@epa.gov*.

3. *PP 9E7531* (EPA–HQ–OPP–2009–0130). The Joint Inerts Task Force, Cluster Support Team 15, EPA Company Number 84947, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance for residues of *N*, *N*, *N*′, *N*″,-tetrakis-(2-hydroxypropyl)ethylenediamine (CAS No. 102–60–3), under 40 CFR 180.920 when used as an inert ingredient in pesticide formulations with no use limitations. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Kerry Leifer, (703) 308–8811, *leifer.kerry@epa.gov*.

4. *PP 9E7533* (EPA–HQ–OPP–2009–0131). The Joint Inerts Task Force, Cluster Support Team 2, EPA Company Number 84914, c/o CropLife Amercia, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance for residues of alkyl alcohol alkoxylate phosphate and sulfate derivatives under 40 CFR 180.910; 180.920; and 180.930 when used as inert ingredients in pesticide formulations including 40 CFR 180.920: α-alkyl(minimum C6 linear, branched, saturated and/or unsaturated)-ω-hydroxypolyoxyethylene polymer with or without polyoxypropylene, mixture of di-; and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; minimum oxyethlyene content is 2 moles; minimum oxypropylene content is 0 moles (CAS Reg. Nos. 9046–01–9, 39464–66–9, 50643–20–4, 52019–36–0, 68071–35–2, 68458–48–0, 68585–36–4, 68815–11–2, 68908–64–5, 68511–37–5, 68130–47–2, 42612–52–2, 58318–92–6, 60267–55–2, 68070–99–5, 68186–36–7, 68186–37–8, 68610–65–1, 68071–17–0, 936100–29–7, 936100–30–0, 73038–25–2, 78330–24–2, 154518–39–5, 317833–96–8, 108818–88–8, 873662–29–4, 61837–79–4, 68311–02–4, 68425–73–0, 37280–82–3, 68649–29–6, 67711–84–6, 68891–13–4); and 40 CFR 180.910 and 180.930: α–alkyl(C_6–C_{15})-ω-hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts, poly(oxyethylene) content averages 2–4 moles (CAS Reg. Nos. 9004–82–4, 68585–34–2, 68891–38–3, 9004–84–6, 13150–00–0, 26183–44–8, 68611–55–2, 68511–39–7, 3088–31–1, 9004–82–4, 25446–78–0, 32612–48–9, 50602–06–7, 62755–21–9, 68424–50–0, 73665–22–2). Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact Kerry Leifer, (703) 308–8811, *leifer.kerry@epa.gov*.

5. *PP 9E7534* (EPA–HQ–OPP–2009–0145). The Joint Inerts Task Force, Cluster Support Team 1, EPA Company Number 84913, c/o CropLife Amercia, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance for residues of various α-alkyl-ω-hydroxy(oxypropylene) and/or poly(oxyethylene) polymers under 40 CFR 180.910, 180.930, 180.940 and 180.960 when used as inert ingredients in pesticide formulations (CAS Reg. Nos. 9002–92–0, 9004–95–9, 9005–00–9, 26183–52–8, 34398–01–1, 52292–17–8, 66455–14–9, 66455–15–0, 68002–97–1, 68131–39–5, 68131–40–8, 68154–96–1, 68213–23–0, 68439–45–2, 68439–46–3, 68526–94–3, 68439–50–9, 68439–49–6, 68551–12–2, 68951–67–7, 71243–46–4, 97043–91–9, 9043–30–5, 60828–78–6, 61827–42–7, 24938–91–8, 68439–54–3, 69011–36–5, 78330–20–8, 78330–21–9, 106232–83–1, 127036–24–2, 160875–66–1, 9004–98–2, 68920–66–1, 61804–34–0, 61791–28–4, 71060–57–6, 26468–86–0, 31726–34–8, 52609–19–5, 61791–20–6, 68155–01–1, 69013–19–0, 69364–63–2, 70879–83–3, 78330–19–5, 97953–22–5, 157627–86–6, 34398–05–5, 72905–87–4, 84133–50–6, 61702–78–1, 27306–79–2, 169107–21–5, 61791–13–7, 39587–22–9, 85422–93–1; 68154–98–3, 61725–89–1, 68002–96–0, 68154–97–2, 68439–51–0, 68551–13–3, 68603–25–8, 68937–66–6, 68987–81–5, 69227–21–0, 70750–27–5, 103818–93–5, 166736–08–9, 120313–48–6, 68213–24–1, 68458–88–8, 68551–14–4, 69013–18–9, 69227–22–1, 72854–13–8, 73049–34–0, 78330–23–1, 37311–02–7, 64366–70–7, 37251–67–5, 9087–53–0, 196823–11–7, 57679–21–7, 111905–54–5). Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact Kerry Leifer, (703) 308–8811, *leifer.kerry@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–8673 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0015; FRL–8792–1]

Review of the National Ambient Air Quality Standards for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft document for public review and comment.

SUMMARY: On or about April 15, 2009, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public review and comment a planning document titled *Carbon Monoxide National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment.* This document describes EPA's planned approach for developing analyses as part of the review of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). The EPA is releasing this planning document to seek consultation with the Clean Air Scientific Advisory Committee (CASAC) and to solicit public comments.

DATES: Comments should be submitted on or before June 15, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0015, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* EPA–HQ–OAR–2008–0015, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0015. The 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 materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Any questions concerning EPA's *Carbon Monoxide National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment* should be directed to Ms. Ines Pagan at *pagan.ines@epa.gov*, telephone 919–541–5469.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM, the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION:

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately

reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes NAAQS for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for CO to provide protection from exposure to ambient concentrations of CO. Presently, EPA is reviewing the air quality criteria and NAAQS for CO. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Carbon Monoxide.*[1] A draft of the integrated review plan was released for public review and comment in March 2008 and was the subject of a publicly accessible teleconference consultation with the CASAC on April 8, 2008 (73 FR 12998). Comments received from that consultation and from the public were considered in finalizing the plan and in beginning the review of the air quality criteria.

As part of the review of the air quality criteria for CO, EPA's Office of Research and Development (ORD) has completed a draft document, *Integrated Science Assessment (ISA) for Carbon Monoxide* (First External Review Draft, March, 2009) and requested review by the CASAC and the public (74 FR 10734; March 12, 2009). In the future, EPA's OAQPS will prepare a Risk and Exposure Assessment (REA) focusing on human exposure, and possibly, risk assessment. The planning document announced today describes the planned approaches for conducting the quantitative assessments that will be presented in the REA as part of the review of the primary (health-based) standards. This planning document is available on the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html*. This document may be accessed in the ''Documents from Current Review'' section under ''Planning Documents.'' This planning document is intended to provide enough specificity to facilitate consultation with CASAC, as well as for public review, in order to obtain advice on the overall scope, approaches and key issues in advance of conducting quantitative analyses and presentation of results in the first draft REA. The CASAC consultation on this planning document coincides with its review of the first draft ISA. This CASAC meeting is scheduled for May 12 and 13, 2009. A separate **Federal Register** notice (74 FR 15265; April 3, 2009) provides additional details about this meeting and the process for participation.

Dated: April 7, 2009.

Jennifer N. Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–8671 Filed 4–14–09; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA 452R–08–005; August 2008. Available: *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html.*

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, April 16, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of Minutes.

Draft Advisory Opinion 2009–02: The True Patriot Network, LLC, by Judith L. Corley, Esquire.

Draft Advisory Opinion 2009–03: IntercontinentalExchange, Inc., by Andrew J. Surdykowski, Esquire.

Directive 54—Employee Transit Benefit Program.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

FOR FURTHER INFORMATION CONTACT: Judith Ingram, Press Officer; *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–8529 Filed 4–14–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011275–026.

Title: Australia and New Zealand/United States Discussion Agreement.

Parties: ANL Singapore PTE LTD.; Hamburg-Südamerikanische dampfschifffahrts-Gesellschaft KG; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes A.P. Moller-Maersk A/S as a party to the agreement.

Agreement No.: 012067.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering & Logistics GmbH & Co. KG; Beluga Chartering GmbH; Clipper Projects Ltd.; Industrial Maritime Carriers, L.L.C.; Rickmers-Linie GmbH & Cie. KG; and Universal Africa Lines Ltd.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The agreement authorizes the parties to participate in discussions related to the International Council of Heavy Lift and Project Cargo Carriers Agreement on non-rate matters of concern to heavy lift and project carriers in the U.S. trades.

By Order of the Federal Maritime Commission.

Dated: April 10, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–8590 Filed 4–14–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean

Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Alpha Global Cargo Inc., 9990 NW. 14 Street, Ste. 110, Miami, FL 33172, *Officers:* Hans K. Bottger, President (Qualifying Individual), Bernardo De La Espriella, Vice President

Cala Investments, LLC, 2705 NW 109 Ave., Miami, FL 33172, *Officer:* Pedro Salcedo, Manager (Qualifying Individual)

HD EXP USA Inc., 501 Broad Ave., Ridgefield, NJ 07657, *Officers:* Man S. Kwak, President (Qualifying Individual), Dong H. Kang, Vice President

American Courier Express LLC, dba 1 Stop Pack N Ship, 785 Rockville Pike Ste. F, Rockville, MD 20852, *Officer:* Khosrow R. Ranjkesh, President (Qualifying Individual)

Port-Air Express Corporation, 1154 54th Street, Brooklyn, NY 11219, *Officer:* Eugene Weiss, President (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Agent's House International, Inc., 2120 Dennis Street, Jacksonville, FL 32204, *Officer:* Victoria Musgrave, Vice President (Qualifying Individual)

World Logistics Services Corporation, 132 East 43rd St., The Chrysler Building, New York, NY 10017, *Officer:* Steve Licursi, President (Qualifying Individual)

Estes Forwarding Worldwide LLC, 1100 Commerce Road, Richmond, VA 23224, *Officer:* Scott P. Fisher, Exec. VP (Qualifying Individual)

R+L Freight Services, LLC, 600 Gillam Road, Wilmington, OH 45177–0271, *Officer:* Lori J. Crawford, Vice President (Qualifying Individual)

South American Freight International, Inc., dba Global ASG Cargo, 9000 W. Flagler St., Miami, FL 33174, *Officer:* Roberto Illanes, Vice President (Qualifying Individual)

Dated: April 10, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–8591 Filed 4–14–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
019059F	Alliance Logistics, Inc., 2225 West Commonwealth Ave., Suite 103, Alhambra, CA 91803	February 19, 2009.
019727N	Cargo Logistics LLC, 3294 Ashley Phosphate Road, Suite 2C, North Charleston, SC 29418	February 9, 2009.
000751F	International Forwarders, Inc., 1350 Ashley River Road, Charleston, SC 29407–5347	January 22, 2009.
020780N	Kevin Jung dba US Global Logistics, 540 S. Catalina Street, Suite 209, Los Angeles, CA 90020	February 26, 2009.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–8593 Filed 4–14–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 018126N.
Name: Alspac Miami Corporation.
Address: 8602 NW. 70th Street, Miami, FL 33166.
Date Revoked: March 20, 2009.
Reason: Surrendered license voluntarily.

License Number: 002375N.
Name: Action Customs Expediters, Inc. dba Action Shipping Agency.
Address: 115 Christopher Columbus Dr., Jersey City, NJ 07302.
Date Revoked: March 30, 2009.
Reason: Surrendered license voluntarily.

License Number: 020046N.
Name: Fremart International Inc.
Address: 17800 Castleton Street, Ste. 263, City of Industry, CA 91748.
Date Revoked: March 2, 2009.
Reason: Surrendered license voluntarily.

License Number: 002978F.
Name: Galaxy Forwarding, Inc.
Address: 407 River Drive So., Ste. 45, Jersey City, NJ 07310.
Date Revoked: March 12, 2009.
Reason: Surrendered license voluntarily.

License Number: 002355N.
Name: Pro-Service Forwarding Co., Inc. dba ISG Ocean Services.
Address: 901 W. Hillcrest Blvd., Inglewood, CA 90301.
Date Revoked: March 6, 2009.
Reason: Surrendered license voluntarily.

License Number: 000156F.
Name: W.M. Stone & Company, Incorporated.
Address: 838 Granby Street, Norfolk, VA 23510.
Date Revoked: March 16, 2009.
Reason: Surrendered license voluntarily.

License Number: 015946N.
Name: Wells International Corp.
Address: 180 15th Street, Jersey City, NJ 07310.
Date Revoked: March 10, 2009.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–8592 Filed 4–14–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through April 30, 2012, the current PRA clearance for information collection requirements contained in the Pay-Per-Call Rule (''Rule''). That clearance expires on April 30, 2009 (OMB Control No. 3084-0102).

DATES: Comments must be submitted on or before May 15, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to [''Pay-Per-Call Rule: FTC File No. R611016''] to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: [*https://secure.commentworks.com/ftc-PPCRulePRA*] (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink [*https://secure.commentworks.com/ftc-PPCRulePRA*.]. If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Pay-Per-Call Rule: FTC File No. R611016'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167, because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Ruth Yodaiken, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2127.

SUPPLEMENTARY INFORMATION: On October 30, 1998, the Commission published a Notice of Proposed Rulemaking (''NPRM''), 63 FR 58524, to amend its Pay-Per-Call Rule, 16 CFR Part 308.[2] The Rule, which implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act (''TDDRA''), 15 U.S.C. 5711-14, 5721-24, requires the disclosure of cost and other information regarding pay-per-call services and establishes dispute resolution procedures for telephone-billed purchases (*i.e.*, charges for pay-per-call services or other charges appearing on a telephone bill other than telecommunications charges). As was explained in the NPRM, the Rule contains certain reporting and disclosure requirements that are subject to OMB review under the PRA, 44 U.S.C. 3501-3521.[3] Accordingly, the FTC submitted the Rule, with proposed amendments, to OMB (*see* 64 FR 70031, Dec. 15, 1999) for its approval, which was granted until December 31, 2002 (OMB control number 3084-0102). Thereafter, the FTC obtained renewed clearance from OMB covering both the existing Rule and the proposed changes, with the most recent clearance set to expire April 30, 2009. The FTC is again seeking renewed 3-year clearance for the Rule, but now only regarding the existing Rule. The proposed changes have not been enacted and any final decision thereto is too uncertain to merit inclusion in this request for clearance renewal. The Commission will seek PRA clearance separately for any proposed rule amendments if that becomes necessary at a future date.

As required by the PRA, on December 30, 2008, the FTC provided the public with a 60-day period for comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein. 44 U.S.C.

[1] *See also* FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] The Rule was originally promulgated as the ''Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992,'' and was known as the ''900-Number Rule.'' In its NPRM, the Commission refers to the Rule as the ''Trade Regulation Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases.'' In this document it will be referred to as the ''Pay-Per-Call Rule.''

[3] The Rule contains no recordkeeping requirements that would be subject to the PRA.

3506(c)(2)(A); *see* 73 FR 79881, Dec. 30, 2008. No comments were received by the FTC.

Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the Commission is providing this second opportunity for public comment while seeking OMB clearance for the Pay-Per-Call Rule regulations. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before May 15, 2009.

Brief description of the need for and proposed use of the information: The existing reporting and disclosure requirements are mandated by the TDDRA to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are adequately informed of the costs they can expect to incur in using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and that they have certain dispute resolution rights and obligations with regarding such telephone-billed purchases.

Likely respondents and their estimated number: Respondents are telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. Staff estimates that there are 13 common carriers,[4] approximately 13,350 vendors,[5] and approximately 1,250 possible billing entities.[6] The FTC seeks public comment or data on these estimates as well as those additionally stated below.

Estimated annual reporting and disclosure burden: 2,468,412 hours; $133,705,222 in associated labor costs[7]

The burden hour estimate for each reporting and disclosure requirement has been multiplied by a ''blended'' wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine its total annual cost. The blended rate calculations are based on the following skill categories and average wage rates and/or labor costs: $250/hour for professional (attorney) services; $15/hour for skilled clerical workers; $35/hour for computer programmers; and $50/hour for management time. These figures are averages, based on the most currently available Bureau of Labor Statistics (''BLS'') cost figures posted online.[8] FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours discussed further below.

(1) *Reporting burden*:

The Rule provides that common carriers must make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements between the carrier and any vendor or service bureau. *See* 16 CFR 308.6. Staff believes that the resulting burden on this segment of the industry will be minimal, since OMB's definition of ''burden'' for PRA purposes excludes any business effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(b)(2). Because this reporting requirement permits staff to seek information limited to that which is already maintained by the carriers, the only burden would be the time an entity expends to compile and provide the information to the Commission. Because of continued industry changes and the infrequency with which the Commission has relied on this requirement, staff is reducing by 40 percent (from 5 hours to 3 hours per entity) the estimated annual time burden per entity for this reporting requirement.

In obtaining OMB clearance for this reporting requirement in 2006, staff estimated a total reporting burden of 70 hours, with an annual cost of $5,145. For the pending submission to OMB, staff has decreased its burden hour estimate to 39 hours, based on an average estimate of 3 hours (rather than 5) expended by 13 common carriers. Using a $75 blended wage rate (assuming for all labor calculations herein, $35/hour for computer programmers, $250/hour for attorneys, $15/hour for skilled clerical workers, and $50/hour for managers),[9] the FTC now estimates an annual cost of $2,925.

(2) *Disclosure burden*:

(a) *Advertising*. FTC staff estimates that the annual burden on the industry for the Rule's advertising disclosure requirements is 48,060 hours. The estimate reflects the burden on approximately 13,350 vendors who must make cost disclosures for all pay-per-call services and additional disclosures if the advertisement is (a) directed to individuals under 18 or (b) for certain pay-per-call services.[10] Because of continued industry changes and the infrequency with which the Commission has relied on this requirement, staff is reducing the

[4] This estimate is based on the North American Numbering Plan Association Report, ''900-NXX Codes,'' (*http://www.nanpa.com/nas/public/form900MasterReport.do?method=display900MasterReport*) (updated as of November 2008), and excluding Canadian entities and one carrier that recently withdrew from carrying 900 number service. *See* Federal Communications Commission, ''Section 63.71 Application of Sprint Communications Company L.P. for Authority to Discontinue Domestic Telecommunications Services,'' Order, WC Docket No. 08-116, DA 08-2557 (Wireline Competition Bureau Nov. 24, 2008) (''FCC Sprint Order'').

[5] This number or an estimate thereof is difficult to derive as there is no ready source of such statistics. For instant purposes, FTC staff has reduced its most recent prior (2006) PRA-related estimate of the number of vendors (approximately 15,000) by 11 percent, reflecting a corresponding decrease in the allocation of 900 numbers. It is noteworthy that one carrier which recently withdrew from carrying 900-number services stated that between 2004 and 2007 claimed that it saw a 41.5 percent decrease in vendor use of such numbers. *See* FCC Sprint Order. However, erring conservatively, FTC staff instead is applying an 11 percent reduction in the number of vendors, tied to a comparison of the number of 900-NXX codes allocated per vendor, as reported annually by the North American Numbering Plan Administration (NANPA). In 2004, it was 133; in 2007, it fell to 118.

[6] The Federal Communications Commission report on telephone statistics indicated that at the end of 2007 there were approximately 1,250 local telephone companies (local exchange carriers). *See* Local Telephone Competition: Status as of December 31, 2007 (released 9/08) (tables 3 and 4), available at (*http://www.fcc.gov/wcb/iatd/comp.html*).

[7] Non-labor (*e.g.*, capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (*e.g.*, business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-labor costs).

[8] (*http://www.bls.gov/ncs/ncswage2007.htm*) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor, BLS, released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). Notwithstanding the referenced BLS data, estimated attorney costs are based on what staff believes may more closely reflect hourly attorney costs associated with Commission information collection activities under the Rule.

[9] This blended wage rate is based upon an estimate of 30 percent for computer programming, 20 percent for attorney services, 30 percent for skilled clerical workers, and 20 percent for managerial time.

[10] Based on an assumed three advertisements per vendor, or a total of 40,050 ads (for 13,350 vendors, as explained in note 5), plus an estimated total 20 percent of which would require such additional disclosures, or 8,010 advertisements. Staff estimates that it would require no more than one hour to draft each type of disclosure. Accordingly, at an estimated one hour each, vendors would require cumulatively 48,060 burden hours to comply with these requirements.

estimated percentage of advertising both directed to individuals under 18 and relating to certain other pay-per-call services to 20 percent of overall pay-per-call services. FTC staff estimated that each disclosure mandated by the Rule requires approximately one hour of compliance time.

The total estimated annual cost of these burden hours is $3,316,140 applying a blended wage rate of $69/hour.[11]

(b) *The Rule's preamble disclosure.* To comply with the Act, the Pay-Per-Call Rule also requires that every pay-per-call service be preceded by a free preamble and that four different disclosures be made in each preamble. Additionally, preambles to sweepstakes pay-per-call services and services that offer information on federal programs must provide additional disclosures. Each preamble need only be prepared one time, unless the cost or other information is changed. There is no additional burden on the vendor to make the disclosures for each telephone call, because the preambles are taped and play automatically when a caller dials the pay-per-call number.

In its 2006 submission for renewed OMB clearance under the PRA, FTC staff estimated that there were approximately 45,864 pay-per-call services required to make disclosures in the preamble to the pay-per-call service, at an average burden of 10 hours for each preamble, resulting in a total burden estimate of 458,640 hours. As noted above, staff now believes that the industry has had at least an 11 percent reduction in size since the FTC's immediately prior pursuit of renewed clearance. Accordingly, staff now estimates that there are no more than 40,819 advertised pay-per-call services.

As with advertising disclosures, preambles for certain pay-per-call services require additional preamble disclosures. Consistent with the estimates of advertised pay-per-call services discussed above, staff estimates that an additional 20 percent of all such pay-per-call services (8,164) relating to certain types of pay-per-call services would require such additional disclosures.[12] On further reflection, staff now estimates that it would require no more than one hour to draft each type of disclosure because the disclosures applicable to the preamble closely approximate in content and volume the advertising disclosures discussed above. Accordingly, staff estimates a total of 48,983 burden hours (40,819 + 8,164) to comply with these requirements. At one hour each, cumulative labor cost associated with these disclosures is $3,379,827, using a blended wage rate of $69/hour (*i.e.*, similar to the blended rate used for advertising disclosures).

(c) *Telephone-billed charges in billing statements.* Section 308.5(j) of the Rule, 16 CFR 308.5(j), requires that vendors ensure that certain disclosures appear on each billing statement that contains a charge for a call to a pay-per-call service. Because these disclosures appear on telephone bills already generated by the local telephone companies, and because the carriers are already subject to nearly identical requirements pursuant to the FCC's rules, FTC staff estimated that the burden to comply would be minimal. At most, the burden on the vendor would be limited to spot checking telephone bills to ensure that the charges are displayed in the manner required by the Rule.

As it had in the 2006 PRA submission, FTC staff estimates that only 10 percent of vendors (1,350) would monitor billing statements in this manner and that it would take 12 hours per year to conduct such checks. Using the total estimated number of vendors noted above, this results in a total of 16,020 burden hours. The total annual cost would be at most $997,245, using a blended rate of $62.25/hour.[13]

(d) *Dispute resolution procedures in billing statements.* This disclosure requirement is set forth in 16 CFR 308.7(c). The blended rate being used for these disclosures is $53.5/hour.[14] FTC staff previously estimated that the billing entities would spend approximately 5 hours each to review, revise, and provide the disclosures on an annual basis. The estimated hour burden for the annual notice component of this requirement is 6,250 burden hours (based on 1,250 possible billing entities each requiring 5 hours each), or a total cost of $334,375.

(e) *Further disclosures related to consumers reporting a billing error*

As in the 2006 PRA submission for this Rule, FTC staff estimates that the incremental disclosure obligations related to consumers reporting a billing error under section 308.7(d) requires, on average, about one hour per each billing error. Previously, staff projected that approximately 5 percent of an estimated 49,980,000 calls made to pay-per-call services each year involves such a billing error. The staff is now reducing its prior estimate of the number of those calls by 6 percent[15] (46,981,200 calls) to reflect recent changes in the amount of pay-per-call services and their billing. Assuming the same apportionment (5 percent) of overall calls to pay-per-call services, this amounts to 2,349,060 hours, cumulatively. Applying the $53.5/hour blended wage rate, the estimated annual cost is $125,674,710 annually.

David C. Shonka,

Acting General Counsel.

[FR Doc. E9–8665 Filed 4–14–09: 8:45 am]

[BILLING CODE 6750–01–S]

[11] The blended rate is based upon 20 percent for attorney services, 60 percent for skilled clerical workers, and 20 percent for management time.

[12] *See* note 10.

[13] The blended rate is 15 percent for attorney services, 40 percent for skilled clerical workers, 25 percent for computer programming, and 20 percent for management time.

[14] The blended rate is 40 percent for computer programming, 10 percent for attorney services, 30 percent for skilled clerical workers, and 20 percent for management time.

[15] Six percent is determined by an approximate halving of the above-noted 11% reduction staff has applied to its prior estimate of the number of vendors (*see* note 5). As in past clearance requests for this Rule, it is halved on the assumption that pay-per-call services do not account for any more than half of all telephone-billed purchases.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0040]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

NCEH/ATSDR Exposure Investigations (EIs) [OMB NO: 0923–0040]—Extension—The National Center for Environmental Health (NCEH), and the Agency for Toxic Substances and Disease Registry (ATSDR), and the Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a brief summary of a joint clearance between the NCEH and ATSDR, (hereafter ATSDR will represent both ATSDR and NCEH). ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Reauthorization Act (SARA) to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances in the environment. EIs are an approach developed by ATSDR that employs targeted biologic (*e.g.,* urine, blood, hair samples) and environmental (*e.g.,* air, water, soil, or food) sampling to determine whether people are or have been exposed to unusual levels of pollutants at specific locations (*e.g.,* where people live, spend leisure time, or anywhere they might come into contact with contaminants under investigation). After a chemical release or suspected release into the environment, ATSDR's EIs are used by public health professionals, environmental risk managers, and other decision makers to determine if current conditions warrant intervention strategies to minimize or eliminate human exposure. EIs are usually requested by officials of a state health agency, county health departments, the Environmental Protection Agency, the general public, and ATSDR staff.

ATSDR has been conducting EIs since 1995 throughout the United States. All of ATSDR's biomedical assessments and some of the environmental investigations involve participants. Participation is completely voluntary. To assist in interpreting the sampling results, a survey questionnaire appropriate to the specific contaminant is administered to participants. ATSDR collects contact information (*e.g.*, name, address, phone number) to provide the participant with their individual results. Name and address information are broken into nine separate questions (data fields) for computer entry. General information, which includes height, weight, age, race, gender, *etc.*, is also collected primarily on biomedical investigations to assist with results interpretation. General information can account for approximately 28 questions per investigation. Some of this information is investigation-specific; not all of this data is collected for every investigation. ATSDR is seeking an extension of our approved set of 61 general information questions.

ATSDR also collects information on other possible confounding sources of chemical(s) exposure such as medicines taken, foods eaten, hobbies, jobs, *etc.* In addition, ATSDR asks questions on recreational or occupational activities that could increase a participant's exposure potential. That information represents an individual's exposure history. To cover those broad categories, ATSDR is seeking an extension to our approved sets of topical questions. Of these, we use approximately 12–15 questions about the pertinent environmental exposures per investigation. This number can vary depending on the number of chemicals being investigated, the route of exposure (*e.g.*, breathing, eating, touching), and number of other sources of the chemical(s) (*e.g.*, products used, jobs).

Typically, the number of participants in an individual EI ranges from 10 to 50. Questionnaires are generally needed in less than half of the EIs (approximately 10–15 per year).

The subject matter for the complete set of topical questions includes the following: (1) Media specific which includes: Air (indoor/outdoor); water (water source and plumbing); soil, and food (gardening, fish, game, domestic animals (*e.g.*, chickens)). (2) Other sources such as: Occupations; hobbies; household chemical uses and house construction characteristics; lifestyle (*e.g.*, smoking); medicines and/or health conditions, and foods.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Exposure Investigation Participants	750	1	30/60	375

Dated: April 8, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–8537 Filed 4–14–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0034)—Extension

The HEAL program provided federally insured loans to assure the availability of funds for loans to eligible students to pay for their education costs. In order to administer and monitor the HEAL program the following forms are utilized: the Lender's Application for Contract of Federal Loan Insurance form (used by lenders to make application to the HEAL insurance program); the Borrower's Deferment Request form (used by borrowers to request deferments on HEAL loans and used by lenders to determine borrower's eligibility for deferment); the Borrower Loan Status update electronic submission (submitted monthly by lenders to the Secretary on the status of each loan); and the Loan Purchase/Consolidation electronic submission (submitted by lenders to the Secretary to report sales, and purchases of HEAL loans).

The estimates of burden for the forms are as follows:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Lender's Application for Contract of Federal Loan Insurance	13	1	13	0.13	2
Borrower's Deferment Request:					
Borrowers	58	1	58	0.17	10
Employers	43	1.34	58	0.08	5
Borrower Loan Status Update	8	13	104	0.17	18
Loan Purchase/Consolidation	1	1	1	0.07	.07
Total	123		234		35

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 8, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–8608 Filed 4–14–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; A Process Evaluation of the NIH Director's Pioneer Award (NDPA) Program

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

An Outcome Evaluation of the NIH Director's Pioneer Award (NDPA) Program. *Type of Information Collection Request:* New collection. *Need and Use of Information Collection:* This study will assess the NDPA Program outputs and outcomes. The primary objectives of the study are to assess: (1) Whether the NDPA awardees are conducting pioneering research, and (2) whether there are spillover effects on the awardees, their lab members, NIH, and the scientific community. The findings will provide valuable information concerning the success of the awardees (pioneers) and whether the characteristics of the NDPA program are adopted by other NIH programs.

Frequency of Response: Once. *Affected Public:* none. *Type of Respondents:* Applicants, Interviewees (finalist), Pioneer Lab Members, Focus Group Panelists. There are no Capital Costs to report. *Estimated Number of Respondents:* 83; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 2.14 (60 minutes for awardees, 10 minutes for finalists, 30 minutes for pioneer lab members, and 10 hours for focus group panelists).

Estimated Total Annual Burden Hours Requested: 177.83 and the annualized cost to respondents is estimated at $11,308.21. Table 1 and Table 2, respectively, present data concerning the burden hours and cost burdens for this data collection.

TABLE 1—ANNUALIZED ESTIMATE OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time for response (hr)	Total hour burden*
Awardees (Pioneers)	22	1	1.0	22.00
Finalists	20	1	0.16	3.33
Pioneer Lab Members	25	1	0.5	12.5
Expert Panel	14	1	10.0	140.00

TABLE 1—ANNUALIZED ESTIMATE OF HOUR BURDEN—Continued

Type of respondents	Number of respondents	Frequency of response	Average time for response (hr)	Total hour burden*
Total	83	1	2.14	177.83

Total Burden = N Respondents *Response Frequency *(minutes to complete/60).

TABLE 2—ANNUALIZED COST TO RESPONDENTS

Type of respondents	Number of respondents	Response frequency	Approx. hourly wage rate	Total respondent cost**
Awardees	22	1	$64.72	$1,423.84
Finalists	20	1	64.72	215.52
Pioneer Lab Members	25	1	46.23	577.88
Focus Group Panel	14	1	64.72	9,060.80
Total	83	1	63.59	11,308.21

** Total Respondent Cost = Total Hour Burden * Hourly Wage Rate.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact G. Stephane Philogene, Ph.D., Assistant Director for Policy and Planning, Office of Behavioral and Social Sciences Research, National Institutes of Health, 31 Center Drive. Building 31, Room B2–B37, Bethesda, MD 20892, or call non-toll-free number 301–402–3902 or e-mail your request, including your address to: *philoges@od.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: April 8, 2009.

G. Stephane Philogene,

Assistant Director for Policy and Planning, OBSSR, National Institutes of Health.

[FR Doc. E9–8470 Filed 4–14–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–09BI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Minority HIV/AIDS Research Initiative (MARI) Project-Family and Cultural Influences on Talking Strategies (New 60-day FRN); National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Elimination Programs (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to conduct an assessment of the determinants of factors associated with parent-adolescent communication about sex among African-American and Hispanic mothers and their children in the southwestern United States. In the United States, non-Hispanic Black and Hispanic adolescents have been disproportionately impacted by HIV/AIDS. In 2006, based on CDC data from the 50 states and the District of Columbia, non-Hispanic Blacks and Hispanics made up 16% and 17%, respectively (34% total), of the 13–19 year-old population, but 69% and 19% respectively (88% total) of AIDS diagnoses among that age group. In addition, current trends suggest that a large number of persons with HIV/AIDS are infected in their adolescent years, and there may be a long latency period before signs of infection present in later years. Individuals may develop patterns of sexual behavior in adolescence that put them at risk for infection with HIV.

Data suggest that parent-adolescent communication about sex is an important determinant of adolescent sexual risk behavior.

The purpose of the proposed study is to identify effective strategies African American and Latino parents use to communicate with their children about sex. Families will be enrolled at a local community Boys and Girls Club that has ongoing activities for youth and their parents. In phase 1 (sample=48), African American and Hispanic mothers will complete a 90 minute focus group. In phase 2 (sample=800), mothers and their children (ages 12–15) will complete a 100 minute self-administered survey on a lap-top computer using Audio-computer Assisted Interviewing (ACASI). Findings will be used to provide recommendations for behavioral interventions and educational materials for parent-adolescent sexual health communications for minority families. The survey will take approximately 100 minutes to complete. The total response burden for the two-year period is estimated to be 1406 hours (703 annualized burden hours). There is no cost to respondents except for their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Types of data collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Focus Group	48	1	2	96
ACASI (Computer) Survey—Mothers	400	1	2	800
ACASI (Computer) Survey—Children	400	1	2	800
Total burden hours				1696

Dated: April 8, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–8540 Filed 4–14–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strategic Plan of the Chronic Fatigue Syndrome Research Program

The Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services (HHS) announces an open meeting concerning chronic fatigue syndrome.

Name: Strategic Plan of CDC's Chronic Fatigue Syndrome (CFS) Research Program.

Times and Date: 1 p.m.–5 p.m., April 27, 2009.

Place: Centers for Disease Control and Prevention, Global Communications Center, Building 19, Auditorium B2, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the public meeting is to solicit input from interested parties on issues that CDC will consider as it develops a five-year strategic plan for its chronic fatigue syndrome research program. Input is sought only on the CFS strategic research plan, not on CDC's overall CFS program. As CDC is one of many institutions conducting research on chronic fatigue syndrome, the strategic plan will only address research that is within CDC's purview.

Topics Include: The objective of the five-year strategic plan is to conduct public health research leading to the control and prevention of medically unexplained chronically fatiguing illnesses, in particular CFS. The agenda will focus on the goals and objectives of CDC's chronic fatigue syndrome research program in five major categories:

1. Studies of Defined populations.
2. Provider-based Patient Registries.
3. In-hospital Clinical Studies.
4. Laboratory Studies.
5. Provider and Public Educational Intervention Research.

The agenda does not include development of consensus positions, guidelines, or discussions or endorsements of specific commercial products. Agenda items are subject to change as priorities dictate. Members of the public wishing to make an oral statement during the meeting should limit their remarks to 5 minutes and should address the research agenda. Written comments and suggestions from the public on the research agenda are encouraged and may be submitted to the e-mail address listed below by April 22, 2009. While CDC will carefully consider the individual comments and opinions it receives, it will retain discretion in its decision-making process. A draft strategic plan will also be presented to the Chronic Fatigue Syndrome Advisory Committee meeting held May 27–28, 2009.

Background: CDC recently solicited and considered recommendations from an external review panel that evaluated the research and professional education components of the CFS research program. The panel's report summarizing the findings of the peer review has been published on the CDC CFS Web site at *www.cdc.gov/cfs/pdf/cdc_cfs_research_program-external_review.pdf*. In brief, the panel noted that: (1) The CDC team currently leads the world in both the breadth and depth of their research into CFS; (2) the efforts of CDC have highlighted the public health importance of CFS; (3) all current research projects address important issues; (4) CDC is uniquely positioned to conduct a broadly based research program derived from the population, a large-scale educational outreach program, particularly to healthcare professionals, and to provide expert Web-based resources for patients, their families and non-healthcare professionals; and (5) CDC is the best-placed institution to lead the establishment of research and educational networks, both nationally and internationally.

The report included several valuable recommendations which CDC has begun to implement, starting with the development of a strategic plan to drive the program's research, prevention, and control activities for the next five years. This meeting will provide input to that strategic plan.

Persons anticipating attending the meeting are requested to send written notification by April 22, 2009, including name, organization (if applicable), address, phone, fax, and e-mail addresses to the contact below.

FOR FURTHER INFORMATION CONTACT: *CFSResearchPlan@cdc.gov.*

Dated: April 8, 2009.

Carlton Duncan,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–8632 Filed 4–14–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Annual Meeting

The Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), announces the following meeting:

Name: Vessel Sanitation Program: Annual Program Status Update and Experience to Date with Program Operations.

Time and Date: 9 a.m. to 4 p.m., June 12, 2009.

Location: Auditorium, Port Everglades Administration Building, 1850 Eller Drive, Fort Lauderdale, Florida 33316.

Status: The meeting is open to the public, but space is limited. The meeting room can accommodate approximately 100 persons. Annual attendees normally include cruise ship industry officials, private sanitation consultants, and other interested parties.

Meeting Objectives

CDC staff will update attendees on the current status of program topics, including but not limited to the following:

- 2008 Program Review.
- Proposed revisions to the Vessel Sanitation Program Operations Manual 2005.
- Proposed revisions to the Vessel Sanitation Program Construction Guidelines 2005.
- Updates on cruise ship outbreaks.

An official record of this meeting will remain open for 15 days (through June 27, 2009) so that additional materials or comments may be submitted and made part of the record.

Advanced registration is encouraged. You may contact Stephanie Lawrence to register in advance or to receive additional information about the meeting. Ms. Lawrence can be reached by phone (770–488–3141), fax (770–488–4127), or e-mail (*slawrence@cdc.gov*). Please provide your name, title, company name, mailing address, telephone number, fax number, and e-mail address when contacting Ms. Lawrence.

Dated: April 8, 2009.

Carlton Duncan,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–8631 Filed 4–14–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0178]

Preparation for International Conference on Harmonisation Meetings in Yokohama, Japan; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for ICH meetings in Yokohama, Japan'' to provide information and receive comments on the International Conference on Harmonisation (ICH) as well as the upcoming meetings in Yokohama, Japan. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Groups meetings in Yokohama, Japan, scheduled for June 6 through 11, 2009, at which discussion of the topics underway and the future of ICH will continue, as well as provide comprehensive updates of the various ICH topics.

Date and Time: The meeting will be held on May 6, 2009, from 2:30 p.m. to 5 p.m.

Location: The meeting will be held in the Washington Room at the Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852. For security reasons, all attendees are asked to arrive no later than 2:15 p.m.

Contact Person: All participants must register with Tammie Jo Bell, Office of the Commissioner (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *Tammie.Bell2@fda.hhs.gov*, or FAX: 301–827–0003.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material and requests to make oral presentation, to the contact person by April 29, 2009.

If you need special accommodations due to a disability, please contact Tammie Jo Bell (see *Contact Person*) at least 7 days in advance.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Association; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufactures Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes

representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org*.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by April 29, 2009, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, telephone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on the Internet at *http://www.fda.gov/cder/meeting/ICH_20090506.htm*.

Dated: April 9, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–8679 Filed 4–14–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Asthma Consortium.

Date: May 6, 2009.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2605, *ks216i@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Genetic Control of Autoimmunity.

Date: May 6, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Thames E. Pickett, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *pickettte@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: April 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8682 Filed 4–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 7, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: NICHD Director's Report presentation, NCMRR Director's Report presentation and various reports on Medical Research Initiatives.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 2A03, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Ralph M. Nitkin, PhD, Director, B.S.C.D. Biological Sciences and Career Development, NCMRR, Eunice Kennedy Shriver National Institute of Child Health & Human Development, NIH, DHHS, 6100 Executive Boulevard, Room 2A03, Bethesda, MD 20892–7510, (301) 402–4206, *nitkinr@mail.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.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/ncmrr.htm*, where an agenda and any additional information for the meeting will be posted when available. To attend the meeting virtually, please click on the *http://www.nichd.nih.gov/about/overview/advisory/nmrrab/minutes/2009may.cfm.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8681 Filed 4–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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) and552b(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: NIDCR Special Grants Review Committee, NIDCR Special Grants Review Committee: Review of F, K, and R03 Applications.

Date: June 11–12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raj K. Krishnaraju, PhD, MS, Scientific Review Officer, Scientific Review Branch, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm. 4AN 32J, Bethesda, MD 20892. 301–594–4864. *kkrishna@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8680 Filed 4–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting 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 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 Advisory Environmental Health Sciences Council.

Date: May 21–22, 2009.

Open: May 21, 2009, 8:30 a.m. to 3 *p.m.*

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: May 21, 2009, 3 *p.m.* to 5 *p.m.*

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: May 22, 2009, 8:30 a.m. to 2 *p.m.*

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, PhD, Interim Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.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.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 9, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8664 Filed 4–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–1135, New Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form G–1135, Joblock Application Form. OMB Control No. 1615–NEW.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 15, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please add the Form G–1135 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Joblock application form.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form G–1135. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required to Respond, as well as a Brief Abstract: Primary:* Individuals or households. The information collected on this form will be used to determine

whether the applicant was a victim of identity theft and thereby eligible for the benefit of locking his or her personal information in the E–Verify Program.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 40,000 responses at one hour per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated with the Collection:* 40,000 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp*.

We may be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: April 9, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–8663 Filed 4–14–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Transfer of Cargo to a Container Station

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection with a change to the burden hours: 1651–0096.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transfer of Cargo to a Container Station. This proposed information collection was previously published in the **Federal Register** (74 FR 5846–5847) on February 2, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 15, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Transfer of Cargo to a Container Station.

OMB Number: 1651–0096.

Form Number: None.

Abstract: Before the filing of an entry of merchandise for the purpose of breaking bulk and redelivery of the cargo, containerized cargo may be moved from the place of unlading, or may be received directly at the container station from a bonded carrier after transportation-in-bond. This also applies to loose cargo as part of containerized cargo. The container station operator may make a request for the transfer of a container intact to the station. This is pursuant to the requirements of 19 CFR 41, 19 CFR 42, 19 CFR 44, and 19 CFR 45.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours resulting from a more accurate estimate of the number of container stations.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 14,327.

Estimated Time per Respondent: 7 minutes.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Burden Hours: 41,548.

Dated: April 8, 2009.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E9–8596 Filed 4–14–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: H–2 Petitioner's Employment Related or Fee Related Notification; Extension of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: H–2 petitioner's employment related or fee related notification; OMB control no. 1615–0107.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 15, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0107 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* H–2 Petitioner's Employment Related or Fee Related Notification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The notification requirement is necessary to ensure that alien workers maintain their nonimmigrant status and will help prevent H–2 workers from engaging in unauthorized employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,700 respondents at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 850 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov*.

We may be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: April 9, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–8491 Filed 4–14–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1827–DR; Docket ID FEMA–2008–0018]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1827–DR), dated March 4, 2009, and related determinations.

DATES: *Effective Date:* March 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 4, 2009.

Albany, Columbia, Delaware, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties for Public Assistance [Category E] (already designated for Categories A, B, C, F, and G), including direct Federal Assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–8547 Filed 4–14–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0271]

Towing Safety Advisory Committee; Meetings

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups on the Revision of Navigation and Vessel Inspection Circular (NVIC) 04–01, and on the Clarification of Current Licensing Regulations pertaining to Apprentice Mates (Steersmen) will meet in Dania Beach, FL. The Committee will also discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: The working groups will meet on Wednesday, May 6, 2009, from 8 a.m. to 5 p.m. The full TSAC Committee will meet on, Thursday, May 7, 2009, from 8 a.m. to 3 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations at the meetings should reach the Coast Guard on or before April 24, 2009. Requests to have a copy of your material distributed to each member of the Committee or working groups should reach the Coast Guard electronically on or before April 24, 2009.

ADDRESSES: The working groups and TSAC will meet at the American Maritime Officers STAR Center; 2 West Dixie Highway, Dania Beach, FL 33004; Phone: 954–921–7254. TSAC is utilizing the Ft. Lauderdale International Airport (FLL) which is nearby.

Send written material and requests to make oral presentations to TSAC's Assistant Designated Federal Officer (ADFO) in the **FOR FURTHER INFORMATION CONTACT** section below. This notice is available on the Internet at *http://www.regulations.gov* under the docket number USCG–2009–0271.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, ADFO, TSAC; U.S. Coast Guard Headquarters, CG–5221, Room 1210; 2100 Second Street, SW.,

Washington, DC 20593–0001. Telephone (202) 372–1401, fax (202) 372–1926, or e-mail at: *Gerald.P.Miante@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meetings

NVIC 04–01 Working Group. The agenda for the working group is to discuss possible revisions to NVIC 04–01, Licensing and Manning for Officers of Towing Vessels, including the enclosures on the Towing Officer Assessment Records (TOARs). The current version of the NVIC can be viewed at *http://www.uscg.mil/hq/g-m/nvic/index00.htm#2001*.

Working Group for Clarification of Current Licensing Regulations pertaining to Apprentice Mates (Steersmen). In the wake of the recent collision between the towing vessel *Mel Oliver* and tanker *Tintomara*, TSAC will study and clarify current regulations and develop Best Practices for Apprentice Mates/Steersman Training Programs.

Towing Safety Advisory Committee. The tentative agenda for the Committee is as follows:

(1) Update of the Towing Vessel Inspection Working Group;

(2) Update on Commercial/Recreational Boating Interface;

(3) Report on the Review and Recommendations for the Revision of NVIC 4–01 ''Licensing and Manning for Officers of Towing Vessels;''

(4) Report on the Review and Recommendations for the Clarification of Current Licensing Regulations pertaining to Apprentice Mates (Steersmen);

(5) Update on National Maritime Center (NMC) activities;

(6) Presentation on Automatic Identification System/Advance Notice of Arrival (AIS/ANA);

(8) Presentation on the Transportation Worker Identification Credential (TWIC); and

(9) Presentation on Bridging Strategy and Towing Vessel Center of Expertise.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the ADFO no later than April 24, 2009. Written material (20 copies) for distribution at a meeting should reach the Coast Guard no later than April 24, 2009. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit it electronically to the ADFO, for e-mail distribution, no later than April 24, 2009. Also at the Chair's discretion, members of the public may present comment at the end of the Public Meeting. Please understand that the Committee's schedule may be quite demanding and time for public comment may be limited.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the ADFO as soon as possible.

Dated: April 9, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9–8615 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning April 1, 2009, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date*: April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2009–7, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2009, and ending on June 30, 2009. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning July 1, 2009, and ending September 30, 2009.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	063009	4	4	3

Dated: April 10, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E9–8661 Filed 4–14–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals by the Gulf of Mexico OCS region.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico and Atlantic OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public

Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/operator	Location	Date
WesternGeco, LLC, Geological & Geophysical Prospecting for Mineral Resources, SEA L08–09.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	3/21/2008
Dominion Exploration & Production, Inc., Structure Removal, SEA ES/SR 05–013A/014A.	West Cameron, Block 570, Lease OCS–G 05188, located 103 miles from the nearest Louisiana shoreline.	5/9/2008
Apache Corporation, Structure Removal, SEA ES/SR 08–002A/014A.	Ship Shoal, Block 207, Lease OCS–G 01523, located 334 miles from the nearest Louisiana shoreline.	5/21/2008
W & T Offshore, Inc., Structure Removal, SEA ES/SR 08–016A.	Main Pass, Block 141, Lease OCS–G 09710, located 17 miles from the nearest Louisiana shoreline.	6/11/2008
EMGS Americas, Geological & Geophysical Prospecting for Mineral Resources, SEA L08–33.	Located in the central and western Gulf of Mexico south of Cameron, Louisiana.	6/16/2008
Maritech Resources, Inc., Structure Removal, SEA ES/SR 07–143A.	Eugene Island, Block 116, Lease OCS–G 00478, located 46 miles from the nearest Louisiana shoreline.	6/18/2008
Maritech Resources, Inc., Structure Removal, SEA ES/SR 07–074A/138A/139A.	South Marsh Island, Block 233, Lease OCS–G 11929, located 20 miles from the nearest Louisiana shoreline.	6/18/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08–095.	East Cameron, Block 32, Lease OCS–G 04777, located 8 miles from the nearest Louisiana shoreline.	7/2/2008
Maritech Resources, Inc., Structure Removal, SEA ES/SR 01–038B.	Eugene Island, Block 305, Lease OCS–G 02108, located 73 miles from the nearest Louisiana shoreline.	7/25/2008
Apache Corporation, Structure Removal, SEA ES/SR 06–147A	Grand Isle, Block 20, Lease OCS–G 03596, located 9 miles from the nearest Louisiana shoreline.	7/30/2008
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08–129	Brazos, Block 542, Lease OCS–G 12465, located 31 miles from the nearest Texas shoreline.	8/1/2008
Maritech Resources, Inc., Structure Removal, SEA ES/SR 01–038C.	Eugene Island, Block 305, Lease OCS–G 02108, located 73 miles from the nearest Louisiana shoreline.	8/1/2008
Coastal Technology Corporation, Geological & Geophysical Prospecting for Mineral Resources, SEA E–7–01.	Located off the coast of St. Johns County, Florida, on the Federal OCS of the Atlantic Ocean.	8/1/2008
Fairfield Industries, Geological & Geophysical Prospecting for Mineral Resources, SEA L08–59.	Located in the western Gulf of Mexico south of Galveston, Texas.	8/15/2008
EMGS Americas, Geological & Geophysical Prospecting for Mineral Resources, SEA M08–01.	Located in the central and eastern Gulf of Mexico south of Mobile, Alabama.	8/20/2008
Ridgelake Energy, Inc., Structure Removal, SEA ES/SR 08–022.	High Island, Block A352, Lease OCS–G 24424, located 102 miles from the nearest Texas shoreline.	8/28/2008
Coastal Planning & Engineering, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA M08–05.	Located off the coast of Longboat Key, Florida, on the Federal OCS of the Gulf of Mexico.	8/29/2008
Seneca Resources Corporation, Structure Removal, SEA ES/SR 08–124A.	West Cameron, Block 182, Lease OCS–G 15062, located 30 miles from the nearest Louisiana shoreline.	8/29/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08–111.	Matagorda Island, Block 651, Lease OCS–G 06045, located 23 miles from the nearest Texas shoreline.	9/8/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08–109.	Matagorda Island, Block 672, Lease OCS–G 10198, located 27 miles from the nearest Texas shoreline.	9/8/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08–108.	Mustang Island, Block 785, Lease OCS–G 08975, located 28 miles from the nearest Texas shoreline.	9/8/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08–113.	Mustang Island, Block A22, Lease OCS–G 04536, located 36 miles from the nearest Texas shoreline.	9/8/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08–139	West Cameron, Block 63, Lease OCS–G 24705, located 12 miles from the nearest Louisiana shoreline.	9/9/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08–111A.	Matagorda Island, Block 651, Lease OCS–G 06045, located 23 miles from the nearest Texas shoreline.	9/10/2008
Wild Well Control, Inc., Structure Removal, SEA ES/SR 08–154.	Grand Isle, Block 47, RUE–G 30014, located 24 miles from the nearest Louisiana shoreline.	9/11/2008
TGS–NOPEC Geophysical Company L.P., Geological & Geophysical Prospecting for Mineral Resources, SEA L08–76.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	9/22/2008
EMGS Americas, Geological & Geophysical Prospecting for Mineral Resources, SEA L08–67.	Located south of Mississippi and Alabama in the OCS of the Gulf of Mexico.	9/22/2008
Mariner Energy, Inc., Well Conductor Removal, SEA ES/SR APMs HI A552–B005/B006.	High Island, Block A522, Lease OCS–G 03949, Wells B005 & B006, located 92 miles from the nearest Texas shoreline.	9/24/2008
Beryl Oil & Gas L.P., Structure Removal, SEA ES/SR 08–098A	West Delta, Block 57, Lease OCS–G 10878, located 3 miles from the nearest Louisiana shoreline.	10/2/2008
BP America Production Company, Structure Removal, SEA ES/SR 08–045.	West Delta, Block 70, Lease OCS–G 00182, located 23 miles from the nearest Louisiana shoreline.	10/3/2008

Activity/operator	Location	Date
BP America Production Company, Structure Removal, SEA ES/SR 08–046.	West Delta, Block 94, Lease OCS–G 00839, located 27 miles from the nearest Louisiana shoreline.	10/3/2008
Helis Oil & Gas Company, Structure Removal, SEA ES/SR 08–160.	Galveston, Block 396, Lease OCS–G 23546, located 19 miles from the nearest Texas shoreline.	10/6/2008
Helis Oil & Gas Company, LLC, Structure Removal, SEA ES/SR 08–161.	East Cameron, Block 131, Lease OCS–G 21068, located 38 miles from the nearest Louisiana shoreline.	10/6/2008
Helis Oil & Gas Company, LLC, Structure Removal, SEA ES/SR 08–159/162.	Galveston, Block 418, Lease OCS–G 10921, located 21 miles from the nearest Texas shoreline; Brazos, Block 17, Lease OCS–G 22190, located 32 miles from the nearest Texas shoreline.	10/6/2008
Helis Oil & Gas Company, LLC, Structure Removal, SEA ES/SR 08–163.	West Cameron, Block 43, Lease OCS–G 16107, located 6 miles from the nearest Louisiana shoreline.	10/6/2008
Coastal Technology Corporation, Geological & Geophysical Prospecting for Mineral Resources, SEA E–8–02/03.	Located off the coast of Flagler County, Florida, Federal OCS of the Atlantic Ocean.	10/7/2008
Newfield Exploration Company, Structure Removal, SEA ES/SR 08–164.	Vermilion, Block 201, Lease OCS–G 27862, located 55 miles from the nearest Louisiana shoreline.	10/7/2008
Energy Partners, Ltd., Structure Removal, SEA ES/SR 07–092A.	High Island, Block A327, Lease OCS–G 02418, located 109 miles from the nearest Texas shoreline.	10/9/2008
Prime Offshore, LLC, Structure Removal, SEA ES/SR 08–155	South Padre Island, Block 1145, Lease OCS–G 24304, located 16 miles from the nearest Texas shoreline.	10/10/2008
GOM Shelf, LLC, Structure Removal, SEA ES/SR 08–013A	South Pass, Block 45, Lease OCS–G 04479, located 7 miles from the nearest Louisiana shoreline.	10/10/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08–119	South Timbalier, Block 131, Lease OCS–G 00457, located 28 miles from the nearest Louisiana shoreline.	10/10/2008
GOM Shelf, LLC, Structure Removal, SEA ES/SR 08–040A	Matagorda Island, Block 633, Lease OCS–G 06042, located 14 miles from the nearest Texas shoreline.	10/11/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08–060A.	Eugene Island, Block 276, Lease OCS–G 00989, located 63 miles from the nearest Louisiana shoreline.	10/17/2008
Apache Corporation, Structure Removal, SEA ES/SR 08–035A	High Island, Block A5, Lease OCS–G 17156, located 38 miles from the nearest Texas shoreline.	10/17/2008
W & T Offshore, Inc., Structure Removal, SEA ES/SR 08–166	Main Pass, Block 069, Lease OCS–G 00372, located 12 miles from the nearest Louisiana shoreline.	10/24/2008
Arena Offshore, LLC, Structure Removal, SEA ES/SR 08–165	South Timbalier, Block 172, Lease OCS–G 01256, located 39 miles from the nearest Louisiana shoreline.	10/28/2008
WesternGeco, LLC, Geological & Geophysical Prospecting for Mineral Resources, SEA L08–77.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	10/30/2008
WesternGeco, LLC, Geological & Geophysical Prospecting for Mineral Resources, SEA L08–82.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	10/30/2008
CGGVeritas, Geological & Geophysical Prospecting for Mineral Resources, SEA L08–83.	Located in the central Gulf of Mexico south of Cameron, Louisiana.	10/31/2008
Fugro Multi-Client Services, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA M08–11.	Located in the western, central and eastern Gulf of Mexico	10/31/2008
Forest Oil Corporation, Structure Removal, SEA ES/SR 08–157/158.	West Cameron, Blocks 315 & 314, Leases OCS–G 08407 & 08406 respectively, located 42 miles from the nearest Louisiana shoreline.	10/31/2008
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08–130/132.	High Island, Blocks A–551 & A–552, Leases OCS–G 03757 & 03949 respectively, located 100 miles from the nearest Texas shoreline.	11/21/2008
Spectrum Geo, Inc., Geological & Geophysical Prospecting for Mineral Resources, SEA M08–07/08/09.	Located in the eastern Gulf of Mexico	11/21/2008
Hunt Petroleum (AEC), Inc., Structure Removal, SEA ES/SR 08–172.	Main Pass, Block 88, Lease OCS–G 23946, located 43 miles from the nearest Louisiana shoreline.	11/25/2008
PGS Geophysical, Geological & Geophysical Prospecting for Mineral Resources, SEA M08–10.	Located in the central and eastern Gulf of Mexico	11/28/2008
Energy Partners, Ltd., Structure Removal, SEA ES/SR 08–156	Vermilion, Block 320, Lease OCS–G 02087, located 87 miles from the nearest Louisiana shoreline.	12/1/2008
PXP Gulf Coast, Inc., Structure Removal, SEA ES/SR 08–173	Chandeleur, Block 30, Lease OCS–G 24002, located 42 miles from the nearest Louisiana shoreline.	12/4/2008
W & T Offshore, Inc., Structure Removal, SEA ES/SR 08–153	Galveston, Block 351, Lease OCS–G 24366, located 23 miles from the nearest Texas shoreline.	12/4/2008
Callon Petroleum Operating Company, Structure Removal, SEA ES/SR 08–147.	North Padre Island, Block 913, Lease OCS–G 22158, located 32 miles from the nearest Texas shoreline.	12/4/2008
Apache Corporation, Structure Removal, SEA ES/SR 08–038A/039A.	High Island, Block 169, Lease OCS–G 14161, located 30 miles from the nearest Texas shoreline.	12/5/2008
Devon Energy Production Company, L.P., Vertical Seismic Profile Ancillary Activities, SEA R–4901 AA.	Keathley Canyon, Block 291, Lease OCS–G 19545, located 195 miles south of Morgan City, Louisiana.	12/5/2008
Devon Energy Production Company, L.P., Vertical Seismic Profile Ancillary Activities, SEA R–4900 AA.	Walker Ridge, Block 249, Lease OCS–G 16969, located 160 miles south of Terrebonne Parish, Louisiana.	12/5/2008
Devon Energy Production Company, L.P., Vertical Seismic Profile Ancillary Activities, SEA R–4904 AA.	Walker Ridge, Block 249, Lease OCS–G 16969, located 160 miles south of Terrebonne Parish, Louisiana.	12/9/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 07–053A.	Eugene Island, Block 214, Lease OCS–G 00977, located 48 miles from the nearest Louisiana shoreline.	12/12/2008
Palace Operating Company, Structure Removal, SEA ES/SR 08–176.	Main Pass, Block 57, Lease OCS–G 19851, located 20 miles from the nearest Louisiana shoreline.	12/12/2008

Activity/operator	Location	Date
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08–168/171.	West Cameron, Block 226, Lease OCS–G 05293, located 42 miles from the nearest Louisiana shoreline.	12/12/2008
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08–167	South Marsh Island, Block 11, Lease OCS–G 01182, located 37 miles from the nearest Louisiana shoreline.	12/17/2008
W & T Offshore, Inc., Structure Removal, SEA ES/SR 08–174	Ship Shoal, Block 149, Lease OCS–G 00434, located 33 miles from the nearest Louisiana shoreline.	12/17/2008
Apache Corporation, Structure Removal, SEA ES/SR 08–051	East Cameron, Block 336, Lease OCS–G 03388, located 106 miles from the nearest Louisiana shoreline.	12/19/2008
Repsol E&P USA, Inc., Velocity Survey Operations to Collect Seismic Data, SEA R–4905 AA.	Keathley Canyon, Block 872, Lease OCS–G 25823, located 236 miles south of Vermilion Parish, Louisiana.	12/22/2008
Apache Corporation, Structure Removal, SEA ES/SR 08–178	Vermilion, Block 284, Lease OCS–G 09508, located 84 miles from the nearest Louisiana shoreline.	12/22/2008
Apache Corporation, Structure Removal, SEA ES/SR 08–179	Ship Shoal, Block 291, Lease OCS–G 02923, located 60 miles from the nearest Louisiana shoreline.	12/23/2008
Hunt Oil Company, Structure Removal, SEA ES/SR 08–177	Brazos, Block A2, Lease OCS–G 25518, located 12 miles from the nearest Texas shoreline.	12/29/2008

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: April 7, 2009.

Lars Herbst,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E9–8525 Filed 4–14–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Termination of Environmental Impact Statement in Favor of an Environmental Assessment, Aztec Ruins National Monument, New Mexico

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of Termination of an Environmental Impact Statement (EIS) for the General Management Plan for Aztec Ruins National Monument, in favor of an Environmental Assessment (EA).

SUMMARY: The National Park Service (NPS) is terminating preparation of an EIS for the General Management Plan for Aztec Ruins National Monument, New Mexico. A Notice of Intent to prepare an EIS for the Aztec Ruins National Monument General Management Plan was published in the **Federal Register** on October 8, 2003 (68 FR 58130), and followed by a scoping newsletter. The NPS has since determined that an EA rather than an EIS is the appropriate level of environmental documentation for the plan.

SUPPLEMENTARY INFORMATION: The General Management Plan will establish the overall management direction for the next 15 to 20 years. Five scoping information meetings were conducted in October 2003 with American Indian tribes and the general public at the park, and in the cities of Aztec, Santa Fe, Albuquerque, and Gallup, New Mexico. Initial scoping did not result in significant impacts being identified by the public. Additionally, the preliminary analysis of the alternatives does not indicate that significant impacts will result from implementation of any of the alternatives. The NPS planning team has developed three alternatives, including the No Action Alternative (1)—Continuation of Existing Conditions, and two action alternatives. All alternatives respond in various degrees to the ideas presented during scoping. The two action alternatives (2 and 3) would expand park-related functions within the boundary, would focus preservation activities within the boundary on resources throughout the monument, and would increase visitor understanding and enjoyment by expanding interpretation to include more resources and research within the monument. The Proposed Action (Alternative 3) would place major emphasis on partnerships, civic engagement, and collaborative management opportunities to address issues within the park boundary, and would promote collaboration and partnerships to help preserve ruins throughout the region. These alternatives will be expanded upon and refined through the planning process.

DATES: The NPS will notify the public by mail, Web site, and other means, of public review periods and meetings associated with the Draft GMP/EA. All public review and other written public information will be made available Online at *http://parkplanning.nps.gov/azru*.

FOR FURTHER INFORMATION CONTACT: Dennis Carruth, Superintendent, Aztec Ruins National Monument, #84 County Road 2900, Aztec, New Mexico 87410; telephone, (505) 334–6174, extension 222; e-mail *azru_superintendent@nps.gov*.

Dated: April 1, 2009.

Rick M. Frost,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. E9–8667 Filed 4–14–09; 8:45 am]

BILLING CODE 4312–ET–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–148, the NCGMP Advisory Committee will meet in Room 324 of Brooks Hall at West Virginia University, 98 Beechurst Ave, Morgantown, WV 26506. The Advisory Committee, comprising scientists from Federal agencies, State agencies, academic institutions, and private companies, shall advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping program.

The Committee will hear updates on progress of the NCGMP towards fulfilling the purposes of the National Geological Mapping Act of 1992; the Federal, State, and educational components of the NCGMP; and the National Geological and Geophysical Data Preservation Program. The

Committee will also discuss future technologies for geologic mapping.

DATES: May 12–13, 2009, commencing at 8:30 a.m. on May 12 and adjourning by 5 p.m. on May 13.

FOR FURTHER INFORMATION CONTACT: Linda Jacobsen, U.S. Geological Survey, Mail Stop 908, National Center, Reston, Virginia 20192 (703) 648–4335.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geological Mapping Program Advisory Committee are open to the Public.

Dated: April 9, 2009.

Timothy Miller,

Acting Associate Director for Geology, U.S. Geological Survey.

[FR Doc. E9–8603 Filed 4–14–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 28, 2009. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 30, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Cleburne County

Heber Springs Commercial Historic District, 100, 200 blocks E. Main St., 100–500 blocks of W. Main St., 100 block of N. and S. 3rd and N. and S. 4th Sts., Heber Springs, 09000266

COLORADO

San Miguel County

Lewis Mill, (Mining Industry in Colorado, MPS), 3.5 mi. SE. of Telluride at the head of Bridal Veil Basin, Telluride, 09000267

GEORGIA

Dawson County

Gilleland, Boyd and Sallie, House, 3 Shepard's Ln., Dawsonville, 09000268

Fulton County

Ellis, Rutherford and Martha, House, 543 W. Wesley Rd., NW., Atlanta, 09000269

Muscogee County

Thomas, Alma, House, 411 21st St., Columbus, 09000270

Rockdale County

Parker, Aaron and Margaret, Jr., House, 4835 Flat Bridge Rd., SW., Stockbridge, 09000271

IOWA

Polk County

Clemens Automobile Company Building, 200 10th St., Des Moines, 09000272

National Biscuit Company Building, 1001 Cherry St., Des Moines, 09000273

KANSAS

Leavenworth County

Leavenworth Terminal Railway & Bridge Company Freight Depot, (Railroad Resources of Kansas MPS), 306 S. 7th St., Leavenworth, 09000274

Marion County

Florence Water Tower, 525 W. 5th St., E. of US 77 at jct. US 50 & 77, Florence, 09000275

Sedgwick County

Ablah, Frank J. and Harvey J., House, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957), 102–104 N. Pinecrest Ave., Wichita, 09000276

North Topeka Avenue Apartments Historic District, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957), 625, 630, 631, and 632 N. Topeka Ave., Wichita, 09000277

Wilkie, Grace, House, 4230 E. English St., Wichita, 09000278

KENTUCKY

Barren County

Jewell Site Complex, Address Restricted, Glasgow, 09000279

MASSACHUSETTS

Essex County

North Canal Historic District (Boundary Increase), Roughly bounded by the Merrimack and Spicket rivers, North Canal, and Broadway, Lawrence, 09000280

MISSOURI

Greene County

Springfield Public Square Historic District (Boundary Increase), (Springfield MPS), E. side Public Square, part of the 300 block Park Central E., N. side of 200 block of W. Olive, Springfield, 09000281

St. Louis Independent City, Gill, William A., Building, 622 Olive St., St. Louis, 09000282

NEVADA

Clark County

''Welcome to Fabulous Las Vegas'' Sign, The, Las Vegas Blvd., in public right of way, approx. .5 mi. S. of intersection with Russell Rd., Paradise Township, 09000284

Lorenzi Park, 3333 W. Washington, Las Vegas, 09000283

NEW YORK

Chautauqua County

Dunkirk Schooner Site, Address Restricted, Dunkirk, 09000285

Herkimer County

Holy Trinity Monastery, 1407 Robinson Rd., Jordanville, 09000286

Niagara County

House at 8 Berkley Drive, 8 Berkley Dr., Lockport, 09000287

NORTH CAROLINA

Cleveland County

Margrace Mill Village Historic District, 101–117, 102–120 Cloninger St., 101–113, 102–116, 200 Fulton Dr., 145 Ark St., 101–107, 102–114 Water Oak St., Kings Mountain, 09000288

Davie County

Barnhardt, George E., House, 291 Hartley Rd., Mocksville, 09000289

Wilkes County

Downtown Wilkesboro Historic District, (Wilkesboro MRA), Bounded roughly by Cowles and Corporation Sts., Henderson Dr., and Woodland Blvd., Wilkesboro, 09000290

Request for REMOVAL has been made for the following resources:

KANSAS

Dickinson County

Saint Patrick's Mission Church and School, NE. of Chapman, Chapman, 87888983

MISSOURI

St. Louis County

Olive Street Terra Cotta District, 600–622 Olive St., St. Louis, 86006

[FR Doc. E9–8567 Filed 4–14–09; 8:45 am]

BILLING CODE

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the

National Register of Historic Places from February 23 to February 28, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: April 9, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

Key

State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name.

DELAWARE

New Castle County

Carney, John, Agricultural Complex, 4300 Thompson Bridge Rd., Greenville Vicinity, 09000050, Listed, 2/25/09

DELAWARE

New Castle County

Rosemont, 15½ Cragmere Rd., Wilmington Vicinity, 09000051, Listed, 2/27/09

DELAWARE

Sussex County

Woman's Christian Temperance Union Fountain, Boardwalk at Rehoboth Ave., Rehoboth Beach, 09000052, Listed, 2/28/09

FLORIDA

Charlotte County

Babcock, Clarence L., House, 25537 Shore Dr., Punta Gorda, 09000053, Listed, 2/25/09

MASSACHUSETTS

Middlesex County

Coolidge School, 319 Arlington St., Watertown, 09000055, Listed, 2/25/09

NEW YORK

Suffolk County

Hopkins, Samuel, House, 415 Pipe Stave Hollow Rd., Miller Place, 09000057, Listed, 2/26/09

NEW YORK

Suffolk County

Shelter Island Country Club, 26 Sunnyside Ave., Shelter Island, 09000058, Listed, 2/25/09

OKLAHOMA

Kay County

Northside Elementary School, 720 W. Doolin Ave., Blackwell, 09000074, Listed, 2/23/09

OKLAHOMA

Kay County

Parkside Elementary School, 502 E. College, Blackwell, 09000075, Listed, 2/23/09

OKLAHOMA

Payne County

Reifsnyder, Josephine, Luston House, 2119 Sherwood, Stillwater, 09000078, Listed, 2/23/09 (Lustron Houses of Oklahoma)

OKLAHOMA

Payne County

Usher, Christian K., Luston House, 1135 E. Moses, Cushing, 09000079, Listed, 2/23/09 (Lustron Houses of Oklahoma)

OKLAHOMA

Washington County

House at 1554 SW. Rogers, Bartlesville, 09000080, Listed, 2/23/09 (Lustron Houses of Oklahoma)

OREGON

Benton County

Whiteside Theatre, 361 SW. Madison Ave., Corvallis, 09000060, Listed, 2/25/09

OREGON

Lane County

Boyer, Clarence and Ethel, House, 1138 E. 22nd Ave., Eugene, 09000061, Listed, 2/25/09

VIRGINIA

Franklin County

Piedmont Mill Historic District, 1709 Alean Rd., Boones Mill Vicinity, 09000063, Listed, 2/27/09

VIRGINIA

Henrico County

Druin-Horner House, 9904 River Rd., Richmond vicinity, 09000064, Listed, 2/25/09

VIRGINIA

Martinsville Independent City

Dry Bridge School, 1005 Jordan St., Martinsville, 09000065, Listed, 2/25/09 (Rosenwald Schools in Virginia MPS)

VIRGINIA

Petersburg Independent City

South Chappell Street Car Barn, 124 South Chappell St., Petersburg, 09000066, Listed, 2/25/09

[FR Doc. E9–8566 Filed 4–14–09; 8:45 am]

BILLING CODE

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–617]

In the Matter of Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of 19 U.S.C. 1337 by Vizio, Inc. of Irvine, California (''Vizio''); AmTran Technology Co., Ltd. of Taiwan (''AmTran''); Syntax-Brillian Corporation of Tempe, Arizona (''SBC''); Taiwan Kolin Co., Ltd. of Taiwan (''Taiwan Kolin''); Proview International Holdings, Ltd. of Hong Kong (''Proview International''); Proview Technology (Shenzhen) Co., Ltd. of China (''Proview Shenzhen''); Proview Technology, Ltd. of Garden Grove, California (''Proview Technology''); TPV Technology, Ltd. of Hong Kong (''TPV Technology''); TPV International (USA), Inc. of Austin, Texas (''TPV USA''); Top Victory Electronics (Taiwan) Co., Ltd. of Taiwan (''Top Victory''); and Envision Peripherals, Inc. of Fremont, California (''Envision'') (collectively, ''respondents'') in the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or 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 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.* 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 instituted this investigation on November 15, 2007, based on a complaint filed by Funai Electric Co., Ltd. of Japan and Funai Corporation of Rutherford, NJ (collectively ''Funai''), alleging 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 digital televisions and certain products containing the same by reason of infringement of certain claims of United States Patent Nos. 5,329,369 (''the '369 patent'') and 6,115,074 (''the '074 patent''). 72 FR 64240 (November 15, 2007). The complaint named fourteen respondents. Subsequent to institution, certain respondents were terminated from the investigation based on settlement agreements.

On November 17, 2008, the ALJ issued his final initial determination (''ID''), finding that a violation of section 337 has occurred in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and certain products containing the same by reason of infringement of claims 1, 5, and 23 of the '074 patent. The ALJ found that no violation exists with respect to the '369 patent. Respondents, the Commission investigative attorney (''IA''), and complainant Funai each filed petitions for review of the ID on December 1, 2008. The IA, the respondents, and complainant Funai each filed responses to the petitions for review on December 9, 2008.

On February 11, 2009, the Commission determined to review the ALJ's determination that the respondents infringe claim 23 of the '074 patent and requested written submissions on the issues under review, remedy, the public interest, and bonding. On February 24, 2009, the parties filed opening submissions, and on March 3, 2009, the parties filed response submissions. Several non-parties, including MediaTek, Inc., Taipei Economic and Cultural Representative Office, and Congressman Adam Schiff of California, also filed submissions addressing issues related to remedy, the public interest, and bonding.

On March 5, 2009, the respondents filed a motion for leave to file a sur-reply to Funai's response submission on remedy, the public interest, and bonding. Both the IA and Funai opposed this motion. The Commission has determined to deny the respondents' motion for leave to file a sur-reply.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to (1) reverse the ALJ's findings that the Proview and TPV respondents directly infringe claim 23 of the '074 patent and (2) affirm the ALJ's conclusion that all respondents induce infringement of claim 23 of the '074 patent.

The Commission has determined that the appropriate form of relief is (i) a limited exclusion order prohibiting the unlicensed entry of digital televisions and products containing the same that infringe one or more of claims 1, 5, and 23 of the '074 patent and are manufactured abroad by or on behalf of, or imported by or on behalf of, Vizio, AmTran, SBC, Taiwan Kolin, Proview International, Proview Shenzhen, Proview Technology, TPV Technology, TPV USA, Top Victory, and Envision; and (ii) cease and desist orders against domestic respondents Vizio, Proview Technology, TPV USA, Envision and SBC.

The Commission further determined that the public interest factors enumerated in section 337(d) and (f)(19 U.S.C. 1337(d), (f)) do not preclude issuance of the limited exclusion order and the cease and desist orders. Finally, the Commission determined that the amount of bond during the Presidential review period (19 U.S.C. 1337(j)) shall be in the amount of two dollars and fifty cents ($2.50) per article that is subject to the order. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–50).

Issued: April 10, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–8600 Filed 4–14–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–643]

In the Matter of Certain Cigarettes and Packaging Thereof; Notice of Commission Determination To Review the Presiding Administrative Law Judge's Initial Summary Determination of Violation; Schedule for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the administrative law judge's (''ALJ'') initial summary determination (''ID'') (Order No. 19) in the above-captioned investigation, in which he granted the complainant's motion for a summary determination of violation.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or 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 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*. 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: On April 4, 2008, the Commission instituted this investigation, based on a complaint filed by Philip Morris USA Inc., naming Alcesia SRL; Emarket Systems Ltd. (d.b.a. *http://all-discount-cigarettes.com*); Jamen Chong (d.b.a. *http://asiadfs.com*); Tri-kita (d.b.a. *http://cheapcigarettes4all.com*); Mr. Eduard Lee (d.b.a. *http://cigarettesonlineshop.com*); Zonitech Properties Limited (d.b.a. *http://cigline.net*); Zonitech Properties Limited (d.b.a. *http://shopping-heaven.com*); Cendano (d.b.a. *http://galastore.com*); Ms. Svetlana Trevinska (d.b.a. *http://*

save-on-cigarettes.com); LMB Trading SA (d.b.a. *http://k2smokes.ch*); G.K.L. International SRL (d.b.a. *http://all-cigarettes-brandsxom*); G.K.L. International SRL (d.b.a. *http://smokerjim.net*); and Best Product Solution Ltd. as respondents. The complainant alleges violations of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation into the United States of certain cigarettes and packaging thereof that infringe registered trademarks owned by complainant.

On December 12, 2008, the ALJ issued an ID, Order No. 13, in which he determined to extend the target date in this investigation from July 6, 2009, to September 21, 2009. No petitions for review were filed, and the Commission determined not to review Order No. 13.

On November 25, 2008, the complainant moved for an initial determination finding 11 respondents in default for failing to show cause why they should not be found in default with regard to 14 trademarks listed in the Commission's Notice of Investigation and one additional respondent in default for failing to participate in the proceeding. On January 9, 2009, the ALJ issued an initial determination, Order No. 17, granting Phillip Morris' motion for entry of default as to these 12 respondents. No petitions for review were filed, and on February 5, 2009, the Commission determined not to review Order No. 17.

On February 3, 2009, the ALJ issued Order No. 19, an initial determination granting Phillip Morris' motion for summary determination that Alcesia had violated Section 337 of the Tariff Act with respect to three trademarks: U.S. Trademark Registration Nos. 68,502; 378,340; and 894,450. On February 17, 2009, Alcesia filed a petition for review of Order No. 19. Both Phillip Morris and the Commission's Office of Unfair Import Investigations filed responses on February 23, 2009. On February 26, 2009, Alcesia filed a motion requesting leave to file a reply, which Phillip Morris opposed on March 2, 2009. On March 4, 2009, the Commission extended the deadline for determining whether to review Order No. 19 until April 9, 2009.

On February 3, 2009, the ALJ also issued Order No. 20, in which he denied Phillip Morris' request for a recommended determination on remedy and bonding on grounds that Phillip Morris' November 26, 2008 motion for summary determination did not, in fact, resolve the issues in the investigation with respect to all 14 trademarks, but only with respect to three: U.S. Trademark Registration Nos. 68,502; 378,340; and 894,450. The ALJ declined to terminate the violation phase of the investigation until Phillip Morris withdrew the 11 trademarks not addressed in its motion for summary determination.

On February 9, 2009, Phillip Morris filed a motion withdrawing the 11 trademark claims. On February 23, 2009, the ALJ issued Order No. 21 in which he granted the motion. Order No. 21 was not reviewed by the Commission. On March 18, 2009, the ALJ issued his recommendations on remedy and bonding.

The Commission has determined to review Order No. 19 in its entirety. It has also determined to deny Alcesia's motion for leave to file a reply. The Commission requests briefing by the parties to the investigation on the following questions:

(1) Does the Commission have the authority to find a foreign entity in violation of 19 U.S.C. 1337 (a)(1)(C) if that entity is not an ''owner, importer or consignee'' of the alleged gray market goods?

(2) What is the appropriate standard for the Commission to apply in gray market cases to determine whether two entities are affiliated for purposes of its ''all or substantially all'' analysis? More specifically, where the Commission is seeking to determine whether all or substantially all of a complainant's sales in the United States are of goods that contain the alleged material differences, and there is evidence that other entities in the United States or abroad have a corporate relationship with the complainant, under what circumstances should gray market sales by those other entities be imputed to the complainant?

(3) Is Phillip Morris International authorized and/or licensed to use the specific Phillip Morris USA trademarks at issue in this investigation in the manufacture and sale of cigarettes abroad? Please make specific reference to documents in the record. If Phillip Morris International was not so authorized, was this case properly brought as a gray market case?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation are asked to file written submissions on the questions posed by the Commission. Parties to the investigation, interested government agencies, and any other interested parties and on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS numbers under which the accused products are imported.

Briefing must be filed no later than close of business on May 8, 2009. Reply submissions must be filed no later than the close of business on May 29, 2009. Such submissions should address the recommended determinations on remedy and bonding which were made by the ALJ in Order No. 23 (March 18,

2009). No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

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. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

Issued: April 9, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–8569 Filed 4–14–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–463 and 731–TA–1159 (Preliminary)]

Certain Oil Country Tubular Goods From China

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–463 (Preliminary) and antidumping duty investigation No. 731–TA–1159 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of certain oil country tubular goods, provided for in subheadings 7304.29, 7305.20 and 7306.29 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China, and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by May 26, 2009. The Commission's views are due at Commerce within five business days thereafter, or by June 2, 2009.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* April 8, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on April 8, 2009, by Maverick Tube Corporation, Houston, TX; United States Steel Corporation, Dallas, TX; V&M Star LP, Houston, TX; V&M Tubular Corporation of America, Houston, TX; TMK IPSCO, Camanche, IA; Evraz Rocky Mountain Steel, Pueblo, CO; Wheatland Tube Corp., Wheatland, PA; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and BPI Service List Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 29, 2009, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than April 27, 2009, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 4, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 8, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–8507 Filed 4–14–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–012]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 23, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1149 (Final)(Circular Welded Carbon Quality Steel Line Pipe from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 6, 2009.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: April 13, 2009.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–8744 Filed 4–13–09; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act (CWA)

Notice is hereby given that on March 31, 2009, a proposed Consent Decree in the case of *U.S.* v. *City of Independence, Missouri*, Civil Action No. 4:09–cv–00240–DGK, was lodged with the United States District Court for the Western District of Missouri.

The United States filed a complaint concurrently with the Consent Decree alleging that on numerous occasions the City of Independence illegally discharged pollutants, including wastewater containing raw sewage, from its sanitary sewer system into waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. 1311. Under the Consent Decree, Independence will pay a civil penalty of $255,000 and be required to perform a comprehensive assessment of the sanitary sewer system, upgrade its pump stations, and implement improvements to its wastewater collection system and wastewater treatment plant. Independence will also perform supplemental environmental projects valued at $450,000. The environmental projects are designed to enhance water quality within the Missouri River watershed by improving storm water detention basins and stabilizing stream banks.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *U.S.* v. *City of Independence, Missouri*, D.J. Ref. No. 90–5–1–1–08702.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.00 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–8570 Filed 4–14–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–11]

Budget Drug and Wellness Center; Declaratory Order Terminating Registration

On August 24, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause to Budget Drug and Wellness Center (Respondent), of Feasterville, Pennsylvania.[1] The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BB5209223, which authorizes it to dispense controlled substances as a retail pharmacy, and the denial of any pending applications to renew or modify its registration, on the ground that it had committed acts which render its registration inconsistent with the public interest. ALJ Ex. 1.

As grounds for the proceeding, the Show Cause Order alleged, *inter alia,*

[1] Upon the commencement of the proceeding, I also immediately suspended Respondent's registration. On April 12, 2006, the suspension order was withdrawn.

that Respondent had violated its corresponding responsibility under Federal law by filling prescriptions which were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. *Id.* More specifically, the Order alleged that Respondent had ''acquired over 15 million dosage units of'' such drugs as Didrex and phentermine, which are schedule III and IV controlled substances respectively, and that Respondent was dispensing ''huge amounts of dosage units to persons who'' obtained prescriptions through the Internet and ''who [were] never actually seen or examined by a physician.'' *Id.* at 8.

Respondent timely requested a hearing. The matter was placed on the docket of the Agency's Administrative Law Judges (ALJ), and a hearing was held on March 27 through 29, 2006, at which both parties elicited the testimony of witnesses and introduced various documents into evidence. Following the hearing, both parties submitted briefs containing their proposed findings of fact, conclusions of law, and argument. Moreover, on October 11, 2007, the ALJ invited the parties to submit additional briefs in light of my decision in *United Prescription Services, Inc.,* 72 FR 50397 (2007); both parties did so.

Thereafter, on March 10, 2008, the ALJ issued her recommended decision. In her decision, the ALJ found that Respondent and its owner had repeatedly violated Federal law by filling prescriptions for controlled substances which it had reason to know were unlawful. ALJ at 64–69. The ALJ also found that Respondent's owner had failed to accept responsibility for her misconduct. *Id.* at 70. The ALJ thus concluded that ''Respondent's continued registration would be inconsistent with the public interest,'' and recommended that I revoke its registration and deny any pending applications. *Id.*

On May 2, 2008, Respondent filed exceptions to the ALJ decision. Shortly thereafter, the record was forwarded to me for final agency action.

During the course of reviewing the record, my office determined that on August 12, 2008, Respondent had been acquired by Walgreens. On the same day, Respondent also surrendered its registration certificate, as well as its order forms (DEA Form 222), to the Agency's Philadelphia Field Division Office. Letter of Charlotte J. Lopacki, R.Ph., to DEA Philadelphia Field Div. Office (August 12, 2008). There is, however, no evidence that Respondent completed a voluntary surrender form.

Based on these acts, I find that Respondent has discontinued business. Under 21 CFR 1301.52(a), ''the registration of any person shall terminate if and when such person * * * discontinues business or professional practice.'' Accordingly, I will declare that Respondent's registration has terminated with an effective date of August 12, 2008. And because there are no pending applications before the Agency, I further hold that the Show Cause proceeding is now moot.[2]

Order

Pursuant to the authority vested in me under 5 U.S.C. 554(e), as well as 28 CFR 0.100(b) & 0.104, I hereby declare terminated as of August 12, 2008, DEA Certificate of Registration, BB5209223, issued to Budget Pharmacy and Wellness Center, of Feasterville, Pennsylvania. Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I further order that the Order to Show Cause issued to Budget Pharmacy and Wellness Center be, and it hereby is, dismissed. This Order is effective immediately.

Dated: April 3, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–8617 Filed 4–14–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–50]

Sylvester A. Nathan; Dismissal of Proceeding

On June 25, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Sylvester A. Nathan, M.D. (Respondent), of Woodridge, Illinois. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AN1430343, which authorized him to dispense controlled substances as a practitioner, and the denial of any pending applications to renew or modify the registration, on the ground that the Illinois Department of Professional Regulation had suspended Respondent's ''state license to handle controlled substances,'' and that Respondent is therefore without authority to dispense controlled substances in the State in which he holds his registration. *Id.* at 1.

Respondent timely requested a hearing on the allegations and sought a five-month long continuance of the proceeding. Thereafter, the Government moved to deny Respondent's request for a continuance and for summary disposition. The basis for the summary disposition motion was that Respondent's state medical license had been suspended. As support for the motion, the Government attached: (1) A copy of a July 25, 2007 order of the Illinois Department of Financial and Professional Regulation (IDFPR), which indefinitely suspended Respondent's Illinois Physician and Surgeon's Certificate until he provided proof that he has passed the Special Purpose Examination (SPEX); and (2) a July 8, 2008 printout of Respondent's Physician Profile from the IDFPR's Web site, which indicated that the status of Respondent's license was ''suspended.''

Thereafter, the ALJ issued an Order for Respondent's Response. On August 11, 2008, Respondent submitted his response in which he acknowledged that since July 25, 2007, he ''has no authority to prescribe, handle or [d]ispense any [c]ontrolled medical substances in the state'' of Illinois. With the submission, Respondent also enclosed his DEA Certificate of Registration but indicated on the document that it was being ''returned under protest.''

Shortly thereafter, the ALJ granted the Government's motion for summary disposition. ALJ at 6. The ALJ noted that there was no dispute that ''Respondent is not authorized to practice medicine in Illinois'' and thus could not ''prescribe controlled substance in that State.'' *Id.* at 5. Applying the Agency's longstanding interpretation that the Controlled Substances Act precludes the continuation of a registration if the practitioner no longer holds authority to dispense controlled substances in the State in which he practices medicine, *id.* (collecting cases); the ALJ granted the Government's motion and recommended that Respondent's registration be revoked and that any pending application be denied.

Respondent did not file exceptions to the ALJ's decision. On September 11, 2008, the record was forwarded to me for final agency action. Having considered the entire record and having taken official notice of the registration

[2] While I have raised the issue of Respondent's registration status *sua sponte,* in the event Respondent seeks to refute the factual basis upon which I rely, it may do so by filing a motion for reconsideration within fifteen days of the date of service of this Order, which shall begin on the date the Order is mailed.

records of this Agency,[1] I find that Respondent's registration expired on October 31, 2008, and that Respondent has not submitted a renewal application, let alone a timely one (which would have kept his registration in effect pending the issuance of this decision).

It is well settled that ''[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' Ronald J. Riegel, 63 FR 67132, 67133 (1998); *see also William W. Nucklos*, 73 FR 34330 (2008). Because Respondent's registration has expired and there is no pending application to act upon, I conclude that this case is now moot.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that the Order to Show Cause issued to Sylvester A. Nathan, M.D., be, and it hereby is, dismissed.

Dated: April 3, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–8625 Filed 4–14–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 05–43]

Gregg & Son Distributors; Grant of Conditional Registration

On August 3, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Gregg & Son Distributors (Respondent), of Powell, Tennessee. The Show Cause Order proposed the revocation of, and the denial of its pending application to renew, Respondent's DEA Certificate of Registration, which authorizes it to distribute the List I chemicals pseudoephedrine and ephedrine, on the ground that its registration ''is inconsistent with the public interest.'' Order to Show Cause at 1.

More specifically, the Show Cause Order alleged that Respondent's customers for List I chemical products ''are almost exclusively * * * entities such as convenience stores and small independent grocery stores,'' and that these retailers are a primary source for the diversion of these products into the illicit manufacture of methamphetamine, a schedule II controlled substance. *Id.* at 1–2. The Order further alleged that Respondent was selling ''products that are not sold in traditional retail outlets, including over one dozen ephedrine products and various pseudoephedrine products,'' *id.* at 2–3, that according to an expert utilized by the Agency, ''the average small store could expect to sell monthly only about $ 10.00 to $ 30.00 worth of pseudoephedrine products,'' and ''that the potential for sales of combination ephedrine products [was] about only one-fourth of [these] sales levels.'' *Id.* at 4. Relatedly, the Order alleged that ''it is highly unlikely that [Respondent's customers] would sell a large volume of List I chemical products for legitimate uses,'' that Respondent's ''sales of combination ephedrine products and pseudoephedrine products are inconsistent with the known legitimate market and known end-user demand for products of this type,'' and that Respondent ''is serving an illegitimate market for these products.'' *Id.* at 4–5.

The Show Cause Order further alleged that in March 2005, DEA Investigators conducted an inspection of Respondent. *Id.* at 2. According to the allegations, the Investigators conducted an audit of six ephedrine products distributed by Respondent between December 27, 2003, and March 15, 2005, and found ''substantial underages and overages for these products.'' *Id.* at 3.

The Order also alleged that during the inspection, the Investigators discovered that Respondent sold '''lovers' roses,' devices with small roses contained inside a glass vial cylinder,'' and that ''[t]hese products are considered drug paraphernalia because the vials are used to smoke methamphetamine and [crack] cocaine.'' *Id.* The Order further alleged that Mr. Dennis Gregg, Respondent's owner, ''acknowledged that he was aware of the illicit use of lovers' roses.'' *Id.*

Finally, the Order alleged that after the inspection, Investigators visited three of Respondent's customers and obtained information which indicated that Respondent's products were being diverted. *Id.* at 3. More specifically, the Order alleged that at the first store, one customer purchased two (forty-eight count) bottles each day, and that at a second store, the manager stated that she had only a few customers who purchased the products but that they did so regularly, and ''that she believed that most of the List I chemical products sold in her store went to 'meth labs.''' *Id.* at 3. Finally, the Order alleged that at the third store, the owner stated ''that he was a former law enforcement officer'' and that ''he was certain that most or all of the ephedrine sold at his store [was] used for illicit methamphetamine production.'' *Id.* at 3–4.

On or about August 30, 2005, Respondent requested a hearing on the allegations; the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). On April 18 and 19, 2006, a hearing was held in Nashville, Tennessee, at which both parties called witnesses to testify and submitted documentary evidence. Following the hearing, both parties submitted briefs containing their proposed findings of fact, legal conclusions, and argument.

On February 29, 2008, nearly twenty-two months after the hearing, the ALJ issued her recommended decision (ALJ). Because Respondent's sales levels of ephedrine products ''far exceed the expected legitimate market demand,'' the ALJ concluded that the Government had established its *prima facie* case that its continued registration is inconsistent with the public interest. ALJ at 41. The ALJ reasoned, however, that a sanction less severe than revocation was warranted because Tennessee had recently enacted legislation that ''placed extensive limits upon the products [Respondent could] sell,'' that Respondent was in ''compliance with the Act,'' *id.*, and that the Agency had not provided evidence that its sales of gel cap products were excessive. *Id.* at 39. The ALJ further concluded that there was a ''lack of evidence in [the] record showing that soft-gel listed chemical products have actually been made into methamphetamine at illicit laboratories.'' *Id.* at 41.

The Government filed exceptions to the ALJ's decision, and Respondent filed a Response to the Government's exceptions.[1] Thereafter, the record was forwarded to me for final agency action.

[1] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute these facts by filing a properly supported motion for reconsideration within fifteen days of service of this order, which shall begin on the date this order is mailed.

[1] Therein, the Government argued that the record not only showed that listed chemical products in gel cap form have been diverted, but that in various decisions I have previously rejected the ALJ's reasoning that the Agency cannot revoke a registration until the actual diversion of gel cap products is substantiated. Exceptions at 2–3 (citing *Holloway Distributing*, 72 FR 42118 (2007), *T. Young Associates*, 71 FR 60567 (2006)).

Continued

Having considered the entire record in this matter, I conclude that the Government has not established a *prima facie* case that Respondent's continued registration is inconsistent with the public interest. I conclude, however, that Respondent violated federal law by distributing drug paraphernalia. While this conduct warrants the suspension of Respondent's registration, because it has otherwise complied with federal law and regulations I conclude that the suspension should be stayed. I make the following findings.

Findings of Fact

Respondent is a distributor of sundry items including non-prescription drug products containing ephedrine and pseudoephedrine to convenience stores, small groceries, and gas stations located in eastern Tennessee.[2] Tr. 169. Respondent is owned by Mr. Dennis Gregg and is run out of Mr. Gregg's home in Powell, Tennessee. *Id.* at 168–69; GX 1. Mr. Gregg has been involved in the wholesale distribution business since 1973 and started Respondent sometime around 1991.[3] *Id.* at 171.

Respondent has held a DEA Certificate of Registration to distribute ephedrine, pseudoephedrine and phenylpropanolamine (PPA)[4] since 1998. GX 1, at 2. While the expiration date of the last registration issued to Respondent is September 30, 2005, *id.*, on August 8, 2005, Respondent filed an application to renew its registration. Joint Status Report at 1. I therefore find that Respondent filed a timely renewal application and that its registration remains in effect pending the issuance of this Order. *See* 5 U.S.C. § 558(c).

Both ephedrine and pseudoephedrine have legitimate therapeutic uses.[5] *See, e.g.,Tri-County Bait Distributors* , 71 FR 52160, 52161 (2006). Both chemicals are, however, regulated as list I chemicals under the Controlled Substances Act because are they extractable from non-prescription drug products and have been frequently diverted into the illicit manufacture of methamphetamine, a schedule II controlled substance. *See* 21 U.S.C. 802(34); 21 CFR 1308.12(d).

Methamphetamine ''is a powerful and addictive central nervous system stimulant.'' *T. Young Associates, Inc.*, 71 FR 60567 (2006). As noted in numerous Agency decisions, the illegal manufacture and abuse of methamphetamine pose a grave threat to this Nation. *Id.* Methamphetamine abuse has destroyed numerous lives and families, and has had a devastating impact on many communities. *Id.* Moreover, because of the toxic nature of the chemicals used in making the drug, illicit methamphetamine laboratories create serious environmental harms. *Id.*

The Investigation of Respondent

Respondent was first inspected by a DEA Investigator in 1998. Tr. 239. At the time of the inspection, Respondent was selling bottled pseudoephedrine, and during the inspection, the Investigator told Mr. Gregg that ''pseudoephedrine was a very dangerous product.'' *Id.* at 179. The DI, however, made no similar reference to ephedrine being dangerous. *Id.* at 241. Thereafter, Respondent stopped selling bottled pseudoephedrine and limited his sales of the product to two-tablet packages. *Id.* at 179–80. Respondent did, however, continue to sell combination ephedrine products in bottles containing forty-eight and sixty tablets, as well as six-tablet packages. *Id.* at 180.

In August 2003, another DI requested that Respondent provide him with information regarding its average monthly sales of List I products to its various customers. *Id.* at 182–83. Mr. Gregg's wife compiled the information and provided it to the DI. *Id.* at 183–84; *see also* RX 6. The DI subsequently called Mr. Gregg's wife and told her that the report was ''exactly what he needed.'' Tr. 183. The DI did not raise any objection as to the quantities of products being sold by Respondent. *Id.*

On March 15, 2005, several DIs visited Respondent to perform an inspection. As part of the inspection, the DIs obtained a product list (GX 3) from Mr. Gregg and chose several products to be audited. Tr. 58–61. While the DIs obtained various records from Respondent and commenced an audit, *id.,* the Government did not introduce into evidence the results of the audit.[6]

During the audit, and upon determining that Respondent was distributing what he termed ''gray market products,'' one of the DIs asked Respondent to voluntarily surrender his registration. *Id.* at 33. During the hearing, the DI testified that he did so even though there was no evidence that Respondent had violated any rule of the Agency and that he had requested the surrender ''solely based on [Respondent's] handling * * * of gray market products.'' *Id.* at 51.

The DI further testified that during the inspection, he determined that Respondent was selling an item known as a ''Love Rose.''[7] *Id.* at 33. According to the DI, this item, which includes a small flower packaged inside of a glass tube, constitutes ''drug paraphernalia'' because it is easily adapted for use in, and frequently used for, smoking both crack cocaine and methamphetamine, and is ''commonly referred to as [a] crack pipe.'' *Id.* at 33–34.

During the inspection, Mr. Gregg acknowledged that he knew that this item was used to smoke crack and told the DI ''that he didn't want to sell them anymore.'' *Id.* at 35. Mr. Gregg testified that approximately a month before the inspection he had decided that because the item was misused, once he sold his remaining stock of the item (which he did to a single person, *id.* at 293), he would stop carrying them. *Id.* at 218–19. According to Mr. Gregg, several of his customers had told him that they thought the product was ''being used for a crack pipe,'' but that he would ''occasionally'' see people in stores buying this item and that with respect to some of them he ''could tell they're not going to smoke something with it.''

The Government further argued that the ALJ ignored its evidence of Respondent's sales of gel cap products between June 2005 and November 2005, which showed it was ''sell[ing] inordinate amounts of ephredrine-based products in gel cap form.'' *Id.* at 5. In support of its contention, the Government provided in its exceptions a list of Respondent's average monthly sales of these products to its various customers during this period. *Id.* at 6–9. Noting testimony in another proceeding that the average monthly retail sale of ephedrine products at convenience stores was $12.48, and that a monthly retail sale of $60.00 ''at a convenience store would occur about once in a million times in random sampling,'' *id.* at 9, the Government contended ''that virtually all'' of Respondent's gel-cap ephedrine customers were ''selling extraordinary amounts [which are] far beyond what would be expected in a legitimate market.'' *Id.*

While I consider the calculations, I note that this data was not provided—as it should have been—while the record was open. To make clear, it is the Government's obligation as part of its burden of proof and not the ALJ's responsbility to sift through the records and highlight that information which is probative of the issues in the proceeding. *Cf. Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36503 n.25 (2007).

[2] Respondent also has customers in North Carolina and Virginia. Tr. 169.

[3] The record does not establish whether Respondent is organized as a corporation, a partnership, or a sole proprietorship.

[4] While Respondent has held a registration to distribute PPA since 1998, it is undisputed that Respondent had long since stopped selling products containing PPA and had requested that it be deleted from the list of chemicals it is authorized to distribute. Tr. 178.

[5] Under the Food, Drug and Cosmetic Act, ephedrine (in combination with guaifenesin) is currently approved for marketing as a non-prescription bronchodilator. *See* 70 FR 40233 (2005).

[6] Mr. Gregg maintained that the audit was inaccurate because the DIs had left out numerous invoices documenting both Respondent's purchases and its distributions. *See* RX 5. Because the Government did not introduce the audit results, it is unnecessary to resolve this factual dispute.

[7] Throughout the proceeding, the parties referred to this item as both a ''Love Rose'' and ''Lover's Rose.'' Accordingly, these terms are used interchangeably in this decision.

Id. at 292. As for other customers he saw purchasing the items, Mr. Gregg maintained that he could not ''judge them'' and what they would use the product for because he is ''just a human'' and ''not God.'' *Id.*

Respondent also introduced into evidence a document which listed his purchases of this product from the Sessions Specialty Company. RX 10. According to the document, between April 28, 2003, and February 18, 2005, Respondent purchased 225 units at a total cost of $396.25. *Id.* Respondent's last purchase of the item was in February 2005, when it obtained twenty-five units for which it paid $36.25. *Id.*

Following the inspection, a DI visited three of Respondent's customers. At the first store, the Westgate Market, the manager told the DI that there were ''very few customers for the List I'' products that the store obtained from Respondent, but that the customers ''were repeat customers.'' Tr. 36.

At the second store, the Sloan Center, which was a truck stop complex with both a large gas station and convenience store, the manager told the DI ''that she was aware that all these * * * List I chemical products were used for methamphetamine.'' *Id.* at 37. The manager also stated that the store had sold other products which are used in the illicit manufacture of methamphetamine including steel wool, matches, coffee filters, and that because ''in her experience,'' the products ''were selling much too quickly'' to be satisfying legitimate consumer demand, ''she had removed [the products] from the shelves.'' *Id.* at 37–38. The DI also testified that the manager had told him ''about the only people that bought'' the listed chemical products, but offered no further details regarding their characteristics. *Id.* at 37.

Finally, the DI visited the Tellico Pride, which was managed by a former police officer. *Id.* at 39. The manager told the DI that he knew ''from his experience'' as both a police officer and store manager that the ephedrine products the store sold were being used for methamphetamine production.[8] *Id.* at 39.

The DI did not relate any of this information to Mr. Gregg. Tr. 71–72. Moreover, Mr. Gregg testified that none of his customers had ever told him that the combination ephedrine products he sold were being diverted, *id.* at 202–03; and that he did not believe that his products were being diverted. *Id.* at 260. Mr. Gregg further stated that if a customer told him this, he would tell them to ''call the officials'' and he ''would not sell to that customer.'' *Id.* at 203.[9]

On cross-examination, Mr. Gregg maintained that he would periodically ask his customers if they have repeat customers and told them not to sell more than two thirty-six count blister packs to a customer. *Id.* at 322–23. He also did not recall any customer telling him that people were purchasing the products every other day, although he acknowledged that some customers had told him that people were buying the products either once or twice a week. *Id.* at 323–24. He further maintained that he told his stores that they should not sell to persons who showed up every day. *Id.* at 325.

As evidence of his efforts to prevent diversion, Mr. Gregg provided posters to some of his customers which listed products that could be diverted into meth. production. *See* RX 7. Moreover, even prior to the enactment of the Meth Free Tennessee Act, Mr. Gregg had provided to most of his ephedrine customers ''hundreds of * * * acrylic cases'' for storing the products, which are placed ''behind the counter.'' Tr. 192–193. Mr. Gregg testified that he placed stickers inside the cabinets which stated that customers could only purchase ''two bottles a day'' and that the products could not be sold to minors. *Id.* at 196. Mr. Gregg maintained that he would stamp his sales invoices with the following statement: ''Please limit a customer two bottles of ephedrine per day.'' *Id.*; *see also* RX 12.

Furthermore, following the passage of the Meth Free Tennessee Act, which prohibited sales of tablet-form listed chemical products, Respondent retrieved the products from his customers and sold them to stores in neighboring States where the products were still legal. Tr. 202. Nor is it disputed that Respondent provides adequate security for the products at its registered location. Finally, Respondent offered evidence that it is conducting weekly audits of its handling of list I chemical products, *id.* at 213–14, and Respondent has never been issued a warning letter regarding its handling of the products.

Respondent's Sales Levels and the Market for List I Chemicals

The Government's principal allegation in this proceeding is that Respondent was selling combination ephedrine products at levels that far exceed legitimate demand for the products for their approved therapeutic use as a bronchodilator, and that the products Respondent sells are likely being diverted. *See* Order to Show Cause at 4. As proof of this allegation, the Government submitted a declaration from an expert witness which concluded that ''the vast majority of American consumers'' purchase non-prescription drug products at pharmacies, supermarkets, large discount merchandisers, or through electronic shopping/mail-order establishments. GX 10, at 5 (declaration of Jonathan Robbin). Relatedly, the expert stated that convenience stores and gas stations such as Respondent's customers ''constitute [the] nontraditional market for the sale of * * * non-prescription drug pseudoephedrine products.'' *Id.* at 6.

In this declaration (which was initially prepared five years earlier for a proceeding which involved a different Tennessee wholesaler), the expert further concluded that ''the normal expected retail sale of pseudoephedrine (hcl) tablets in a convenience store may range between $10 and $30 per month, with an average of about $20 per month,'' and that the average store would spend ''about $12 per month acquiring an inventory of pseudoephedrine (hcl) tablets at wholesale from a distributor.'' *Id.* at 8–9. The expert also stated that a sale of pseudoephedrine by a convenience store ''of over $100 a month * * * would be expected to occur in random sampling about once in a million raised to the tenth power, a number nearly equal to a count of all the atoms in the universe.'' *Id.* at 8.

The expert further opined that sales of combination ephedrine products are about one-fourth the amount of pseudoephedrine sales and thus sales of ephedrine at the same level as pseudoephedrine sales are considerably less likely to be for legitimate demand than sales of pseudoephedrine. *Id.* at 10–11. The expert thus concluded that sales of listed chemical products in

[8] The DI also visited a law enforcement station located in the Cherokee National Forest, which was approximately ten miles from the Tellico Pride store. Tr. 40–41. There, the DI was told that the authorities had found six sites where waste created by illicit methamphetamine manufacturers had been dumped. *Id.* at 40–41.

[9] Mr. Gregg further testified that he did not become aware of the risk that combination ephedrine products could be diverted until the spring of 2005, when the DIs explained this to him, and the State of Tennessee enacted the Meth Free Tennessee Act. *Id.* at 261. Respondent also introduced into evidence several posters (which he provided to his customers) directed at retail store employees which listed various items used to make methamphetamine including ephedrine. *See* RX 7. Mr. Gregg's testimony certainly pushes the limits of plausibility.

amounts similar to Respondent's sales [10] are inconsistent with legitimate demand for the products. *Id.* at 11.

Notably, the expert's declaration contains no explanation as to his basis for concluding that ephedrine sales are only one-fourth of pseudoephedrine sales. *See generally id.* at 1–12. Moreover, after the record closed in this matter, the expert's methodology for calculating the sales levels of ephedrine was challenged in another proceeding and found wanting. *See Novelty Distributors, Inc.*, 73 FR 52689, 52693–94 (2008).

It is true that in this matter, Respondent did not raise similar challenges to the expert's methodology.[11] The Agency cannot, however, ignore the ultimate finding in *Novelty* which rejected the expert's conclusions as to the expected sales range of ephedrine products. Moreover, since the issuance of the *Novelty* decision, the Government has not offered any briefing as to why it would still be appropriate to adopt the expert's conclusions.[12] I therefore conclude that the expert's declaration does not constitute substantial evidence as to the expected sales range of ephedrine products to meet legitimate demand at convenience stores and gas stations. *See* 5 U.S.C. § 556(d).

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to distribute a list I chemical ''may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). Moreover, under section 303(h), ''[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.'' 21 U.S.C. 823(h). In making the public interest determination, Congress directed that the following factors be considered:

(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance by the applicant with applicable Federal, State, and local law;

(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) such other factors as are relevant to and consistent with the public health and safety.

Id. § 823(h).

''These factors are considered in the disjunctive.'' *Joy's Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked or an application for a registration should be denied. *See, e.g., David M. Starr*, 71 FR 39367, 39368 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (DC Cir. 2005).

The Government, however, bears the burden of proof. 21 CFR 1301.44(d). Having considered the entire record in this matter, I conclude that the Government has not established that Respondent does not maintain effective controls against diversion. Moreover, while I find that Respondent violated Federal law when it sold the Lover's Roses even after he became aware that this item is used to smoke illicit drugs, I conclude that this single violation, which involved a nominal amount of this item, does not support the revocation of its registration. Based on the extensive evidence of Respondent's efforts to responsibly comply with Federal and state laws, I conclude that Respondent's registration should be suspended but that the suspension should be stayed for a period of probation.

Factor One—The Maintenance of Effective Controls Against Diversion

It is undisputed that Respondent maintains adequate security with respect to the storage of listed chemicals at its registered location. In the Show Cause Order, the Government alleged, however, that Respondent did not maintain effective controls against diversion for two additional reasons: (1) an audit performed during the March 2005 inspection found ''substantial underage and overages'' for several products, and (2) Respondent's sales of combination ephedrine products were ''inconsistent with the known legitimate market and known end-user demand for products of this type,'' and therefore Respondent ''is serving an illegitimate market for these products.'' Show Cause Order at 3–4.

Neither of these allegations is supported by substantial evidence. As for the allegations pertaining to the audit, while the record establishes that an audit was conducted during the March 2005 inspection, the Government did offer the audit results into evidence. Accordingly, there is no basis to conclude that Respondent does not maintain adequate ''systems for monitoring the receipt, distribution and disposition'' of the List I products it distributes. *See* 21 CFR 1309.71(b)(8). The allegation is therefore rejected.

The Government also argues that Respondent was distributing combination ephedrine products in quantities that greatly exceed legitimate demand for these products at convenience stores, small markets and gas stations, and that its sales levels are consistent with diversion of the products into the illicit manufacture of methamphetamine. *See* Gov. Exceptions at 3–9. Moreover, the Government contends that even though Respondent complied with Tennessee law by ceasing its distribution of tablet-form products and selling only gel-caps to its Tennessee customers, even those sales are excessive. *See* Gov. Exceptions at 6–9 (listing Respondent's average monthly sales of gel cap products).

The Government's theory is based on expert testimony, which was credited in other cases, regarding the average monthly retail sale of ephedrine products at convenience stores and the statistical improbability that various sales levels were consistent with legitimate demand. However, as explained above, in *Novelty Distributors*, I found that the methodology used by the Government's expert in determining these figures was unreliable. I further concluded that the expert's figures for the average monthly sale and the statistical improbability of various sales of ephedrine to meet legitimate demand were not supported by substantial evidence.

Here, the Government relies on the expert's written testimony, which putting aside that it primarily addressed pseudoephedrine and offered nothing more than a conclusory assertion as to the level of ephedrine sales, appears to have been based on the same methodology which I rejected in *Novelty*.[13] I therefore again conclude

[10] The expert did not review any data pertaining to Respondent.

[11] Respondent did, however, argue that the declaration should be given ''minimal consideration'' because it was executed in September 2003, the expert did not review ''any information concerning'' Respondent, and it was ''not based upon the most recent statistical figures available.'' Resp. Proposed Findings at 19.

[12] Nor has the Government sought a remand to put on additional evidence as to the expected sales range to meet legitimate demand.

[13] It is noted that the expert's methodology involves various steps and that some of the problems identified with respect to ephedrine (such as the expert's purported use of consumer survey data which did not report any information specific to ephedrine, *see* 73 FR at 52693–94), may not be

that the Government's figures as to the monthly expected sales range to meet legitimate demand (and the statistical improbability of certain sales levels in legitimate commerce) are not supported by substantial evidence. Consistent with these findings, I am compelled to reject the Government's contention that Respondent's sales of gel-cap ephedrine products ''are far in excess of any legitimate market for the product'' and ''that the products are being diverted to the illicit manufacture of methamphetamine.'' [14] Gov. Exceptions at 5; *see also* Show Cause Order at 3–4.

It is true that the Government's evidence included testimony regarding the hearsay statements of two store managers which raise the suspicion that Respondent's products were being diverted by customers of those stores. But there is no evidence that the managers ever related their suspicions to Respondent, and Mr. Gregg testified that he would cut off sales to a customer if the customer told him that the products were being diverted.[15] Relatedly, while in 2003, Respondent had submitted—at the Agency's request—a report regarding its estimated sales of list I products at each of its customers, no one at the Agency ever raised any objection regarding the quantities it was selling.

Nor did the Government introduce any evidence to question the credibility of Mr. Gregg's testimony that he had stopped selling bottled pseudoephedrine and sold only two tablet packages of this product upon being told by a DI years earlier that these products were dangerous and that the DI had not mentioned combination ephedrine products as raising the same concern. Finally, the record establishes that Respondent attempted to educate its customers regarding diversion and provided special cases to them for storing the products and had done so years before the enactment of laws requiring that they be kept either behind the counter or in a locked case. *See* 21 U.S.C. § 830(e)(1)(A). In sum, the record as a whole does not establish that Respondent has failed to maintain effective controls against diversion.

Factor Two—Respondent's Compliance With Applicable Laws

The Government further maintains that Respondent violated Federal law because he knowingly sold drug paraphernalia (*i.e.*, the Love Roses). Gov. Proposed Findings at 8 (citing 21 U.S.C. 863). According to the testimony of a DI, this product is easily modified and used to smoke such substances as crack cocaine and methamphetamine. Moreover, at the hearing, Mr. Gregg acknowledged that shortly before the March 2005 inspection and his final sale of the product, he had become aware that the product was used to smoke crack. Notwithstanding this information, Respondent sold his remaining supply which amounted to approximately twenty-five of the Lover's Roses and stopped carrying the product.

The ALJ rejected the Government's argument as ''tenuous,'' noting that under Federal law the term ''drug paraphernalia'' is defined as an item ''*primarily intended or designed for* use in ingesting, inhaling, or otherwise introducing [controlled substances] into the human body.'' ALJ at 33 (quoting 21 U.S.C. 863(d)). According to the ALJ, ''the primary purpose of a love rose appears to be decorative in nature * * * [and] [t]hus, this product was not primarily manufactured or designed to be used for the ingestion of a controlled substance.'' *Id.* (quoting Tr. 218) (testimony of Mr. Gregg; ''when it first started out, all it was, was a cute little rose in a tube'').

The ALJ, however, failed to acknowledge Supreme Court precedent interpreting the same statutory language which was used in the since repealed statute, 21 U.S.C. § 857. *See Posters 'N' Things, Ltd.* v. *United States*, 511 U.S. 513, 516 n.5 (1994).[16] In *Posters 'N' Things*, the Court explained that Section 863(d) ''identifies two categories of drug paraphernalia: items 'primarily intended * * * for use' with controlled substances and items 'designed for use' with such substances.'' *Id.* at 518. With respect to the latter category, the Court explained that ''[a]n item is 'designed for use' * * * if it 'is principally used with illegal drugs by virtue of its objective features, *i.e.*, features designed by the manufacturer.' '' *Id.* (quoting *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 501 (1982)).

As for the ''primarily intended * * * for use'' language, the Court acknowledged that the term ''could refer to the intent of nondefendants, including manufacturers, distributors, retailers, buyers or users.'' *Id.* at 519. Based on its analysis of the statute's text and structure, the Court concluded that the term ''is to be understood objectively and refers generally to an item's likely use.'' *Id* at 521. The Court further explained that where an item has multiple uses, ''it is the likely use of customers generally, [and] not [of] any particular customer, that can render a multiple-use item drug paraphernalia.'' *Id.* at 522 n.11.

While the Court construed section 857 as imposing a scienter requirement of knowledge, the Court held that ''the knowledge standard in this context [does not] require knowledge on the defendant's part that a particular customer actually will use an item of drug paraphernalia with illegal drugs.'' *Id.* at 524. The Court further explained that ''[i]t is sufficient that the defendant be aware that *customers in general are likely to use the merchandise with drugs*. Therefore, the Government must establish that the defendant knew that the items at issue are likely to be used with illegal drugs.'' *Id.* (emphasis added) (citing *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 444 (1978) (''knowledge of 'probable consequences' sufficient for conviction'')).[17]

The ALJ's reasoning that an item is not ''drug paraphernalia,'' unless it was ''primarily manufactured or designed to be used for the ingestion of a controlled substance,'' ALJ at 33, ignores the Supreme Court's holding that section 863(d) identifies two different categories of drug paraphernalia and that the ''primarily intended * * * for use'' category ''refers generally to an item's likely use'' by those who use it. 511 U.S. at 521. Applying this standard, the evidence establishes that a Love Rose's likely use is to smoke illicit drugs and that Respondent sold the products

a valid criticism of the methodology as it is applied to pseudoephedrine (because there may be more extensive data). Even so—and ignoring that the declaration discusses pseudoephedrine and not ephedrine (the chemical at issue in this case)—the expert's declaration contains none of the underlying data and calculations such as the number of stores used in determining the average sales per store.

[14] It is further noted that while the Government calculated the average monthly purchase of Respondent's various List I customers, it did not calculate the mean and standard deviation for all stores and did not show any instances in which sales to particular stores greatly exceeded what its typical customer purchases. *See* 73 FR at 52700.

[15] Indeed, the Government's figures for Respondent's monthly sales to the two stores do not stand out as suggesting that diversion was occurring.

[16] As the Supreme Court explained in *Posters 'N' Things*: ''The language of § 863 is identical to that of former § 857 except in the general description of the offense.'' 511 U.S. at 516 n.5. Of note, section 863 expanded the scope of prohibited acts with respect to drug paraphernalia and did not alter the definition of the term ''drug paraphernalia.'' *See id.* Accordingly, the Court's interpretation of the term applies here.

[17] *See also United States* v. *Mishra*, 979 F.2d 301, 307 (3d Cir. 1992) (''Government must prove that defendant 'contemplated, or reasonably expected under the circumstances, that the item sold or offered for sale would be used with illegal drugs'') (quoted at 511 U.S. at 524 n.13); *United States* v. *Schneiderman*, 968 F.2d 1564, 1567 (2d Cir. 1992) (''Government must prove that defendant 'knew there was a strong probability the items would be so used.' '') (quoted at 511 U.S. at 524 n.13).

knowing that they were ''likely to be used with illegal drugs.'' *Id.* at 524.

At the outset, it should be noted that Congress expressly included in the definition of ''drug paraphernalia,'' a list of items which ''constitute[e] *per se* drug paraphernalia.'' *Id.* at 519. Of relevance here, Congress included in this list ''metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens.'' 21 U.S.C. 863(d). As the record shows, a Love Rose is nothing more than a small and fake flower inserted in a glass pipe, Tr. 33; that the pipe contains a flower does not make it any less a pipe.[18] *See Posters 'N' Things,* 511 U.S. at 518 (observing that certain items ''including bongs, cocaine freebase kits, and certain kinds of pipes, have no other use besides contrived ones (such as use of a bong as a flower vase)''). The item thus falls within the statutory definition of ''drug paraphernalia.'' *See* 21 U.S.C. 863(d).

Furthermore, even if the Love Rose does not fall strictly within the ''list of * * * items constituting *per se* drug paraphernalia,'' 511 U.S. at 519, there was ample evidence establishing that the item's ''likely use'' is to ingest illicit drugs. *Id.* at 521. An agency Investigator testified that the Lover's Roses are ''commonly referred to as crack pipes,'' and that they are ''used to smoke crack'' and methamphetamine. Tr. 34; *cf.* Sharon Tubbs, *A Crack Pipe by Any Other Name*, St. Petersburg Times (Aug. 10, 2001) (Floridian Section) (''The outsider assumes the rose tubes are meant to attract the impulse buyer who picks up a chintzy gift for his sweetie. But for addicts, the buy is anything but an impulse. Addicts go to stores looking for rose tubes, calling them 'stems'—street talk for [a] crack pipe.'').

The DI further explained the ease with which this item is adapted for use as a crack or meth. pipe. *Id.* Finally, it is undisputed that at the time of the inspection—and before he sold his final stock—Mr. Gregg was aware of what this item was used for. *Id.* at 35. Indeed, Mr. Gregg testified that several of his customers had told him what the item was used for. *Id.* at 292. Thus, at the time he sold his remaining supply, Mr. Gregg was ''aware that customers in general [we]re likely to use the merchandise with drugs.'' 511 U.S. at 524.

Contrary to the ALJ's reasoning, ALJ at 34, once Mr. Gregg became aware of the product's likely use, it was unlawful for him to sell it. As for the ALJ's rational that ''at some point the responsibility for the *misuse* of the * * * product * * * must rest upon the person * * * illegally ingesting a controlled substances through * * * the tube,'' *id.*, Congress, by prohibiting the knowing sale of drug paraphernalia, has concluded otherwise. I thus hold that Respondent violated federal law when it sold its remaining stock of love roses. 21 U.S.C. 863(a)(1).

The record establishes, however, that Respondent's violation involved only the sale of a small quantity of this item, which was likely no more than twenty-five units (and for which Respondent paid $ 36.25). RX 10. Moreover, it is undisputed that Respondent stopped selling the product after this sale. Furthermore, other evidence suggests that Respondent has promptly complied with the requirement of recently enacted state and federal laws. *See* Tr. 224–25. Accordingly, while Respondent's violation of 21 U.S.C. § 863(a) cannot be condoned, the limited nature of the violation and Respondent's overall record of compliance with applicable laws does not support the conclusion that its continued registration is inconsistent with the public interest.[19]

Factor Four—Respondent's Experience in the Distribution of Chemicals

Respondent has been registered since 1998. During this period, it has never been issued a warning letter and the record does not establish any other deficiencies in its handling of list I chemicals.[20] Furthermore, with the exception of the violation discussed above, the record indicates that Respondent has been attentive to his responsibilities as a registrant.

For example, it is undisputed that upon being told that bottled pseudoephedrine was a dangerous product, Respondent stopped carrying the product and limited his sales to two-tablet packages. When Tennessee banned tablet-form products, Respondent retrieved the products from his customers.

Moreover, Respondent voluntarily submitted to the Agency information regarding its sales of the products and no one from the Agency ever objected to the quantities of products it was selling. Respondent also provided posters from Tennessee Meth Watch (a program of the Tennessee Bureau of Investigation) and the Southeast Tennessee Methamphetamine Task Force which identified numerous products which are used in the illicit manufacture of methamphetamine. RX 7. In addition, Respondent took steps—long before they were required by state or federal law—to protect the products from theft at his customers.

While proof that Respondent was selling quantities of products that are consistent diversion would outweigh all of the above and would support an adverse finding under this factor, as explained above, the Government has not met its burden of proof on this allegation. I therefore conclude that this factor supports the continuation of Respondent's registration.

Factor Five—Other Factors Relevant to and Consistent With Public Health and Safety

At the hearing, a DI testified that it was agency policy to seek the revocation of the registration issued to any person or entity which distributes listed chemicals to the non-traditional market. Tr. 82. Based on this testimony, Respondent contends that the Agency is in violation of the Administrative Procedure Act (APA) because it has adopted a substantive ''rule for effecting automatic registration revocations of all entities distributing List I products to gray market entities'' without engaging in notice and comment rulemaking under 5 U.S.C. 553. Resp. Prop. Findings at 25–26.

Relatedly, in an appendix, the ALJ opined that there is an ''agency-wide policy of revoking the registrations of 'gray market' distributors'' and that this policy ''is substantive, rather than procedural, in nature.'' ALJ at 46. Continuing, the ALJ recommended ''that the [A]gency should not proceed against listed chemical distributors on such a *'rule' alone* because the [A]gency has not'' engaged in notice and comment rulemaking. ALJ at 47 (emphasis added).

Neither Respondent's argument nor the ALJ's reasoning is persuasive. As an initial matter, at most the evidence establishes a policy of seeking the revocation of such registrations.[21] *See* Tr. 141 (testimony of DI acknowledging that ''the mere fact that someone sells on the graymarket is cause for DEA *to*

[18] Indeed, even if one is cheap, if one is intent on expressing his/her affection for a loved one, there are plenty of other ways of doing so such as buying a real flower and not a fake one.

[19] It is further noted that neither Respondent, nor its owner, has been convicted of an offense related to controlled substances or listed chemicals.

[20] Based on her finding that Respondent sold excessive quantities of listed chemical products, the ALJ concluded that ''absent any change in marketing or product line, this factor would weigh in favor of revocation.'' ALJ at 37. Because I conclude that the Government's figures as to the expected sales range and probability of various sales levels are not supported by substantial evidence, I reject the ALJ's conclusion with respect to factor four.

[21] Notably, in its Exceptions, the Government disputes that there is any such policy. Exceptions at 10–11. (arguing that ''[t]he ALJ had no basis on which to assume that DEA has a policy of revoking

seek [the] revocation of their registration'') (emphasis added). A policy of seeking the revocation of the registrations issued to a particular class of registrants is not, however, the same as a policy of revoking such registrations. Indeed, to equate the former with the latter ignores that the ultimate decision in any proceeding under section 304 of the Act does not rest with those who prosecute but with the Deputy Administrator. *See* 28 CFR 0.104 (Appendix section 7(h)).

Moreover, contrary to the understanding of both Respondent and the ALJ, the above described policy is not a rule within the meaning of the APA. As numerous courts have recognized, a policy does not constitute a rule unless it establishes a ''binding norm'' or ''a standard of conduct which has the force of law.'' *See Pacific Gas & Elec. Co.* v. *FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974). The policy merely reflects the decision of those with prosecutorial authority to focus the Agency's resources on a particular and serious aspect of the diversion problem. As such, it ''does not establish a 'binding norm[,]' '' which has the force and effect ''of law.'' *Id.* at 38; *see also Center for Auto Safety* v. *NHTSA*, 452 F.3d 798, 806 (D.C. Cir. 2006) (noting that one line of inquiry ''considers the effects of an agency's action, inquiring whether the agency has '(1) imposed any rights and obligations, or (2) genuinely [left] the agency and its decision-makers free to exercise discretion' '') (other citation omitted).[22] Notably, in her appendix, the ALJ did not cite to any decision of this Agency which holds that the mere act of distributing to the non-traditional market constitutes a *per se* ground for revocation of an existing registration or the denial of an application. [23]

Indeed, in this matter, the Government does not argue that Respondent's registration should be revoked solely because it distributes to the non-traditional market. Rather, the Government relied primarily on what it alleged were various practices of Respondent (such as excessive sales and poor recordkeeping) that increased the risk that its products were being diverted. Moreover, were the Government to seek revocation solely on the basis that a registrant was distributing to the non-traditional market (rather than on the basis that its policies and practices were increasing the risk of diversion), it would be required ''to present evidence and reasoning supporting its'' position, *Center for Auto Safety,* 452 F.3d at 807 (quoting *Pacific Gas*, 506 F.2d at 38); and the registrant would be entitled to challenge the Government's evidence and reasoning.[24]

To be sure, based on its experience, DEA has frequently recognized that the distribution of listed chemical products through non-traditional retailers presents a heightened risk of diversion and has considered this to be an important factor in the public interest analysis. *See, e.g., Joy's Ideas*, 70 FR 33195, 33199 (2005). But as this case demonstrates, there is no *per se* rule prohibiting the distribution of listed chemicals to the non-traditional market and subjecting a registration to revocation for the mere act of distributing to the non-traditional market.

Sanction

In her decision, the ALJ concluded that the Agency had met its burden of proof by showing that Respondent was selling excessive quantities of listed chemicals. Based in part on Respondent's compliance with the Meth Free Tennessee Act,[25] the ALJ further concluded that the revocation of Respondent's registration would be too severe a sanction and recommended that its registration be continued subject to two conditions—(1) that Respondent be limited to selling only soft-gel products, and (2) that Respondent consent to periodic inspections by the Agency based on a Notice of Inspection and without a warrant.

In *Janet L. Thornton*, 73 FR 50354, 50356 (2008), I explained that ''[w]hile in some instances, this Agency has placed restrictions on a practitioner's registration, such restrictions must be related to what the Government has alleged and proved in any case.'' The ALJ's proposed conditions were based on her finding that Respondent had engaged in excessive sales. But having rejected the Government's proof as insufficient to support this allegation, there is no basis to impose these conditions.

The only violation proved on this record is Respondent's sale of drug paraphernalia (*i.e.*, the Love Roses). But as found above, the evidence supports the conclusion that Respondent committed only a single violation of the statute, and the violation involved only a nominal amount. Moreover, it is undisputed that following this sale, Respondent stopped carrying the item.

Respondent's sale of any amount of this product (once Mr. Gregg learned how it was being used) violated Federal law and is a criminal offense. Indeed, it is stunning that Mr. Gregg sold this product after being told by several of his customers that it was being used to smoke crack cocaine. Contrary to his testimony that because he is ''not God,'' he could not determine why some of the persons he saw buying the product were

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the * * * registrations of all List I chemical distributors that distribute * * * in the gray market. * * * The opinions of non-managerial employees attesting to the existence of an agency policy, without more, can hardly be a sufficient basis for a fact-finder to make a formal finding, or in this case, to simply assume, that a federal agency has implemented a substantial policy.'').

[22] The other line of inquiry focuses on the ''[A]gency expressed intentions.'' *Center for Auto Safety*, 452 F.3d at 798. As the Government points out, ''[t]here was no evidence that [the DIs] were authorized to speak on behalf of the agency regarding agency policy, that the two employees had any involvement in the formulation of the alleged policy, or were in managerial or executive positions.'' Exceptions at 11. Thus, the employees' testimony does not express the Agency's intention.

[23] In her appendix, the ALJ observed that she ''could find no agency final order where * * * the DEA registration was continued for a DEA-registered distributor selling listed chemical products to the 'gray market,' as defined by the'' Agency. ALJ at 37. The absence of any such decision does not establish that there is such a rule because each case is decided with respect to the five factors set forth in 21 U.S.C. § 823(h).

[24] Relying on *Ford Motor Co.* v. *FTC*, 673 F.2d 1008, 1009 (9th Cir. 1982), Respondent asserts that because the purported rule ''creates a general and widespread standard for revocation'' it must be ''subject[ed] to notice and comment rulemaking.'' Resp. Proposed Findings at 25 & n.70. Respondent's reliance on *Ford* is peculiar because it is widely recognized as a sport case.

As several leading commentators have explained: ''The Ninth Circuit's decision in *Ford* almost certainly is an aberration. It has been severely criticized. It is inconsistent with both [*SEC v. Chenery*, 352 U.S. 194 (1947), and *NLRB* v. *Bell Aerospace Co.*, 415 U.S. 199 (1974)]. Indeed, even the Ninth Circuit seems not to have followed it in subsequent cases.'' Richard J. Pierce, et al., *Administrative Law and Process* 295 (1985).

Moreover, the preeminent treatise squarely states that *Ford* was ''wrongly decided and should not be followed.'' I Richard J. Pierce, *Administrative Law Treatise* § 6.9, at 384 (4th ed. 2002). As this authority explains: ''The [*Ford*] court rested its holding on the proposition that 'an agency must proceed by rulemaking if it seeks to change the law and establish rules of widespread application.' That proposition is not supportable in Supreme Court decisions; rather it is directly contradicted by such decisions and is inconsistent with the routine practice of all courts and agencies.'' *Id.*

[25] The ALJ also based her recommendation on what she maintained was ''the lack of evidence in this record showing that soft-gel listed * * * products have actually been made into methamphetamine at illicit laboratories.'' ALJ at 41. I have previously rejected this reasoning, and would have done so again had the Government proved that Respondent was selling quantities of products that are consistent with diversion. *See Holloway Distributing*, 72 FR 42118, 42126 (2007); *T. Young Associates*, 71 FR 60567, 60573 (2006). As I have previously explained, '' 'experience has taught DEA that in the aftermath of every major piece of legislation addressing the illicit manufacture of methamphetamine, traffickers have quickly found ways to circumvent the restrictions.' This Agency is not required to wait until the diversion of gelcap and liquid forms of pseudoephedrine reach epidemic proportions before acting to protect the public interest.'' *Holloway Distributing*, 72 FR at 42126 (quoting 71 FR at 60573).

doing so, this Agency does not expect its registrants to possess divine powers. It does, however, expect that its registrants exercise common sense and act responsibly.

Respondent's and Mr. Gregg's violation in selling this product cannot be condoned. I therefore conclude that Respondent's registration should be suspended for a period of six months. However, in light of the total record in this case, which establishes that Respondent has otherwise attempted to obey applicable laws and regulations, I conclude that the suspension should be stayed for a period of three years at which time the suspension will be rescinded provided Respondent does not commit any further violation of federal or state laws or regulations related to listed chemicals or controlled substances.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Gregg & Son Distributors to renew its DEA Certificate of Registration be, and it hereby is, granted. I further order that the DEA Certificate of Registration issued to Gregg & Son Distributors be, and it hereby is suspended for a period of six months, but that the suspension shall be stayed for a period of three years from the date of this Order provided Respondent complies with all applicable laws and regulations as set forth above. This Order is effective immediately.

Dated: April 3, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–8621 Filed 4–14–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Department of Justice.

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a Federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division programs or wishing to address this session should notify Senior CJIS Advisor Roy G. Weise at (304) 625–2730 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES AND TIMES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 4–5, 2009.

ADDRESSES: The meeting will take place at the Gaylord National, 201 Waterfront Street, National Harbor, Maryland, (301) 965–2300.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Lori A. Kemp, Management and Program Analyst, Advisory Groups Management Unit, Liaison, Advisory, Training and Statistics Section, FBI CJIS Division; Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–2619; facsimile (304) 625–5090.

Dated: April 1, 2009.

Roy G. Weise,

Senior CJIS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. E9–8490 Filed 4–14–09; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–58]

John B. Freitas, D.O.; Revocation of Registration

On August 29, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to John B. Freitas, D.O. (Respondent), of Carthage, Missouri. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BF2847715, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, as well as the denial of any pending application to renew or modify the registration, on the ground that Respondent lacks authority to dispense controlled substances in Missouri, the State in which he is registered with DEA. Show Cause Order at 1.

Respondent timely requested a hearing on the allegation; the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). Thereafter, the Government moved for summary disposition. Motion for Summary Disp. at 1. The basis of the motion was that Respondent's Missouri Controlled Substances Registration automatically terminated when Respondent ceased practicing at the location where he held his State registration and ''did not notify the [State] of [his] change of address or a new Missouri practice location.'' *Id.* at Attachment 1 (Letter of Michael R. Boeger, Asst. Administrator, Missouri Bureau of Narcotics & Dangerous Drugs, to Dr. John Freitas (May 13, 2008)).[1]

Thereafter, Respondent filed his response to the Government's motion. Therein, Respondent acknowledged the State BNDD's letter and further stated that he ''does not deny that he no longer has the authority to handle controlled substances in the State of Missouri.'' Respondent's Response to Gov.'s Mot. for Summ. Disp. at 1. Respondent argued, however, that his state registration had not been ''suspended, revoked, or denied under Missouri law by the BNDD,'' and that under 21 U.S.C. 824(a)(3), DEA's authority to revoke is limited to those situations in which a registrant's State authority has been

[1] According to the letter, the State ''ha[d] received information that [Respondent's] last day of practicing at that location was the[e] date of [his] overdose on March 25, 2008,'' and ''had received written documentation that [Respondent's] privileges were terminated at that location on March 26, 2008.'' Gov. Motion at Attachment 1.

''suspended, revoked or denied by competent State authority'' and the registrant ''is no longer authorized by State law to engage in the * * * dispensing of controlled substances.'' *Id.* at 2.

On November 7, 2008, the ALJ granted the Government's motion, noting that ''it is undisputed that the Respondent currently lacks authority to handle controlled substances in Missouri.'' ALJ at 3. Because Respondent's argument as to the scope of the Agency's authority under 21 U.S.C. 823(a)(3) had previously been rejected with respect to a practitioner who allowed his registration to expire, the ALJ found ''no meaningful basis on which to distinguish expiration of a State authorization from automatic termination by operation of law.'' *Id.* at 5. The ALJ thus applied the Agency's longstanding interpretation that it lacks authority under the Controlled Substances Act to maintain a registration if a registrant lacks authority under State law to dispense controlled substances. *Id.* at 4–5. The ALJ thus recommended that Respondent's registration be revoked and that any pending application to renew or modify his registration be denied.

After the period for filing exceptions lapsed,[2] the record was forwarded to me for final agency action. Having considered the entire record in this matter, I adopt the ALJ's decision in its entirety.

I find that Respondent currently holds DEA Certificate of Registration, BF2847715, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, at the registered location of 2232 S. Garrison Ave., Carthage, Missouri. I also find that Respondent's Missouri Controlled Substances Registration has terminated. I therefore further find that Respondent is currently without authority to dispense controlled substances in Missouri, the State in which he practices medicine and holds his DEA Registration. Moreover, according to the Web site of the Missouri Department of Health and Senior Services, Respondent does not possess a State controlled substances registration.

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner who lacks authority under state law to dispense controlled substances. Moreover, DEA has applied this rule not only where a registrant's state authority has been suspended or revoked, but also where a practitioner with an existing DEA registration has lost his state authority for reasons other than through formal disciplinary action of a State board.

For example, in *William D. Levitt*, 64 FR 49882, 49823 (1999), DEA held that because ''state authorization was clearly intended to be a prerequisite to DEA registration, Congress could not have intended for DEA to maintain a registration if a registrant is no longer authorized by the state in which he practices to handle controlled substances due to the expiration of his state license.'' *See also Mark L. Beck*, 64 FR 40899, 40900 (1999); *Charles H. Ryan*, 58 FR 14430 (1993). Moreover, in *Marlou D. Davis*, 69 FR 1307, 1310 (2004), I addressed and rejected the same argument raised by Respondent in a case which involved the same factual scenario as is presented here—the termination under Missouri law of a practitioner's authority which arose because of an address change. In *Davis*, I specifically relied on the reasoning of *Levitt* and rejected the argument that the respondent's registration should be deemed terminated under 21 CFR 1301.52 rather than revoked under 21 U.S.C. 824(a)(3).[3] *Id.* at 1310. Indeed, as the ALJ observed in her recommended decision in this matter, because possessing authority under State law is an essential requirement for holding a CSA registration, there is ''no meaningful basis'' for distinguishing between those registrants who allow their State authority to expire and those whose State authority expires by operation of law. ALJ at 5.

Here, as in *Davis*, Respondent has not notified the Agency that he has permanently ceased the practice of medicine (or the dispensing of controlled substances in the course of medical practice). 21 CFR 1301.52(a). Nor is there any evidence that he has returned his certificate of registration for cancellation. *Id.* 1301.52(c). Accordingly, Respondent's registration cannot be deemed terminated. Because Respondent does not have authority under Missouri law to dispense controlled substances, he does not meet the statutory requirement for holding a registration under Federal law. *See* 21 U.S.C. 823(f). His registration must therefore be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BF2847715, issued to John B. Freitas, D.O., be, and it hereby is, revoked. I further order that any pending application of John B. Freitas, D.O., to renew or modify his registration, be, and it hereby is; denied. This Order is effective May 15, 2009.

Dated: April 10, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–8620 Filed 4–14–09; 8:45 am]

BILLING CODE 4410–09–P

[2] Respondent did not file exceptions.

[3] While there is a procedure available for terminating a registration, under the Agency's regulation, a registrant who discontinues professional practice must ''notify the [Agency] promptly of such fact.'' 21 CFR 1301.52(a). Moreover, the registrant must return his certificate of registration to the Agency for cancellation, as well as any unexecuted order forms. *Id.* 1301.52(c). Notably, in *Davis*, the respondent did not comply with the regulation and indeed had continued professional practice.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–49]

Joseph Baumstarck, M.D.; Revocation of Registration

On May 19, 2008, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Joseph Baumstarck, M.D. (Respondent), of Lovell, Wyoming. The Order proposed the revocation of Respondent's DEA Certificate of Registration, BB2806480, which authorizes him to dispense controlled substances in schedules II through V, and proposed the denial of any pending applications to renew or modify his registration, on the ground that Respondent had committed acts which render his continued registration inconsistent with the public interest.

Show Cause Order at 1 (citing 21 U.S.C. 824(a)(4)).

The Show Cause Order alleged that Respondent had repeatedly issued controlled-substance prescriptions without establishing a legitimate doctor-patient relationship in violation of Federal and state laws in that he failed to obtain adequate patient histories or failed to perform adequate physical examinations of his patients. *Id.* (citing 21 U.S.C. 841(a)(1), 21 CFR 1306.04, & Wyo. Stat. § 33–26–402(a)). The Order further alleged that Respondent issued controlled-substance prescriptions to persons he knew to be drug addicts and that these persons were not using the drugs for a legitimate medical purpose. *Id.* Relatedly, the Order alleged that Respondent did ''nothing to confirm that these patients are not diverting the controlled substances'' that he prescribed. *Id.* at 1–2.

The Show Cause Order further alleged that ''on at least four occasions in January and February 2008, Respondent had prescribed schedule II controlled substances for the purpose of detoxification and/or maintenance treatment,'' notwithstanding that he was not registered to conduct a narcotic-treatment program, and that the drugs he prescribed were ''not approved by the Food and Drug Administration (FDA) for detoxification and/or maintenance treatment in an office-based setting.'' *Id.* at 2 (citing 21 U.S.C. 823(g)(1) & 21 CFR 1306.07(a)). Relatedly, the Order alleged that in April 2008, Respondent had discussed with a police officer who claimed to be addicted to prescription pain killers, how he prescribed drugs containing oxycodone, a schedule II controlled substance, to treat addicts for addiction.[1] *Id.* The Order also alleged that Respondent's illegal practices were ongoing. *Id.* I thus concluded that Respondent's ''continued registration during the pendency of these proceeds would constitute an imminent danger to the public health and safety.'' *Id.* (citing 21 U.S.C. 824(d)).

On May 22, 2008, the Order was served on Respondent. On June 16, 2008, Respondent requested a hearing on the allegations. Letter of Joseph Baumstarck, Jr., to Hearing Clerk (June 16, 2008). Respondent denied the allegations, but further stated that because he had been charged criminally, he was exercising his Fifth Amendment right against self-incrimination. *Id.*

On June 25, 2008, the Government moved for summary disposition (and to stay the filing of pre-hearing statements) on the ground that on June 9, 2008, the Wyoming Board of Medicine had summarily suspended Respondent's state medical license and that the suspension was to remain in effect pending the resolution of the Board's proceeding. Gov. Mot. for Summ. Disp. at 2. The Government further noted that while a practitioner in Wyoming must hold both a medical license and a state issued controlled-substance registration (which is issued by the Board of Pharmacy), and Respondent still held a state controlled-substance registration, he was currently without authority to practice medicine and thus could not prescribe any drug (whether controlled or non-controlled). *Id.* at 3.

In support of its motion, the Government attached the State Board's order which summarily suspended Respondent's medical license. *Id.* at Ex. B. As grounds for its action, the Board's order noted that on May 19, 2008, Respondent had been indicted by a federal grand jury on four counts of unlawful distribution of hydrocodone and two counts of unlawful distribution of oxycodone. *Id.* at 1–2 (citing 21 U.S.C. 841(a)(1)(B) & (1)(D) and *id.* § 841(a)(1)(B) & (1)(C)). The order also noted that the Board had received an Adverse Action Report from the National Practitioner Data Bank indicating that on May 29, 2008, North Big Horn Hospital of Lovell, Wyoming, had summarily suspended Respondent's clinical privileges pending the resolution of the criminal case. *Id.* at 3. The order further noted that on June 5, 2008, the Board had received a report from the state Pharmacy Board that Respondent had prescribed Suboxone on multiple occasions ''without the required DEA endorsement.'' [2] *Id.* Finally, the Order noted that as a condition of his release from custody, the Federal District Court had imposed a restriction that Respondent could ''continue the practice of medicine only after the Board * * * creates a plan regarding the prescribing of any controlled substances'' and that he ''shall not see patients without another licensed physician present in the room with him,'' and that Respondent had told the Medical Board's Executive Secretary that he intended to seek a removal of the condition that another physician directly supervise his practice. *Id.* at 2–3. Based on all of these findings, the State Board concluded that ''the public health, safety or welfare imperatively requires emergency action and that a summary suspension of [Respondent's] license is necessary to protect the citizens of Wyoming.'' *Id.* at 4.

Upon reviewing the Government's motion, the ALJ issued a memorandum which provided Respondent with the opportunity to respond to the motion. Memorandum to Parties (June 25, 2008). The following day, Respondent submitted a letter to the Hearing Clerk in which he stated that he opposed the Government's motion, but that because of the pending criminal case and his invocation of his Fifth Amendment privilege, he was ''unable * * * to adequately address'' the issues, and that the Agency was therefore denying him his right to Due Process. Ltr. of Joseph Baumstarck, Jr., to Hearing Clerk (June 26, 2008). Respondent further contended that ''[t]he actions which the government's statement alleges as having occurred in regard to my ability to practice in Wyoming are the result of the DEA's action which is the issue being contested here.'' *Id.* Respondent then requested that the proceeding be postponed until his criminal case was resolved. *Id.*

Thereafter, the Government moved to deny Respondent's request for a postponement and also requested that the ALJ grant its motion for summary disposition. *See* Gov. Response to Resp.'s Req. for Postponement and Resp.'s Opp. In its motion, the Government maintained that under the Controlled Substances Act (CSA), the Agency does not have authority to maintain the registration of a practitioner who lacks state authority to handle controlled substances and ''that the reason for [Respondent's] state suspension is irrelevant.'' *Id.* at 2 & n 1. The Government further argued that Respondent had also been ''investigated by state and local law enforcement [and] thus, his assertion that DEA is the cause of his [s]tate medical license suspension is without merit.'' *Id.* The Government also maintained that granting its motion for summary disposition would not violate Respondent's right to Due Process because the granting of such motions (when no material facts are in dispute) is a common feature of adjudicatory proceedings. *Id.* at 2. Finally, the Government urged the ALJ to reject Respondent's request for a postponement because the issue in the case—whether he is without state authority to handle controlled substances—could be litigated without Respondent having to testify (by submitting documentary evidence to the

[1] The Order also alleged that on at least eight occasions, Respondent had violated Federal law by failing to include his registration number and the patient's address on controlled-substance prescriptions. Show Cause Order at 2 (citing 21 U.S.C. 842(a); 21 CFR 1306.05(a)).

[2] The State Board's Order also noted the allegations contained in my Order to Show Cause and Immediate Suspension of Registration. Ex B at 2.

contrary), and because ''there [was] no guarantee that'' his criminal case would be resolved by date he claimed it would be. *Id.* at 3.

On July 1, 2008, Respondent sent an additional letter to the Hearing Clerk in which he reiterated his previous objections to the Government's position, including his contention that his inability ''to practice medicine in Wyoming [is] the result of the DEA's action which is the issue being contested here.'' Letter of Respondent to Hearing Clerk (June 30, 2008). Respondent disputed the Government's argument that he could reapply for a new registration as ''beg[ging] the question of due process.'' *Id.* He also contended that the Government's argument that the criminal case could be rescheduled several times was irrelevant to the issue of whether this proceeding should be stayed because he had ''no control over the scheduling of court cases.'' *Id.*

On the same day, the ALJ stayed the proceeding pending her review of the Government's motion. ALJ at 6. On July 16, 2008, the ALJ granted the Government's motion. *Id.* at 7. Noting that it was ''undisputed that Respondent is without state authority to hand controlled substances in Wyoming,'' *id.*, the ALJ applied the Agency's long-settled ruled that a practitioner may not maintain his registration if he lacks authority to handle controlled substances under the laws of the State in which he practices. Id. at 6–7. The ALJ thus recommended that Respondent's registration be revoked and that any pending applications be denied.

On July 23, 2008, Respondent submitted his ''formal objection'' to the ALJ's decision. Letter of Respondent to Hearing Clerk (July 23, 2008). Respondent ''reiterate[d] [his] previous position that it is ludicrous that a government entity is able to cause by its original action a secondary action by another government entity and then use the second action to justify the original action.'' *Id.* Respondent also restated his position that he was ''unable to give a detailed statement'' regarding the allegations because he had been criminally charged and was exercising his Fifth Amendment rights.

Thereafter, the record was forwarded to me for final agency action. Having considered the entire record in this matter (including the issues raised by Respondent in his July 23, 2008 letter), I adopt the ALJ's decision in its entirety.

I find that Respondent currently holds DEA Certificate of Registration, BB2806480, which authorizes him to dispense controlled substances in schedule II through V as a practitioner at registered premises of 342 E. Main St., Lovell, Wyoming. Respondent's registration does not expire until July 31, 2009.

On June 6, 2008, the Wyoming Board of Medicine summarily suspended Respondent's physician's license and further ordered that ''such suspension shall continue pending proceedings for revocation or other action against'' his license. GX B. The State's order cited five different grounds as support for its order including: (1) That on May 19, 2008, Respondent had been indicted in federal court on six counts of unlawful distribution of controlled substances; (2) the allegations of the Order to Show Cause; (3) the Adverse Action Report that Respondent's privileges had been suspended by a local hospital; (4) the state Pharmacy Board's report that Respondent had prescribed Suboxone on numerous occasions without holding the requisite endorsement to his DEA registration; and (5) that Respondent had told the Board's Executive Secretary of his intent to seek the removal of certain conditions of his release which were imposed by the Federal District Court. According to the Wyoming Board of Medicine Web site, Respondent's state license remains suspended.

Under the CSA, a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, the Agency has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David Wang*, 72 FR 54297, 54298 (2007); Sheran Arden Yeates, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances''). Moreover, because the statutory text makes plain that a practitioner must have current authority to handle controlled substances under state law in order to maintain his CSA registration, the Agency has also held that revocation is warranted even when a practitioner's state authority has only been suspended and there remains a possibility that the authority will be restored following a state proceeding. *See Bourne Pharmacy, Inc.*, 72 FR 18273, 18274 (2007).

Here, there is no dispute that Respondent does not have current authority under state law to dispense controlled substances. Respondent, however, maintains that the Agency's revocation of his registration based on the State's suspension of his medical license would violate his right to Due Process because the State's action was based on my Order which immediately suspended his registration.

Respondent ignores, however, that the State's suspension order did not rely solely on my Order. Rather, the State Board also relied on Respondent's indictment by a federal grand jury, which represents the judgment of an independent body of citizens that probable cause exists to believe that Respondent had committed six felony counts of unlawful distribution of controlled substances. *See, e.g., FDIC* v. *Mallen*, 486 U.S. 230, 241 (1988) (where ''[a] grand jury ha[s] determined that there was probable cause that [bank officer] had committed a felony,'' the finding supported suspension followed by a hearing).

Moreover, the State Board also relied on the Board of Pharmacy's Report that Respondent had violated the law in prescribing Suboxone, the report from the National Practitioner Bank that a local hospital had suspended his privileges, and Respondent's own statements to the Board's Executive Secretary that he was seeking to remove the District Court's requirement that another physician directly supervise his practice. In short, in concluding that Respondent posed ''an immediate threat to the public health, safety or welfare of the people of * * * Wyoming,'' GX B at 3–4, the Board clearly conducted its own independent evaluation of the evidence against him and did not simply piggyback on my Order of Immediate Suspension. *See Oakland Medical Pharmacy*, 71 FR 50100, 50102 (2006) (rejecting the contention that it is circular for DEA to rely on a state suspension order to revoke a registration

where the State did not rely solely on the DEA order in suspending a practitioner's state license).

Respondent also apparently argues that revoking his registration would violate his right to Due Process because he has invoked his Fifth Amendment privilege and is ''unable'' to address the allegations. This argument would be unpersuasive even if the Agency was still seeking to revoke based on the allegations that he unlawfully distributed controlled substances.[3]

Moreover, Respondent ignores that under the CSA, the loss of state authority provides an independent ground to revoke and that the only issue now in dispute is whether Respondent holds state authority. Respondent was provided with a meaningful opportunity to refute the Government's evidence by showing that his state license had not been (or was no longer) suspended; such a showing would not require his testimony. That there is no such evidence (because the State's suspension order remains in effect) likewise does not deprive Respondent of Due Process.

Because Respondent remains without authority to dispense controlled substances under the laws of the State in which he practices medicine and is registered with the Agency, his registration will be revoked. Moreover, for the same reasons that I ordered the immediate suspension of Respondent's registration, I further hold that this Order be effective immediately.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BB2806480, issued to Joseph Baumstarck, M.D., be, and it hereby is, revoked. I further order that any pending application of Joseph Baumstarck, M.D., for renewal or modification of his registration be, and it hereby is, denied. This order is effective immediately.

[3] Due Process only requires that the Government provide a meaningful opportunity to test the Government's proof and respond to the allegations; a litigant's unwillingness to testify in a civil matter, because he fears incriminating himself, does not render a hearing opportunity unmeaningful in the constitutional sense. *Ohio Adult Parole Authority* v. *Woodward*, 523 U.S. at 272, 286 (1998). Indeed, the Supreme Court has even upheld the drawing of an adverse inference based on a respondent's refusal to testify in an administrative proceeding. *See Woodward*, 523 U.S. at (1998) (citing *Baxter* v. *Palmigiano*, 425 U.S. 308, 316–18 (1976)); *see also INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1043–44 (1984).

Dated: April 3, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–8612 Filed 4–14–09; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–10]

Scott Sandarg, D.M.D.; Revocation of Registration

On July 25, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Scott Sandarg, D.M.D. (Respondent), of Irvine, California. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BS6026525, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, and the denial of any pending applications to renew or modify the registration, on the ground that Respondent had committed numerous acts which were inconsistent with the public interest. Show Cause Order at 1.

The Show Cause Order specifically alleged that Respondent had unlawfully obtained controlled substances for his own use which included illicit methamphetamine, anabolic steroids, drugs containing hydrocodone, and several benzodiazepines including alprazolam, through various means including by engaging in prescription fraud and by obtaining the controlled substances over the internet from practitioners with whom he did not establish a valid doctor-patient relationship. *Id.* at 1–3. The Order also alleged that on two separate occasions, Respondent had been arrested; that the police found various controlled substances in his possession during lawful searches of his property; and that Respondent had subsequently pled guilty to various offenses under California law including one felony count of unlawful possession of a controlled substance in violation of Cal. Health & Safety Code § 11377(a), one misdemeanor count of unlawfully being under the influence of a controlled substance in violation of Cal. Health & Safety Code section 11550(a), and two misdemeanor counts related to firearms violations under Cal. Penal Code section 17(b). Show Cause Order at 2–3.

On September 11, 2007, a DEA Diversion Investigator attempted to serve the Order to Show Cause on Respondent by faxing it to him. On November 9, 2007, Respondent requested a hearing on the allegations of the Show Cause Order, and the matter was assigned to an Administrative Law Judge (ALJ). Thereafter, the Government moved to terminate the proceeding on the ground that Respondent's request was out of time. Respondent opposed the motion, submitting the declarations of himself and his office manager, both of which asserted that the fax had included the cover sheet but not the Show Cause Order. Thereafter, the Government submitted a DI's declaration which maintained that Respondent's office manager had informed him that she had received the entire fax.

The ALJ denied the Government's motion reasoning that there was a factual dispute as to when Respondent had received the Show Cause Order. The ALJ then allowed the Government to file an interlocutory appeal. On May 12, 2008, I denied the appeal because there was a clear factual dispute as to whether Respondent had actually received the Show Cause Order on September 11, 2007, and the dispute could not be resolved without assessing the credibility of each party's witnesses.[1]

Thereafter, the Government moved to terminate the proceeding on the ground that on December 19, 2007, the California Board of Dental Examiners had adopted the proposed decision of a State Administrative Law Judge and revoked Respondent's State Dental Certificate with an effective date of January 21, 2008. Gov. Mot. for Summary Judgment 2–3. The Government argued that because Respondent is not authorized to handle controlled substances in the State in which he is registered with this Agency, he is not entitled to maintain his registration. *Id.*

Respondent's counsel opposed the motion arguing that he had filed for a writ of administrative mandamus in State court challenging the Board's order. Respondent's Resp. to ALJ's May 21, 2008 Memorandum to Counsel at 1. According to Respondent's counsel, the writ raised multiple claims of error on the part of the State ALJ, and were the court to find any of the claims meritorious, Respondent's license could be restored. *Id.* Respondent's counsel further argued that DEA's decision be stayed until the State proceeding was resolved. *Id.* The Government opposed Respondent's motion on the ground that it was speculative whether the State court would grant any relief, and that

[1] Respondent did not, however, dispute that he had subsequently been properly served.

this Agency has previously rejected similar arguments.

On July 10, 2008, the ALJ granted the Government's motion. ALJ at 6. The ALJ noted that no material facts were in dispute and that Respondent did not deny that he is currently not authorized under California law to handle controlled substances. *Id.* Noting that this Agency has consistently held that a practitioner may not maintain his registration if he lacks authority to handle controlled substances under the laws of the State in which he practices, the ALJ granted the motion and recommended that Respondent's registration be revoked and that any pending applications to renew or modify his registration be denied. *Id.* Thereafter, the ALJ forwarded the record to me for final agency action.

Having considered the entire record in this matter, I adopt the ALJ's decision in its entirety. I find that Respondent holds DEA Certificate of Registration, BS6026529, which authorizes him to dispense controlled substances in schedules II through V at the registered location of 17655 Harvard Place, Suite F, Irvine, California. I further find that while the expiration date of the registration was February 28, 2007, Respondent submitted a timely renewal application and therefore his registration has remained in effect pending the issuance of this Final Order. *See* 5 U.S.C. 554(e).

I further find, however, that on December 19, 2007, the Dental Board of California ordered that Respondent's State Dental Certificate be revoked with an effective date of January 21, 2008.[2] Moreover, while it has been more than seven months since Respondent's challenge to the Dental Board's proceeding was heard in State court, Respondent has submitted no evidence to the Agency that the Board's revocation order has been set aside or stayed, and according to the Board's Web site, Respondent's Dental Certificate remains revoked.

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority under State law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose State license has been suspended or revoked. *David Wang*, 72 FR 54297, 54298 (2007); *Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3)(authorizing the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances'').

Here, there is no dispute over the material fact that Respondent's California Dental Certificate has been revoked and that Respondent lacks authority under California law to dispense control substances. Respondent is therefore not entitled to maintain his DEA registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BS6026529, issued to Scott Sandarg, D.D.S., be, and it hereby is, revoked. I further order that any pending application of Scott Sandarg, D.D.S., to renew or modify his registration, be, and it hereby is denied. This Order is effective May 15, 2009.

Dated: April 3, 2009.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–52]

George C. Aycock, M.D.; Revocation of Registration

On June 25, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to George C. Aycock, M.D. (Respondent), of Sumter, South Carolina. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AA1071947, which authorizes him to dispense controlled substances as a practitioner, and the denial of any pending application to renew or modify the registration, on the grounds that: (1) Respondent's state controlled substance registrations had been suspended, and thus he no longer has authority to handle controlled substances under South Carolina law; and (2) Respondent had committed acts inconsistent with the public interest. ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

With respect to the second ground for the proceeding, the Show Cause Order alleged that Respondent had ''repeatedly failed to establish a proper physician-patient relationship, as required by state and federal law, and ha[d] authorized controlled substance[] prescriptions without a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04(a), 21 U.S.C. 841(a)(1), and S.C. Code Regs. 81–28.'' *Id.* More specifically, the Order alleged that Respondent issued controlled-substance prescriptions to persons he knew were exhibiting drug-seeking behavior, abusing controlled substances, or selling their drugs to others. *Id.* The Order further alleged that Respondent failed to obtain appropriate medical histories, perform appropriate physical examinations, discuss treatments options and create a therapeutic plan as required by state law.[1] *Id.* at 2.

Thereafter, the Government sought the Immediate Suspension of Respondent's registration based on information that on July 3, 2008, the State of South Carolina had reinstated Respondent's controlled-substance registration, and that on the same day, Respondent had issued to a person, who had traveled 250 miles to see him, prescriptions for sixty tablets of Oxycontin (80 mg.), 90 tablets of Lortab (10 mg.), and 90 tablets of Xanax (1 mg.). ALJ Ex. 2, at 1–2. The Order further alleged that this person had been receiving prescriptions from Respondent since July 2007, and that medical records which the Government had seized during the execution of a search warrant indicated that Respondent had not ''perform[ed] an appropriate physical examination, ma[de] appropriate diagnoses or

[2] The State ALJ's decision concluded that the State had proved nine different causes to discipline Respondent, several of which related to his abuse of controlled substances. *In re Sandarg*, Proposed Dec. at 44–46, No. DBC 2006–36 (2007).

[1] On July 10, 2008, the Government served the Show Cause Order on Respondent. ALJ Ex. 3.

formulate[d] a therapeutic plan before prescribing high doses of opioids to this individual.'' *Id.* at 2.

Based on the above, I found that Respondent had authorized, and was ''continu[ing] to authorize, controlled substance[] prescriptions'' which lacked a ''legitimate medical purpose,'' and were issued ''outside the usual course of professional practice,'' and that there was a ''substantial likelihood that [he] will continue to allow the diversion of controlled substances.'' *Id.* I further concluded that Respondent's ''continued registration during the pendency of the[] proceedings would constitute an imminent danger to the public health or safety.'' *Id.* Accordingly, on July 22, 2008, I immediately suspended Respondent's registration.

On or about July 10, 2008, Respondent was served with the Show Cause Order, and on July 25, 2008, Respondent was served with the Immediate Suspension Order. ALJ Ex. 3. On July 25, 2008, Respondent requested a hearing on the allegations, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). ALJ Ex. 4.

On December 10, 2008, a hearing was held in Arlington, Virginia. At the hearing, the Government called witnesses to testify and introduced various documents into evidence; Respondent introduced various documents and testified on his own behalf. Thereafter, the Government submitted a post-hearing brief. While Respondent sought and was granted an extension of the filing deadline, he failed to file a post-hearing brief.

On January 21, 2009, the ALJ issued her recommended decision (ALJ). Therein, the ALJ generally ''found the Government's witnesses more credible than Respondent,'' that the former ''appeared to be straightforward and candid, but Respondent appeared to tailor his testimony to suit his version of [the] events.'' ALJ at 50.

The ALJ also found that the various patient files were consistent with hearsay evidence as to what the patients had told Investigators regarding Respondent's prescribing practices. *Id.* at 51. Moreover, the ALJ found credible the testimony of the Government's expert as to the appropriate treatment of pain patients and the use of methadone to treat pain. *Id.*

With respect to the public interest factors, the ALJ found that Respondent was authorized to handle controlled substances under South Carolina law and had not been convicted of any offense under either Federal or State law related to controlled substances. ALJ at 51 & 53. As for Respondent's experience in dispensing controlled substance, the ALJ specifically found that:

> Respondent saw patients in groups; that he did not conduct complete physical examinations of them or document complete medical histories; that he did not document the bases for his diagnoses, especially his diagnoses of anxiety; and that he did not document any treatment plans other than to list the medications he prescribed and note the date of the next visit. Respondent also failed to order any tests or refer patients to specialists for their underlying conditions.

Id. at 52.

The ALJ also found that Respondent inappropriately prescribed methadone to treat pain, and that ''he ignored indications that at least some of the persons to whom he issued controlled substance prescriptions were abusing those medications.'' *Id.* More specifically, the ALJ noted that ''some of Respondent's patients had obvious track marks * * * but Respondent's only response to this testimony was that he took blood pressure and listened to patient's lungs through their shirts, and thus did not see their arms.'' *Id.* Relatedly, the ALJ found that Respondent ''ignored obvious signs of drug-seeking behavior,'' and that he ''increased the strength and/or quantities of the drugs he prescribed without explaining the increases in the patient charts and, in some instances, [did so] while simultaneously recording that the patients were doing well.'' *Id.* at 52–53. Finally, the ALJ adopted the conclusion of the Government's expert ''that Respondent issued prescriptions for other than legitimate medical reasons.'' *Id.* at 53. The ALJ thus concluded that this factor supported ''a finding that Respondent's continued registration would be inconsistent with the public interest.'' *Id.*

Relatedly, the ALJ found that Respondent had failed to comply with the laws and regulations of South Carolina which require that a physician establish a valid doctor-patient relationship (and set forth various steps a physician must take) prior to prescribing a drug. *Id.* The ALJ thus concluded that Respondent violated both South Carolina law and the Controlled Substances Act's prescription requirement, 21 CFR 1306.04, and that this factor also supported ''a finding that the Respondent's continued registration would be inconsistent with the public interest.'' *Id.*

As for the fifth factor, the ALJ noted that while Respondent had introduced into evidence letters ''attesting to his good character and professional competence,'' the letters did not ''controvert the [Government's] evidence.'' *Id.* at 54. Finally, the ALJ found that Respondent had ''refus[ed] to acknowledge his wrongdoing,'' and that his refusal to do so ''offers little hope * * * that he will act more responsibly in the future.'' *Id.*

The ALJ thus apparently concluded that Respondent's continued registration ''would not be consistent with the public interest,'' and recommended that I revoke his registration and deny any pending application to renew or modify his registration. *Id.* Neither party filed exceptions to the ALJ's recommendation. Thereafter, the recorded was forwarded to me for final agency action.

Having considered the entire record in this matter, I adopt the ALJ's decision in its entirety with the exception of the first paragraph of footnote 82.[2] More specifically, I conclude that Respondent's experience in dispensing controlled substances and record of compliance with applicable laws amply demonstrate that he committed acts which render his registration ''inconsistent with the public interest.'' 21 U.S.C. § 824(a)(4). I further conclude that Respondent failed to rebut the Government's *prima facie* showing that his continued registration would be inconsistent with the public interest. Accordingly, I will order the revocation of Respondent's registration and the denial of any pending application to renew or modify the registration. I make the following findings.

Findings

Respondent is a Medical Doctor who is currently licensed in the State of South Carolina to both practice medicine and handle controlled substances. ALJ Ex. 4, at 1. Respondent is also the holder of DEA Certificate of Registration, AA1071947, which prior to my issuance of the immediate suspension order, authorized him to dispense controlled substances in schedules II through V as a practitioner.

[2] Therein, the ALJ noted that Respondent had violated 21 U.S.C. 844(a) ''by asking someone else to pick up a controlled substance from [his] home.'' ALJ at 53 n.82. This provision, however, renders it ''unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter.'' 21 U.S.C. 844(a). It is not clear how Respondent violated the statute when the Government produced no evidence that he lacked a lawful prescription for the drug. Nor did the Government cite to any authority holding that the act it relies on constitutes a violation of the statute where a person has a lawful prescription.

GX 1, at 1. Respondent's registration does not expire until June 30, 2009.[3] *Id.*

Respondent, who is board-certified in family practice, previously practiced medicine in Greeneville, Tennessee, in a practice which apparently was owned by another physician. Tr. 276. In his testimony, Respondent claimed that while he lived in Greeneville, he ''ticked off'' a prominent person in the town and thereafter, became the target of ''the vindictiveness of the town.'' *Id.* at 278–79. As an example, Respondent testified that one day he was stopped for speeding. *Id.* at 279–80. Respondent did not, however, have his license on him and was arrested for driving without a license. *Id.* at 280. Following the incident, Respondent was also charged with resisting arrest; Respondent claimed, however, that he had done nothing to warrant the charge. *Id.* A jury apparently felt differently and convicted him of all three charges. *Id.* at 134.

In November 2005, Respondent, who apparently was also having marital difficulties, was arrested a second time by the Greeneville police and charged with domestic assault on his then-wife and stepdaughter; Respondent was also charged with resisting arrest on this occasion. *Id.* at 133. At some point, Respondent, who was arrested a third time for missing a court appearance, pled guilty to the charges. *Id.* at 134.

According to Respondent, at some point following his trial and conviction on the first set of charges, ''rumors * * * were being started around town'' that he was ''selling drugs out of [his] office.'' *Id.* at 282. Moreover, the doctor who owned the office where Respondent practiced died suddenly and the former's son-in-law told Respondent to leave. *Id.* at 283. Respondent then moved to Sumter, South Carolina. *Id.* at 285.

On November 21, 2006, Respondent was arrested in South Carolina and jailed in Sumter. *Id.* Respondent was eventually extradited back to Tennessee, and jailed in the Greene County Jail in Greeneville. *Id.* at 285–86. On or about February 13, 2007, Respondent was released from the jail. *Id.*

While in jail, Respondent met several individuals who eventually became his ''patients'' including W.G. and B.J.P.; both A.C. and B.C., who also became Respondent's patients, were incarcerated in the jail during some portion of the period of his residence therein. *Id.* at 156, 174, 243. In his testimony, Respondent admitted that while he was in jail, he had met ''three or four of'' his patients. *Id.* at 294.

While in jail, Respondent discussed with B.J.P. (who was his ''pod mate''), the latter's ''pain problems,'' and on one occasion, Respondent looked at B.J.P.'s back. *Id.* at 157–58. Respondent agreed to write controlled-substance prescriptions for B.J.P. after they were released from jail. *Id.* at 156. The day after he was released, Respondent wrote a controlled substance prescription for B.J.P., and called in another prescription a month later. *Id.* at 156–57; 184–85.

During an interview with investigators, Respondent initially denied writing prescriptions for B.J.P. Tr. 184. The Investigators then confronted Respondent with the prescription that he wrote for B.J.P. the day after his release from the jail. *Id.* Respondent then admitted he should not have written the prescription. *Id.*

Following his release from jail, Respondent returned to South Carolina. *Id.* at 157. While Respondent lived approximately four-and-a-half to five hours away (by driving) from Greeneville, Tennessee, B.J.P. began traveling to Respondent's home to obtain controlled-substance prescriptions from him. *Id.* According to the testimony of a DEA Investigator who interviewed B.J.P., B.J.P. would travel with a friend (M.H.), who also obtained controlled-substance prescriptions from Respondent. *Id.* at 158.

B.J.P. also related to the Investigator that during the visits, he and his friend would talk with Respondent but did not undergo a physical examination. *Id.* at 157–58. B.J.P. also told the Investigator that Lortab, a schedule III controlled substance which combines hydrocodone with acetaminophen, ''was his drug of choice'' and ''what he received from'' Respondent, *id.* at 159, but that Respondent had also given him prescriptions for Oxycontin, a schedule II controlled substance which contains oxycodone. *Id.* at 160. While Oxycontin was not B.J.P.'s ''drug of choice,'' he was able to sell it and pay for his trips to Respondent. *Id.* at 160.

An Investigator also interviewed M.H., who had accompanied B.J.P. on the latter's visits. *Id.* at 170–71. M.H. confirmed B.J.P.'s statement that when the two of them visited Respondent, they would talk with him in the latter's living room, and that Respondent did not take their blood pressure, require them to disrobe, or conduct any type of physical examination ''like [M.H.] had ever seen in a regular doctor's office.'' *Id.* at 171. After some discussion, Respondent would go upstairs and print out whatever prescriptions he was going to issue to them. *Id.* M.H. did not ''know what his diagnosis was,'' what his treatment plan was, and never ''receive[d] a referral for other treatment'' or tests. *Id.* at 172. M.H. told investigators that he initially received prescriptions for schedule III drugs containing 10 mg. of hydrocodone, ''after a short period,'' Respondent issued him prescriptions for Percocet or Oxycontin, both of which contain oxycodone. *Id.* at 171–72.

B.J.P. and M.H. were not, however, the only ''patients'' who jointly saw Respondent. H.R. and A.R., who were married to each other, told investigators that Respondent had been recommended to them by two other persons who were seeing him, M.C. and P.G. *Id.* at 234. These four individuals traveled together to see Respondent at his residence. *Id.*

Giving new meaning to the term ''group practice,'' the four persons jointly met with Respondent in his living room. *Id.* H.R. related to the investigators that he became ''rather embarrassed'' when during the meeting, Respondent ''asked him to unbutton his trousers so that [Respondent] could examine his back in front of the other three individuals in the same room.'' *Id.* at 234–35. Thereafter, Respondent ''went upstairs.'' *Id.* at 235. When Respondent returned he gave controlled-substance prescriptions to H.R. *Id.* Respondent charged H.R. $150 at the initial visit and $100 at subsequent visits. *Id.*

According to H.R.'s patient file, which was seized pursuant to a warrant, on July 24, 2007, Respondent diagnosed H.R. as having chronic lower back pain and anxiety, and issued him prescriptions for sixty tablets of Oxycontin (20 mg.), ninety tablets of Lortab (10 mg.), ninety tablets of Xanax (1 mg.), and ninety tablets of Soma (carisoprodol).[4] GX 51, at 5. At H.R.'s next visit (August 21, 2007), Respondent increased the strength of the Oxycontin to forty milligrams, and issued additional prescriptions for Lortab, Xanax, and Soma;[5] Respondent issued additional prescriptions for these four drugs on September 20 and October 19, 2007. *See id.* at 2 & 4.

The patient files of M.C. (GX 46) and A.R. (GX 59) reflect that both

[3] Respondent registration was issued to him at the address of 295 Lakewood Drive, Sumter, South Carolina. GX 1, at 2.

[4] Soma (carisoprodol) is not a controlled substance under federal law. It is, however, a highly abused drug which metabolizes into meprobamate, a schedule IV depressant. *See Paul Volkman,* 73 FR 30630, 30636 n.21 (2008). The drug is frequently taken by drug abusers as part of a cocktail which also includes an opiate and benzodiazepine. *See id.* at 30638.

[5] Respondent slightly reduced the number of tablets of the various drugs to reflect the fact that H.R. had returned after twenty-eight rather than thirty days. GX 51, at 4.

individuals obtained controlled-substance prescriptions from Respondent on both July 24 and August 21, 2007.[6] *See* GX 46, at 7; GX 59, at 2, 5–6. More specifically, at the July 24 visit, Respondent issued to A.R., prescriptions for sixty tablets of Oxycontin (20 mg.), ninety tablets of Lortab (10 mg.), ninety tablets of Xanax (1 mg.), and ninety tablets of Soma. GX 59, at 5. On the same date, Respondent issued to M.C. a refill of the prescriptions he had previously issued to him (on June 26) for Oxycontin (80 mg.), Lortab (10 mg.), Xanax (1 mg.) and Soma.[7] GX 46, at 7–8.

According to the note dated August 21, 2007, M.C. was ''working [and] unable to come.'' *Id.* at 7. The note nonetheless related that M.C. ''is doing well [and] pain is stable,'' and that Respondent issued him prescriptions for fifty-six tablets Oxycontin (80 mg.), eighty-four tablets of Lortab (10 mg.), eighty-four tablets of Xanax (1 mg.), and eighty-four tablets of Soma.[8] *Id.* M.C. received prescriptions for the same drugs from Respondent on September 15, October 8, November 5, and December 3, 2007. *Id.* at 2, 4–6.

As for A.R., at the August 21 visit, Respondent prescribed fifty-six tablets of a stronger version of Oxycontin (40 mg.), as well as eighty-four tablets of Lortab (10 mg.), Xanax (1 mg.), and Soma. GX 59, at 5. On September 20 and October 19, 2007, Respondent issued to A.R. prescriptions for the same four drugs. *Id.* at 2 & 4.

On or about October 1, 2007, Respondent opened an office in Sumter and started seeing patients there. Tr. 185. Prior to opening his office, Respondent sought to develop his patient base by placing ads in newspapers that were published in both Sumter and Greeneville, Tennessee. *Id.* at 229. Apparently, the ad placed in the Greeneville paper was far more successful than the one placed in the local paper as the overwhelming majority of the fifty-seven patients he had (as of the date the warrant was executed) were from Tennessee, and only three of them were from South Carolina. *See* Tr. 244–45 (testimony that Respondent told his nurse that ''the patients were his previous patients from Tennessee, who came when [he] ran the ad in the newspaper''); *id.* at 229, 180–81. Investigators were only able to identify two persons (J.C., and an unnamed woman), who he had previously treated when he practiced in Tennessee. *Id.* at 180–81.

K.C., M.B., and S.M. were also among the patients interviewed by DEA Investigators who drove from the Greeneville, Tennessee area, to obtain prescriptions from Respondent. M.B., an admitted drug dealer, told Investigators that H.R. and A.R. had told him that if he saw Respondent, he could ''get whatever you want from'' him.[9] *Id.* at 164. M.B. accordingly visited Respondent and obtained controlled-substance prescriptions from him. *Id.* During one of the visits, M.B. told Respondent that he had ''just tried a friend's [Oxycontin] and liked it.'' *Id.* M.B. asked for an Oxycontin prescription and Respondent obliged. *Id.* M.B. further told investigators that when he saw Respondent ''he didn't have a normal exam,'' and ''wasn't asked to disrobe.'' *Id.* at 166. ''Basically,'' M.B. ''just talked to'' Respondent. *Id.*

Various prescription records show that Respondent issued to M.B. the following prescriptions for Oxycontin (20 mg.): sixty tablets on October 1, fifty tablets on October 26, and ninety tablets on November 27, 2007. *See* GX 64, at 26, 56 & 130. Respondent also issued to M.B. the following prescriptions for Percocet (10/325): sixty tablets on both November 27 and December 28, 2007. *See id.* at 24 & 149. Finally, on January 28, 2008, Respondent issued M.B. a prescription for 90 Klonopin (clonazepam 2 mg.). *See id.* at 268.

S.M., who admitted to investigators that he was a lifelong drug abuser, had also purchased drugs from M.B., which the latter had obtained from Respondent. Tr. 138–39. According to both a DI and Lt. Crum, S.M. had visible track marks on his arms, which indicated that he was taking drugs intravenously (IV). *Id.* at 138 & 167. S.M. also told the DIs ''that he would use any drugs that he could get his hands on,'' and that he would shoot up every day but for the expense. *Id.* at 167. Moreover, S.M. had chronic obstructive pulmonary disorder and was being treated for this condition by a physician (Dr. R.L.) in Greene County. *Id.* at 190; GX 52, at 15. In April 2008, two DIs interviewed Dr. R.L. regarding S.M. *Id.*

Dr. R.L. told the DIs that S.M. had admitted to him that he was an IV drug abuser, and in any event, S.M.'s track marks and gaunt appearance made it obvious that he was a drug abuser, and that one did not have to be a physician to recognize as much. *Id.; see also id.* at 167 (Investigator testifying that S.M.'s track marks were ''very obvious,'' that his vein area was ''discolored,'' and there were ''open sores on his arms where he shot up''). Dr. R.L. stated that because of S.M.'s history of drug abuse, he would not prescribe controlled substances to him. *Id.* at 191. Moreover, Dr. R.L. had never been contacted by Respondent regarding S.M., and ''had no idea'' that S.M. was seeing Respondent. *Id.*

S.M.'s patient file contains several documents which indicated that he was being treated by Dr. R.L. See GX 52, at 15–16. Moreover, a report of a physical examination which was done on May 4, 2007 when S.M. sought disability, noted that he ''has used marijuana and IV drug[s], specifically cocaine.'' *Id.* at 8. While the report also indicated that S.M.'s ''last use of [illicit drugs] was about [three] years ago,'' *id.*, the report also noted that he had been in jail ''for the last 17 months and * * * has been out about 2 or 3 months.'' *Id.* at 7.

Respondent first saw S.M. on, or about October 1, 2007.[10] While S.M.'s file includes the report of a recent MRI of his right knee which indicated that he had tears of the lateral and medial menisci, chondromalacia, a ''probable tear of the anterior cruciate ligament,'' and a Baker's cyst, S.M. had not been treated with controlled substances. *Id.* at 5, 12–13. Respondent issued S.M. a prescription for sixty tablets of Oxycontin (20 mg.), with instructions to take one tablet twice a day, as well as for Motrin, a non-controlled drug. *Id.* at 6. Respondent's treatment plan was limited to prescribing these two drugs and a follow-up in thirty days. *Id.*

On October 26, S.M. again saw Respondent. *Id.* at 4. The progress note indicates that S.M. had only one tablet of the Oxycontin left, even though only twenty-five days had passed since the earlier visit. *Id.* Moreover, S.M. told Respondent ''[h]e also took someone else's Roxicodone 30 mg, & says it really helped his pain.'' *Id.* S.M. also complained of ''nerves'' and that he was ''not sleeping well.'' *Id.* On the note,

[6] The patient file for P.G. was not admitted into the record.

[7] The patient file for M.C. does not indicate the number of tablets he prescribed for the various drugs on June 26 and July 24, 2007; the file does, however, include the abbreviations for the dosing instructions on the progress note which is dated June 26. GX 46, at 7–8. The note indicates that M.C. was to take the Oxycontin b.i.d., or twice a day (thus suggesting that the prescription was for sixty tablets); the other drugs were to be taken t.i.d., or three times per day (thus suggesting that prescriptions were for ninety tablets).

[8] The record does not establish whether the prescriptions were mailed to M.C. or were provided to M.C.'s acquaintances.

[9] According to Lieutenant Crum of the Greeneville, Tennessee Police Department, during the execution of a search warrant at M.B.'s residence, the authorities found both ''several pounds of marijuana and several pill bottles from Respondent.'' Tr. 138.

[10] While the notes pertaining to the initial visit are cut off where the date is indicated, the note for the October 26, 2007 visit, indicates that Respondent had ''first seen [S.M.] 25 days ago.'' GX 52, at 4.

Respondent indicated that S.M. had the following conditions: 1) Chronic knee pain—menisci tears, 2) osteoarthritis, 3) chronic anxiety, 4) COPD, and 5) Hepatitis C. *Id.* Respondent then issued S.M. prescriptions for fifty tablets of Oxycontin (20 mg.), sixty tablets of Roxicodone (15 mg.), and sixty tablets of Klonopin, and indicated that there would be a follow-up in ''30 days.'' *Id.*[11]

S.M. returned to Respondent on November 27. S.M. complained of knee pain and lower back pain/hip pain, which radiated down his leg. *Id.* at 2. He also complained that the ''pain meds aren't lasting long enough.'' *Id.* At the visit, Respondent prescribed sixty tablets of Oxycontin (20 mg.), sixty tablets of Klonopin, increased the Roxicodone (15 mg.) prescription to ninety tablets ''temporarily due to'' the earlier car accident, and added a prescription for Soma. *Id.* Respondent also noted that there would be a follow-up in thirty days and if S.M.'s back was not better, he ''will get MRI.'' *Id.*[12]

On one occasion, S.M. had traveled to Respondent accompanied by M.B. and K.C. On the way to South Carolina, S.M. was having trouble breathing, and according to K.C. was exhibiting ''extreme respiratory distress.'' Tr. 162; *see also id.* at 165 (M.B. told DI that S.M. ''was having extreme difficulty breathing''). Respondent nonetheless gave S.M. a prescription for Oxycontin, and apparently after S.M. filled the prescription at a pharmacy in South Carolina, he proceeded to inject the Oxycontin intravenously.[13] *Id.* According to both K.C. and M.B., S.M. injected himself with Oxycontin three times on the trip back to Tennessee. *Id.* at 162–63, 165. After returning to Greeneville, S.M., who had a collapsed lung, was admitted to the intensive care unit of a local hospital. *Id.* at 165 & 168.

Regarding his visit with Respondent on the day of this incident, S.M. acknowledged that he ''was having great difficulty breathing.'' *Id.* at 168. Respondent did not, however, mention S.M.'s condition or question him about it. *Id.* Respondent did not recommend that S.M. seek treatment for the condition, and after S.M. paid him in cash, issued him controlled-substance prescriptions. Tr. 168.

DEA Investigators interviewed several other persons who had obtained prescriptions from Respondent and related similar information regarding his prescribing practices. W.G., who as found above, had met Respondent in the Greene County Jail, saw Respondent at his home on multiple occasions. Tr. 174; GX 7. W.G., who at the time of the interview had been re-incarcerated, told Investigators that Respondent did not perform a physical examination on him, and he could not recall what conditions he was diagnosed with. Tr. 174. W.G. also told the Investigators that Respondent did not refer him to any specialist, and that his treatment was limited to taking medication. *Id.*

W.G.'s patient file indicates that he first saw Respondent on May 21, 2007. GX 7, at 3. According to the file, W.G. had a history of lower back pain, and an MRI indicated that he had disc problems. *Id.* W.G.'s file did not, however, contain an MRI report.[14] *See* GX 7. Moreover, under the portion for the physical exam, the notation for ''Back'' is blank. *Id.* at 3. Respondent nonetheless diagnosed W.G. as having the following conditions: (1) Lumbar Disc Disease, (2) Hypertension, (3) Hyperlipidemia, and (4) Chronic Anxiety. *Id.* At this visit, Respondent prescribed to W.G. ninety tablets of Lortab (hydrocodone) (10 mg.), sixty tablets of Avinza (morphine sulfate)[15] (90 mg.), ninety tablets of Valium (1 mg.) and ninety tablets of Soma. *Id.* At W.G.'s second visit, which occurred on June 26, 2007, Respondent re-issued prescriptions for each of these four drugs in the same quantities and strengths. *Id.*

On July 24, 2007, W.G. again saw Respondent. *Id.* at 2. Respondent noted that W.G. ''still has [Lower back pain]. Meds are helping but he took one of daughters [sic] Oxycontin & it helped better than Avinza.'' *Id.* Respondent also noted that he observed ''mild tenderness @ lower paravertebral area of lumbar spine,'' and that ''muscle spasm [is] present.'' *Id.* Instead of renewing the Avinza prescription, Respondent prescribed sixty tablets of Oxycontin (80 mg.). *Id.; see also* GX 64, at 3. Respondent also issued refills of the Lortab, Valium and Soma prescriptions. *Id.*

W.G.'s fourth visit with Respondent occurred on August 21, 2007. *Id.* Respondent indicated that W.G. is ''doing well'', but that he had a ''muscle spasm lower back & mild tenderness @ paravertebral area.'' *Id.* Respondent re-issued prescriptions for Oxycontin (80 mg.), Lortab (10 mg.), Valium (1 mg.), and Soma, although he decreased the quantities because W.G. had showed up two days early.[16] *Id.*

R.B. received at least five prescriptions for controlled substances from Respondent including three for Opana ER (oxymorphone hydrochloride), a schedule II controlled substance (21 CFR 1308.12(b)(1)), hydrocodone/acetaminophen (10/500 mg.), and clonazepam (1 mg.). *See* GX 64, at 110; GX 65, at 1–3. Moreover, at his visit of October 20, 2007, Respondent issued R.B. prescriptions for Opana ER, hydrocodone, clonazepam, and carisoprodol. *See* GX 65, at 1–3. While R.B. told Investigators that he had ''some pain problems,'' he also stated that Respondent did not examine him, did not refer him to any specialists, and that he did not know ''how long he was going to be on the medications.'' Tr. 173. Rather, R.B.'s understanding was ''that if he paid, he got this many [drugs] for this month,'' and that he was to ''come back next month.'' *Id.*

The Expert Testimony

Y. Eugene Mironer, M.D., testified for the Government as an expert witness in pain management. Dr. Mironer is a 1980 graduate of the Moscow State Medical School, did a four-year residency in general surgery at Moscow Medical School Hospital, and practiced for five years as a general surgeon at the Municipal Hospital, Moscow, in the former Soviet Union. GX 5, at 1. Thereafter, Dr. Mironer emigrated to the United States, and has completed an internship in Internal Medicine at SUNY–St. John's Hospital, Queens, NY; a three-year residency in Anesthesiology at the University of Massachusetts, Worcester, MA; and a fellowship in Pain

[11] In this note, Respondent also indicated that S.M. had been in a motor vehicle accident when he fell asleep while driving. *Id.*

[12] According to prescriptions records, Respondent issued to S.M. additional prescriptions for ninety tablets of Roxicodone (15 mg.) on December 28, 2007, and January 28, 2008; on the latter date, he also issued to S.M. prescriptions for sixty Oxycontin (20 mg.) and sixty Klonopin. *See* GX 64, at 151 & 228.

[13] K.C. testified that on her first trip to see Respondent she obtained a prescription for Percocet. Tr. 163. Various records show that on January 28, 2008, S.M., K.C., and M.B. all filled prescriptions issued by Respondent at the same pharmacy which was located in Columbia, South Carolina. *See* GX 64, at 228–29 (Rx to S.M. for Oxycontin 20 mg.), 266–67 (Rx to S.M. for Klonopin), 246–47 (Rx to K.C. for Percocet 10/325 mg.), 268–69 (Rx to M.B. for Klonopin). According to the records, these four prescriptions were dispensed between 4:11 p.m. and 4:58 p.m. *See id.* Approximately one hour later, S.M. filled a prescription for Roxicodone at a CVS Pharmacy, which was also located in Columbia. *See* GX 64, at 308–09.

[14] W.G.'s file also indicated that he had a history of HTN (hypertension) and lipid problems. GX 7, at 3.

[15] Avinza (morphine sulfate), a schedule II controlled substance. *See* 21 CFR 1308.12(b)(1).

[16] It also appears that W.G. saw Respondent on January 11, 2008, after he was released from jail, at which time he obtained additional prescriptions for Lortab and Valium. *See* GX 64, at 248–49, 250–51.

Management at the Medical College of Virginia, Richmond,VA[17] *Id.*

Dr. Mironer is board certified in both Anesthesiology and Pain Management, and is the Managing Partner and Medical Director of the Carolinas Center for Advanced Management of Pain, which has numerous offices in South Carolina and North Carolina, where he has practiced since 1996.[18] Tr. 10, GX 5, at 1. Dr. Mironer is also a member of various medical organizations including the American Pain Society, the Southern Pain Society, the International Spinal Injection Society, the American Medical Association, and the North Carolina and South Carolina Medical Associations. *Id.* at 2. Dr. Mironer has published numerous articles, and written several chapters of a textbook, on pain management; he has also presented at several conferences. *Id.* at 2–5; Tr. 12–13. Moreover, Dr. Mironer has continued to keep himself informed as to developments in the practice of pain management. Tr. at 13.

Dr. Mironer was qualified as an expert and testified at length regarding the course of medical practice used to assess, diagnose and treat pain patients. Dr. Mironer testified that ninety-nine percent of his practice's patients have been referred by either their primary care physician or a specialist, and that the patients either have their records sent prior to their appointment or hand carry them. *Id.* at 14. Before seeing a doctor, new patients are required to register and complete various forms and disclose what drugs they are currently taking and what pharmacies they are using. *Id.*

Upon meeting the patient, the physician obtains a thorough medical history which includes questions about the pain's location, origin, frequency, intensity, length of time it has been present, what aggravates it or eases it, and whether there are any other sensations that are related to it. *Id.* at 15–16. The physician also asks the patient about tests that have been done; what treatments including medications have been previously, or are currently being, used; if the patient has allergies; and the patient's surgeries. *Id.* at 16. The final part of the patient's history including reviewing other medical problems that the patient may have including mental health conditions and treatments, past drug and alcohol abuse, and sleep disorders.[19] *Id.* at 16–17.

Next, the physician does ''a full physical examination.'' *Id.* at 17. In the case of a complaint of back pain (which was a common complaint among Respondent's patients), this involves observing the patient's gait, assessing his ability to walk on both his toes and heels, and checking the patient's range of motion in his back both forwards/backwards and from side to side. *Id.* at 17–18. The patient's back is then visually examined for abnormalities such as scoliosis and scars from surgery; this is followed by palpation of the back for tender spots or trigger points. *Id.* at 18.

The physician next examines the strength, sensory condition, and reflexes of the patient's lower extremities. *Id.* Finally, the physician tests for Wadell's non-organic signs; these tests are used to determine whether the patient's pain has a psychological component. *Id.* at 18–19.

Based on the above, the physician arrives at his findings, formulates a treatment plan, and discusses both the findings and treatment plan with the patient. *Id.* at 20. As part of this process, the physician provides a detailed explanation as to why he/she is prescribing a particular drug (or no longer prescribing a drug the patient was previously taking), what procedures or treatments may help, and whether consultations with other specialists would be beneficial. *Id.* According Dr. Mironer, at least three out of four patients have not undergone enough diagnostic testing to determine the exact ''source of the[ir] pain and how to treat it.'' *Id.* at 21.

Dr. Mironer also stated that if a patient appeared at the initial visit without his/her records, he would prescribe a controlled substance—and do so only in a limited amount and in a low dose—only if the physical ''examination reveal[ed] some significant abnormalities.'' *Id.* at 23. The patient would be told, however, to come back in a couple days with all of his records. *Id.*

While Dr. Mironer testified that he accepts a patient's word that he is ''in pain,'' he further stated that ''not every pain is the same, and not every pain requires prescribing controlled substances,'' some pain may not be so bad as to require ''any serious intervention,'' and that some pain may be of ''a psychological origin'' and ''should not be treated with medication.'' *Id.* at 23–24. Dr. Mironer further noted that there are a variety of treatment modalities available for treating pain including physical therapy, psychological counseling, various types of injections, nerve blocks, and referrals to a spinal surgeon if short-term treatments do not improve the patient's pain level. *Id.* at 27–28.

Dr. Mironer also explained that he does not rely on a patient's recollection as to what drugs they are using because the patient may give mistaken information or mix up medications. *Id.* at 24. Moreover, in prescribing controlled substances, the amount of drug taken by the patient should be titrated. *Id.* at 34. Specifically, if treatment with a controlled substance is warranted and the patient is not currently taking a controlled substance, the patient is started on a lower strength drug such as hydrocodone of either 5 or 7.5 mg. strength, to be taken two to three times a day. *Id.* at 36. However, if the condition is severe, the dosing may be increased to ''every four to six hours.'' *Id.* at 37. Moreover, some patients may be started on oxycodone. *Id.* at 36 & 38.

Dr. Mironer further testified that he had reviewed the files Respondent maintained on fifty-seven of his patients, which were provided to him by Investigators with the DEA Columbia, S.C. Office. *Id.* at 40–41. The Government also introduced thirteen of the files into evidence and specifically questioned Dr. Mironer regarding what the records showed with respect to Respondent's prescribing practices.[20]

With respect to his review of all of the patient files, Dr. Mironer noted that ''practically all [of the] patients were self-referred and not from the local area,'' Tr. 44, and that fifty-four of the fifty-seven patients ''were coming from Tennessee,'' that this ''is usually not the case unless they are coming for some unique procedure,'' *id.* at 45, and that Respondent was not providing any unique procedures. *Id.* at 46. With respect to the out-of-state patients, Dr. Mironer observed that ''it is difficult to provide pain management for patients that live far away, because your ability to control what they take and what they receive and how they do it [is] significantly diminished with the distance'' they live from the practice. *Id.*

Dr. Mironer explained that when patients live out of state, ''there is much less communication [with] the pharmacist,'' a patient may be ''receiv[ing] the same medication from you and their family doctor,'' or even going to another pain clinic. *Id.* at 47. Dr. Mironer also noted that in his practice, at least ninety-nine percent of

[17] Dr. Mironer has also served as an Instructor in Anesthesia at the University of Massachusetts, and practiced as an anesthesiologist. GX 5, at 1.

[18] According to Dr. Mironer, the Carolinas Center has fifteen to twenty thousand patients. Tr. 10.

[19] Dr. Mironer also testified that it is not the ''usual or typical way of conducting [medical] practice'' to see multiple patients simultaneously, whether in one's living room or an examination room. Tr. 90.

[20] The contents of some of the files have been set forth above.

the patients are referred to it by another physician, whether a specialist or a family doctor. *Id.* at 47–48. According to Dr. Mironer, in dealing with self-referred patients, it is ''much more difficult to get the information from them and verify what kind of treatment they [have] received and are receiving currently.'' *Id.*; *see also id.* at 64 (discussing importance of communicating with a patient's other physicians to ensure that he/she is not receiving similar drugs from other physicians).

Relatedly, Dr. Mironer subsequently explained that he did not find ''any'' evidence that Respondent was attempting to control his patients' use of controlled substances through such standard practices as ''random urine toxicology screening to make sure that the patient is taking the medications that [are] prescribed, and not taking other controlled substances or street drugs,'' and/or calling the patients to come to the office for pill counts. *Id.* at 63–64. Dr. Mironer also noted that pill counts were not possible, because most of the patients lived out of state.[21] *Id.* at 64–65.

Dr. Mironer further opined that ''practically all of the patients [were] receiving an inadequate physical examination, as far as the areas of their pain is concerned,'' that ''practically all, if not all, receive[d] a prescription of controlled substances, but no specific treatment plan ha[d] been made.'' *Id.* at 48. Moreover, ''practically all the patients received opioids without any specific discernible plan,'' and a ''very significant number of the patients were receiving very high doses of opioids.'' [22] *Id.* at 49.

Furthermore, the files contained ''no indications that there were any attempts to control or verify or check the use of controlled substances, such as urine toxicology screening or pharmacy check[s,] or check[ing] with the other treating physicians to see what kind of medication [the patients] have been prescribed, which is one of the typical steps that pain clinics * * * tak[e] to'' monitor their patients. *Id.* Dr. Mironer also explained that he found that ''very significant numbers [of patients] were diagnosed with anxiety without indication of how that diagnosis was made, and they were treated with the same medications for anxiety.'' *Id.* at 48–49.

Dr. Mironer further noted that in the ''vast majority of the cases'' in which Respondent prescribed controlled substances for lower back pain, the physical examination was limited to determining whether the patient had tenderness. Tr. 54. Moreover, ''most of the time'' Respondent's patient files lacked ''enough diagnostic or physical examination to confirm the severity of [the] disease,'' and ''[n]o additional tests were done or planned that [would] help[] with the determination.'' *Id.* at 122–23. Dr. Mironer also rejected the notion that additional tests should not be performed simply because a patient lacks insurance, noting that certain tests such as x-ray and CT scan are considerably cheaper than an MRI, and in any case, while a CT scan ''is still expensive,'' its cost is ''on par'' with the cost of filling multiple prescriptions. *Id.* at 126–27.

Accordingly to Dr. Mironer, Respondent's exam involved ''just basically press[ing] on the area, and if the patient says ouch, that is tenderness.'' *Id.* at 54. Dr. Mironer reiterated that to properly examine a patient's back, ''[t]here should be a range of motion examination of [the] musculoskeletal, nervous system, including the reflexes, strength of the muscles, sensitivity to touch, the possibility of abnormality in the sympathetic system which you check by examining the look of the skin, the possibility of what is called allodenia, or extremely painful response to a non-painful stimulus, and so on.'' *Id.*

With respect to Respondent's diagnosis of anxiety in various patients and prescribing of benzodiazepines, Dr. Mironer explained that ''there was nothing in the notes indicating as to why this diagnosis appears.'' *Id.* at 55. According to Dr. Mironer, there should be ''something in [the] description of [the] encounter with the patient [which] should tell us something. For example, the patient looks anxious and jittery, constantly shaking, sweating, complaining of constant feeling of anxiety running all the time, or panic attacks or what not. There was nothing like that described in any of the patients most of the time. * * * '' *Id.*

Dr. Mironer also stated that ''it is a common practice in pain clinics to do psychological testing * * * for a majority of the patients, because it is well known that a significant number of patients with chronic pain are suffering from psychological conditions,'' and the ''prevalence of psychological conditions among pain patients is higher than in general populations.'' *Id.* at 56. Moreover, among chronic pain patients, depression ''is more prevalent'' than anxiety. *Id.*

Dr. Mironer further observed that ''benzodiazepines were the medications that were prescribed in most of the cases I reviewed.'' *Id.* at 57. According to Dr. Mironer, they are ''usually not the first line of defense for anxiety,'' and are ''not the best medication to prescribe for patients who are on opioids as well.'' *Id.* Dr. Mironer explained that prescribing benzodiazepines with opioids increases the risk ''of opioid overdose or significant side effect[s] such as drowsiness.'' *Id.* at 58. Dr. Mironer also noted that most of his patients that are being treated for chronic anxiety ''are being treated without benzodiazepines or other controlled substances.'' *Id.* at 61.

Next, Dr. Mironer noted that in most of the files, after Respondent issued prescriptions, ''the only plan of care was to come back in one month.'' *Id.* at 62. Dr. Mironer opined ''[t]hat this is fairly unusual,'' because for ''the majority of the patients, prescribing medication'' is ''just a starting point to get them into other modalities of treatment, either testing or consulting and so on.'' *Id.* Dr. Mironer further explained that practically none of the files included ''a plan of treatment saying I will start the patient on hydrocodone and muscle relaxants, obtain nerve conduction studies, obtain new MRIs, consider doing this injection or sending him to physical therapy or neurosurgical consult. * * * [T]here were no plans for treatment other than a follow up report.'' *Id.*

Dr. Mironer also noted that there were ''quite a few patients'' whose ''dose of opioids was increased after the patient asked for an increase.'' *Id.* at 63. Dr. Mironer found that this was ''very significant'' because there was no ''specific plan of treatment,'' and the patients ''were just on this free flow regimen where they received controlled substances, and whenever they wanted an increase they were getting an increase most of the time.'' *Id.* According to Dr. Mironer, this is ''not the regular way of practicing pain medicine.'' *Id.* Dr. Mironer also noted that there were instances in which patients had told Respondent that they had obtained a controlled substances from others or patients had taken their drug ''more often'' than was prescribed. *Id.*

[21] Dr. Mironer also observed that while patients who engage in drug-seeking behavior may indeed have legitimate medical conditions that cause pain and require treatment, these patients must be more closely monitored through pill counts, urine tests, and pharmacy checks. *Id.* at 87.

[22] Dr. Mironer explained that giving high doses of opioids can cause constipation, depression, hormonal release and in the event of an overdose, respiratory depression and even death. Tr. 52–53. Moreover, because patients develop tolerance, ''one would try to increase the [dosing] from small amounts * * * very slowly, because after you reach a certain amount of medicine you are not getting much more benefit at all.'' *Id.* at 53.

Patient Specific Evidence

Next, Dr. Mironer testified regarding Respondent's prescribing to specific patients. With respect to W.G. (GX 7), who met with Respondent while they were both in jail, and to whom Respondent prescribed three controlled substances including morphine, hydrocodone, Valium, as well as carisoprodol at the first visit (as well as at three subsequent visits), Dr. Mironer opined that Respondent prescribed inappropriate amounts of opioids and that ''[t]here were no reasons obvious from the chart for prescribing benzodiazepines.'' [23] Tr. 67. Dr. Mironer further noted that the ''physical examination was incomplete,'' and that Respondent's diagnoses, which included both lumbar disc disease and chronic anxiety (*see* GX 7, at 2) ''had no support with tests or as a result of'' the physical examination. *Id.* at 67–68. Moreover, Respondent did not create a treatment plan. *Id.* at 68. Based on all of these findings, Dr. Mironer concluded that the prescriptions Respondent issued to W.G. ''were not issued for medical purposes.'' *Id.*

Respondent diagnosed D.F. (GX 13) with mild degenerative disc disease in the lumbar region, facet joint arthropathy, chronic muscle tension headaches, and chronic anxiety, and issued her prescriptions for sixty tablets of Oxycontin (80 mg), as well as ninety tablet prescriptions for Lortab (10 mg.), Xanax (1 mg.) and Soma. According to Dr. Mironer, a radiologist who reviewed a CT scan of D.F.'s lumbar spine had found that she had ''very mild degenerative changes'' of her lumbar spine, but that ''significant discomfort or radiculopathy would not be expected from these findings.'' Tr. 73, GX 13, at 9. Moreover, while D.F.'s file contained multiple radiology reports, it did not contain any records of prior treatments she had received. *See* GX 13; Tr. 73.

Dr. Mironer noted that ''there was again an inadequate examination of the back, and the patient was diagnosed with chronic anxiety without any'' findings to support the diagnosis. Tr. 73, *see also* GX 13, at 7–8.[24] Dr. Mironer also found that D.F. had ''received an extremely high dose of opioids together with Xanax and a muscle relaxant [Soma], and no treatment plan, and the same prescribing continue[d] for durations [sic] that was in the chart.'' Tr. 73. Dr. Mironer thus concluded that the prescriptions were ''not issued for legitimate medical purposes.'' *Id.*

On March 19, 2007, Respondent diagnosed D.M. as having five conditions: (1) Degenerative Lumbar Disc Disease with Radiculopathy, (2) Bilateral Lumbar Facet Joint Arthropathy, (3) S 1 Nerve Root Compression, (4) L Sciatica, and (5) Chronic Anxiety. GX 25, at 8. D.M.'s file contained the reports of two MRIs, which were done on May 12, 2001, and May 29, 2003. *Id.* at 9–10. At this visit, Respondent issued D.M. prescriptions for Avinza 90 mg (morphine sulfate), Lortab (10 mg), Xanax (1 mg.), and Soma. *Id.* at 8. Respondent issued to D.M. new prescriptions for these drugs on April 16, May 29, June 29; at the July 28 visit, Respondent noted that D.M. ''would like to [change] Avinza to Oxycontin due to expense,'' and issued her prescriptions for Oxycontin (40 mg.), as well as Lortab (10 mg.), Xanax (1 mg.), and Soma. *Id.* at 6–7. On August 25, September 20, October 18, and November 15, Respondent issued D. M. new prescriptions for the latter four drugs. *Id.* at 2, 4, 5, & 6.

According to Dr. Mironer, the findings of D.M.'s most recent MRI, which was then four years old, were not ''very significant.'' Tr. 74. Dr. Mironer opined that Respondent's ''examination of the back was again inadequate.'' *Id.* Relatedly, Dr. Mironer noted that Respondent had recorded the result of D.M.'s straight leg raise as negative, which suggested that ''a lack of radiculopathy, or nerve pinching of [the] sciatica,'' yet he had diagnosed D.M. with radiculopathy. *Id.* Moreover, Respondent had diagnosed D.M. as having chronic anxiety without noting any findings to support the diagnosis. *Id.*

Dr. Mironer observed that Respondent had prescribed a ''high dose of opioid, with benzodiazepine and no treatment plan.'' *Id.* Moreover, on the ''very next visit,'' Respondent increased ''the amount of opioids,'' and at a later visit, Respondent had ''changed from one medication to the other at [D.M's] request.'' *Id.* Finally, Respondent continued to prescribe ''for another five months without any treatment, testing or additional plans.'' *Id.* at 74–75. Dr. Mironer thus concluded that ''the prescription[s] of controlled substances were not issued for legitimate medical purpose in this case as well.'' *Id.* at 75.

With respect to F.M. (GX 26), Dr. Mironer noted that while he complained ''of low back pain,'' his patient file included records which indicated that he had been treated at a pain clinic and had been ''discharged just about ten days prior to'' his initial visit with Respondent. Tr. 75; *see also* GX 26, at 6–17. More specifically, F.M.'s file included a letter which indicated that during a September 6, 2007 office visit at the pain clinic, he had undergone a random urinalysis. GX 26, at 6. While F.M. had been prescribed Dilaudid (hydromorphone), a schedule II controlled substance, he tested negative for the drug when he ''should have been positive.'' *Id.* According to the letter, this was a breech of F.M.'s pain contract with the clinic; the clinic also recommended that F.M. go to a chemical dependency treatment center. *Id.*

At the initial visit (on October 18, 2007), Respondent noted that F.M. had been discharged based on the negative drug screen for Dilaudid; Respondent also diagnosed him as having approximately nine conditions including degenerative disk disease of the lumbar region, right SI joint pain, muscle spasm in his back, and chronic anxiety. GX 26, at 4–5. The progress note indicates, however, that Respondent performed a physical examination which included taking vitals signs, a neurological examination and various other findings. *Id.* at 4–5. Respondent issued him prescriptions for ninety tablets of Roxicodone 30 mg., sixty tablets of MS Contin 30 mg. (another schedule II drug), ninety tablets of Xanax (.5 mg), and sixty tablets of Soma. *Id.* Respondent also noted that he had discussed a narcotic contract with F.M. and told him that ''any breech will [result in] immediate dismissal,'' and that F.M. should consider injections of both his lower back and SI joint area. *Id.*

F.M. also saw Respondent on November 15, 2007. *Id.* at 2. At this visit, F.M. complained that he was ''still having pain'' and that ''the MS Contin causes some nausea.'' *Id.* F.M. reported, however, that ''the Roxicodone helps his pain the best.'' *Id.* Respondent noted he needed to make changes in F.M.'s medications; while Respondent renewed F.M.'s prescriptions for Roxicodone (30 mg.) and Xanax (.5 mg.), he also increased the strength of the MS Contin to 60 mg.[25]

Regarding Respondent's prescribing to F.M., Dr. Mironer observed that notwithstanding that ''a discharge letter * * * recommended treatment with

[23] W.G.'s patient file is discussed above.

[24] Dr. Mironer also found that Respondent had mistakenly diagnosed D.F. as having tension headaches, when her headaches were related to a brain cyst. Tr. 73. While this finding might be evidence of medical malpractice, it is not relevant to the issues in this proceeding.

Under the heading of ''Meds,'' a progress note dated June 26, 2007 contained in D.F.'s file indicates that she was taking Lortab (10 mg.), Xanax (1 mg.), Oxycontin (80 mg.) and Soma. GX 13, at 8. Yet, as Dr. Mironer testified, the patient file does not contain any records related to D.F.'s being prescribed these drugs by other physicians. Tr. 73.

[25] Respondent also changed F.M.'s muscle relaxant from Soma to Zanaflex. GX 26, at 2.

[an] addictionologist,'' F.M. ''was given a high dose prescription of benzodiazepine and a muscle relaxant with no plans for treatment or no plans for further strict control of his use of control substances, such as mediation check, pharmacy check, or urine toxicology screening.'' Tr. 75–76. Dr. Mironer further noted that while F.M. had complained that the MS Contin caused nausea, Respondent had issued him a new prescription which doubled the strength of the MS Contin. Tr. 76. Finally, Dr. Mironer noted that Respondent had not made a ''new plan.'' *Id.* Dr. Mironer thus concluded that the prescriptions were ''not issued for legitimate medical purposes.'' *Id.*

J.M.'s first visit with Respondent was April 16, 2007. GX 27, at 14. At the visit, J.M. complained of lower back pain, hip pain, and neck pain. *Id.* In the progress note, Respondent also indicated that J.M. had undergone an MRI on November 11, 2003, which showed that she had two herniated discs (L4–5 & L5–S1), and either an X-ray or an MRI (two years ago) of her cervical spine which showed that she had two ruptured discs (C1–2 & C2–3). *Id.* Moreover, Respondent noted that J.M. had seen another physician until October 2006. *Id.* J.M.'s file does not, however, contain reports for either radiological exam or any records from the physician who previously treated her. *See generally* GX 27.

Respondent's physical exam noted that J.M.'s lungs were clear and included a notation for a finding with respect to her cardiovascular system.[26] With respect to J.M.'s back, Respondent indicated ''nontender x over [right] buttocks,'' and with respect to her neck, Respondent indicated ''tender [with] spasm over [right] trapezius [and] periscapular area.'' *Id.* Respondent diagnosed J.M. with cervical disc disease, lumbar disc disease, and chronic anxiety, although there were no findings to support the latter. *Id.* Respondent's treatment plan for J.M. was to issue her prescriptions for sixty tablets of each of the following: Avinza (morphine sulfate 120 mg.), Roxicodone (30 mg.), and Xanax, as well as ninety tablets of Soma, with a follow-up in thirty days. *Id.* At J.M.'s next visit, Respondent issued her new prescriptions for each of the above drugs (although he reduced the number of pills by one day's worth). *Id.* at 13.

At J.M.'s third visit (June 6, 2007), Respondent noted that J.M. ''wants to [change] Avinza to MS Contin due to cost.'' Respondent obliged and issued J.M. a prescription for ninety tablets of MS Contin (60 mg.); Respondent also issued J.M. new prescriptions for sixty tablets of both Roxicodone (30 mg.) and Xanax (1 mg.), as well as ninety Soma. *Id.*

On the next visit (July 1, 2007), Respondent noted that the MS Contin was not helping her as well as the Avinza. *Id.* at 12. He also noted that J.M.'s hip pain was ''much worse internally [with] very limited movement'' and that she was ''still tender over [left] trapezius.'' *Id.* Respondent then issued new prescriptions for the same three controlled substances (as well as the Soma) and increased the quantity of MS Contin to 120 tablets. *Id.* Respondent re-issued the same four prescriptions on August 3, September 1 and 29, October 24, and November 20. *Id.* at 7, 9–11. Throughout the entire course of his treating J.M., her plan of care was limited to prescribing medication and follow-up visits. *See generally* GX 27.

Based on his review of J.M.'s record, Dr. Mironer concluded that Respondent's physical examination was ''inadequate,'' that she had ''received exceedingly high doses of opioids,'' as well as a ''benzodiazepine for anxiety'' with no findings to support the diagnosis. Tr. 76. Dr. Mironer further noted that ''no treatment plan was given,'' and that the ''prescribing was continued for more than half a year with no additional treatments, testing, or additional plans for the future.'' *Id.* Dr. Mironer thus opined that ''the prescriptions of controlled substances in [J.M's] case were * * * not issued for legitimate medical purposes.'' *Id.* at 77.

L.C.'s initially visited Respondent on March 19, 2007, and complained of lower back pain. GX 41, at 8. L.C.'s file includes a copy of a report for an MRI which had been done on November 29, 2006; the Radiologist's report indicates that the MRI had found ''only minimal disk disease'' of her lumbar spine, and that her disks ''are actually still within normal limits.'' *Id.* at 12. While the report also noted that there were ''degenerative changes * * * within the facet joints,'' it indicated that ''these should not be the cause of a radiculopathy.'' *Id.*

The note for L.C.'s first visit listed three doctors she had previously seen, yet her patient file did not contain any records from these doctors. *Id.* at 8. According to the history section, L.C. also had radiculopathy in her left leg to the back of her knee, and that her pain level was ''8.'' *Id.* According to the physical examination section, Respondent found tender the paravertebral area of L.C.'s lower back. *Id.* Respondent also apparently did a straight leg raise test on L.C; while findings appear to have been noted, the significance of the findings is not clear on the record.[27]

Respondent diagnosed L.C. as having four conditions: 1) Facet joint arthropathy, 2) mild lumbar disc disease, 3) chronic anxiety, and 4) chronic lower back pain with left radiculopathy. *Id.* Respondent then issued her prescriptions for Avinza (90 mg.), Lortab (10 mg.), Xanax (1 mg.), and Soma, with a follow-up in thirty days. *Id.* Respondent re-issued the prescriptions for the same drugs on April 16 (although he increased the dosing of the Avinza from twice to three times a day), and on May 29; on the latter date, Respondent did so without even requiring L.C. to appear. *Id.* at 7.

On June 29, L.C. returned to Respondent and requested that he prescribe Oxycontin instead of Avinza due to the latter's cost. *Id.* Respondent agreed and issued her a prescription for ninety tablets of Oxycontin (40 mg); Respondent also issued L.C. prescriptions for sixty tablets of Lortab (10 mg.), as well as ninety tablets of both Xanax and Soma. *Id.* Respondent issued new prescriptions for these drugs on or about July 28, August 25 (based on a telephone call), September 27, October 29, and November 30, 2007. *Id.* at 2, 4–6.

While L.C.'s patient file spans eight months of visits, it contains no indication that she was ever subjected to a urine drug screen or pill count. *See generally id.* at 2–8. Moreover, Respondent's plan of treatment for L.C. was invariably to prescribe controlled substances (and Soma); Respondent did not recommend any other treatment modalities to L.C. *Id.*

With respect to L.C., Dr. Mironer observed that ''[t]he only available record was an MRI, which was appropriate for [her] age,'' and that at the first visit, she had ''received a very high amount of opioids on this visit, with [a] benzodiazepine for anxiety that was again not documented.'' Tr. 77. Dr. Mironer further noted that at L.C.'s ''next visit,'' Respondent had increased her medications by ''[thirty] percent,'' that he ''later changed to a different pain medication,'' and that the prescribing ''continued for * * * seven, eight months with no control of intake of the medication and no plans for a future treatment.'' *Id.* Dr. Mironer thus concluded that the prescriptions Respondent issued to L.C. were ''not

[26] The record does not establish what the notation signified.

[27] Respondent also apparently checked L.C.'s lungs and cardiovascular system. GX 41, at 8.

issued for legitimate medical purposes.'' *Id.* at 77–78.

M.C., a patient who participated in Respondent's ''group practice,'' received prescriptions for Oxycontin (80 mg.), Lortab (10 mg.), Xanax (1 mg.) and Soma on June 26, July 24, August 21, September 15, October 8, November 5, and December 3, 2007. *See generally* GX 46. According to the progress note for his initial visit, M.C. reported that he was currently taking all four of the above drugs yet the file contains no records from other physicians. *Id.*

Respondent performed a physical examination of his lungs, cardiovascular, and back. *Id.* at 8. With respect to M.C.'s back, Respondent noted that it was tender at both the ''lower & upper paravertebral areas of [the] lumbar region,'' as well as ''at [the] lower [right] scapula area.'' *Id.* Respondent diagnosed M.C. as having degenerative disc disease in the lumbar region, facet joint arthropathy, and anxiety. *Id.* There is, however, no indication of any finding that would support a diagnosis of anxiety. *Id.*

Dr. Mironer noted with respect to M.C. that ''[n]o records [were] available at the time of the visit,'' and that Respondent's examination of his back ''was not adequate.'' Tr. 78. Dr. Mironer further observed that Respondent had prescribed ''an extremely high dose opioids * * * with benzodiazepines for anxiety that was not documented, and muscle relaxants,'' and that ''the pain prescribing continued for * * * half a year with again no'' plans for other treatment modalities. *Id.* Dr. Mironer thus concluded that Respondent's prescribing of controlled substances to M.C. ''was not for [a] legitimate medical purpose.'' *Id.* at 79.

H.R., another of Respondent's group practice patients, first saw Respondent on July 24, 2007, complaining of lower back pain, but ''no radiation.'' GX 51, at 5. H.R.'s file included two radiology reports, one for an MRI of his hips (dated June 19, 2006), and another for an apparent X-ray examination of his lumbar spine (dated March 28, 2006). *Id.* at 6–7. With respect to the latter exam, the Radiologist found that ''degenerative disc disease is present at the lumbar spine with mild degenerative levoscoliosis.'' *Id.* at 7.

In the physical exam section of the progress note, Respondent indicated that H.R.'s back was ''tender [bilateral] paravertebral areas of lumbar spine,'' and that he was ''able to bend to 90'' degrees. *Id.* at 5. Respondent further noted that H.R.'s straight leg raise was negative. *Id.*

According to the progress note, Respondent diagnosed H.R. as having chronic lower back pain caused by degenerative disc disease, and chronic anxiety. *Id.* Here again, the progress note contains no findings that support a diagnosis for anxiety. *Id.* As found above, Respondent issued H.R. prescriptions for sixty tablets of Oxycontin (20 mg.), ninety tablets of both Lortab (10 mg.) and Xanax (1 mg.), and ninety tablets of Soma. *Id.*

At the next visit (Aug. 21, 2007), H.R. reported that he was still having lower back pain. *Id.* at 4. Respondent doubled the strength of the Oxycontin he prescribed to 40 mg. and issued new prescriptions for Lortab, Xanax and Soma. *Id.* Respondent re-issued the same four prescriptions on two additional occasions. *Id.* at 2 & 4. Moreover, there is no indication in H.R.'s file that Respondent ever recommended alternative treatment modalities.

H.R.'s file also contained a Tennessee Board of Pharmacy Patient Rx History Report (dated November 26, 2007), which showed that H.R. had been receiving prescriptions for alprazolam (Xanax) and hydrocodone from multiple doctors and had obtained several of the prescriptions during the same period in which he was obtaining prescriptions from Respondent. *Id.* at 8–9. There is, however, no evidence that Respondent prescribed to H.R. after he received the report.

Dr. Mironer observed that ''the only available record at the time of [H.R.'s] visit was [an] age-appropriate X-ray of the spine with some mild to moderate degenerative changes, and [a] normal X-ray of the hip.'' Tr. 79. Dr. Mironer also noted that Respondent's initial prescribing was for ''a fairly high dose of opioid,'' and that the benzodiazepine prescriptions ''for anxiety * * * was undocumented.'' *Id.* Dr. Mironer further noted that ''[d]uring [the] next visit the amount of opioids that was fairly high already was increased more than fifty percent, and that [the] prescribing continued for a couple more months.'' *Id.* Here again, Dr. Mironer concluded that Respondent's prescribing of controlled substance lacked a ''legitimate medical purpose.'' *Id.* at 79–80.

A.R., who was H.R's wife, also visited Respondent on July 24, 2004, and complained of lower back pain and pain radiating down her left leg to her ankle. GX 59. A.R.'s file included the reports of two radiological examinations (one of her cervical spine and one of her lumbar spine), which were then more than three and a half years old. *Id.* at 7–9. While the report on A.R.'s cervical spine noted the presence of a paravertebral muscle spasm, it was otherwise ''unremarkable''; similarly, while the report on A.R.'s lumbar spine found ''disc desiccation at the level of L5/S1, with mild posterior and left paracentral disc bulging * * * the remaining portions of the exam are unremarkable.'' *Id.* at 7 & 9.

According to the progress note, Respondent examined A.R. and found tenderness at the bilateral paravertebral region of her lower back and a muscle spasm. *Id.* at 6. Respondent also found tenderness over A.R.'s left buttocks in the region of the sciatic nerve, that A.R. was able to bend over to ninety degrees, and that the straight leg raise was negative bilateral. *Id.* Respondent thus diagnosed A.R. as having chronic lower back pain caused by degenerative disc disease, chronic anxiety, and chronic left sciatica, and issued her prescriptions for sixty Oxycontin (20 mg.), ninety Lortab (10 mg.), ninety Xanax (1mg.), ninety Soma, with a follow-up in thirty days. *Id.* at 5–6.

At the next visit (August 21), A.R complained that she still had lower back pain despite her taking Oxycontin (20 mg.). *Id.* at 5. Respondent thus doubled the strength of the Oxycontin to 40 mg. and also re-issued the prescriptions for Lortab (10 mg), Xanax, and Soma. *Id.* Respondent also issued prescriptions for the same four drugs on September 20 and October 19. *Id.* at 2 & 4. At no point in his treatment of A.R. did Respondent recommend alternative treatment modalities.

At each of her four visits, Respondent issued the exact same prescriptions to A.R.—including drug, drug strength, and dosing—as he did for her husband, H.R. Moreover, at their August 21 visit, Respondent doubled the strength of the Oxycontin he prescribed to both H.R. and A.R. *Compare id.* at 5, *with* GX 51, at 4.

As Dr. Mironer observed, ''the treatment of both Mr. and Mrs. [R] was exactly the same as far as medication and increases and the dates.'' Tr. 80. Dr. Mironer further noted that while an MRI indicated that A.R. had a bulging disk, it ''may be a very benign condition.'' *Id.* Moreover, A.R. had ''received a fairly high amount of opioids on her first visit with [a] benzodiazepine for anxiety that was not documented.'' *Id.* Dr. Mironer also observed that Respondent had increased the amount of opiates at the second visit, and that A.R. continued to receive the medication for two more months thereafter. *Id.* Dr. Mironer thus concluded that the prescriptions Respondent issued to A.R. lacked a legitimate medical purpose. *Id.*

C.H. first saw Respondent on November 8, 2007, and apparently complained of back and shoulder pain.

GX 19, at 3. According to the progress note, C.H. had been undergoing treatment by a clinic for opiate dependence for the last ten months and was taking a ''maintenance dose of methadone hcl 80 mg daily.'' *Id.* at 3. C.H. further reported to Respondent that methadone ''controls his pain better than hydrocodone,'' which he had become addicted to. *Id.*

C.H. patient's file included numerous records from the methadone clinic including a printout of C.H.'s ''Patient Drug Screen Results,'' which indicated that it was printed out on the morning of his first visit with Respondent. *Id.* at 16. This document showed that C.H. had been given a urine drug screen the day before; the document also contained a handwritten notation stating that ''[C.H.] is currently medicating @ 80 mg. daily.'' [28] *Id.* There is no indication in C.H.'s file that Respondent contacted the clinic to determine whether C.H. was still being treated by it.

Dr. Mironer did not take issue with the physical exam that Respondent performed on C.H. or his diagnosis of pain. Tr. 81–82. He noted, however, that Respondent had prescribed to C.H. an eighty milligram dose of methadone to be taken once a day. *Id.* at 81. More specifically, Dr. Mironer explained that ''methadone is prescribed once a day for treatment of addiction because of the length of methadone being in the body makes it different'' as the drug remains in the body ''exceed[ing] two days.'' *Id.* 50. In contrast, the analgesic effect of methadone ''is only six to eight hours,'' and thus the ''prescribing [of] methadone for pain should be in the form of [a] low dose for three, four, five times a day, rather than a high dose once a day.'' *Id.*

According to Dr. Mironer, ''[w]hen you prescribe a high dose once a day, you are not providing pain relief, but you are providing a certain amount of opioid in the body for a long duration that is usually what is needed for [the] treatment of addiction.'' *Id.* Moreover, if methadone is used to treat pain, the dosing ''should be started at 5 to 10 milligrams three or four times a day,'' and titrated to a total dosage of sixty milligrams a day. *Id.* Finally, because methadone is ''so long acting,'' a patient ''may eventually accumulate [a] significant amount of the drug,'' thus risking ''respiratory depression and the possibility of death.'' *Id.* at 52. Dr. Mironer therefore concluded that Respondent's prescribing of methadone to C.H. was not issued for ''appropriate medical purposes.'' [29] *Id.* at 81.

Finally, with respect to S.M. (GX 52), whose history of medical problems and substance abuse, as well as his road trip (accompanied by K.C. and M.B.) to visit Respondent was discussed above, Dr. Mironer acknowledged that the records ''showed significant disease of the knee joint.'' Tr. 83. Dr. Mironer further noted, however, that the available records showed that S.M had a ''history of street drug use'' including marijuana and IV cocaine use, and ''long term incarceration.'' *Id.*

Dr. Mironer noted that Respondent issued S.M. a prescription for Oxycontin (20 mg.) at the initial visit, that he did not create any treatment plan other than to prescribe drugs, and that he did not attempt control S.M.'s use of his medication. *Id.* at 83–84. Dr. Mironer also noted that S.M. had run ''out of his medication early,'' and had ''received additional controlled substance [Roxicodone 30 mg.] from a third person.'' *Id.* at 84. Dr. Mironer then observed that ''[d]espite all that, [S.M.] received [a] renewal of his prescription for Oxycontin, and actually received an additional prescription for the same medicine [Roxicodone] that he received from the third person.'' *Id.* Finally, Dr. Mironer again explained that while Respondent had increased the amount of controlled substances he prescribed, no plan was made for alternative treatments or to control S.M.'s ''intake of medication.'' *Id.* Dr. Mironer thus concluded that Respondent's prescribing of controlled substances lacked a legitimate medical purpose. *Id.*

Respondent's Cross-Examination of Dr. Mironer

On cross-examination, Respondent did not challenge Dr. Mironer's testimony with respect to a specific patient. Respondent did, however, inquire into the basis for Dr. Mironer's more general observations about both Respondent's patient pool and the practice of pain management.

For example, with regard to the ''large number'' of patients who were traveling from Greeneville, Tennessee to see Respondent, Dr. Mironer testified that while patients may go out of state ''to obtain a consult or to have a procedure done,'' it is ''fairly unusual'' for patients ''to go a long distance on a monthly basis just to see a family doctor or * * * a pain doctor who is prescribing their medication.'' *Id.* at 96. Moreover, when asked by Respondent whether he would still require studies and MRIs for a chronic pain patient who has been treated with medications for a five to ten-year period, Dr. Mironer testified that he ''would absolutely do'' the test ''unless [he had] a clear understanding of what is the pathology and * * * that there is nothing [that] can be done to improve the condition, which is extremely rare.'' *Id.* at 98. Dr. Mironer further stated that the ''majority'' of chronic pain patients can be helped with alternative treatments such as injections, nerve destruction or surgery, even if they ''cannot be cured completely,'' and that in his experience, the majority of chronic pain patients have ''never received proper medical treatment.'' *Id.* at 99–100.

Moreover, while acknowledging that ''[p]ain is subjective,'' Dr. Mironer explained that the cause of chronic pain can only be assessed through ''objective findings.'' *Id.* at 100. If the patient's findings through physical examination and diagnostic tests are normal, and the ''patient has severe pain,'' the pain is ''probably psychological in origin,'' and should be treated accordingly. *Id.*

Respondent's Evidence

Respondent testified on his own behalf. Respondent generally did not address Dr. Mironer's testimony regarding the specific patients and his opinion testimony regarding the legality

[28] While the notation gives a date of ''1/8/07,'' the date appears to be cut off and obviously could not have been written ten months before the document was printed out and a month before C.H. commenced treatment with the clinic. *See* GX 19, at 10. I thus find that the notation was made on November 8, 2007, the date the document was printed out.

[29] Dr. Mironer further noted that ''[i]f a patient finishes his treatment at a methadone clinic, we require usually a psychiatric or psychological evaluation * * * to make sure * * * that the patient * * * is a good candidate to try to treat * * * with chronic opioids. We will try to avoid it as much as we can. However, if we will prescribe for this patient medication, it probably won't be methadone, and it for sure won't be a high dose of methadone once a day.'' *Id.* at 81–82. Dr. Mironer also explained that ''it is a well documented knowledge, and even the PDR [Physicians' Desk Reference] refers to the duration of pain action and advises to not prescribe methadone for pain.'' *Id.* at 83. *See also id.* at 111 (''If the patient is treated for addiction and cured, then he shouldn't be on methadone any more. If he still required daily doses of methadone, it means that he is still in treatment for addiction'' and the prescribing should ''be done only by the methadone clinic'').

The Government also introduced the patient file of K.M., who complained of chronic lower back pain. GX 24, at 2. K.M.'s chart contains but a single progress note, which appears to be incomplete as indicated by the notation ''OVER'' at the bottom of the page, but the continuation page is not in the record. *Id.* Nor does the note appear to document the full scope of the physical examination as it makes no mention of Respondent's findings with respect to K.M.'s back, even though with respect to every other patient, Respondent made some finding with respect to a patient's back even if his exams were inadequate. *Id.* Moreover, the file is missing Respondent's assessment and does not clearly indicate what drugs he may have prescribed and the plan of treatment; while the file contains a document which lists various medications, the record does not establish the significance of this document. Nor did the Government submit other records which show the prescriptions Respondent issued to K.M.

of the prescribings. Rather, Respondent testified as to the circumstances surrounding his starting his South Carolina practice, the results of the patient interviews conducted by the Investigators, his reasons for not requiring his patients to undergo diagnostic testing and alternative treatments, his prescribing for anxiety, and his prescribing to a person with track marks.

The ALJ found that ''Respondent appeared to tailor his testimony to suit his version of the events.'' ALJ at 50. This was for good reason as beyond her personal observation of Respondent's demeanor, as much of his testimony was patently self-serving, and frequently, absurd.

According to Respondent, he opened up his pain management practice notwithstanding his lack of board certification in pain management and that he had not attended any conferences on pain management, based on what he had learned in his seven years as a family practitioner in Tennessee and while being treated by a board-certified pain specialist. *Id.* at 322 & 324. Respondent maintained that he opened a pain management practice rather than a family practice, because it ''would be simple,'' ''[i]t wouldn't require a lot of employees'' or ''a lot of the things that family practice requires,'' and he ''wouldn't have to mess with insurance companies taking [forty to sixty] percent of the money.'' *Id.* at 290. Respondent subsequently testified that he ''needed money for retirement'' and to pay bills for his old office in Tennessee because his office manager had ''stolen between forty and two hundred thousand dollars.'' *Id.* at 304. Respondent maintained, however, that his need for money was not the only reason he resumed practicing as he missed caring for patients. *Id.*

Respondent also maintained ''that it made sense that probably patients would come down'' from Greeneville, Tennessee to see him, because ''the pain clinics'' near Greenville ''were mostly full,'' and the patients are ''not going to go to a pain clinic that they don't know something about the doctor.'' *Id.* at 291. Respondent did not, however, establish that he had surveyed any pain clinics to determine whether they were still accepting patients. According to Respondent, patients would not simply go to a pain management center of a university-hospital (such as Duke or the University of Tennessee, which might also be a shorter drive) to be treated because they want a doctor that ''they know something about.'' *Id.* at 324–25.

With respect to the evidence pertaining to his prescribing practices, Respondent admitted that ''I could have done blood pressures and all at the house, but it is a little more cumbersome to do blood pressures.'' *Id.* at 292. Respondent further acknowledged that ''[i]f there were families there or whatever, they're on the couch and we're talking and I'm getting a history from them and all.'' *Id.* Respondent maintained, however, that ''I did examine patients that were there,'' that ''I don't [sic] people's pants down in front of other people,'' that ''I didn't discuss anything that was * * * confidential'' without taking the person to another room. *Id.* at 292–93.

Moreover, Respondent asserted that he was ''just floor[ed]'' by the evidence that the patients had told investigators that ''they weren't examined.'' *Id.* at 293. Relatedly, Respondent stated that ''[i]t's nothing to listen to somebody's heart[ ], lungs, check their back and neck,'' and that he could ''do a complete physical on somebody in three or four minutes.'' *Id.* Respondent, however, then implicitly acknowledged that he had not performed physical examinations on at least some of the persons, testifying that ''[B.J.P.] and a number of these patients say that they were not examined at my house, but they were at the office.'' *Id.*

Respondent also testified that ''this is probably some of the worse documentation I've probably ever done.'' *Id.* at 301. Respondent further asserted that those patients who told investigators that they didn't know ''what their diagnosis is or what the [treatment] plans are for them [were] lying, plain and simple * * * because I go over the same routine with every patient.'' *Id.* Respondent also maintained that he was ''eminently qualified to treat anxiety and depression,'' and that he would ''always ask the basic questions'' that are needed to diagnose ''anxiety and depression.'' *Id.* at 303. I conclude, however, that the records speak for themselves and because they do not set forth the findings required to support the numerous diagnoses Respondent made for both pain and chronic anxiety, or that he created plans that recommended treatments (other than taking drugs), I reject Respondent's testimony.

Relatedly, Respondent testified that ''he was probably at fault'' for not seeing track marks on several of his patients' arms was ''because it was easier [to] listen to somebody's heart and lungs, just underneath their shirt, [to] lift up their shirt, because they would wear long-sleeved shirts * * * and I didn't remove their shirts usually.'' *Id.* at 294. On cross-examination, Respondent acknowledged that if a patient's medical records indicated that he had a history of IV drug use (as in the case of S.M., GX 52, at 8), it would ''[t]o some degree'' raise a red flag to examine his arms for current use. Tr. 329. Respondent insisted, however, that ''I * * * make my own decisions about patients I treat.'' [30] *Id.*

Respondent also maintained that that he was willing to accept that a patient has not ''had an MRI in four or five years * * * for a while,'' but ''there was going to be a time within a year, year and a half, that [he] was going to come up with something'' because he was ''not going to jeopardize a patient.'' *Id.* at 296.

Relatedly, Respondent maintained that he did not ''immediately'' ask his patients to get MRIs because of the costs involved. *Id.* Finally, Respondent maintained that if his patients continued to put off obtaining trigger point injections, ''the medication was going to stop.'' *Id.* at 297. Respondent admitted, however, that he had never actually stopped prescribing to a patient even though he acknowledged that there were a few patients who he had been prescribing to for that long a period (a year and a half). *Id.* at 319. Finally, when asked whether he was aware of what was required under South Carolina law to establish a doctor-patient relationship, Respondent testified that he did not ''know the details of it,'' but that ''you make contact and do basic things.'' *Id.* at 335.

Respondent also introduced into evidence various statements which were prepared by family members, professional acquaintances, and friends. *See* RXs 1–10. Of these statements, most are not remotely probative of the issues in this case. Among the statements, however, is one from a physician who ''assisted him at his clinic during the summer of 2008,'' RX 1, as well as one from a nurse who worked for him ''from approximately May 2002–May 2006,'' when he was practicing in Greeneville, Tennessee. RX 3.

[30] Respondent further maintained that S.M., who was hospitalized with a collapsed lung after obtaining prescriptions for Oxycontin which he proceeded to inject intravenously, was not in respiratory distress on ''that day.'' *Id.* at 299. While Respondent acknowledged that ''respiratory depression will come from the narcotics,'' he maintained that narcotics would not cause a lung to collapse. *Id.* at 300.

Regardless of whether narcotics would cause a collapsed lung, respiratory depression is a known side effect of taking opiates, and it seems unusual to prescribe narcotics to a patient who has been diagnosed with C.O.P.D. The Government did not, however, ask its expert regarding the propriety of Respondent's prescribing of Oxycontin and Roxicodone to S.M. in light of this condition. I thus do not rely on this conduct in determining whether the prescriptions were for a legitimate medical purpose.

Notably, neither of these persons worked with Respondent during the period when he issued the prescriptions which are at issue here. Moreover, the unsworn statement of Dr. Koon (RX 1), reflects his observations of Respondent at a time when the latter was aware that he was under investigation and had ample reason to portray himself as responsible and law abiding. *See* GXs 2 & 3 (Respondent's letters to DEA Investigators regarding pending investigation).

Nor does the statement from his former nurse support him. According to the nurse, Respondent ''was very strict when it came to pain medicine and always attempted to control a patient's pain first with a non-controlled substance and/or alternative medicine[,]'' and ''required all his patients to have supporting MRI/x-rays etc. * * * before ever giving any narcotic pain medication.'' RX 3. Respondent's former nurse also stated that he ''always did thorough examines on his patients with each office visit,'' that he requires his patents ''to bring in their narcotic prescription bottles with each monthly visit,'' and would do pill counts, and that he would request that his patients ''come in for a drug screen'' and give them 24 hours to come to the office and provide the specimen. *Id.* Indeed, the statement is remarkably consistent with Dr. Mironer's testimony as to the appropriate and usual course of professional practice in prescribing controlled substances to patients and monitoring them to ensure that they are neither abusing the drugs nor diverting them, and buttresses Dr. Mironer's opinion testimony that Respondent issued numerous prescriptions which lacked a legitimate medical purpose.

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. § 824(a)(4). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

In this matter, it is undisputed that Respondent holds a valid medical license and a controlled substance registration from the State of South Carolina (factor one). It is also undisputed that Respondent had not been convicted of an offense related to controlled substances under either federal or state law (factor three).[31] This proceeding focused, however, on Respondent's experience in dispensing controlled substances (factor two) and his record of compliance with applicable federal and state laws (factor four). Having considered the record as a whole, I conclude that the Government has proved by a preponderance of the evidence that Respondent issued numerous controlled substance prescriptions which were unlawful under federal law and that he has therefore committed acts which render his continued registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). As the ALJ did, I also conclude that Respondent has failed to accept responsibility for his misconduct and therefore cannot be entrusted with a registration.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

The principal issue in this case is whether the controlled-substance prescriptions Respondent issued complied with federal law. Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. § 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' *Id. See also* 21 U.S.C. § 802(10) (defining the term ''dispense'' as meaning ''to deliver a controlled substance to an ultimate user by, or pursuant to *the lawful order of, a practitioner*, including the prescribing and administering of a controlled substance'') (emphasis added).

As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon*, 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore*, 423 U.S. 122, 135, 143 (1975)).

Under the CSA, it is fundamental that a practitioner must establish and maintain a bonafide doctor-patient relationship in order to act ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *Laurence T. McKinney*, 73 FR 43260, 43265 n.22 (2008); *see also Moore*, 423 U.S. at 142–43 (noting that evidence established that physician ''exceeded the bounds of 'professional practice,''' when ''he gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' and ''took no precautions against * * * misuse and diversion''). The CSA, however, generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship. *See Kamir Garces-Mejias*, 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.*, 72 FR 50397, 50407 (2007).

Under South Carolina law, ''[i]t is unprofessional conduct for a licensee initially to prescribe drugs to an individual without first establishing a proper physician-patient relationship.'' S.C. Code Ann. § 40–47–113(A). The statute further provides that:

[a] proper relationship, at a minimum, required that the licensee make an informed medical judgment based on the circumstances of the situation and on the licensee's training and experience and that the licensee:

[31] Under Agency precedent, neither of these findings is dispositive. *See Edmund Chein*, 72 FR 6580, 6590 n.22 (2007); *Mortimer B. Levin*, 55 FR 8209, 8210 (1990).

(1) personally perform and document an appropriate history and physical examination, make a diagnosis, and formulate a therapeutic plan;

(2) discuss with the patient the diagnosis and the evidence for it, and the risks and benefits of various treatment options;

(3) ensure the availability of the licensee or coverage for the patient for appropriate follow-up care.

Id.

Relatedly, the South Carolina Board of Medical Examiners had adopted *Pain Management Guidelines*, which represent ''what the Board considers to be within the boundaries of professional practice.'' GX 67, at 2. The Guidelines advise that the prescribing of ''controlled substances for pain [will be considered] to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds.'' *Id.*

However, ''[a]ll such prescribing must be based on clear documentation of unrelieved pain and in compliance with applicable state or federal law.'' *Id.* Moreover, ''[a] complete medical history and physical examination must be conducted and documented in the medical record.'' *Id.* at 2. The Guidelines further state that ''[t]he medical records should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or condition, the effect of the pain on physical and psychological function, and history of substance abuse,'' as well as ''the presence of one or more recognized medical indications for use of a controlled substance.'' *Id.*

Moreover, ''[t]he written treatment plan * * * should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned.'' *Id.* at 3. Continuing, the Guidelines advise that ''[o]ther treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.'' *Id.* The Guidelines also advise that the physician should periodically review the patient's progress toward treatment goals, ''monitor patient compliance in medication usage,'' and ''refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives.'' *Id.*

The Guidelines further state that ''special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion.'' *Id.* Finally, the Guidelines advise that ''[t]he management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.'' *Id.*

The record clearly establishes that Respondent repeatedly exceeded the bounds of professional practice and issued controlled-substance prescriptions which lacked a legitimate medical purpose as required by Federal law. 21 CFR 1306.04. Even putting aside the scandalous evidence obtained by the Investigators in their interviews with the patients, Dr. Mironer, who reviewed the patient files, testified that Respondent invariably prescribed narcotic controlled substances for pain based on inadequate physical examinations, as well as benzodiazepines for anxiety without any findings to support his diagnosis. Moreover, Respondent's treatment plans were typically limited to prescribing multiple controlled substances; he rarely recommended that a patient undergo further testing, obtain a consultation from specialists, or try alternative treatment modalities, and failed to do so even when the prescribing went on and on.

For these reasons, Dr. Mironer specifically testified that Respondent lacked a legitimate medical purpose in issuing controlled substance prescriptions to W.G., D.F., D.M., J.M., L.C., M.C., H.R. and A.R. (the latter two being married to each other and who received the same exact prescriptions on the same dates). *See* Tr. 68, 73, 75, 77, 77–78, 79, 79–80. I agree and adopt Dr. Mironer's conclusion that these prescriptions lacked a legitimate medical purpose and were therefore unlawful under federal law. 21 CFR 1306.04(a).

With respect to F.M., who was discharged by his previous physician only a short while before his first visit with Respondent when a drug screen was negative for a drug (Dilaudid) which had been prescribed to him, Dr. Mironer did not find that Respondent's physical exam was inadequate. Tr. 75–76. Dr. Mironer did, however, note that notwithstanding F.M.'s having been discharged for noncompliance, Respondent issued controlled-substance prescriptions without any plan to monitor his use of the drugs through pill counts, pharmacy checks or urine testing; Dr. Mironer also noted that Respondent did not recommend any alternative treatments or consultations. *Id.* Notably, Respondent issued F.M. prescriptions for two schedule II opiates (MS Contin and Roxicodone), as well as benzodiazepines.

Based on Respondent's failure to properly monitor F.M.'s use of medications, his doubling of the strength of the MS Contin even though F.M. complained that the drug made him nauseous, and failure to create a treatment plan, Dr. Mironer concluded that the prescriptions were not issued for a legitimate medical purpose. Tr. 76. As the Supreme Court has explained, one of the purposes of the prescription requirement is to ensure that ''patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse.'' 546 U.S. at 274. As Dr. Mironer's testimony establishes, Respondent did not properly supervise F.M.'s use of controlled substances, notwithstanding the evidence which suggests that he was either diverting or taking excessive amounts of Dilaudid. I thus adopt Dr. Mironer's conclusion that the prescriptions Respondent issued lacked a legitimate medical purpose as required by federal law. 21 CFR 1306.04(a).

Similarly, while S.M.'s medical history indicated that he had significant knee problems, it also established that he had abused street drugs including marijuana and cocaine, which he took intravenously. Moreover, at the second visit (which occurred twenty-five days after his initial visit), S.M. had only one tablet left of Oxycontin (out of the originally sixty tablets—a thirty day supply—which had been prescribed to him), and told Respondent that he had used Roxicodone (another schedule II drug) which he had obtained from a third person. Respondent nonetheless issued him a new prescription for Oxycontin and added a prescription for Roxicodone. As Dr. Mironer observed, notwithstanding the information Respondent had obtained as to S.M.'s history of drug abuse, he recommended no alternative treatment modalities and made no plan to control S.M.'s use of medications. Tr. 84. Dr. Mironer again concluded that Respondent's prescribing to S.M. lacked a legitimate medical purpose. *Id.* So do I.

Finally, with respect to C.H., Dr. Mironer did not take issue with Respondent's physical examination or his diagnosis of pain. Dr. Mironer did, however, note that Respondent had prescribed methadone to C.H., and used the same dosing regime (a large dose once a day) which the drug treatment clinic had used and which is used to treat addiction. *Id.* at 81, 50. Dr. Mironer's testimony established that

Respondent's prescribing to C.H. was fundamentally dangerous because the analgesic effect of methadone is only six to eight hours, the proper dosing for pain involves much smaller amounts of the drug such as five or ten milligrams which are taken three to four times a day, and a patient may accumulate significant amounts of the drug and risk respiratory depression and possibly death. *Id.* at 52.

Moreover, Dr. Mironer explained that when a patient has finished treatment for addiction, a psychiatric or psychological evaluation is required to ensure that the patient ''is a good candidate'' to treat with chronic opioids, that if the patient has been successfully treated for addiction he should no longer be on methadone, and if the patient still requires methadone, he is still addicted and should be treated by a methadone clinic. *Id.* at 81–82, 111.[32] Dr. Mironer also observed that the Physicians' Desk Reference advises against prescribing methadone for pain. *Id.* at 83.

Furthermore, given that C.H. had been subjected to a drug screen the day before his first visit with Respondent, and that the printout of C.H.'s drug screen results stated that he ''is currently medicating'' with 80 mg. of methadone, Respondent had ample reason to question why it was necessary to prescribe to C.H. C.H.'s patient file contains, however, no indication that Respondent contacted the methadone clinic to determine whether C.H. was still being treated by, and receiving methadone from, it. I therefore agree with Dr. Mironer that Respondent's prescribing of methadone to C.H. lacked a legitimate medical purpose.

As the forgoing demonstrates, Respondent repeatedly issued controlled substance prescriptions without a legitimate medical purpose and therefore violated the CSA's prescription requirement. *See* 21 CFR 1306.04(a). Moreover, substantial evidence supports the conclusion that Respondent was knowingly diverting controlled substances.

For example, Respondent initially denied writing prescriptions for B.J.P., his ''pod mate'' in the Greene County Jail, but then acknowledged that he had done so when confronted with the prescription he issued the day after his release from the jail. Moreover, the statements of various persons to Investigators regarding their road trips to see Respondent and the group sessions that occurred in his living room were to some degree corroborated by progress notes and prescription records indicating that the patients had seen Respondent on the same date. Relatedly, in his testimony Respondent did not deny that the group sessions occurred, but rather insisted that the patients were ''on the couch and we're talking and I'm getting a history from them and all.'' Tr. 292.

Furthermore, there was extensive evidence that nearly all of Respondent's patients were driving from the Greeneville, Tennessee area (a nine to ten-hour round trip), when they could have obtained treatment much closer to home. It is absurd to suggest—as Respondent does—that his patients were legitimate but could not obtain treatment much closer to home. Finally, not only did H.R. and A.R., who were married to each other, jointly visit Respondent; at each visit, they received the exact same controlled substance prescriptions and did so even when Respondent doubled the strength of the Oxycontin he was prescribing.

In sum, Respondent's experience in dispensing controlled substances and record of compliance with applicable laws is characterized by his knowing diversion of controlled substances. I thus conclude that the Government has made out its *prima facie* case that Respondent has committed acts which render his registration ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

Sanction

Under Agency precedent, where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present[] sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.'" *Medicine Shoppe-Jonesborough,* 73 FR 363, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988)). Moreover, because ''past performance is the best predictor of future performance, *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his]s actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels*, 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

In her discussion of factor five, the ALJ specifically found that Respondent had ''refus[ed] to acknowledge his wrongdoing,'' and that there was ''little hope'' that ''he will act more responsibly in the future.'' ALJ at 54. The ALJ thus ''conclude[d] that Respondent is unwilling * * * to accept the responsibilities inherent in a DEA registration,'' and recommended that his registration be revoked and any pending applications be denied. *Id.* I agree.

On balance, Respondent's testimony does not establish that he has accepted responsibility for his misconduct. For example, while it was an ancillary issue in the proceeding, Respondent insisted that he had done nothing to warrant the charge of resisting arrest even though he was convicted by a jury of the charge. Moreover, he insisted that his patients had lied when they told Investigators that he had not performed physical exams on them or told them what their treatment plan was. Indeed, with respect to the latter, he maintained that his patients had lied notwithstanding that his records rarely listed any plan other than to prescribe drugs and return in thirty days.

Furthermore, Respondent maintained that he could do a complete physical examination ''in three or four minutes,'' and insisted that ''he always ask[ed] the basic questions'' needed to diagnose anxiety and depression even though the progress notes repeatedly lacked the findings necessary to support such a diagnosis. And while Respondent initially acknowledged that he was ''probably at fault'' for not examining his patients' arms for track marks indicative of current intravenous drug abuse, when asked whether he should have done so when a patient's medical records established a history of drug abuse, he insisted that he ''makes [his] own decisions about patients that [he] treat[s].'' Tr. 329.

As forgoing demonstrates, Respondent has not accepted responsibility for his misconduct. Moreover, while Respondent produced a letter from a physician, who had worked with him ''[f]or a short period of time'' during the summer of 2008, which suggests that Respondent has reformed his practices, it is significant that at the time, Respondent was well aware that he was under investigation and had ample incentive to behave. Finally, Respondent's misconduct was egregious

[32] Under federal law, a practitioner must meet extensive requirements and be separately registered to lawfully dispense narcotic drugs for maintenance or detoxification treatment. 21 U.S.C. 823(g).

and caused extraordinary harm to public health and safety.[33]

I thus conclude that the revocation of Respondent's registration is necessary to protect the public interest. For the same reasons that led me to order the immediate suspension of his registration, I conclude that public interest requires that this Order be effective immediately.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, AA1071947, issued to George C. Aycock, M.D., be, and it hereby is, revoked. I further order that any pending application to renew or modify the registration be, and it hereby is, denied. This Order is effective immediately.

Dated: April 3, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–8624 Filed 4–14–09; 8:45 am]

BILLING CODE 4410–09–P

[33] According to the National Center on Addiction and Drug Abuse, ''[t]he number of people who admit abusing controlled prescription drugs increased from 7.8 million in 1992 to 15.1 million in 2003.'' National Center on Addiction and Substance Abuse, *Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S.* 3 (2005). The above figure is ''23 percent more than the combined number abusing cocaine (5.9 million), hallucinogens (4.0 million), inhalants (2.1 million) and heroin (328,000).'' *Id.* Moreover, ''between 1992 and 2003, there has been a * * * 140.5 percent increase in the self-reported abuse of prescription opioids,'' and during this period, the ''abuse of controlled prescription drugs has been growing at a rate twice that of marijuana abuse, five times greater than cocaine abuse and 60 times greater than heroin abuse.'' *Id.* at 4.

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Application for Certificate to Employ Homeworkers (WH–46); Piece Rate Measurements; and Homeworker Handbook (WH–75). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 15, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, E-mail *Lawrence.Steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Fair Labor Standards Act (FLSA) section 11(d), 29 U.S.C 211(d), authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary or appropriate to prevent the circumvention or evasion of the minimum wage requirements of the Act. The Department of Labor (DOL) restricts homework in seven industries (*i.e.,* knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries) to those employers who obtain certificates. *See* 29 CFR 530.1–.2. The DOL now allows employers to obtain general (employer) certificates to employ homeworkers in all restricted industries except women's apparel and hazardous jewelry manufacturing operations. *See* 29 CFR 530.101. In order to obtain general certificates to employ workers in the restricted industries under the certification program, an employer must apply to the Wage and Hour Division (WHD) of the DOL. *See Id.* Form WH–46 is the application form used to obtain a certificate to employ homeworkers in restricted industries, and it must contain information required by Regulations 29 CFR 530.102—including names, addresses, and languages (other than English) spoken by the homeworker—and the written assurances set forth in Regulations 29 CFR 530.103. If approved, the WHD issues a certificate that is valid for two-year periods unless suspended or revoked. 29 CFR 530.101(b). Employers in the restricted industries under the certification program who pay workers based on piece-rates must record and retain documentation of the method used to establish piece-rates in order to verify that rates were properly determined and resulted in wage payments to homeworkers at a rate at least equal to the FLSA minimum wage for all hours worked in the workweek. 29 CFR 530.202. To ensure employers fulfill their obligation to obtain and record accurate hours worked information whenever they distribute homework to employees and collect it from them, homeworkers record the information in Homeworker Handbooks (WH–75) as they perform the work and provide the Handbooks to their employer for transcription at the end of each pay period. *See* 29 CFR 516.31(c), 530.103(d)–(e). This information collection is currently approved for use through October 31, 2009.

II. Review Focus

The DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The DOL seeks the approval of the extension of this information collection in order to ensure employees working as homeworkers are paid in compliance with the FLSA and to allow the agency to carry out its responsibilities under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Application for Certificate to Employ Homeworkers; Piece-Rate Measurements; and Homeworker Handbook.

OMB Number: 1215–0013.

Agency Numbers: Forms WH–46 and WH–75.

Affected Public: Business or other for-profit.

Respondents: 302,080.

Total Annual Responses: 1,208,195.

Estimated Total Burden Hours: 614,241.

Estimated Time per Response: Varies; from 30 seconds to 30 minutes.

Frequency: On occasion.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 9, 2009.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–8504 Filed 4–14–09; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcing the New iCERT Portal System for Temporary and Permanent Labor Certifications

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) is announcing a new electronic system for submitting the Labor Condition Application (LCA) and the Application for Permanent Employment Certification.

DATES: This Notice is effective April 15, 2009.

FOR FURTHER INFORMATION CONTACT: For technical issues stemming from the iCERT portal, please contact David Wilson, Chief, Division of Technology Applications, Office of Performance and Technology, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–3493 (this is not a toll-free number), e-mail *Wilson.david@dol.gov*. For technical assistance with the iCERT Portal System you may also write to *OFLC.Portal@dol.gov* or see the iCERT Factsheet on the ETA Web site. For program-related issues, please contact the appropriate National Processing Center's help desk. For LCA questions write to *lca.chicago@dol.gov*. For PERM questions write to *plc.atlanta@dol.gov* or call: (312) 886–8000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's Employment and Training Administration (ETA), Office of Foreign Labor Certification (OFLC) provides national leadership and policy guidance and develops regulations and administrative procedures to carry out the responsibilities of the Secretary of Labor under the Immigration and Nationality Act (INA) concerning foreign workers seeking admission to the United States in order to work under the labor certification programs authorized by the INA. In the H–1B (including H–1B1 and E–3) program, the Secretary of Labor must receive an attestation from the employer about wages, working conditions, strikes, lockouts, notice, recruitment and other issues related to the possible displacement of U.S. workers as specified by Congress in 8 U.S.C. 1182(n) and (t). *See* also 20 CFR part 653 and 20 CFR part 655, subparts H and I.

In the permanent labor certification program (PERM), the Secretary of Labor must certify that: (1) There are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and (2) employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. *See* 8 U.S.C. 1182(a)(5)(A)(i); 20 CFR part 656.

The H–1B nonimmigrant program provides a means for U.S. employers to employ foreign workers on a temporary basis in specialty occupations while the PERM program allows employers to employ foreign workers on a permanent basis. Currently, both programs have electronic applications that can be filled out and submitted on-line. The H–1B nonimmigrant program requires electronic submission. However, the two electronic systems are not linked and an employer desiring to file applications in both systems must set up separate accounts. In addition, the PERM system does not allow attorneys or agents to have their own accounts. The new iCERT system will allow program users to set up one account and multiple subaccounts and utilize the account to file in both programs. There are enhanced security measures that allow employers, attorneys, and agents to control who is authorized to input data and who is authorized to submit applications.

II. Information on iCERT System Activation Dates

The Department plans to initially activate the iCERT system for purposes of establishing user accounts and filing the new LCA form (9035E). The system will be located at *http://icert.doleta.gov*. On and after April 15, 2009, the iCERT portal will be available for the submission of ETA 9035E (electronic LCA H–1B application). The current electronic LCA system will continue to be available through May 14, 2009. However, effective May 15, 2009, the LCA for the H–1B program will be available for submission only through the iCERT portal system.

The PERM application, Form ETA 9089, will become available for application submission on September 1, 2009. To allow for an appropriate transition, both systems will be active during the month of September. However, beginning October 1, 2009, PERM applications will be submitted electronically only through iCERT system accounts.

III. Information on Deactivation of Old Electronic Forms

The Department will deactivate the current electronic version of the Form ETA 9035E on May 15, 2009. The Department will deactivate the current electronic version of the Form ETA 9089 on October 1, 2009. Employers are encouraged to copy all necessary application information into the new iCERT system prior to these deactivation dates. The status of applications submitted prior to deactivation will continue to be available through current system accounts.

IV. Help Desk

The Office of Foreign Labor Certification has implemented a dedicated Help Desk Unit for program assistance at the Chicago National Processing Center (CNPC) to serve as a resource to those employers and/or their representatives in filing LCAs with the Department of Labor. Please submit program-related questions by e-mail to *LCA.Chicago@dol.gov*. The LCA Help Desk e-mail box will be monitored by the CNPC during the business hours of 8:30 a.m. to 5 p.m. Central Time

Monday through Friday. Your e-mail inquiries will be handled as expeditiously as possible.

Signed at Washington, DC, this 6th day of April 2009.

Douglas F. Small,

Deputy Assistant Secretary.

[FR Doc. E9–8505 Filed 4–14–09; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of additional meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date*: May 28, 2009.

Time: 8:30 a.m. to 5 p.m.

Room: 402.

Program: This meeting will review applications for JISC/NEH Transatlantic Digitization Collaboration Grants, submitted to the Division of Preservation and Access, at the March 26, 2009 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E9–8594 Filed 4–14–09; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0164]

Notice of Availability of Draft NUREG–1536, Revision 1A, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility'', and Opportunity To Provide Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and opportunity to provide comments.

DATES: Comments must be provided by July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ron Parkhill, Senior Mechanical Engineer, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation Division, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission Washington, DC 20005–0001. Telephone: (301) 492–3324; fax number: (301) 492–3342; e-mail: *ron.parkhill@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing Draft Revision 1A to NUREG–1536, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility.'' Its previous title, ''Standard Review Plan for Dry Cask Storage Systems,'' has been changed to better reflect its applicability. This revision incorporates Interim Staff Guidance (ISG) documents 1 through 22, as applicable, as well as other current NRC staff practices (*e.g.* addition of a materials chapter) utilized in its review of licensee integrated safety analyses, license applications or amendment requests, or other related licensing activities for dry storage systems under 10 CFR part 72. Additionally, the guidance contained in the Review Procedures section of each chapter of the subject document has been risk-informed to assist the NRC staff in prioritizing its review with respect to relative level of effort, and to increase efficiency.

The purpose of this notice is to provide the public with an opportunity to review and solicit comments on the Draft NUREG–1536, Revision 1A, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility''. These comments will be considered in the final version or subsequent revisions.

II. Opportunity To Provide Comments

Comments and questions on Draft NUREG–1536, Revision 1A, should be directed to Ron Parkhill, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001 by July 14, 2009. Comments received after this date will be considered if it is practical to do so, but only those comments received on or before the due date can be assured consideration. Comments can also be submitted by telephone, fax, or e-mail to the following: Telephone: (301) 492–3324; fax number: (301) 492–3331; e-mail: *Ron.Parkhill@NRC.gov*.

III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is [ML090400676]. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. ISGs that have been incorporated, as appropriate, into the subject document can be viewed at *http://www.nrc.gov/reading-rm/doc-collections/isg/spent-fuel.html*. During the public comment period for this document, other ISGs could be issued separately for public comment, and may be incorporated into the final version of NUREG–1536.

This document may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 2nd day of April, 2009.

For the Nuclear Regulatory Commission.

Nathan Sanfilippo,

Acting Chief, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E9–8599 Filed 4–14–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0166]

Issuance and Availability of Draft Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Draft Regulatory Guide 1211.

FOR FURTHER INFORMATION CONTACT: Wallace E. Norris, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7650 or e-mail to *Wallace.Norris@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, ''Materials and Inspections for Reactor Vessel Closure Studs,'' is temporarily identified by its task number, DG–1211, which should be mentioned in all related correspondence. DG–1211 is the proposed Revision 1 of Regulatory Guide 1.65.

General Design Criterion 1, ''Quality Standards and Records,'' of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the Code of Federal Regulations (10 CFR part 50), requires, in part, that structures, systems, and components important to safety be designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety function to be performed. Where generally recognized codes and standards are used, Criterion 1 requires that they be identified and evaluated to determine their applicability, adequacy, and sufficiency and be supplemented or modified as necessary to ensure a quality product in keeping with the required safety function.

Criterion 30, ''Quality of Reactor Coolant Pressure Boundary,'' of the same appendix requires, in part, that components that are part of the reactor coolant pressure boundary be designed, fabricated, erected, and tested to the highest practical quality standards.

Criterion 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' requires, in part, that the reactor coolant pressure boundary be designed with sufficient margin to assure that when stressed under operating, maintenance, testing, and postulated accident conditions (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized.

Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR part 50 requires, in part, that measures be established for the control of special processing such as heat treating and that proper testing be performed.

II. Further Information

The NRC staff is soliciting comments on DG–1211. Comments may be accompanied by relevant information or supporting data, and should mention DG–1211 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from the comments. Comments may be submitted by any of the following methods:

1. *Mail to:* Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Fax to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1211 may be directed to Wallace E. Norris at (301) 251–7650 or e-mail to *Wallace.Norris@nrc.gov*.

Comments would be most helpful if received by June 12, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1211 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML082820439.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 6th day of April 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–8597 Filed 4–14–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

VoIP, Inc.; Order of Suspension of Trading

April 13, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VoIP, Inc. (''VoIP'') because it has not filed an Annual Report on Form 10–K since December 31, 2006 or periodic or quarterly reports on Form 10–Q for any fiscal period subsequent to its fiscal quarter ending September 30, 2007.

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 company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the

securities in the above listed company is suspended for the period from 9:30 a.m. EDT, April 13, 2009 through 11:59 p.m. EDT, on April 24, 2009.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8743 Filed 4–13–09; 4:15 pm]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2009–0010]

Request for Public Comments Regarding Status of U.S. Equipment Industry Access to the European Community's (EC) Galileo Program and European Markets for Related Goods and Services

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee is seeking the views of interested parties on six questions regarding U.S. equipment industry access to the EC Galileo program and European markets for related goods and services, which pertain to Articles 5, 6, and 8 of the Agreement on the Promotion, Provision and Use of Galileo and GPS Satellite-Based Navigation Systems and Related Applications (''Agreement''). USTR will use this information in connection with its preparation of a report to Congress, as requested in the explanatory statement accompanying the Omnibus Appropriations Act, 2009, and to identify issues that may merit further discussion with the EC and its Member States under the consultation mechanism established under the Agreement.

DATES: Public comments are due no later than 5 p.m., Wednesday, May 13, 2009.

ADDRESSES: Comments should be submitted electronically to *http://www.regulations.gov*, docket number USTR–2009–0010. If you are unable to provide submissions by *http://www.regulations.gov*, please contact Gloria Blue at (202) 395–3475 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted only by fax to Gloria Blue at (202) 395–5141.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Scott Pietan, Director of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–9646.

SUPPLEMENTARY INFORMATION: In 2004, the United States and the EC and its Member States signed the Agreement on the Promotion, Provision and Use of Galileo and GPS Satellite-Based Navigation Systems and Related Applications (''Agreement''), which addresses U.S. and EC satellite navigation services, in particular the U.S. Global Positioning System, and the planned EC Galileo system. The Agreement has not yet entered into force, but it is being provisionally applied. The Agreement may be found at *http://pnt.gov/public/docs/2004/gpsgalileoagreement.pdf*. In addition to addressing signal compatibility and individual and mutual security concerns, the Agreement calls for non-discrimination and open markets in trade in civil satellite navigation-related goods and services.

In an explanatory statement accompanying the Omnibus Appropriations Act, 2009, Congress requested that USTR report on the status of U.S. equipment industry access to the EC Galileo program and European markets for related goods and services, in order to assess EC compliance with the Agreement. Joint Explanatory Statement to the Omnibus Appropriations Act, 2009, Public Law 111–008, 155 Cong. Rec. H1653, H1840 (daily ed., Feb. 23, 2009). To assist it in fulfilling that request, and in identifying matters that merit further discussion with the EC and its Member States in connection with the consultation mechanism provided under the Agreement, USTR is seeking comments on six issues:

(1) Has the EC or any of its Member States established any measures of the type described in Article 5.1 of the Agreement that adversely affect U.S. equipment industry access to Galileo navigation and timing signals and services, value added services, augmentations and global navigation and timing goods, or European markets for related goods and services?

(2) Has the EC or any of its Member States established any measures that have the effect, directly or indirectly, of mandating the use of any civil satellite-based navigation and timing signals or services, value-added service, augmentation, or global navigation and timing equipment within its territory, not expressly authorized by the International Civil Aviation Organization or the International Maritime Organization, as described in Article 5.2 of the Agreement?

(3) Does the EC or any of its Member States maintain a non-discriminatory approach with respect to trade in goods and services related to civil satellite-based navigation and timing signals, augmentations, and value-added services, consistent with the affirming statement contained in Article 6.1 of the Agreement?

(4) Are any EC or Member State measures with respect to goods and services related to civil satellite-based navigation and timing signals or services, augmentations, and value-added services used as a disguised restriction on or an unnecessary obstacle to international trade, as described in Article 6.2 of the Agreement?

(5) Does the EC make publicly available on a non-discriminatory basis, sufficient information concerning its unencrypted civil satellite-based navigation and timing signals and augmentations, consistent with Article 8.1 of the Agreement?

(6) To the extent that it provides civil satellite-based navigation and timing signals or services, augmentation, or value-added service for civil users that is encrypted or otherwise has features that allow the global navigation service provider to deny access, does the EC or any of its Member States, subject to applicable export controls, afford to U.S. manufacturers of global navigation and timing equipment or augmentation or value-added services providers, on a non-discriminatory basis, access to the information necessary to incorporate such encryption or other similar features into their equipment, through licensing of necessary information or other means at market prices, consistent with the terms set forth in Article 8.2 of the Agreement?

Public Comment: Requirements for Submissions

Persons may submit public comments electronically to http://www.regulations.gov docket number USTR–2009–0010. If you are unable to provide submission by *http://www.regulations.gov,* please contact Gloria Blue at (202) 395–3475 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2009–0010 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by

selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.) The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''General Comments'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''*See* attached'' in the ''General Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information should be submitted only by fax to Gloria Blue at (202) 395–3475. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection.

Comments will be placed in the docket and open to public inspection, except confidential business information. Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2009–0010 in the search field on the home page.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. E9–8548 Filed 4–14–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–11]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received; Extension of comment period.

SUMMARY: In accordance with 14 CFR 11.47(c), the FAA has received a petition from NetJets Aviation, Inc. That petition requested an extension of the comment period for a petition from CitationShares Management LLC. The FAA will extend the comment period for 40 days after date of publication.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 26, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0083 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Background

The comment period for the Summary of Petition Received published on March 25, 2009 (74 FR 12924) and closes on April 14, 2009. However, NetJets Aviation, Inc. petitioned the FAA to extend the comment period. This notice extends the comment period.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Laverne Brunache (202) 267–3133, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 10, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–8607 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0312]

Parts and Accessories Necessary for Safe Operation; Grant of Exemption for DriveCam, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant an exemption to DriveCam, Inc. (DriveCam) that will enable video event recorders to be mounted on commercial motor vehicles lower in the windshield than is currently permitted by the Agency's regulations. DriveCam requested the exemption so that commercial motor vehicle operators would be able to use video event recorders to increase safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior for CMVs in passenger service; and (3) enhanced collision review and analysis. FMCSA believes that permitting video event recorders to be mounted lower than currently allowed, but still outside the driver's sight lines to the road and highway signs and signals, will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective from April 15, 2009 through April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and

Truck Standards and Operations, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the prohibition on obstructions to the driver's field of view requirements in 49 CFR 393.60(e) for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption'' (49 CFR 381.305(a)).

DriveCam's Request for Exemption

DriveCam applied for an exemption from 49 CFR 393.60(e)(1) to allow the use of video event recorders on all commercial motor vehicles.

Section 393.60(e)(1) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas, transponders and similar devices (devices) must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road and highway signs and signals.

DriveCam states that one of the primary deployers of video event recorders has been the motorcoach industry. DriveCam notes that over the last several years, the structural and aesthetic design of buses has changed considerably to include windshields that encompass a larger percentage of the front area of a motor coach and that extend well beyond the driver's useable sight line. As a result, manufacturers have voluntarily installed larger windshield wipers on these windshields that increase the swept area beyond the minimum required by Federal Motor Vehicle Safety Standard (FMVSS) No. 104, ''Windshield wiping and washing systems.'' FMVSS No. 104 establishes the requirements applicable to vehicle and equipment manufacturers for windshield wiper system coverage for passenger cars, multi-purpose passenger vehicles, trucks and buses.

DriveCam states that video event recorders, for optimal effectiveness, are mounted on the vehicle windshield on the interior of the vehicle in a position that enables the video-capture of what is happening in front of the vehicle as well as an internal video-capture of the driver (and passengers in passenger carrier vehicles). The view toward the front requires that the forward lens of the recorder be in the swept area of the windshield for a clear view in inclement weather. DriveCam states:

> Section 393.60(e)(1) was designed to avoid placement of devices on the windshield that would obstruct a driver's useful view of the roadway. However, because of the increase of the size of motorcoach windows and the corresponding increase in the area swept by the windshield wipers, video event recorders now must be mounted so high on the window as to limit the view of drivers, passengers, and collision events. Thus, the level of safety that can be produced by use of video event recorders is limited by the current regulation. By comparison, the proposed alternative will enable DriveCam to lower the placement of the video event recorders to a level, which will maximize the external and internal views of the recorders while still having them mounted high enough so as not to limit the field of vision of the driver.

DriveCam notes in its exemption application that the Commercial Vehicle Safety Alliance (CVSA) submitted a petition for rulemaking to FMCSA on October 18, 2007, to amend 49 CFR 393.60(e). The CVSA petition requests that the FMCSRs be amended to permit video event recorders and similar devices that require a clear forward facing visual field to be mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, provided that they are located outside the driver's sight lines to the road and highway signs and signals. DriveCam proposes that motor carriers utilizing the exemption be required to comply with the standard proposed in the CVSA petition if it is adopted during the 2-year exemption period. Copies of DriveCam's application for exemption and the CVSA petition are available for review in the docket for this notice.

DriveCam contends that video event recorders, once intergrated into fleets, have been shown to reduce the incidence of preventable vehicle incidents and crashes by 30–40 percent when used with a program to (1) review non-crash events, and (2) coach drivers to improve driving behavior. DriveCam provided a number of case studies of commercial fleets that it has conducted to support these claims.

Comments

On October 31, 2008, FMCSA published notice of the DriveCam application and asked for public comment (73 FR 65008). The Agency received two comments.

1. Mr. Richard L. Cofer, of Southern Company, a large utility with over 2,500 commercial motor vehicles, stated that Southern supports the use of video event recorders, and does not object to granting the exemption. Mr. Cofer stated that the devices present relatively minor visual obstruction when placed directly under the rear view mirror. Mr. Cofer stated that if an exemption is granted, the Agency should specifically identify where the devices can be placed.

FMCSA Response: DriveCam proposed to require motor carriers to mount video event recorders not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals in accordance with the CVSA petition for rulemaking. As noted below, the Agency has adopted these parameters as conditions of the exemption.

2. The California Highway Patrol (CHP) stated that the windshield visibility requirements in the California Vehicle Code (CVC), Section 26708, are based on the preemptive requirements of the Federal Motor Carrier Safety Standards (FMVSS) (49 CFR part 571.104) and cannot be changed without a statutory amendment. Until that step is taken, CHP asserted that the installation of video event recorders as proposed by DriveCam would be prohibited in California. In addition, CHP expressed concern regarding the lack of any safety studies and related supporting data to support the exemption application.

FMCSA Response: While FMCSA acknowledges that DriveCam did not present specific studies or data showing that safety will not be degraded, the Agency believes that placement of video event recorders just below the top of the swept area of the windshield wipers will (1) be well outside the drivers' sight lines, (2) allow the Agency to test, on an interim basis, an innovative safety management control system, and (3) not negatively affect safety. The FMCSA encourages any party having information that motor carriers utilizing this exemption are not achieving the requisite level of safety immediately to notify the Agency. If safety is being compromised, or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b) and 31136(e), FMCSA will take immediate steps to revoke the exemption.

FMVSS 104, Windshield Wiping and Washing Systems (49 CFR 571.104), applies to vehicle manufactures, while this exemption applies to individuals or businesses that purchase and operate the vehicles. Pursuant to 49 U.S.C. 31315(d) (as implemented by 49 CFR 381.600), ''[d]uring the period that a[n] * * * exemption * * * is in effect * * * no State shall enforce any law or regulation that conflicts with or is

inconsistent with the * * * exemption * * * with respect to a person operating under the * * * exemption * * *.'' To the extent CVC 26708 conflicts with this exemption, it is preempted by Federal law and may not be enforced.

Terms and Conditions for the Exemption

Based on its evaluation of the application for an exemption, FMCSA grants DriveCam's exemption application. The Agency believes that the safety performance of motor carriers during the 2-year exemption period will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the video event recorders would obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) generally, trucks and buses have an elevated seating position which greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the location within the top two inches of the area swept by the windshield wiper and out of the driver's normal sightline should be reasonable and enforceable at roadside. In addition, the Agency believes that the use of video event recorders by fleets to deter unsafe driving behavior is likely to improve the overall level of safety to the motoring public. Without the exemption, FMCSA would be unable to test this innovative safety management control system.

The Agency hereby grants the exemption for a two-year period, beginning April 15, 2009 and ending April 15, 2011.

During the temporary exemption period, motor carriers using video event recorders must ensure that the devices are mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

Preemption

During the period the exemption is in effect, no state shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

Issued on: April 6, 2009.

William A. Quade,

Acting Chief Safety Officer.

[FR Doc. E9–8595 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project along Interstate 805 from the proposed Carroll Canyon Road Direct Access Ramp (DAR) to the I–805/I–5 merge in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 13, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Susanne Glasgow, Deputy District Director, Division of Environmental Analysis, California Department of Transportation, 4050 Taylor Street, San Diego, CA 92110, Regular Office Hours 8 a.m. to 5 p.m., Telephone number 619–688–0100, e-mail: *Susanne.Glasgow@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans and the USFWS have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California. The California Department of Transportation (Caltrans) proposes to extend Carroll Canyon Road under Interstate 805 (I–805), construct north facing Direct Access Ramps (DARs) from the extension of Carroll Canyon Road to I–805, and add north and southbound High Occupancy Vehicle (HOV) lanes on I–805 from the DARs, north to the I–805 junction with I–5. The project extends for a length of 2.2 mi (3.5 km). The project would provide additional access for motorists to I–805 that are currently experiencing substantial delay at the existing Mira Mesa Boulevard/Sorrento Valley Road interchange. The actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), and a Finding of No Significant Impact (FONSI) was issued for the project on April 2, 2009. The EA/FONSI and other project records are available by contacting Caltrans at the address provided above. The EA/FONSI and other project records can be viewed and downloaded from the project web site at: *http://www.dot.ca.gov/dist11/Env_docs/I-805CCRFinal_4-09.pdf*. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. Farmland Protection Policy Act of 1981;
11. Title VI of the Civil Rights Act of 1964;
12. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
13. National Historic Preservation Act of 1966;
14. Historic Sites Act of 1935;
15. Executive Order 11990, Protection of Wetlands;
16. Executive Order 13112, Invasive Species;
17. Executive Order 11988, Floodplain Management; and
18. Executive Order 12898, Environmental Justice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: April 9, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–8659 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed project to construct a Direct Access Ramp (DAR) to connect the Interstate 15 (I–15) Managed Lanes facility with the local street system and transit facilities in the Mira Mesa and Scripps Miramar Ranch communities on I–15, from 385 meters (m; 1,265 feet [ft]) north of the Carroll Canyon Road Overcrossing to 960 m (3,150 ft) north of the Mira Mesa Boulevard Undercrossing, in the county of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 13, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Susanne Glasgow, Deputy District Director, Division of Environmental Analysis, California Department of Transportation, 4050 Taylor Street, San Diego, CA 92110, Regular Office Hours 8 a.m. to 5 p.m., Telephone number 619–688–0100, e-mail *Susanne.Glasgow@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following Direct Access Ramp project in the State of California. The project is located in San Diego County and would connect the Interstate 15 (I–15) Managed Lanes facility with the local street system and transit facilities in the Mira Mesa and Scripps Miramar Ranch communities on I–15, from 385 meters (m; 1,265 feet [ft]) north of the Carroll Canyon Road Overcrossing to 960 m (3,150 ft) north of the Mira Mesa Boulevard Undercrossing. The Hillery Drive Alternative has been selected as the Preferred Alternative. The FHWA project reference number is FHWA–CA–EIS–08–01–F. The actions by the Federal agencies and the laws under which such actions were taken are described in the Environmental Assessment with/Finding of No Significant Impact (EA/FONSI) for the project, approved on March 27, 2009, and in other documents in the FHWA project records. The EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans' EA/FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist11*. Pending federal actions include:

- Modified Access Report.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. Farmland Protection Policy Act of 1981;
11. Title VI of the Civil Rights Act of 1964;
12. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
13. National Historic Preservation Act of 1966;
14. Historic Sites Act of 1935;
15. Executive Order 11990, Protection of Wetlands;
16. Executive Order 13112, Invasive Species;
17. Executive Order 11988, Floodplain Management; and,
18. Executive Order 12898, Environmental Justice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: April 9, 2009.

Karen Bobo,

Director, Local Agency Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–8601 Filed 4–14–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

Correction

In notice document E9–7496 beginning on page 15322 in the issue of Friday, April 3, 2009, make the following correction:

On page 15322, in the second column, in the **DATES** section, in the second line, ''May 4, 2009'' should read ''June 2, 2009''.

[FR Doc. Z9–7496 Filed 4–14–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 8, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 15, 2009 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0118.

Type of Review: Revision.

Title: Formulas for Fomented Beverage Products.

Description: Formula information is necessary to protect the public and collect revenue. Brewers must submit written notices to obtain formula approval.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1513–0083.

Type of Review: Revision.

Form: TTB F 5000.24.

Title: Excise Tax Return.

Description: Businesses, other than those in Puerto Rico, report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on TTB F 5000.24. TTB needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 48,166 hours.

OMB Number: 1513–0122.

Type of Review: Extension.

Form: TTB F 5100.51.

Title: Formula and Process for Domestic and Imported Alcohol Beverages

Description: This report is used to monitor the production of malt beverages, wine, and distilled spirits products. It ensures that these products are correctly produced and classified according to Federal regulations.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 8,000 hours.

Clearance Officer: Frank Foote, (202) 927–9347. Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–8598 Filed 4–14–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Proposed Information Collection (Application for Fee or Personnel Designation) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine applicants' qualifications as a fee appraiser or compliance inspector.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0113'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Fee or Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Abstract: Applicants complete VA form 26–6681 to apply for a position as a designate fee appraiser or compliance inspector. VA will use the data collected to determine the applicant's experience in the real estate valuation field.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,100 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 6,200.

Dated: April 10, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–8627 Filed 4–14–09; 8:45 am]

BILLING CODE A320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–21093)]

Proposed Information Collection (A Veteran's Faith: Spirituality Influences Coping With Cancer) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine if there is a relationship between

spirituality and the ability to cope with cancer.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–New (10–21093)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: A Veteran's Faith: Spirituality Influences Coping with Cancer, VA Forms 10–21093(A)–(C).

OMB Control Number: 2900–New (10–21093).

Type of Review: New collection.

Abstracts: VA will use the data collected to measure whether cancer patients' spiritual beliefs give them the ability to cope with the illness.

Affected Public: Individuals or households.

Estimated Annual Burden: 10 hours.

Estimated Average Burden per Respondent: 40.

Frequency of Response: Annually.

Dated: April 9, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–8628 Filed 4–14–09; 8:45 am]

BILLING CODE A320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0724]

Proposed Information Collection (FVEC) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to collect information from honorably discharged Filipino veterans of WWII who served in the Armed Forces of the United States and who may be eligible to receive a one-time payment from Filipino Veterans Equity Compensation Fund (FVEC), which is a part of the President's Stimulus Package.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 15, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0724'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement in Support of Claim (Filipino Veterans Equity Compensation Fund), VA Form 21–4138(CF).

OMB Control Number: 2900–0724.

Abstract: Veterans who served in the organized military forces of the Government of the Commonwealth of the Philippines, including certain service in the Philippine Scouts or in organized guerrilla forces recognized by the United States Army, while such forces were in the service of the Armed Forces of the United States, are entitled to a one time payment from the Filipino Veterans Equity Compensation Fund. The veteran must be honorably discharged and served before July 1, 1946 to receive the one-time payment. Applicants seeking this one-time payment must complete VA Form 21–4138(CF) to determine eligibility and file their claim on or before February 16, 2010.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 18,000.

Dated: April 10, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–8629 Filed 4–14–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) Voluntary Service Office (VAVS) is amending the system of records currently entitled ''Voluntary Service Records—VA'' (57VA135) as set forth in the **Federal Register** 66 FR 6764. VA is amending the System Location; Categories of Individuals covered by the System; Categories of Records in the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storing, Retrieving, Retaining, and Disposing of Records in the System, including Storage, Retrievability and Safeguards. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than May 15, 2009. If no public comment is received, the amended system will become effective May 15, 2009.

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 Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. 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) 461–4902 (this is not a toll-free number) for an appointment. 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: Laura Balun, Director, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

The number of the system was changed from 57VA10C2 to 57VA135 to maintain consistency of numbering with the Office code for VA Voluntary Service (VAVS). Routine use 9 was added to disclosure information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

Routine use 10 was added to so that VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Approved: March 30, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

57VA135

SYSTEM NAME:

Voluntary Service Records—VA.

SYSTEM LOCATION:

Records are maintained at each of the VA health care facilities and in the Voluntary Service System (VSS). Active records are retained at the facility where the individual has volunteered to assist the administrative and professional personnel and in the VSS. Basic information for all inactive records is retained at the facility where the volunteer worked and in the VSS. VSS is a Web-based volunteer timekeeping package currently housed on Web-servers at Silver Spring, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All volunteers, regularly-scheduled and occasional, including non-affiliated and members of voluntary service organizations; welfare, service, veterans, fraternal, religious, civic, industrial, labor, and social groups or clubs which voluntarily offer the services of their organizations and/or individuals to assist with the provision of care to patients, either directly or indirectly, through VA Voluntary Service under Title 38, United States Code, Section 513.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records containing personal information about the individual making application to become a volunteer in a VA health care facility, VA regional office, or VA cemetery. Information relating to the individual membership in service organizations, qualifications, restrictions and preferences of duty and availability to schedule time of service. Training records pertaining to the volunteer's service will also be maintained for all active volunteers at the facility where the volunteer works. Medical records of active volunteers will be maintained in the facility's Employee Health office. Fingerprint and background investigation records will be maintained by the local facility's office that handles those investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 513.

PURPOSE(S):

The records and information are used for tracking the number of Regularly Scheduled (RS) Volunteers, Occasional Volunteers, and student volunteers; to produce statistical and managerial reports on the number of hours and visits of all volunteers each month; and to present volunteers with certificates of appreciation for service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, *i.e.*, individually identifiable health information, and 38 U.S.C. 7332, *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse,

sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. Any information in this system, except the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

3. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

4. Volunteer records may be used to confirm volunteer service, duty schedule, and assignments to service organizations, Bureau of Unemployment, insurance firms, office of personnel of the individual's full-time employment; to assist in the development of VA history of the volunteer and his/her assignments; and to confirm voluntary hours for on-the-job accidents, and for recognition awards.

5. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

6. Disclosure may be made to the National Archives and Records Service, General Services Administration, in records management inspections conducted under authority of Title 44 United States Code.

7. VA may disclose information from this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

10. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Digital information of all active volunteers is maintained in Silver Spring, Maryland, on secured Web-servers. Paper documents for all active volunteers are maintained at the individual VA facilities where the volunteer has donated time. Computer files containing such basic information as name, address, date of birth, volunteer assignments, hours/years volunteered, and award information are retained for all volunteers, either active or inactive, at the VA facility where the volunteer worked.

RETRIEVABILITY:

(a) All volunteer records are filed by unique identification numbers within the VA's Voluntary Service System, (VSS), and are cross-referenced under the organization(s) they represent.

(b) Medical records are stored by name and SSN in the VISTA patient files.

SAFEGUARDS:

Physical Security:

1. Access to VA working space and medical record storage areas and the Web-servers in Silver Spring, Maryland, is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service. Volunteer file records of sensitive medical record files are stored in separate locked files.

2. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files and volunteer specific data elements stored in the VSS are limited to VAVS employees whose official duties warrant access to those files. The automated record system recognizes authorized users by keyboard entry of a

series of unique passwords. Once the employee is logged onto the system, access to files is controlled by discreet menus which are assigned by the VSS package local system administrator based upon the employee's demonstrated need to access the data to perform the employee's assigned duties. A number of other security measures are implemented to enhance security of electronic records (automatic timeout after short period of inactivity, device locking after pre-set number of invalid logon attempts, etc.). Employees are required to sign a user access agreement acknowledging their knowledge of confidentiality requirements, and all employees receive annual training on information security. Access is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security measures.

3. On-line data resides on VSS Web-servers in Silver Spring, Maryland, that is highly secured.

4. Any sensitive information that may be downloaded or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal.

5. All new VAVS employees receive initial information security training, and refresher training is provided to all employees on an annual basis.

RETENTION AND DISPOSAL:

1. The individual volunteer's record of service is maintained by the Department of Veterans Affairs health care facility, as long as he or she is living and actively participating in the VAVS program. VSS maintains minimum information on all volunteers indefinitely. These minimum records include the volunteer's name, address, date of birth, telephone number, next of kin information, assignments worked, hours and years of service and last award received.

2. Depending on the record medium, records are destroyed by either shredding or degaussing. Summary reports and other output reports are destroyed when no longer needed for current operation. Regardless of record medium, no records will be retired to a Federal records center.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Director, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Official maintaining the system: dNovus Contractor, Jay Singh, VHA Oakland OIFO, 1301 Clay Street, Suite 1350N, Oakland, CA 94612.

NOTIFICATION PROCEDURE:

Individuals seeking information concerning the existence and content of their service records must submit a written request or apply in person to the VA health care facility where their voluntary service was accomplished. All inquiries must reasonably identify, to the VA facility, the portion of the volunteer's service record they want information about and the approximate dates of service, in order to receive that information. Inquiries should include the volunteer's name, organization represented, date of birth, and last address while serving as a volunteer to the VA.

RECORD ACCESS PROCEDURE:

Volunteers, dependents, survivors or duly authorized representatives seeking information regarding access to and contesting of VA Voluntary Service records may contact the Voluntary Service office at the Department of Veterans Affairs health care facility where the individual was a volunteer worker.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records may be provided by the volunteer, his/her family, civic and service organization, ''Patient Medical Records—VA'' (24VA136) system of records, and Voluntary Service at the health care facility where volunteer worked.

[FR Doc. E9–8605 Filed 4–14–09; 8:45 am]
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Wednesday,
April 15, 2009

Part II

Environmental Protection Agency

Endocrine Disruptor Screening Program; Policies and Procedures for Initial Screening; Final List of Initial Pesticide Active Ingredients and Pesticide Inert Ingredients To Be Screened Under the Federal Food, Drug, and Cosmetic Act; Notices

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1080; FRL–8399–9]

RIN 2070–AD61

Endocrine Disruptor Screening Program; Policies and Procedures for Initial Screening

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document describes the policies and procedures EPA generally intends to adopt for initial screening of chemicals under the Endocrine Disruptor Screening Program (EDSP). The EDSP is established under section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which requires endocrine screening of all pesticide chemicals and was established in response to growing scientific evidence that humans, domestic animals, and fish and wildlife species have exhibited adverse health consequences from exposure to environmental chemicals that interact with their endocrine systems. In December 2007, EPA sought comment on its draft policies and procedures for initial screening under the EDSP. Following review and revision based on the public comments, EPA is now describing the specific details of the policies and procedures that EPA generally intends to adopt for initial screening under the EDSP, including the statutory requirements associated with and format of the test orders, as well as EPA's procedures for fair and equitable sharing of test costs and handling confidential data.

FOR FURTHER INFORMATION CONTACT: William Wooge, Office of Science Coordination and Policy (OSCP), Mailcode 7201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8482; e-mail address: *wooge.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you produce, manufacture, use, or import pesticide/agricultural chemicals and other chemical substances; or if you are or may otherwise be involved in the testing of chemical substances for potential endocrine effects. Potentially affected entities, identified by the North American Industrial Classification System (NAICS) codes, may include, but are not limited to:

- Chemical manufacturers, importers and processors (NAICS code 325), e.g., persons who manufacture, import or process chemical substances.
- Pesticide, fertilizer, and other agricultural chemical manufacturing (NAICS code 3253), e.g., persons who manufacture, import or process pesticide, fertilizer and agricultural chemicals.
- Scientific research and development services (NAICS code 5417), e.g., persons who conduct testing of chemical substances for endocrine effects.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit IV.E. of this document, and examine section 408(p) of the FFDCA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2007–1080. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* In addition to accessing the public docket for this document through *www.regulations.gov*, you can access other information about the EDSP through the Agency's website at *http://www.epa.gov/scipoly/oscpendo/index.htm*. You may also access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Overview

A. What Action is the Agency Taking?

Following review of public comments received on the Draft Policy and Procedures in response to the **Federal Register** notice of December 13, 2007 (72 FR 70842) (FRL–8340–3), EPA is describing the policies and procedures it generally intends to use to issue and enforce orders pursuant to the authority provided by section 408(p)(5) of the Federal Food, Drug, and Cosmetic Act (FFDCA). This document provides specific details on the requirements associated with section 408(p) of FFDCA, format of the orders, and the associated Agency policies and procedures. This document also describes the actions and/or procedures that EPA intends to use to:

- Minimize duplicative testing (see Unit IV.C.).
- Promote fair and equitable sharing of test costs (see Unit IV.C.).
- Address issues surrounding data compensation (see Unit IV.C.) and confidentiality (see Unit IV.D.).
- Determine to whom orders would generally be issued (see Unit IV.E.).
- Identify how order recipients should respond to FFDCA section 408(p) test orders, including procedures for challenging the orders (see Unit IV.F. and H.).
- Ensure compliance with FFDCA section 408(p) test orders (see Unit IV.G.).

This document only addresses the procedural framework applicable to EPA's implementation of FFDCA section 408(p)(5), and it does not address the tests or assays that will be used to screen chemicals for their potential to interact with the endocrine system or the approach for selecting chemicals under the EDSP. Elsewhere in today's **Federal Register**, the Agency is publishing a document that presents the final list of the first group of chemicals to undergo Tier 1 screening.

B. Does this Document Contain Binding Requirements?

This document describes the administrative policies and procedures that EPA generally intends to use in implementing the EDSP for initial screening. While the requirements in the statutes and the orders are binding on EPA and the order recipients, this document does not impose any binding requirements. Although EPA tried to develop policies that could be used in subsequent data collection efforts, these policies may be modified in response to the Agency's experience during initial screening. The policies outlined in this document are intended to further the general goals of the program, and to the extent the policies need to be amended to further those programmatic goals, EPA may do so. The policies and procedures presented in this document are not intended to be binding on either EPA or any outside parties, and EPA may depart from the policies and procedures presented in this document where circumstances warrant and without prior notice.

C. What is the Endocrine Disruptor Screening Program (EDSP)?

The EDSP was established in 1998 to carry out the mandate in section 408(p) of the FFDCA (21 U.S.C. 346a et. seq.), which directed EPA ''to develop a screening program . . . to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.'' If a substance is found to have an endocrine effect on humans, FFDCA section 408(p)(6) directs the Administrator to take action under available statutory authority to ensure protection of public health. That is, the ultimate purpose of the EDSP is to provide information to the Agency that will allow the Agency to evaluate the risks associated with the use of a chemical and take appropriate steps to mitigate any risks (Ref. 1). The necessary information includes identifying any adverse effects that might result from the interaction of a substance with the endocrine system and establishing a dose-response curve (Ref. 1). Section 1457 of the Safe Drinking Water Act (SDWA) also authorizes EPA to screen substances that may be found in sources of drinking water, and to which a substantial population may be exposed, for endocrine disruption potential. (42 U.S.C. 300j–17).

The Agency first proposed the basic components of the EDSP on August 11, 1998 (63 FR 42852) (FRL–6021–3). After public comments, external consultations and peer review, EPA provided additional details on December 28, 1998 (63 FR 71542) (FRL–6052–9). The design of the EDSP was based on the recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), which was chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App.2, 9(c)). The EDSTAC was comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies, worker protection and labor organizations, environmental and public health groups, and research scientists. EDSTAC recommended that EPA's program address both potential human and ecological effects; examine effects on estrogen, androgen, and thyroid hormone-related processes; and include non-pesticide chemicals, contaminants, and mixtures in addition to pesticides (Ref. 1). In addition, because of the large number of chemicals that might be included in the program, EDSTAC also recommended that EPA establish a priority-setting approach for choosing chemicals to undergo Tier 1 screening. The Science Advisory Board (SAB)/ Scientific Advisory Panel Subcommittee further recommended that initial screening be limited to 50 to 100 chemicals.

Based on the EDSTAC recommendations, EPA developed a two-tiered approach to implement the statutory testing requirements. The purpose of Tier 1 screening (referred to as ''screening'') is to identify substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems using a battery of assays. The fact that a substance may interact with a hormone system, however, does not mean that when the substance is used, it will cause adverse effects in humans or ecological systems. The purpose of Tier 2 testing (referred to as ''testing''), is to identify and establish a dose-response relationship for any adverse effects that might result from the interactions identified through the Tier 1 assays (Ref. 1).

EPA is implementing its EDSP in three major parts developed in parallel. This document deals only with one component of the EDSP (i.e., the administrative policies and procedures related to the issuance of Tier 1 Orders). The three parts are briefly summarized as follows:

1. *Assay validation*. Under FFDCA section 408(p), EPA is required to use ''appropriate validated test systems and other scientifically relevant information'' to determine whether substances may have estrogenic effects in humans or other endocrine effects as the Administrator may designate. Validation is defined as the process by which the reliability and relevance of test methods are evaluated for the purpose of supporting a specific use (Ref. 2). The proposed EDSP Tier 1 Screening Battery of Assays was presented to the FIFRA SAP during a public meeting on March 25–27, 2008. The FIFRA SAP report covering the meeting is available at *http://www.epa.gov/scipoly/sap/meetings/2008/march/minutes2008-03-25.pdf*. The final Tier 1 battery will be announced in a separate **Federal Register** document that the Agency anticipates issuing in spring 2009. EPA is also in the process of developing and validating Tier 2 tests. The status of each assay can be viewed on the EDSP website in the Assay Status table: *http://www.epa.gov/scipoly/oscpendo/pubs/assayvalidation/status.htm*.

2. *Priority setting*. EPA described its priority setting approach to select pesticide chemicals for initial screening on September 27, 2005 (70 FR 56449) (FRL–7716–9), and announced the draft list of initial pesticide active ingredients and pesticide inerts to be considered for screening under FFDCA on June 18, 2007 (72 FR 33486) (FRL–8129–3). The first group of pesticide chemicals to undergo screening is also referred to as ''initial screening'' in this document. The Agency is publishing in today's **Federal Register** a final list of chemicals that will be subject to initial screening. EPA anticipates that it may, in the future, modify its approach to selecting chemicals for screening. Information and factors that EPA may consider in selecting chemicals could include: Public input; the results of testing chemicals on the initial list; management considerations to increase the integration of screening with other regulatory activities within the Agency; implementation considerations flowing from a decision to extend screening to additional categories of chemicals (e.g., non-pesticide chemical substances); and the availability of new priority setting tools (e.g., High Throughput Pre-screening or Quantitative Structure Activity Relationships models). More information on EPA's priority setting approach and the list of chemicals is available at *http://www.epa.gov/scipoly/oscpendo/pubs/prioritysetting*.

3. *Procedures*. This **Federal Register** document describes the administrative policies and procedures that EPA generally intends to use in implementing the EDSP for initial screening. Specifically, the general policies and procedures relating to:

- The issuance of FFDCA 408(p) testing orders.
- Responses and related activities for order recipients to use in responding to an order.
- Joint data development, cost sharing, data compensation, and data protection.
- Other related procedures or policies.

D. What Chemicals May Be Covered by the EDSP?

FFDCA section 408(p)(3) specifically requires that EPA ''shall provide for the testing of all pesticide chemicals.'' Section 201 of FFDCA defines ''pesticide chemical'' as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including all active and pesticide inert ingredients of such pesticide.'' (FFDCA section 201(q)(1), 21 U.S.C. 231(q)(1) (Note that section 201(q) contains certain minor exceptions that do not affect these policies and procedures.)). Active ingredients are the substances that prevent, repel, suppress, control or kill the target pests. (FIFRA section 2(a); 7 U.S.C. 136(a)) Pesticide inert ingredients (also referred to as ''other pesticide ingredients'') are any ingredients in a pesticide product that are not active. (FIFRA section 2(m); 7 U.S.C. 136(m)). Pesticide inert ingredients may simply dilute the active ingredient or they may perform some function such as allowing the product to adhere better to leaves or other surfaces to improve contact with the pests. Pesticide inert ingredients also include fragrances, which may mask the smell of residential pesticides, and odorizers, which may act as warning agents. Many of these chemicals, including both pesticide active and inert ingredients, also have other, non-pesticidal uses.

FFDCA also provides EPA with discretionary authority to ''provide for the testing of any other substance may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' (21 U.S.C. 346a(p)(3)).

In addition, EPA may provide for the testing of ''any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.'' (SDWA section 1457, 42 U.S.C. 300j–17).

Lastly, it is important to clarify that the procedures and policies described in this document do not in any way limit the Agency's use of other authorities or procedures to require testing of chemicals for endocrine disruptor effects. For example, section 4 of the Toxic Substances Control Act (TSCA) provides EPA with the authority to require testing of TSCA chemical substances, provided that the Agency makes certain risk and/or exposure findings. (15 U.S.C. 2603). Similarly, section 3(c)(2)(B) of FIFRA grants EPA the authority to require pesticide registrants to submit additional data that EPA determines are necessary to maintain an existing registration. (7 U.S.C. 136a(c)(2)(B)).

As discussed in EPA's priority setting approach for the EDSP (70 FR 56449, September 27, 2005), the Agency is initially focusing its chemical selection on pesticide chemicals, both active ingredients and high production volume chemicals used as a pesticide inert ingredient in pesticides. If chemicals identified for future screening and testing under the EDSP are not used in pesticides, the Agency intends to consider whether the policies and procedures identified in this document would be appropriate for other categories of substances.

E. How Will EDSP Data be Used?

In general, EPA intends to use the data collected under the EDSP, along with other information, to determine if a pesticide chemical, or other substances, may pose a risk to human health or the environment due to disruption of the endocrine system. The determination that a chemical does or is not likely to have the potential to interact with the endocrine system (i.e., disruption of the estrogen, androgen, or thyroid hormone systems) will be made on a weight-of-evidence basis taking into account data from the Tier 1 assays and/or other scientifically relevant information.

Chemicals that go through Tier 1 screening and are found to have the potential to interact with the estrogen, androgen, or thyroid hormone systems will proceed to the next stage of the EDSP where EPA will determine which, if any, of the Tier 2 tests are necessary based on the available data. Tier 2 testing is designed to identify any adverse endocrine-related effects caused by the substance, and establish a quantitative relationship between the dose and that endocrine effect.

III. Authority

A. What is the Statutory Authority for the Policies Discussed in this Document?

FFDCA section 408(p)(1) requires EPA ''to develop a screening program, using appropriate validated test systems and other scientifically relevant information to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effects as [EPA] may designate.'' (21 U.S.C. 346a(p)).

FFDCA section 408(p)(3) expressly requires that EPA ''shall provide for the testing of all pesticide chemicals.'' FFDCA section 201 defines ''pesticide chemical'' as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including all active and pesticide inert ingredients of such pesticide.'' (FFDCA section 201(q)(1), 21 U.S.C. 231(q)(1)). The statute also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' (21 U.S.C. 346a(p)(3)).

FFDCA section 408(p)(5)(A) provides that the Administrator ''shall issue an order to a registrant of a substance for which testing is required [under FFDCA section 408(p)], or to a person who manufactures or imports a substance for which testing is required [under FFDCA section 408(p)], to conduct testing in accordance with the screening program, and submit information obtained from the testing to the Administrator within a reasonable time period'' that the Agency determines is sufficient for the generation of the information.

FFDCA section 408(p)(5)(B) requires that, ''to the extent practicable, the Administrator shall minimize duplicative testing of the same substance for the same endocrine effect, develop, as appropriate, procedures for fair and equitable sharing of test costs, and develop, as necessary, procedures for handling of confidential business information. . . .'' (21 U.S.C. 346a (p)(5)(B)).

If a registrant fails to comply with a FFDCA section 408(p)(5) test order, the Administrator is required to issue ''a notice of intent to suspend the sale or distribution of the substance by the registrant. Any suspension proposed under this paragraph shall become final at the end of the 30–day period beginning on the date that the registrant receives the notice of intent to suspend, unless during that period, a person adversely affected by the notice requests a hearing or the Administrator determines that the registrant has complied fully with this paragraph.'' (21 U.S.C. 346a (p)(5)(C)). Any hearing is required to be conducted in accordance

with section 554 of the Administrative Procedures Act (APA). (5 U.S.C. 554). FFDCA section 408(p) explicitly provides that ''the only matter for resolution at the hearing shall be whether the registrant has failed to comply with a test order under subparagraph (A) of this paragraph.'' (21 U.S.C. 346a (p)(5)(C)(ii)). A decision by the Administrator after completion of a hearing is considered to be a final Agency action. (21 U.S.C. 346a (p)(5)(C)(ii)). The Administrator shall terminate a suspension issued with respect to a registrant if the Administrator determines that the registrant has complied fully with FFDCA section 408(p)(5). (21 U.S.C. 346a (p)(5)(C)(iii)).

FFDCA section 408(p)(5)(D) provides that any person (other than a registrant) who fails to comply with a FFDCA section 408(p)(5) test order shall be liable for the same penalties and sanctions as are provided for under TSCA section 16. (21 U.S.C. 346a (p)(5)(D)). Such penalties and sanctions shall be assessed and imposed in the same manner as provided in TSCA section 16. Under section 16 of TSCA, civil penalties of up to $25,000 per day may be assessed, after notice and an administrative hearing held on the record in accordance with section 554 of the APA. (15 U.S.C. 2615(a)(1)–(2)(A)).

B. Other Statutory Authorities Relevant to this Notice

A number of other statutory provisions are discussed in this document, and consequently, are described below. This document does not reopen in any way or otherwise affect the existing policies or related procedures that have been established under these other provisions. The following is a brief summary of these other relevant authorities.

1. *FIFRA*. FIFRA section 3(c)(1)(F) provides certain protections for people who submit data to EPA in connection with decisions under EPA's pesticide regulatory program. Specifically, FIFRA section 3(c)(1)(F) confers ''exclusive use'' or ''data compensation'' rights on certain persons (''original data submitters'') who submit data (in which they have an ownership interest), in support of an application for registration, reregistration, or experimental use permit, or to maintain an existing registration. Applicants who cite qualifying data previously submitted to the Agency by the original data submitter must certify that the original data submitter has granted permission to the applicant to cite data or that the applicant has made an offer of compensation to the original data submitter. In the case of ''exclusive use'' data, the applicant must obtain the permission of the original data submitter and certify to the Agency that the applicant has obtained written authorization from the original data submitter. (Data are generally entitled to ''exclusive use'' for 10 years after the date of the initial registration of a pesticide product containing a new active ingredient.) If data are not subject to exclusive use but are compensable, an applicant may cite the data without the permission of the original data submitter, so long as the applicant offers to pay compensation for the right to rely on the data. (Data are ''compensable'' for 15 years after the date on which the data were originally submitted.) If an applicant and an original data submitter cannot agree on the appropriate amount of compensation, either may initiate binding arbitration to reach a determination. If an applicant fails to comply with either the statutory requirements or the provisions of a compensation agreement or an arbitration decision, the application or registration is subject to denial or cancellation. (See also 7 U.S.C. 136a (c)(1)(F)(ii)–(iii)).

FIFRA section 3(c)(2)(B) provides that:

> . . . [i]f the Administrator determines that additional data are required to maintain in effect an existing registration of a pesticide, the Administrator shall notify all existing registrants of the pesticide to which the determination relates and provide a list of such registrants to any interested person. (7 U.S.C. 136a(c)(2)(B)).

Continued registration of a pesticide requires that its use not result in ''unreasonable adverse effects on the environment'' defined as:

> . . . (1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental cost and benefits of the use of any pesticide, or (2) a human dietary risk from residues that results from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the [FFDCA]. (7 U.S.C. 136 (bb)).

FIFRA section 3(c)(2)(B) contains a mechanism by which recipients of notices of data requirements (referred to as ''Data Call-In notices'' or ''DCI notices'') may jointly develop data and provides that ''[a]ny registrant who offers to share in the cost of producing the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.'' The section establishes procedures to allow registrants who received DCI notices to use binding arbitration to resolve disputes about each person's fair share of the testing costs.

Further, FIFRA section 3(c)(1)(F) makes clear that data submitted under FIFRA section 3(c)(2)(B) are also ''compensable'' when cited in support of an application for a registration. In other words, a pesticide company that chooses to rely on such data rather than develop its own data must offer compensation to the original data submitter–usually the data generator. Lastly, the Agency may suspend the registration of a pesticide if the registrant fails to take appropriate steps to provide data required under a DCI notice in a timely manner.

Finally, FIFRA section 3(c)(2)(D) contains a provision, referred to as the ''formulator's exemption'' that is intended to simplify and promote equity in the implementation of the data compensation program under FIFRA section 3(c)(1)(F). This exemption relieves an applicant of the obligation to submit a study, or to cite and obtain permission or offer to pay data compensation to cite the results of a study if the study is relevant to the safety assessment of a registered product that the applicant buys from another person and uses to make the applicant's product. Congress' rationale for this exemption is that the seller will recover any data generation costs through the purchase price of its product. Thus, if a pesticide formulator applies to register a product containing an active ingredient that the formulator purchased from the basic manufacturer of the active ingredient, the formulator does not need to submit or cite and offer to pay compensation for any data specifically relevant to the purchased product. The Agency has extended the principles of the formulator's exemption to data requirements under FIFRA section 3(c)(2)(B). Consequently, if the formulator received a DCI notice requiring data on the active ingredient, the formulator could comply by providing documentation that it bought the active ingredient from another registrant.

2. *SDWA*. SDWA section 1457 provides EPA with discretionary authority to require testing, under the FFDCA section 408(p) screening program, ''of any other substances that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.'' (42 U.S.C. 300j–17). Because SDWA section 1457 specifically mandates that EPA ''may provide for testing. . . in accordance with the provisions of [FFDCA section 408(p)],'' EPA may rely on many of the procedures discussed in this document to require testing under SDWA section 1457.

3. *Other sections of FFDCA*. FFDCA section 408(f) establishes procedures that the Agency ''shall use'' to require data to support the continuation of a tolerance or exemption that is in effect. The provision identifies three options:

- Issuance of a notice to the person holding a pesticide registration under FIFRA section 3(c)(2)(B) (FFDCA section 408(f)(1)(A)).
- Issuance of a rule under section 4 of TSCA (FFDCA section 408(f)(1)(B)).
- Publication of a notice in the **Federal Register** requiring submission, by certain dates, of a commitment to generate the data ''by one or more interested persons.'' (FFDCA section 408(f)(1)(C)).

Before using the third option, however, EPA must demonstrate why the data ''could not be obtained'' using either of the first two options. FFDCA section 408(f)(1) expressly provides that EPA may use these procedures to ''require data or information pertaining to whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.'' Finally, FFDCA section 408(f)(1)(B) provides that, in the event of failure to comply with a rule under TSCA section 4 or an order under FFDCA section 408(f)(1)(C), EPA may, after notice and opportunity for public comment, modify or revoke any tolerance or exemption to which the data are relevant.

In addition, FFDCA section 408(i) provides that ''[d]ata that are or have been submitted to the Administrator under this section or FFDCA section 409 in support of a tolerance or an exemption from a tolerance shall be entitled to confidential treatment for reasons of business confidentiality and to exclusive use and data compensation to the same extent provided by section 3 and section 10 of [FIFRA].''

IV. Policies and Procedures for Initial Screening Under the EDSP

This Unit describes the policies and procedures that EPA generally intends to adopt for the initial screening required under the EDSP. In general, the Agency has tried to develop policies that could be used in subsequent data collection efforts, including those under SDWA. However, these policies and procedures may be modified as a result of the Agency's experience applying them to the first chemicals to undergo screening and testing under the EDSP. In addition, EPA may modify these policies and procedures during the initial screening as circumstances warrant.

A. Background

On December 13, 2007 (72 FR 70842), EPA announced availability of and solicited public comment on EPA's draft policies and procedures for initial screening under the EDSP. EPA held two public workshops, one on December 17, 2007, and another on February 28, 2008, to discuss the proposed policies and procedures with stakeholders. Following review and revision based on the public comments, EPA is now describing the specific details of the policies and procedures that EPA generally intends to use for initial screening under the EDSP.

After reviewing all of the public comments received, EPA has decided to make some changes and/or clarifications to the draft policies and procedures. The Agency's responses to public comments are discussed in more detail in the document entitled *Response to Comments on the Endocrine Disruptor Screening Program: Draft Policies and Procedures for Initial Screening and Testing* (Ref. 3), a copy of which is in the docket. The following is a discussion of the major changes and/or clarifications to the policies and procedures.

1. *Modified the response options for inerts*. The Agency originally proposed to relieve a manufacturer or importer of a pesticide inert ingredient of the requirement to generate EDSP data only if the manufacturer or importer agreed to discontinue selling and distributing the ingredient for any use, whether the use was as a pesticide inert ingredient in a pesticide product or for a non-pesticidal purpose. As explained more fully in its Response to Comments document, after considering all of the comments, EPA is persuaded that it should change the EDSP initial screening policies and procedures and allow a manufacturer or importer to comply with an order by agreeing to discontinue sale of the chemical into the pesticide market. This change leads to other modifications to the procedures to ensure effective enforcement of data use protections as well as maintaining a ''level playing field.''

Specifically, EPA intends to establish a Pesticide Inert Ingredients Data Submitters & Suppliers List (PIIDSSL) to identify any entity who has submitted compensable data on a pesticide inert ingredient in response to a test order issued under section 408(p). Pursuant to FIFRA section 3(c)(1)(F), when a new pesticide registration applicant's product contains a pesticide inert ingredient on the PIIDSSL, EPA intends to require the applicant to identify the source of the pesticide inert ingredient. If the applicant's source does not appear on the PIIDSSL, EPA intends to require the applicant either to switch to a source on the PIIDSSL; offer to pay compensation to the original data submitter(s) on the PIIDSSL; or generate their own data to support their application.

The Agency also intends to continue to issue ''catch-up'' orders to any manufacturer or importer of a pesticide inert ingredient who enters the market place after EPA receives data in response to an initial test order for that ingredient. The Agency thinks that the combination of procedures–issuance of ''catch-up'' orders and establishment of the PIIDSSL–will result in a system that effectively provides data use protections to generators of endocrine data on pesticide inert ingredients. EPA agrees that industry will have a strong interest in self-policing to ensure that competitors are not reneging on their commitment not to sell to the pesticide market and EPA accepts the commenters' claims that the industry can effectively identify for EPA any companies that do not abide by a commitment to cease sales into the pesticide market. However, in the event that significant problems arise, EPA intends to reevaluate this policy, along with evaluating options for responding. For example, EPA considers that reexamination of this policy would be warranted if all manufacturers of a particular inert ingredient opted out of the pesticide market, given the likely impact this would have on end-use formulators. Another consideration would be if EPA discovers that these measures are ineffective at keeping the chemical out of the pesticide market. Under those circumstances, EPA may consider reissuing FFDCA section 408(p) orders to the original manufacturers, with the requirement that the manufacturers and importers provide data in response to the order unless they agree to cease entirely all manufacture or importation of the chemical. EPA may also consider issuing orders to end-use registrants, if circumstances warrant.

2. *Catch-up orders*. The Agency intends to issue ''catch-up'' orders for 15 years after the initial test order(s) for the chemical is issued.

3. *Clarifications*. The Agency has provided additional clarifications, including the policies and statutory interpretations relating to pre-enforcement review and informal administrative review, and the procedures related to the citation or submission of other scientifically relevant information.

4. *Paperwork activities and estimates.* The Agency has also revised the Initial Response Form and the templates for Tier 1 Orders, as well as the related estimated paperwork burden and costs.

B. Testing of Pesticide Chemicals Under the EDSP

For the initial screening, EPA generally intends to issue ''Tier 1 Orders'' pursuant to section 408(p)(5) of FFDCA. This is consistent with the December 1998 Notice, where EPA indicated that it intended to rely primarily on FFDCA and SDWA to require testing, and would ''use other testing authorities under FIFRA and TSCA to require the testing of those chemical substances that the FFDCA and SDWA do not cover.'' (Ref. 1). Because EPA is focusing on pesticide chemicals in registered pesticide products for initial screening, there is no need to rely on TSCA or SDWA. However, as discussed in Unit IV.C.–IV.D., in order to address some of the more complex issues surrounding joint data development and the availability of data compensation and data protection, EPA intends to issue some orders jointly under the authority of FFDCA section 408(p)(5) and FIFRA section 3(c)(2)(B). A diagram that graphically depicts the overall process is available in the docket.

The Agency has developed two templates for the Tier 1 Orders that reflect the policies and procedures discussed in this document, and which outline the basic framework that EPA generally intends to use to issue orders for the EDSP initial screening. The test orders differ according to whether the recipient is a: (1) Pesticide registrant, or (2) manufacturer and/or importer of a pesticide inert ingredient (aka ''other ingredient''). In addition, the templates accommodate differences in the Agency's procedures for data compensation, and for the minimization of duplicative data, which varies based on the Order recipient. Copies of the Tier 1 Order templates are included in the docket.

There are some pesticide active and pesticide inert ingredients that are not registered in the U.S. but for which there are tolerances on foods imported from other countries. When these chemicals are to be tested in the future, EPA may rely on FFDCA 408(f)(1) to require ''interested persons'' to submit data for the EDSP.

C. What is EPA Doing To Minimize Duplicative Testing and Promote Cost Sharing and Data Compensation Under EDSP?

One of the complex issues discussed in the December 1998 Notice related to joint data development, and how EPA would implement the FFDCA section 408(p)(5)(B) directive that ''[t]o the extent practicable, the Administrator shall minimize duplicative testing of the same substance for the same endocrine effect. . . .'' As noted in the December 1998 Notice (63 FR 71563), EPA originally contemplated that it would adopt new procedures unique to the EDSP.

After considering public comment on its 2007 Draft Policies and Procedures (72 FR 70842), EPA is adopting an approach that follows closely the draft procedures to promote cost sharing and data compensation described in the December 2007 document.

EPA's approach to ''minimize duplicative testing of the same substance'' and to promote the ''fair and equitable sharing of test costs'' is intended to achieve the following goals essentially the same outcome for all inert ingredients as the outcome the procedures under FIFRA section 3(c)(2)(B) and section 3(c)(1)(F) produce for active ingredients. That is:

- The companies who are the basic producers of an active ingredient or pesticide inert ingredient would typically bear the costs of testing. Those who purchase a pesticide inert ingredient from a basic producer (who becomes/is an original data submitter) or another ''approved inert supplier'' would not typically have to participate in joint development of, or offer to pay compensation for the right to rely on, required EDSP data. See Unit IV.C.3.c.
- The recipients of the FFDCA section 408(p) test orders have a mechanism to resolve disputes and enforce agreements to develop data jointly and to share test costs. See Unit IV.C.1.b.
- Subsequent entrants into the marketplace are, for an appropriate period of time, subject to the same data requirements, with provisions that would allow them to share the test costs rather than submit duplicative data. See Unit IV.C.2.
- The recipients of the FFDCA section 408(p) test orders may cite or submit existing data (i.e., other scientifically relevant information) in lieu of developing new data, and ask EPA to determine whether the information can be used to satisfy part or all of the Tier 1 Order and/or otherwise inform the Tier 1 determination. See Unit IV.C.1.c.

EPA believes its approach will achieve essentially the same outcome for all inert ingredients as the outcome the procedures under FIFRA section 3(c)(2)(B) and section 3(c)(1)(F) produce for active ingredients.

In summary, EPA generally intends to adopt a policy that encourages data developers to join forces and agree on how to share costs, and that also encourages companies entering the marketplace after the data are developed to pay reasonable compensation to those that developed the data. To the extent permitted by FFDCA, EPA's intended policies and procedures for EDSP resembles the policies and procedures used for Data-Call-Ins under FIFRA.

1. *Minimizing duplicative testing.* As a point of clarification, a substantial amount of overlap exists between the goal of minimizing duplicative testing and the topic discussed in the next unit, allowing parties to share the costs of conducting the tests. Consequently, some of the measures discussed in this unit to minimize duplicative testing will have certain implications for the decisions pertaining to cost sharing, and vice versa.

In developing its policy and procedures, EPA draws on years of experience with pesticide registrants. This experience has shown that reducing the costs of complying with a test order is a powerful incentive in bringing companies together to jointly develop and submit data. However, there may also be disincentives to joint data development including the costs of organizing a consortium. EPA policy and procedures are primarily designed to minimize the disincentives.

a. *Recipients of 408(p) test orders.* The Agency recognizes that, as the number of recipients of test orders increases, organizational costs also increase. EPA must balance the second goal mentioned in FFDCA section 408(p)(5)(B)—promoting ''fair and equitable sharing of test costs''—with the organizational costs of a large number of order recipients. As is discussed more fully in Unit IV.E., under FFDCA section 408(p), EPA may issue orders to pesticide registrants or manufacturers and importers. While EPA could issue orders to all the interested parties, including the registrants of end-use products containing the active or inert ingredient this would greatly expand the number of order recipients and complicate the organization of consortia. Under FIFRA, data generation is typically undertaken by the technical registrant, who is also a producer or importer of the chemical. EPA generally

intends to issue FFDCA 408(p) test orders to the basic producers of active or inert ingredients, balancing the goal of fairness with the need to keep the number of recipients low to avoid high organizational costs.

Further, by issuing orders to manufacturers and importers of inert ingredients, EPA is able to avoid the confidentiality issues associated with inert ingredients. Most manufacturers claim their inert ingredients to be confidential; accordingly, EPA cannot reveal the inert ingredients in pesticide products and therefore generally could not reveal the companies to whom an order was issued. By issuing orders to manufacturers and importers, EPA can, with few exceptions, immediately inform a recipient of the identity of all other recipients, facilitating communication and the formation of a consortium.

b. Resolving disputes and enforcing agreements. As described in the December 2007 Draft Policy and Procedures, the Agency has concluded that FFDCA section 408(p)(5) does not provide the authority to create requirements for joint data development, including a requirement to use binding arbitration to resolve disputes, as does FIFRA section 3. In EPA's view, FFDCA section 408(p)(5)(B) merely establishes a qualified direction that the Agency ''[t]o the extent practicable . . . minimize duplicative testing . . . .'' This, standing alone, does not create new authority to compel companies to use arbitration to resolve disputes arising from an effort to develop data jointly, nor does it even authorize EPA to impose a requirement for joint data development. Rather, EPA believes that this provision directs the Agency to create procedures that operate within the confines of existing statutory authorities.

While FFDCA section 408(p) does not allow EPA to impose requirements identical to those authorized by FIFRA section 3, EPA has the authority under FFDCA section 408(p) to develop Agency procedures that would facilitate joint data generation. Specifically, the Agency has discretion to determine what actions constitute compliance with a FFDCA section 408(p) test order, and EPA intends to apply this discretion in a manner that creates strong incentives for companies to voluntarily develop data jointly. At the same time, however, each recipient of an order under FFDCA section 408(p) has a separate obligation to satisfy the Tier 1 Order that they received. EPA thinks that FFDCA section 408(p) confers adequate discretion to consider that a recipient has fulfilled its obligation to provide data when:

- The recipient individually or jointly submits results from the required studies, or
- EPA judges that it would be equitable to allow the recipient to rely on, or cite, results of studies submitted by another person.

The determination of whether it would be equitable to allow citation to another recipient's data will be necessarily based on a case-by-case review of the specifics of the individual circumstances. However, the Agency believes that it would generally be equitable to allow a recipient of a FFDCA section 408(p) test order to rely on the results of studies submitted by another person where:

- The data generator has given permission to the recipient to cite the results, or
- Within a reasonable period after receiving the FFDCA section 408(p) test order, the recipient has made an offer to commence negotiations regarding the amount and terms of paying a reasonable share of the cost of testing, and has included an offer to resolve any dispute over the recipients' shares of the test costs by submitting the dispute to a neutral third party with authority to bind the parties, (e.g., through binding arbitration).

The Agency believes this approach to minimizing duplicative testing, which parallels that used under FIFRA section 3(c)(2)(B), provides all recipients of FFDCA section 408(p) test orders adequate incentives to develop data jointly. In the first instance, where the data generator had granted permission for another party to cite its data, the equities are clear, and EPA has no reason for refusing to allow it. In the second instance, where the data generator received an offer to commence negotiations regarding the amount and terms of compensation and to go to a neutral decisionmaker with authority to bind the parties failing successful negotiations, EPA believes that the company has demonstrated a good faith effort to develop data jointly, and consequently would typically consider that the order recipient had complied with the order. Based on EPA's experience under FIFRA, there would be little or no reason for a data generator to decline such an offer. Moreover, if EPA did not adopt such an approach, the end result would effectively confer the sort of ''exclusive use'' property rights established under FIFRA section 3(c)(1)(F), on a broad category of data, and EPA does not believe that FFDCA section 408(p)(5) creates such rights, or provides EPA with the authority to create such rights.

These conditions would also apply to recipients of ''catch up'' FFDCA 408(p) orders, who enter the market after the data have been submitted.

c. *Submission/citation of existing data.* As under FIFRA, EPA provides the recipients of FFDCA section 408(p) test orders with the option of submitting or citing existing data, along with a rationale that explains how the cited or submitted study satisfies the Tier 1 Order. Existing data may include data that has already been generated using the assay(s) specified in the Order, or ''other scientifically relevant information.'' Other scientifically relevant information is information that informs the determination as to whether the substance may have an effect that is similar to an effect produced by a substance that interacts with the estrogen, androgen, and/or thyroid hormonal systems (e.g., information that identifies substances as having the potential to interact with the estrogen, androgen, and/or thyroid system(s); information demonstrating whether substances have an effect on the functioning of the endocrine system). Other scientifically relevant information may either be functionally equivalent to information obtained from the Tier 1 assays—that is, data from assays that perform the same function as EDSP Tier 1 assays—or may include data that provide information on a potential consequence or effect that could be due to effects on the estrogen, androgen or thyroid systems. Some ''other scientifically relevant information'' may be sufficient to satisfy part or all of the Tier 1 Order and/or otherwise inform the Tier 1 determination. The submission or citation of other scientifically relevant information in lieu of the data specified in the Order is discussed in Unit IV.F.1.b.

The Agency has written a paper entitled *EPA's Approach for Considering Other Scientifically Relevant Information (OSRI) under the Endocrine Disruptor Screening Program.* (Ref. 4). This paper was developed by EPA to provide guidance to EPA staff and managers who will be reviewing the responses to Tier 1 Orders issued under the EDSP, and may also be of interest to parties considering whether to submit other scientifically relevant information to EPA. This paper provides general guidance and is not binding on either EPA or any outside parties. Anyone may provide other scientifically relevant information, and the Agency will assess the information for appropriateness on a case-by-case basis to determine whether the information can be used to satisfy

part or all of the Tier 1 Order and/or otherwise inform the Tier 1 determination. EPA will respond to the submitter in writing and will make its determination publicly available. A copy of the approach paper has been placed in the docket for this policy (Docket ID number EPA–HQ–OPPT–2007–1080).

In summary, EPA believes this approach to minimizing duplicative testing, which parallels that used under FIFRA section 3(c)(2)(B), provides all recipients of FFDCA section 408(p) test orders adequate incentives to develop data jointly.

2. *Promoting cost sharing and data compensation.* As noted in Unit IV.C.1., FFDCA section 408(p)(5)(B) directs the Agency to ''develop, as appropriate, procedures for fair and equitable sharing of test costs.'' Informed by its experience under FIFRA, EPA sees this provision as containing two related directives:

- Promotion of the sharing of costs by companies that agree to develop data jointly (''cost sharing'').
- Payment of compensation to a data generator by a person whose activity subsequent to the submission of the required data would make such payment equitable (''data compensation'').

The first directive relates to sharing the cost of developing data between parties on the market when a test order is issued. The second directive relates to the payment by a person (who was not part of a joint data development agreement) to those that originally generated and submitted data, in exchange for relying on the results of their previously submitted study. These mirror the data generation and data compensation processes that have been followed for years under FIFRA, and the Agency believes those processes are a good starting point for dealing with these issues in the context of FFDCA section 408(p)(5) orders. Consistent with FFDCA section 408(p)(5)(B), EPA intends, ''to the extent practicable,'' to ''develop procedures for fair and equitable sharing of test costs'' not only by persons in business when the initial FFDCA section 408(p) test orders were issued, but also by persons who enter the marketplace after the data are submitted.

As discussed in Unit IV.C.1., EPA has developed procedures to implement FFDCA section 408(p) screening that minimize duplicative testing; these measures also have the effect of substantially fostering cost sharing among those who receive the initial test order. By using an approach which parallels that used under FIFRA section 3(c)(2)(B), any disincentives for the recipients of FFDCA section 408(p) test orders to develop data jointly are addressed. EPA's experience with FIFRA section 3(c)(2)(B) indicates that when multiple registrants receive DCI notices to produce the same data on the same active ingredient, they form consortia that work together to develop the required data. If manufacturers and importers receive FFDCA section 408(p) test orders containing the provisions previously discussed, EPA expects that they would behave in the same manner.

a. *Compensable data under the EDSP.* With respect to determining the extent to which compensation for previously submitted studies is warranted, the threshold issue is what EDSP data will be ''compensable.'' Given EPA's conclusion that FFDCA section 408(p)(5)(B) does not give EPA the inherent authority to create new rights to compensation, the threshold for what is ''compensable'' requires consideration of existing statutory authority for compensation. To the extent the data are otherwise covered by any provision of FFDCA or FIFRA that requires a person to offer compensation for the right to cite or rely on data submitted by another person in connection with a pesticide regulatory matter, EPA must continue to enforce those provisions.

FFDCA section 408(i) provides that data submitted under FFDCA section 408 ''in support of a tolerance or an exemption from a tolerance shall be entitled to . . . exclusive use and data compensation to the same extent provided by section 3 of [FIFRA].'' The Agency considers any data generated in response to requirements under FFDCA section 408(p) on a pesticide chemical for which there is an existing tolerance, tolerance exemption, or pending petition to establish a tolerance or an exemption to be data submitted in support of a tolerance or an exemption. In fact, FFDCA section 408(b)(2)(D)(viii) explicitly requires EPA to consider ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects,'' as part of its determination that a substance meets the safety standard. (21 U.S.C. 346a(b)(2)(D)(viii)). Thus, EDSP data on active and pesticide inert ingredients for which there is a tolerance or tolerance exemption are compensable as outlined under FIFRA section 3(c)(1)(F).

Moreover, data establishing whether a pesticide chemical (either active or inert) has the potential to interact with the endocrine system would be relevant to a FIFRA registration decision. Under FIFRA, EPA has a continuing duty to ensure that a pesticide meets the registration standard; EPA must consider all available data relevant to this determination. (See 7 U.S.C. 136a (bb) and 3(c)(5)). In the terms of FIFRA section 3(c)(1)(F), such data ''support or maintain in effect an existing registration.'' Thus, data generated in response to a FFDCA section 408(p) test order are compensable as outlined in FIFRA section 3(c)(1)(F) if the data are submitted by a pesticide registrant because FIFRA specifically grants those rights to registrants.

Given EPA's position that FFDCA section 408(p)(5)(B) does not give EPA the authority to modify FIFRA data compensation rights, the fact that EDSP data are potentially compensable under FIFRA raises questions about the interplay between the two statutes. For example, unlike FIFRA section 3(c)(2)(B), FFDCA section 408(p) does not give EPA the authority to enforce an offer to pay compensation by suspending the registration of a noncompliant company. Thus, unless and until such data are used in support of a pesticide regulatory action under FIFRA, if a recipient of a test order made an offer but then refused to pay compensation or to participate in binding arbitration following the data submitters acceptance of that offer, the data generator's only recourse would be to seek any judicial remedies that may be available. Consequently, rather than leave recipients with any ambiguity, EPA intends to issue orders to registrants to conduct EDSP testing pursuant to both FIFRA section 3(c)(2)(B) and FFDCA section 408(p).

In summary, most EDSP data are compensable under FIFRA or FFDCA section 408(i). Data for active and pesticide inert ingredients that have a tolerance or tolerance exemption or are the subject of a pending petition are compensable regardless of what companies submit the data. EDSP data generated from testing other active and inert ingredients are also compensable as long as, in the case of a joint submission, at least one of the submitters is a pesticide registrant or applicant.

While much EDSP data are compensable under FIFRA or FFDCA section 408(i), some EDSP data will be generated by chemical manufacturers and importers of pesticide inert ingredients that have neither a tolerance nor tolerance exemption and are not the subject of a pending tolerance petition. (EPA refers to these substances as ''non-food use inerts.'') Because such EDSP data could not be considered ''data

submitted in support of a tolerance or exemption,'' the data submitted on such substances in response to a FFDCA section 408(p) test order are not entitled to compensation under FFDCA section 408(i). Moreover, since FIFRA section 3(c)(1)(F) establishes compensation rights only for data submitted by an applicant or a registrant and inert ingredients do not have separate or technical registrations, data submitted to EPA in response to a FFDCA section 408(p) order by a person who is neither a registrant nor an applicant are not compensable under FIFRA. However, although data on a non-food use pesticide inert are not compensable when submitted by a non-registrant pursuant to FFDCA section 408(p), such data would become compensable when submitted jointly by an applicant or registrant to support initial or continued registration of a pesticide product containing that inert ingredient. That is, if the submitters of data for a non-food use inert ingredient include a product registrant, EPA intends to consider the data compensable.

In addition, EPA believes that the internal procedures it has adopted effectively provide manufacturers and importers with the same opportunity for cost sharing/compensation available to all other order recipients.

Because EPA believes there are ways to make all EDSP data generated on pesticide inert ingredients compensable, EPA must consider what procedures to use to ensure persons who did not share in the cost of testing, but who benefit from the existence of such data, actually pay compensation. Under FIFRA section 3(c)(1)(F), companies that apply for registrations of pesticide products after the data were submitted either would have to offer to pay compensation for the right to cite the data or would have to generate comparable data. Consequently, in the case of active ingredients, everyone who benefits from the existence of EDSP data on an active ingredient either shares the cost of the testing as part of the joint data development under FIFRA section 3(c)(2)(B) or offers to pay compensation to the original data submitter under FIFRA section 3(c)(1)(F).

The same is not true for pesticide inert ingredients. There is no mechanism under either FIFRA or FFDCA for directly requiring payment of compensation by companies that start to manufacture or import a pesticide inert ingredient after an original data submitter has provided EDSP data on the pesticide inert ingredient. Such companies are not subject to FIFRA data compensation obligations because they are not registrants or applicants for registration. Nonetheless, EPA believes that, by using its discretion under FFDCA section 408(p) to issue test orders to new manufacturers or importers of a substance for which EDSP data had previously been submitted, EPA can achieve substantially the same ends.

FFDCA section 408(p)(5) provides that ''[t]he Administrator shall issue an order to ''. . .a person who manufactures or imports a substance for which testing is required under this subsection, to conduct testing in accordance with the screening program . . . .'' Thus, under FFDCA section 408(p)(5), following the submission of required EDSP data on the ingredient by manufacturers or importers who were in the marketplace when the initial test orders were issued, EPA generally intends to issue a test order to a manufacturer or importer who begins to sell a pesticide inert ingredient after the test orders requiring the data were issued. The Agency refers to these as ''catch-up'' test orders. As with the initial FFDCA section 408(p) test order, recipients could fulfill the testing requirement either by submitting the results of a new study or by citing the data submitted by another person or by agreeing not to sell into the pesticide market. In furtherance of the goal of ''fair and equitable sharing of test costs,'' the Agency would accept citation of existing data under the same circumstances that it would accept the citation for recipients of the original order—e.g., where the recipient of a catch-up test order either had the original data submitter's permission or the recipient had made an appropriate offer to pay compensation to the original data submitter that also determined how disputes would be resolved.

Unless new manufacturers or importers requested pesticide registrations, EPA cannot readily identify new entrants in the market. EPA is largely relying on the manufacturers and importers who are part of the data submitters' task force to inform the Agency about new entrants to the market, at which time EPA intends to issue the FFDCA section 408(p) ''catch-up'' test orders. Currently, EPA only intends to send ''catch-up'' FFDCA section 408(p) test orders to subsequent entrants into the marketplace within 15 years after the initial EDSP test order(s) for the chemical is issued—a time frame matching the period of compensability under FIFRA section 3(c)(1)(F).

b. Who provides compensation under this approach? Although the procedures described would result in having all companies that manufacture or import a pesticide inert ingredient share equitably in the cost of generating required EDSP data, FIFRA imposes additional compensation requirements on the customers of such companies who purchase the pesticide inert ingredients for use in formulating their registered pesticides. Specifically, FIFRA section 3(c)(1)(F) requires an applicant for a new or amended registration to offer to pay compensation to the original submitter of EDSP data if the applicant's product contains an ingredient (active or inert) for which EDSP data have been submitted.

For all compensable data, the Agency interprets the formulator's exemption to be applicable. The formulator's exemption under FIFRA section 3(c)(2)(D) would only be applicable to EDSP data generated on non-food use pesticide inerts if the data are submitted jointly by a registrant or applicant for registration. However, EPA believes that it can effectively achieve the same ends through the internal procedures it adopts, and through its discretion to selectively issue FFDCA section 408(p) test orders only to importers and manufacturers of such pesticide inert ingredients. The policy rationale underlying FIFRA's formulator's exemption is equally applicable in the case of non-food use pesticide inerts. Specifically, Congress believed that, so long as the requirements apply equally to manufacturers of a particular ingredient, the price of their product should also reflect any data development costs. Accordingly, requiring compensation of product purchasers would have the effect of requiring purchasers to pay data development costs twice—once as a condition of satisfying a FFDCA section 408(p) test order, and thereafter as part of the price of the pesticide inert ingredients they purchase to make their products. (See 49 FR 30892, August 1, 1984). As a result, EPA has adopted the following procedures to determine whether the end-use formulators have met their obligations to submit EDSP screening data.

c. *Determining whether compensation obligations have been met.* Currently, EPA maintains a list of all data on active ingredients that would support a technical registration along with contact information for the owners of the data. This is the Data Submitters List. Product applicants must identify the chemicals in their product and, in the case of the active ingredient(s), they must identify the source of the ingredient(s). If the source of the active ingredient is a registered product that is labeled for the same (or more) uses as the applicant's product, the applicant is entitled to claim the formulators' exemption from

all data requirements relating to the purchased product and need not submit or cite such data. If the applicant is not eligible for the formulators' exemption, an applicant must submit or cite required data (for a technical product registration, the required data are typically data submitted on the active ingredients to support a technical registration). The citation is accompanied by a certification that an offer to pay was made to the owners of the data. FIFRA requires that an applicant/registrant agree to binding arbitration to resolve disputes regarding compensation. If the applicant or registrant fails to fulfill either the terms of a compensation agreement or an arbitrator's award, the owner of the data may petition the Agency to cancel the registration. These procedures are also applicable to EDSP data that are subject to FFDCA section 408(i).

The approach outlined here to address compensation for EDSP data on pesticide inert ingredients is consistent with those adopted generically for all food use pesticide inert data, as there is no reason for creating separate procedures for EDSP pesticide inert data and all other food use pesticide inert data.

First, for each pesticide inert ingredient on which EPA receives EDSP data, EPA intends to identify the data submitter on a ''Pesticide Inert Ingredients Data Submitters & Suppliers List'' (PIIDSSL). This list identifies every company that submits the required EDSP data (original data submitters). The PIIDSSL also contains the names of every company that fulfilled its obligation under a FFDCA section 408(p) test order by offering to share the cost of testing with other data developers, as well as any other company that the original data submitter identifies as entitled to serve as a source of the pesticide inert ingredient from whom an applicant or registrant may obtain the pesticide inert without making an offer to compensate the original data submitter (''approved inert suppliers'' or ''approved sources'').

Second, under FIFRA section 3(c)(1)(F), the action of submitting an application of a pesticide containing the pesticide inert ingredient will trigger the obligation for the applicant to provide compensable EDSP data. The applicant may satisfy this requirement by submitting new data or citing existing data. In most cases, however, EPA expects an applicant to comply by claiming that the pesticide inert ingredient comes from an ''approved source'' and therefore that the principles of the formulator's exemption apply. To fulfill the obligation in this manner, EPA intends to require a pesticide applicant to identify the source of pesticide inert ingredients for which there are compensable EDSP data. Then, EPA would agree that the applicant had adequately complied with FIFRA section 3(c)(1)(F) and FFDCA section 408(p)(3)'s requirements if the person identified as the source for the pesticide inert ingredient appears on the PIIDSSL as either an original data submitter or an approved source for that pesticide inert ingredient.

Third, on a case-by-case basis, EPA may require current registrants to identify the source of a pesticide inert ingredient on which EDSP data have been submitted. If the registrant of a pesticide product identifies a source for the pesticide inert ingredient that is not on the PIIDSSL, the registrant would have the choice of changing its supplier of the pesticide inert ingredient to an approved source on the PIIDSSL list. (Note: EPA also intends to revise the guidance presented in PR Notice 98–10 regarding notifications to provide that a registrant may not change the source of a pesticide inert ingredient on the PIIDSSL in its formulation by notification. Such a change must be made through an application for amended registration.) Should the registrant not choose to obtain the pesticide inert ingredient from an approved source, EPA generally intends to issue an order to the registrant, requiring the registrant either to generate the EDSP test data or offer to pay compensation to the original data submitter on the PIIDSSL.

D. What Procedures Apply for Handling CBI?

FFDCA section 408(p)(5)(B) also requires that EPA, to the extent practicable, develop, as necessary, procedures for the handling of CBI. Many of the same considerations laid out in Unit IV.C. are relevant to EPA's implementation of this directive. EPA has therefore adopted a consistent approach with respect to the handling of CBI.

As with the directives to develop procedures for sharing test costs and minimizing duplicative testing, EPA does not think that FFDCA section 408(p)(5)(B) provides the authority for the Agency to either create new rights or to modify existing rights to confidentiality. Rather, EPA believes that this provision directs the Agency to create procedures that operate within the existing confines of FFDCA section 408(i), FIFRA section 10, the Freedom of Information Act (FOIA), and the Trade Secrets Act.

As explained in Unit IV.C., because EPA considers much of the data submitted in response to FFDCA section 408(p) orders to be submitted in support of a tolerance or tolerance exemption, such submissions are entitled to confidential treatment to the same extent as under FIFRA section 10, pursuant to FFDCA section 408(i). In addition, CBI submitted by pesticide registrants in response to a FFDCA section 408(p) test order is considered as part of the registration process, and is therefore considered to be submitted in support of a registration. As such, that information is directly subject to FIFRA section 10. However covered, information subject to FIFRA section 10 is provided certain protections that go beyond those authorized by FOIA. For example, FIFRA section 10(g) generally prohibits EPA from releasing information submitted by a registrant under FIFRA to a foreign or multinational pesticide producer, and requires the Agency to obtain an affirmation from all persons seeking access to such information that they will not disclose the information to a foreign or multinational producer. FFDCA section 408(i) extends the protection available under FIFRA section 10 for data submitted in support of a tolerance or tolerance exemption.

All other CBI submitted in response to a FFDCA section 408(p) test order (i.e., data not in support of a registration or tolerance/tolerance exemption) is only protected by the provisions of the Trade Secrets Act which incorporates the confidentiality standard in FOIA Exemption 4. FOIA requires agencies to make information available to the public upon request, except for information that is ''specifically made confidential by other statutes'' or data that are ''trade secrets and commercial or financial information obtained from a person and is privileged or confidential.'' (5 U.S.C. 552(b)(4)). Note that substantive criteria must be met to claim confidentiality of business information, as specified in 40 CFR 2.208.

As with EPA's approach for data compensation, EPA considers that data submitted jointly with a registrant, or as part of a consortium in which pesticide registrants participate, to be data submitted in support of a tolerance/tolerance exemption or registration, and therefore entitled to protection under FIFRA section 10. However, if a non-registrant chooses not to partner with a registrant, such data is only subject to the protections available under FOIA and the Trade Secrets Act.

E. Who Would Receive FFDCA Section 408(p) Test Orders Under the EDSP and How Would They Be Notified?

Under FFDCA section 408(p)(5)(A), EPA ''shall issue'' EDSP test orders ''to a registrant of a substance for which testing is required . . . or to a person who manufactures or imports a substance for which testing is required.'' EPA has identified the following categories of potential test order recipients:

• *Technical registrants (basic manufacturers of pesticide active ingredients)*. Entities who manufacture or import an active ingredient and hold an active EPA registration (technical registrants in most cases). Usually a product with technical registration is used in the formulation of other pesticide products. However, EPA also uses this term in this policy statement to include registrants who use an integrated system, that is, those who produce their own active ingredient, as well as those who use an unregistered technical active ingredient. In the interest of simplifying this document, the phrase ''technical registrant'' will be used to refer to:

(1) Registrants of a technical grade of active ingredient; and

(2) Registrants whose products are produced using an integrated system, as defined in 40 CFR 158.153(g), (which includes registrants who use an unregistered technical active ingredient to manufacture their pesticide product).

• *End-use registrants (formulators/customers)*. Registrants whose products are formulated and sold for end use; such product generally contain both an active ingredient as well as pesticide inert ingredients. The registrant does not necessarily manufacture or import the active pesticide ingredient or inert.

• *Manufacturers/importers*. Entities who manufacture or import a pesticide inert ingredient that do not necessarily have to hold an EPA registration for the sale of pesticide products. This also includes those manufacturers of pesticide products that are intended solely for export, so long as another company has a U.S. pesticide registration for the chemical, or an import tolerance exists for that chemical.

1. *Pesticide active ingredients*. EPA generally intends to send test orders issued pursuant to FFDCA section 408(p) and FIFRA section 3(c)(2)(B) to technical registrants of the pesticide active ingredient. The Agency can easily identify the technical registrants of pesticide active ingredients. As previously noted, a technical registrant holds a registration for a specific active ingredient that it then formulates into end-use (or retail) products or that its customers purchase for formulation into end-use products. Typically much of the safety data EPA requires is conducted on the technical grade active ingredient, rather than on the end-use product. (See generally, 40 CFR part 158). Consequently, the ''technical registrants,'' who are typically not considered to be a small business, have historically been responsible for generating most of the data that support pesticide registrations. Registrants of end-use products generally rely on the data generated by the technical registrants in accordance with the ''formulator's exemption'' in FIFRA section 3(c)(2)(D).

Some active ingredients are ''commodity chemicals,'' that is, they may be used both in non-pesticidal products, such as drugs or cleaning products, and as active ingredients in pesticide products. When a company produces such a commodity chemical and that company does not sell or distribute the chemical as a pesticide within the meaning of FIFRA section 2(u) and 40 CFR 152.15, FIFRA does not require registration of the chemical until it is sold or distributed in a product that is intended for a pesticidal purpose. However, FFDCA section 408(p)(5) specifies that EPA is to send test orders to manufacturers and importers of ''a substance for which testing is required under this subsection,'' and does not limit testing requirements only to manufacturers/importers of a pesticide chemical. Once EPA issues a test order for a pesticide chemical, a person who manufactures that chemical, even if not for use as a pesticide, is clearly manufacturing a substance for which testing is required, and consequently, is potentially subject to EPA's authority under the plain language of FFDCA section 408(p)(5).

Since EPA's goal is to follow as closely as feasible its existing practices for data generation under FIFRA, EPA generally intends to issue FFDCA section 408(p) test orders initially only to current pesticide registrants (and if there are any, only to technical registrants). Such orders would be issued under the authority of both FFDCA section 408(p) and FIFRA section 3(c)(2)(B). The Agency expects to issue ''catch-up'' test orders to any entity selling a commodity chemical into the pesticide market. This will occur when a commodity chemical company is discovered to be selling into the pesticide market for 15 years subsequent to the initial issuance of the testing orders.

2. *Pesticide inert ingredients*. EPA generally intends to send test orders issued pursuant to FFDCA section 408(p) to current manufacturers and importers; and ''catch-up'' FFDCA section 408(p) test orders to manufacturers and importers who subsequently enter the marketplace for 15 years after the initial test order(s) for the chemical is issued. For pesticide inert ingredients, manufacturers/importers include any company that manufactures or imports the chemical regardless of whether it is a registrant and regardless of whether it directly sells the chemical for use as a pesticide inert.

For the purposes of discussion, EPA identified two subclasses of pesticide inerts:

• Food use pesticide inerts, i.e., pesticide inert ingredients with an existing or pending tolerance or tolerance exemption.

• Non-food use pesticide inerts.

a. *Food-use pesticide inerts*. If a pesticide inert ingredient has an existing or pending tolerance or tolerance exemption, data compensation and data confidentiality protection are available pursuant to FFDCA section 408(i). For this class of pesticide inert ingredients, EPA generally intends to issue FFDCA section 408(p) test orders to manufacturers and importers.

b. *Non-food use pesticide inerts.* EPA generally intends to send the FFDCA section 408(p) test orders only to manufacturers/importers of the substance used as a non-food use pesticide inert ingredient. Note that EDSP data submitted on non-food use pesticide inerts are not covered by the data compensation and data confidentiality provisions of FFDCA section 408(i) or by FIFRA, unless the data are submitted by a registrant or a consortium that includes at least one registrant. Therefore, although EPA does not currently intend to send initial test orders to registrants, EPA encourages non-registrant recipients who submit data to partner with a registrant, so they will receive added protections under FIFRA for proprietary information or compensation from applicants who use the pesticide inert ingredient to formulate their pesticide products. Bear in mind, however, that even where FIFRA's compensation provisions do not apply, EPA expects that the Agency's procedures (e.g., whereby companies entering the market after submission of the EDSP data would receive ''catch-up'' FFDCA section 408(p) test orders) would lead to the manufacturers and importers subject to the initial FFDCA section 408(p) test

orders receiving offers to share test costs equitably.

3. *How would EPA identify order recipients*? For FFDCA section 408(p) test orders involving pesticide active ingredients, the Agency intends to rely on the Office of Pesticide Programs' (OPP's) Office of Pesticide Programs Information Network (OPPIN). OPPIN is an internal OPP database for query, input and tracking of pesticide products, ingredients, studies, regulatory decisions and other information. The OPPIN system is typically used to produce study bibliographies or lists of registered products. EPA intends to use OPPIN to identify registrants of the pesticide active ingredients identified for initial screening under the EDSP.

For FFDCA section 408(p) test orders involving pesticide inerts, the Agency intends to use OPPIN (where applicable), information from the TSCA Inventory Update Rule (IUR), and rely on other databases to identify appropriate manufacturers/importers and end-use registrants. These other databases may include publicly available sources like Dun and Bradstreet, online marketing material, etc.

EPA intends to make public the list of recipients of FFDCA section 408(p) test orders and DCI notices and invite the public to identify additional persons who should have received the FFDCA section 408(p) test order. Commenters could either identify themselves or another person as additional candidates (with proper substantiation) for receipt of a FFDCA section 408(p) test order. If the identity of a company subject to the test order is claimed as CBI, EPA intends to offer the company an opportunity to identify an agent who would act on their behalf in all matters relating to the EDSP program. For any company that chooses to designate an agent, the Agency intends to make the name of the agent (instead of the company) public by including it on the list of recipients of FFDCA section 408(p) test orders and DCI notices. If the identity of a company subject to the test order is claimed as CBI, and yet the company does not name an agent, that company's ability to obtain data compensation from other parties (or rely on compensable data submitted by other parties) would likely be affected. EPA generally intends to publish the list of order recipients in the **Federal Register** and post it on the Agency's website. EPA intends to update the list with subsequent publication(s) and posting(s) as appropriate. For example, the Agency intends to post the status of the testing orders, including the recipient's response, on the Agency website so that both order recipients and the public can check on the status of responses to the orders. This public listing is intended to also facilitate the formation of consortia to develop data jointly since recipients would know all other entities required to generate the same data.

4. *How would EPA notify order recipients*? Order recipients would be notified through their direct receipt of a FFDCA section 408(p) test order via first-class mail, with return receipt. Each order recipient would receive an ''EDSP Order Packet'' that EPA expects will contain the signed order, a list of other order recipients for that chemical, and the Initial Response Form, pre-populated with the recipient-specific information and due dates for complying with the order.

F. Potential Responses to a Test Order

In general, EPA expects that the orders would direct recipients to utilize the following procedures to respond either to an initial FFDCA section 408(p) test order or to a ''catch-up'' test order issued to a person who began to manufacture or import a pesticide inert ingredient for 15 years after the initial test order(s) for the chemical is issued. These options are also appropriate for responding to test orders issued jointly under the authority of FFDCA section 408(p) and FIFRA section 3(c)(2)(B).

1. *Initial response*. Each recipient would be directed to provide an initial response to EPA within 90 days of the issuance of the order. This initial response is intended to be used to report the recipient's commitment to act in response to the test order in one of several ways for each assay specified in the order, and may indicate a different response commitment for each assay.

To facilitate completion of this initial response within the 90 days, EPA has created two simple Initial Response Forms that EPA intends to pre-populate with basic information about the chemical and recipient to connect it to the specific order. One form is for use by the Individual Order recipient and the other is for use when a Consortium provides their group's response. EPA intends to include both of the Initial Response Forms in the EDSP Order Packet that is sent to the recipients. Please note that in calculating the due date for the Initial Response Form, the Agency intends to include an additional 10 calendar days to account for the Agency processing of the final order package for delivery to the Post Office.

An Order recipient may elect any of these options for one or more of the assays in the Order, and is not limited to electing a single response for all assays, nor are they required to elect different options for each assay. For simplicity, however, the Response Form is structured so that recipients indicate their responses on an assay-by-assay basis—even if the response is the same for more than one of the assays.

Any recipient who did not fulfill the commitments made in its initial response would be subject to enforcement action for its failure to comply with the FFDCA section 408(p) order, in accordance with section 408(p)(5)(D). Having failed to perform the actions necessary for this response option, the recipient would be obliged to immediately comply with the order—i.e., to provide the data, within the time frame that had originally been required by the order. In addition, the recipient would potentially be subject to penalties, pursuant to 18 U.S.C. 1001, for willfully making any false or misleading statements to the Federal government.

The recipient of a test order has several potential initial responses from which it can choose. The 90–day initial response options include the following.

a. *Recipient indicates that it intends to generate new data*. Recipients would choose this option to indicate that it agrees to individually generate new data for the test(s) specified in the Tier 1 Order. In the case of data pertaining to a pesticide inert ingredient for which there is no tolerance or exemption (a ''non-food use'' inert ingredient), the recipient may negotiate an agreement to have a registrant of a product containing the pesticide inert ingredient submit the data after it is generated so that the data qualify for compensation under FIFRA—the data generator and the registrant could work out among themselves the details of such an agreement.

b. *Recipient indicates that it is submitting or citing existing data*. The recipient would choose this option to indicate that it is submitting or citing existing data (including citing data previously submitted to the Agency) that they believe is relevant to one or more of the requests in the test order. The recipient's initial response would include either the data or a reference to the data for each assay specified in the order. In submitting or citing existing data, the order recipient or other party should follow, as appropriate, relevant format guidelines described in Unit IV.F.4. and provide an explanation of the relevance of the data to the order, including, where appropriate, a cogent and complete rationale for why it believes the information is or is not sufficient to satisfy part or all of the Tier 1 Order.

Data compensation procedures may apply to data previously submitted to the Agency. If the data cited or submitted are from a study that was not conducted exactly as specified in the protocols referenced in the test order or in accordance with accepted scientific methodology or protocol, including but not limited to those presented in EPA's harmonized test guideline compendium (see *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' on the left), the recipient would also identify the deviations from the applicable protocol(s), along with an explanation for the deviations, including an explanation as to why, notwithstanding the deviations, the protocol used for developing the cited or submitted data should still be considered as providing an accepted scientific methodology or protocol, and any other information relevant to a decision to accept the data as satisfaction of the Order.

EPA would review any existing relevant information submitted or cited (including other scientifically relevant information) to determine whether the information is acceptable (i.e., the study was not rejected by the Agency for any reason related to completeness or quality) and satisfies the Order. Decisions about whether the information satisfies part or all of the Tier 1 Order will be based on the weight-of-evidence from all relevant information available. The Agency would notify the recipient in writing of its determination.

If the Agency determines that the information cited or submitted as part of the initial response received from an Order recipient can be used to satisfy the Tier 1 Order, which will be based on the weight-of-evidence from all relevant information available to the Agency, the Initial Response Form is the only response required.

If, however, EPA determines that the information cited or submitted as part of the initial response is insufficient to satisfy the Tier 1 Order, although it may satisfy part of the Order, the recipient would still need to satisfy the remainder of the Order.

As indicated previously, EPA intends to use a weight-of-evidence basis, taking into account data from the Tier 1 assays and any other scientifically relevant information available, to determine whether the chemical has the potential to interact with the endocrine system. Chemicals that go through Tier 1 screening and are found to have the potential to interact with the estrogen, androgen, or thyroid hormone systems will proceed to the next stage of the EDSP where EPA will determine which, if any, of the Tier 2 tests are necessary based on the available data. Tier 2 testing is designed to identify any adverse endocrine-related effects caused by the substance, and establish a quantitative relationship between the dose and that endocrine effect.

EPA is not currently able to provide definitive examples of the specific circumstances in which a chemical would be able to go directly to Tier 2 testing; however, if an Order recipient chooses to make such a request, EPA will consider it, along with any justification provided. In general, it may in some cases be possible to determine that a particular chemical has the potential to interact with the endocrine system and therefore could proceed to Tier 2 even if Tier 1 data are limited. However, if only some of the Tier 1 data are available, there may not be sufficient information to determine that some of the Tier 2 data are not necessary. These determinations will be made in a weight-of-evidence judgment on a case-by-case basis and made publicly available for consideration by others with the same or similar circumstances.

c. *Recipient indicates that it intends to enter (or offer to enter) into an agreement to form a consortium to provide the data.* The recipient would choose this option to indicate that it intends to enter (or has offered to enter) an agreement with other order recipients to form a consortium or task force to comply with the test order. Each consortium participant or potential participant is expected to submit an Initial Response Form within 90 days. The lead for the consortium is expected to submit documentation confirming the formation of the consortium or task force within 150 calendar days of issuance of the Order/DCI, or as part of their initial response. Such documentation would include the contact information for the primary consortia contact, a list of participants, and the intended consortia action/response for each assay. EPA's typical practice has been that, if the consortia fails to satisfy the order, all parties would be held to have violated the test order.

Alternatively, recipients may provide EPA with documentation that they have made an offer to join the consortium or commence negotiations regarding the amount and terms of paying a reasonable share of the cost of testing, and have included an offer to submit to a neutral third party with authority to bind the parties to resolve any dispute over the recipient's share of the test costs, (e.g., through binding arbitration). Note: EPA's typical practice has been that, if the required data are not generated by the person(s) to whom the offer is made, all parties, including those that have made offers to pay or otherwise joined the consortium, would be held to have violated the test order.

d. *Recipient claims that they are not subject to the test order.* The recipient would choose this option to indicate that they are not subject to the order because:

(i) In the case of a test order that requires data on an active ingredient, the recipient is not a pesticide registrant, or

(ii) In the case of an initial test order that requires data on a pesticide inert ingredient, the recipient does not currently manufacture or import the chemical.

(iii) In the case of a ''catch-up'' order, the recipient obtains the chemical solely from persons who are either (1) the original data submitter; (2) a person who has complied with a test order by offering compensation; or (3) a person who is otherwise an approved source (i.e., is listed on the PIIDSSL) for that inert. An explanation of the basis for the claim, along with appropriate information to substantiate that claim, is required to allow EPA to evaluate the claim.

The recipient's initial response would include an explanation and documentation supporting their claim. If EPA verifies your claim of not being subject to the order, the Initial Response Form is the only response you are required to complete to satisfy the order. If, however, EPA cannot verify your claim, you must still comply with the order and the deadline(s) for responding remain.

e. *Recipient indicates that it intends to voluntarily cancel their registration(s).* Registrants may request voluntary cancellation of their product's pesticide registration(s) pursuant to FIFRA section 6(f). Such a request must be submitted within 90 days of the issuance of the order. Doing so would initiate the existing procedures for a voluntary cancellation (see 40 CFR 152.99). Under those procedures, the registrant may either adopt the standard provisions for sale or use of existing stocks of their pesticide, or may propose an alternative procedure. If the recipient chooses this option, the Initial Response Form is the only response required to satisfy the Order as long as the Registrant completes the voluntary cancellation procedures. When their product's pesticide registration(s) is canceled, the recipient would be considered to have satisfied the order.

f. *Recipient indicates that it intends to reformulate their product(s) to exclude the chemical from the formulation.* In

place of submitting the data required in this order, a registrant may submit an application to amend the formulation of its product by removing as an ingredient of their product the chemical that is the subject of the order. For example, this may occur in the case of a pesticide inert ingredient if EPA issues orders to end-use registrants. Submitting such an application would initiate the existing procedures for reformulation, and such a request must be submitted within 90 days of the issuance of the order. If the recipient chooses this option, the Initial Response Form is the only response required to satisfy the order as long as the registrant completes the reformulation procedures. When their product's formulation has been changed, the recipient would be considered to have satisfied the order.

g. *Recipient claims a formulator's exemption.* A product registrant who receives an order to test a chemical and who purchases the chemical from another recipient that has agreed to generate the data may be eligible for a formulator's exemption. The recipient's initial response would include an explanation and documentation supporting their claim. EPA will confirm such claims of eligibility. A response asserting the formulator's exemption would no longer be considered an appropriate response to a test order if the supplier of the chemical fails to comply with the test order (i.e., it fails to submit the data either individually or jointly with other recipients or it fails to comply with the terms of a compensation agreement or the binding decision of a neutral third party regarding the terms of compensation). If EPA confirms the eligibility claim, the Initial Response Form is the only response required to satisfy this order. If, however, EPA determines that the order recipient is not eligible, the recipient must comply with the order.

h. *Recipient indicates that it has or is in the process of discontinuing the manufacture or import of the chemical.* The recipient of an order for a pesticide inert ingredient (i.e., manufacturer/importer) would choose this option to indicate that they are in the process of discontinuing the manufacture or import of the chemical. The recipient's initial response would include an explanation and documentation supporting their claim. EPA intends to verify such a claim. If EPA confirms the claim, the Initial Response Form is the only response required to satisfy this order. If, however, EPA determines that the claim is false, the recipient must comply with the order.

i. *Recipient indicates that it does not and will not sell the chemical for use in pesticide products.* The recipient of an order for a pesticide inert ingredient (i.e., manufacturer/importer) would choose this option to indicate that they do not currently or agree to no longer sell their chemical for use in the pesticide market. To elect this option, the order recipient would indicate, as part of its initial response, that they commit to discontinue, on or before a date 6 months after the issuance of the test order, all sale and distribution of the pesticide inert ingredient that is the subject of the test order to any person who the recipient knows or reasonably should know, intends to use the substance in the formulation of a pesticide product. The order recipient would also indicate that it will include in all contracts for sale or distribution of the material a provision that contractually prohibits the purchaser from using the substance in the formulation of a pesticide product. As part of its initial response, the order recipient would be asked to provide a copy of the contract provision and a certification to include this contractual provision in any contracts entered into on or after a date 6 months after the issuance of the test order.

j. *Request an exemption under FFDCA section 408(p)(4).* EPA recognizes that FFDCA section 408(p)(4) provides that ''the Administrator may, by order, exempt from the requirements of this section a biologic substance or other substance if the Administrator determines that the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.'' In 1998, the Agency assessed the need to develop a specific list of substances to be exempted from EDSP testing or an exemption process for those substances that might not be anticipated to produce endocrine effects in humans (See Unit VI.L. of the December 1998 notice at 63 FR 71542). In the 1998 FR notice, EPA also provided several examples of substances that might possibly be exempted. As the EDSP has evolved and more endocrine research has been conducted, it has become evident that, at this time, development of criteria to exempt certain substances or to otherwise identify any pre-determined or blanket exemptions from endocrine disruptor testing is premature.

For the initial screening, EPA is not aware of sufficient data that would allow the Agency to confidently determine that a chemical meets the statutory standard for an exemption—i.e., that it is not anticipated to interact with the endocrine system. Although a relatively broad range of toxicity data are available for pesticide active ingredients regulated under FIFRA, in most cases EPA has not yet established how the available data might be confidently used to predict the endocrine disruption potentials of these chemicals. This may be due to the non-specific nature of an effect or effects observed, questions related to whether the mode of action in producing a given effect or effects is or are endocrine system-mediated in whole or in part, or the lack of relevant data to make a judgment altogether.

However, if an order recipient believes that this showing can be made for its chemical, the Agency would consider requests to issue such an exemption order on a case-by-case or chemical-by-chemical basis in response to individual submissions. In order for the Agency to make the necessary statutory finding to issue the exemption, the request would need to provide any hazard-related information that you believe would allow EPA to determine that your chemical is anticipated to not be an endocrine disruptor, i.e., is not anticipated ''to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.''

k. *Other initial responses*—(i) *Pre-enforcement challenges to a test order.* A recipient may wish to challenge the test order. Unit IV.H., describes the informal process by which a recipient may raise, and EPA may review, objections to the issuance of a test order or to specific provisions in the order. In order for EPA to be able to respond to the objections in a timely manner, the recipient would need to state with particularity the scope and basis of the objection, providing sufficient detail to allow the Agency to evaluate the objection. For further information refer to Units IV.H. and IV.I.

(ii) *Additional EDSP screening is unnecessary because the chemical is an endocrine disruptor or was used as a ''positive control'' in the EDSP validation effort.* If an Order recipient chooses to ask EPA to reconsider some or all of the testing specified in the Tier 1 Order, EPA would review the request, along with the appropriate information supporting the claim that additional EDSP screening of the chemical is unnecessary because the chemical is an endocrine disruptor or was used as a ''positive control'' in the EDSP validation effort, on a case-by-case basis. Based on the information currently available, EPA generally expects that if the chemical was used by EPA as a ''positive control'' to validate one or more of the screening assays, only the data submitted related to those assays

for which the chemical was used to complete the testing as part of the validation effort would be sufficient to satisfy the Tier 1 Order.

As discussed in detail in Unit IV.F.1.b., under one of the response options provided in the Tier 1 Order, a recipient may choose to cite or submit existing data they believe can be used to satisfy part or all of the Tier 1 Order. Existing data may be of several types. An example may be an *in vitro* assay for transcriptional activation that is conducted with a different cell line and by a different protocol. But more generally, existing data may be other scientifically relevant information. Scientifically relevant information can include data from studies other than the EDSP Tier 1 assays, e.g., studies conducted to satisfy a 40 CFR part 158 or part 161 data requirement, data from other studies conducted to address an identified issue, or data from studies found in the scientific literature. In addition to the Tier 1 Order recipient, anyone can submit other scientifically relevant information. To allow EPA to review the submission of other scientifically relevant information in a timely fashion, the submitter of the information should consider providing a scientifically sound rationale that explains how the submitted or cited data provides the information needed to satisfy part or all of the Tier 1 Order and/or otherwise inform the Agency's Tier 1 determination.

2. *Generate the data specified in the Tier 1 Order*. As indicated in the Initial Response Form, the recipient's next step will vary depending upon their initial response. The process diagram in the docket outlines the overall process with the various response options. In general, assuming that the order recipient indicated that they will generate the data individually or as part of a consortium, the next step in responding to the order would be the generation of the data as specified.

The tests would generally be conducted using the test protocols cited in the order because FFDCA requires that the test method be validated. If, however, an order recipient believes a deviation from the required protocol is needed, they would first consult with the Agency before deviating from the test protocol. All requests would be submitted with a clear rationale to allow the Agency to evaluate the request in a timely manner. EPA intends to review all protocol variations and send a written response to the specific order recipient in a timely fashion.

In addition, order recipients generating data must adhere to the good laboratory practice (GLP) standards described in 40 CFR part 160 when conducting studies in response to a FFDCA section 408(p) test order.

3. *Submit a progress report*. Unless EPA has notified the recipient that they have satisfied the order, EPA generally intends to ask each order recipient to submit a progress report to EPA 12 months after issuance of the order. Each progress report would provide a brief description of the status of the recipients planned activities for each assay, and, if applicable, a description of any problems encountered or expected difficulties in meeting the schedule for complying with the order.

4. *Submit the data specified in the test order*. Assuming that the order recipient indicated that they would generate the data individually or as part of a consortium, the next step in responding to the order would be the submission of the data as specified. The Agency generally intends for the order to include a final submission due date of 24 months after the issuance of the order. In establishing this timeframe, the Agency considered:

(a) The timeframes set for the initial response and consortia documentation;

(b) The duration of each assay in terms of estimated timeframes for planning, performing the tests and documenting results; and

(c) The estimated timeframes for preparing and completing the final data submission to EPA.

EPA believes that having a single due date allows the order recipients to efficiently plan the activities necessary for generating and submitting the data, including entering into joint agreements and sequencing the laboratory activities as appropriate. Although EPA intends to establish a single due date, if the order recipient or consortia choose to submit the results from each assay individually, the order would be satisfied when the Agency determines the results submitted satisfy the order.

The Agency intends to use the same submission procedures as those that are currently used for submitting other data in support of a pesticide registration, with only a few modifications. Once the data are generated, the recipient would prepare a submission package for transmittal to EPA. EPA intends for the orders to include requirements on how the data would be formatted or presented for submission to EPA. In general, EPA expects the orders to include the following instructions.

a. *Format for data submission*. As part of a cooperative NAFTA project, EPA and the Canadian Pest Management Regulatory Agency (PMRA) developed standard data evaluation formats, or templates. The templates have been in use by these agencies since 2002 for writing their data evaluation records (DERs) of studies submitted under FIFRA and FFDCA to EPA and the Canadian data codes (DACOs). Although such templates do not currently reflect the assays being considered for the EDSP Tier 1 battery, the Agency intends to review and, as necessary, develop new or revised templates before the deadlines for submission of the data under the EDSP.

The DER that the agencies prepare contains a study profile documenting basic study information such as materials, methods, results, applicant's conclusions and the evaluator's conclusions. The templates provide pesticide registrants and the public an opportunity to gain a better understanding of the regulatory science review and decision-making process. The agencies encourage registrants to include study profiles based on these templates in their study documents for all pesticide types. These templates describe the layout and scope of information that would be contained within a study profile and can serve as guides for preparation of study documents. Use of the templates improves the likelihood of a successful submission, since the information necessary for an efficient agency review is outlined. Additional details about these templates are available at: *http://www.epa.gov/pesticides/regulating/studyprofile_templates/*.

In addition, Pesticide Registration (PR) Notice 86–5, entitled *Standard Format for Data Submitted Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Certain Provisions of the Federal Food, Drug, and Cosmetic Act (FFDCA)*, describes how to organize and format submittals of data supporting a pesticide registration (*http://www.epa.gov/PR_Notices/pr86-5.html*). The Agency has begun the process of updating the guidance in PR Notice 86–5 to further clarify the data submission process for pesticide-related submissions and intends to provide the public with an opportunity to comment on the proposed revisions to PR Notice 86–5 consistent with the procedures described in PR Notice 2003–3, entitled *Procedural Guidance for EPA's Office of Pesticide Programs Procedures Concerning the Development, Modification, and Implementation of Policy Guidance Documents*; (*http://www.epa.gov/PR_Notices/pr2003-3.pdf*).

The Agency also intends to encourage FFDCA section 408(p) test order recipients to submit completed study profiles and supporting data in an

electronic format whether submitting one or several studies. OPP has established Adobe Portable Document Format (PDF) as the standard file format for the electronic submission of required studies, using compact disks as the transport medium. In addition, OPP recently announced an e-Submission initiative to help EPA move toward a more paperless environment. The information exchange from industry to EPA is based on a harmonized eXtensible Markup Language (XML) schema used by Canada's PMRA, which has been adapted by EPA. This harmonization assures industry that a documentation package submitted to one participating regulatory agency can likewise be submitted to the other participating agency, thus increasing standardization and decreasing the burden on industry. EPA also believes that information submitted to EPA in the XML schema format is intended to improve data quality and allow for a more efficient pesticide registration process. To assist pesticide registrants with the creation of the e-Submission XML packages, EPA has established an e-Submission XML help desk. For more information about electronic submissions, go to *http://www.epa.gov/pesticides/regulating/registering/submissions/index.htm*.

b. *Transmittal document*. In order for EPA to effectively track the compliance of each order recipient, each submission in satisfaction of a FFDCA section 408(p) test order would need to be accompanied by a transmittal document that includes the following information:

- Identity of the submitter.
- The date on which the submission package was prepared for transmittal to EPA.
- The FFDCA section 408(p) test order number.
- Summary of the response commitment for each assay.
- A list of the individual documents included in the submission, with relationship to assay specified.

c. *Individual study or test result documents*. Unless otherwise specified by the Agency, and varying based on the order recipient's initial response, EPA would generally expect each submission package to be in the form of individual documents or studies to address each assay specified in the order. As indicated previously, EPA does not anticipate the resubmission of previously submitted documents absent a specific Agency request. Instead it would be sufficient for previously submitted documents to be cited with adequate information to identify the previously submitted document. EPA would typically expect each study or document to include the following:

i. A title page including the following information:

- The FFDCA section 408(p) test order number.
- The title of the study, including identification of the substance(s) tested and the test name or data requirement addressed.
- The author(s) of the study.
- The date the study was completed.
- If the study was performed in a laboratory, the name and address of the laboratory, project numbers or other identifying codes.
- If the study is a commentary on or supplement to another previously submitted study, full identification of the other study with which it would be associated in review.
- If the study is a reprint of a published document, all relevant facts of publication, such as the journal title, volume, issue, inclusive page numbers, and date of publication.

ii. Upon submission to EPA, any data confidentiality claims must be accompanied by a signed and dated document containing the appropriate statement(s) as described in the FFDCA section 408(p) test order, which EPA expects would reference PR Notice 86–5 or other available Agency guidance, as appropriate.

iii. A statement of compliance or non-compliance with respect to GLP standards as described in 40 CFR part 160, as applicable.

iv. A complete and accurate English translation for any information that is not in English.

5. *Submit a written request for an extension*. The FFDCA section 408(p) test order would identify a due date for submitting the data specified to EPA. If an order recipient determines that they will not be able to submit the data specified in the order to EPA by the due date, the recipient can submit a written request for a time extension that provides a clear rationale for the need for an extension, along with any supporting documentation, in order to allow the Agency to properly and timely assess the request. EPA intends to review all such requests and send a written response to the requester in a timely fashion. In most cases the original deadline would remain while EPA considers the request. The Agency intends to only grant extensions that were requested in writing. Ordinarily, extensions would only be available in cases of extraordinary testing problems beyond the expectation or control of the order recipient. Extensions would not be considered if the request for extension is not made in a timely fashion; or if it is submitted at or after the deadline. EPA intends to only grant extension requests in writing.

6. *Maintain records*. EPA generally intends for the FFDCA section 408(p) test order to identify the following records that the recipient would maintain as part of compliance with the order. Typically, the Agency expects recipients to retain copies of the data and other information submitted to the Agency in response to an order.

Under FIFRA section 8, all producers of pesticides, devices, or active ingredients used in producing pesticides subject to FIFRA, including pesticides produced pursuant to an experimental use permit and pesticides, devices, and pesticide active ingredients produced for export, are required to maintain certain records. As such, any recipients who are pesticide registrants or who otherwise submit their data in support of a pesticide registration will be held to the recordkeeping standards in 40 CFR part 169. Consistent with 40 CFR 169.2(k), this includes all test reports submitted to the Agency in support of a registration or in support of a tolerance petition, all underlying raw data, and interpretations and evaluations thereof. Under part 169, the registrant must retain these records as long as the ingredient is contained in a pesticide product with a valid registration and the producer is in business, and such records must be made available to EPA or its agent for inspection upon request.

Recipients who are not a registrant would also be asked to retain records related to the generation of the data and copies of other information submitted to the Agency in response to the order. In general, EPA would typically expect recipients who are not a registrant to also retain such records for the same length of time as a registrant, and to also make the records available to EPA or its agent for inspection upon request.

G. What are the Consequences for a Recipient Who Fails to Respond or Comply with the Test Order?

For pesticide active ingredients, FFDCA section 408(p)(5)(C)(i) requires EPA to issue to any registrant that fails to comply with a FFDCA section 408(p) test order ''a notice of intent to suspend the sale or distribution of the substance by the registrant.'' The proposed suspension ''shall become final at the end of the 30–day period beginning on the date that the registrant receives the notice of intent to suspend, unless during that period a person adversely affected by the notice requests a hearing or the Administrator determines that the registrant has complied'' with the

FFDCA section 408(p) test order. As specified by FFDCA section 408(p)(5)(C)(iii), the Administrator shall terminate a suspension if the Administrator determines that the registrant has complied fully.

For all pesticide inert ingredient manufacturers/importers, FFDCA section 408(p)(5)(D) provides for EPA to apply the penalties and sanctions provided under section 16 of TSCA (15 U.S.C. 2615) ''to any person (other than a registrant) who fails to comply with an [FFDCA section 408(p)] order.''

H. Process for Contesting a Test Order/ Pre-enforcement Review

FFDCA section 408(p) does not explicitly address the process for challenging a test order (e.g., if the test order recipient disagrees that a particular study is appropriate or valid). The statute only specifies the rights and procedures available to test order recipients who have failed to comply with a test order. Further, the issue is somewhat complicated by the fact that the statute establishes different procedures for enforcing the test orders against pesticide registrants and against chemical manufacturers or importers. (Compare 21 U.S.C. 346a(p)(3)(C) and (D)). Nor is this issue resolved by FFDCA section 408's general judicial review provision; that provision is applicably solely to the enumerated actions, which do not include FFDCA section 408(p) test orders. (21 U.S.C. 346a(h)). Consequently, FFDCA section 408(p) is ambiguous on a number of issues, such as the availability of pre-enforcement review, and the issues that may be raised in an enforcement hearing.

For pesticide registrants, FFDCA section 408(p)(5)(C) directs EPA to initiate proceedings to suspend the registration when a registrant fails to comply with a test order. (21 U.S.C. 346a(p)(3)(C)(i)). Prior to the suspension, a registrant may request a hearing, but the statute restricts the issues in the hearing solely to whether the registrant has complied with the test order. (21 U.S.C. 346a(p)(3)(C)(ii)). The substance of the test order may not be challenged during this hearing. Thus, for example, to challenge whether EPA should have required a particular study, the registrant would need to challenge the test order itself in the appropriate district court. (See, e.g., Atochem *v.* EPA, 759 F.Supp. 861, 869-872 (D.D.C. 1991)). The basis for the statutory restriction is that the FFDCA section 408(p) test order constitutes final agency action, and as such, is subject to review upon issuance. (See, Atochem, supra). In addition, as discussed above, EPA currently intends to issue the test orders for testing of active ingredients jointly under FFDCA section 408(p) and FIFRA section 3(c)(2)(B). The procedures discussed above for challenging an FFDCA section 408(p) test order are wholly consistent with the procedures applicable to FIFRA section 3(c)(2)(B), which similarly limits the issues for resolution in any suspension hearing held for failure to comply with the order. (See 7 U.S.C. 136a(c)(2)(B)(iv)). Accordingly, EPA believes that for pesticide registrants, pre-enforcement review of the test order would be available directly in federal district courts under any approach, and based on the plain meaning of the statute, would be the only means to obtain judicial review of the validity of the test order itself.

By contrast, FFDCA section 408(p)(5)(D) provides that non-registrants (manufacturers or importers of pesticide inert ingredients) are subject to monetary penalties through an enforcement proceeding, using the process established by TSCA section 16. Under TSCA section 16, civil penalties of up to $25,000 per day may be assessed, after an administrative hearing is held on the record in accordance with section 554 of the Administrative Procedures Act (APA). (15 U.S.C. 2615(a)(1)–(2)(A)). Before issuing a final penalty order, EPA must provide notice of its intention to assess the penalty, including a draft of the final penalty order, and provide the recipient with the opportunity to request a hearing within 15 days of the date the notice has been received. (15 U.S.C. 2615(a)(2)(A)). (See also, 40 CFR 22.13–22.14). TSCA section 16 also specifies that the following issues shall be taken into account in determining the amount of a civil penalty: The nature, circumstances, extent and gravity of the violation(s); the violator's ability to pay; the effect on the violator's ability to continue to do business; any history of prior violations; the degree of culpability; and such other matters as justice may require. (15 U.S.C. 2615(a)(2)(B)).

Although neither FFDCA section 408(p) nor TSCA section 16 expressly imposes the same restriction on the issues that a non-registrant may raise in the penalty hearing, EPA's interpretation of the statutes and existing regulations is to impose a similar restriction. In large measure this interpretation turns on the fact that, at least for pesticide registrants, FFDCA section 408(p) test orders constitute final agency action, and consequently, would be subject to review in the appropriate district court. Logically, it makes sense to interpret the test order to be final for all parties, as the provisions of FFDCA section 408(p)(5)(A) that describe the test order do not distinguish between registrants and other test order recipients. Accordingly, pre-enforcement judicial review of the test order will be available, and would be the means by which any test order recipient would challenge the validity of the test order. As a consequence of that interpretation, EPA interprets TSCA section 16 to restrict the issues that may be raised in any enforcement hearing to whether the test order recipient had violated the test order, as well as the appropriate amount of any penalty. This interpretation is consistent with the issues listed in TSCA section 16(a)(2)(B), which do not expressly relate to the validity of the underlying requirement.

I. Informal Administrative Review Procedure

EPA generally intends to include a provision in the FFDCA section 408(p) test order by which order recipients would raise any questions or challenges concerning the issuance of the test order to the Agency in response to the order. In addition, because the mere filing of the objection (or indeed, the filing of a judicial challenge) would not necessarily extend the deadline for submission of the studies, in order for this process to be completed in a timely fashion, EPA expects order recipients to present their objections with sufficient specificity and detail to allow the Agency to adequately and fairly evaluate the issue(s) presented. EPA intends to review the issues presented and provide a written response within a reasonable amount of time. The Agency understands that it will need to respond within sufficient time for the order recipient to either comply with the order or determine whether to pursue its concerns through judicial review.

J. How Would EPA Handle Responses from Recipients of Test Orders?

Just as there are many different, acceptable responses that recipients may provide to a test order, so too are there many actions that EPA may take. In some cases, a recipient's response would affect only the recipient. This would be the case for a response from a test order recipient:

- Who claims that it is not subject to the order (see Unit IV.F.1.d.); or
- Who voluntarily cancels its registration (see Unit IV.F.1.e.); or
- Who reformulates its registered products (see Unit IV.F.1.f.); or

• Who claims that it qualifies for the formulator's exemption (see Unit IV.F.1.g.); or

• Who claims that it does not or no longer manufacture(s) or import(s) the chemical (see Unit IV.F.1.h.).

Each of these responses would only affect the specific recipient's obligation under the order. If EPA agreed with the response, the recipient would not be required to generate the EDSP data (not subject to the order or qualified for the formulator's exemption) or EPA would cancel the recipient's registration as requested. EPA actions on these kinds of responses would not affect other order recipients; they would still be required to respond to the order by generating the data or making one of the other acceptable responses.

In some cases, however, another recipient's response may have consequences for other recipients. This would be the case for a response from a test order recipient:

• Who intends to generate the data (see Unit IV.F.1.a.); or

• Who cites or submits existing data (see Unit IV.F.1.b.); or

• Who enter (or offer to enter) a joint agreement to generate the data (see Unit IV.F.1.c.); or

• Who commits to not sell their chemical for use in the pesticide market (see Unit IV.F.1.i.).

The following discussion summarizes how EPA expects to handle responses to test orders that may have consequences for other recipients.

1. *Publication order recipients, responses, and order status.* As noted earlier, EPA intends to publish the list of all order recipients in the **Federal Register** and post the list on the Agency's website. The Agency intends to also post the status of the testing orders, including recipients' responses, on the Agency website so that both order recipients and the public can check on the status of responses to the orders. This information is intended to enable recipients of test orders to identify and join other order recipients to develop the data in response to the order, which in turn would help achieve EPA's goals of minimizing duplicative testing and promoting fair and equitable sharing of test costs. For example, if more than one recipient has agreed to perform the required studies (see Unit IV.F.1.a.), it will be reflected on the list and having this information will help them explore the possibility of generating the data jointly. In addition, a recipient who has agreed to generate required EDSP data can see all other recipients who have informed the Agency that they would be willing to share the cost of performing the required studies (see Unit IV.F.1.b.). This information will aid in their sorting of offers to share the cost of generating the required data from any recipient whom EPA indicates has promised to make an offer to share test costs, but has not yet contacted the recipient.

2. *Publication of EPA decisions regarding reliance on existing data or requests for an exemption under section 408(p)(4), and decisions challenging the issuance of the test orders.* The EPA website would also contain information on decisions about whether a test recipient may rely on existing data (see Unit IV.F.1.c.). If so, the Agency intends to regard the existing data as meeting the requirement for all test order recipients. Similarly, if EPA determines that a recipient has demonstrated that the Agency should exempt the chemical from testing under section 408(p)(4) (see Unit IV.F.1.h.), that decision would apply equally to all test order recipients. Finally, a recipient's challenge to the legal basis for a test order (see Unit IV.F.1.i.) might be resolved in a way that affects the validity of the order for other recipients. Publishing these decisions may also be considered by others with similar questions.

3. *Generation of data, tracking compensability of submitted data, and enforcing compensation obligations.* When EDSP data on an active ingredient are submitted, EPA intends to handle the submission in the same manner used under FIFRA. The name of the data submitter would be added to the Data Submitters List and all future applicants for registration of a pesticide containing the active ingredient would be required to cite and offer to pay compensation in order to rely on the data for the 15–year period following submission of such data.

In the case of EDSP data on pesticide inert ingredients, as explained in Unit IV.C.2.c., EPA intends to establish a list (i.e., the PIIDSSL) to identify any person who has submitted compensable data on a pesticide inert ingredient in response to a test order issued under FFDCA section 408(p). Assuming at least one recipient of a test order submits the required EDSP data, EPA would add the name of the submitter to the PIIDSSL under the name of the ingredient as an ''original data submitter.'' The PIIDSSL would also include any other test order recipient who has made an offer to share the cost of testing as an ''approved source,'' i.e., a source from whom an applicant or registrant may obtain the pesticide inert and not have to offer to pay compensation to the original data submitter. Since it is important to have as complete a list of approved sources as possible, EPA encourages original data submitters to identify additional companies as approved sources, for example, because they have a contract to buy from the data submitter. Then, pursuant to FIFRA section 3(c)(1)(F), when an applicant's product contains a pesticide inert ingredient on the PIIDSSL, the applicant would identify the source of the pesticide inert ingredient. If the applicant's source does not appear on the PIIDSSL, the applicant would either switch to a source on the PIIDSSL, offer to pay compensation to the original data submitter(s) on the PIIDSSL, or generate their own data.

EPA intends to also take a number of measures to ensure that pesticide registrants are not obtaining the pesticide inert ingredient from an ''unapproved'' source. Shortly after the receipt of test order responses, EPA intends to make public the commitments made by recipients of test orders–the names of the companies that have agreed to generate (or share in the cost of generating) test data (''data generators'') and the names of the companies that have committed to discontinue selling into the pesticide market. If at least one order recipient has agreed to generate the required data, EPA intends to inform registrants that in the future they will need to obtain the pesticide inert ingredient only from a data submitter or approved source, offer to pay compensation to the data submitter for the right to rely on existing data, or generate new data.

The Agency thinks these procedures will result in a system that effectively provides data use protections to generators of EDSP data on pesticide active and inert ingredients. Through this system all manufacturers and importers of pesticide inert ingredients will understand whether or not they are allowed to sell into the pesticide market. If a manufacturer or importer takes the necessary steps that allow it to sell into the pesticide market, such a company would be listed on the PIIDSSL. Those manufacturers and importers whose products reached the pesticide market through other suppliers could add the names of the suppliers to the PIIDSSL. Similarly, through this system, applicants for new products and registrants of existing products will understand from which sources they may purchase a pesticide inert ingredient without having to offer to pay compensation, or without running the risk of needing to generate their own data.

The Agency recognizes that these safeguards do not automatically ensure compliance with the data use

protections. But the Agency expects that manufacturers and importers who commit not to sell their chemical into the pesticide market will adhere to this promise and will work with their customers to ensure they also observe this market constraint.

EPA also intends to take steps to try to prevent companies from inadvertently subverting the commitment made by order recipients. For example, the Agency's **Federal Register** document that announces the issuance of the FFDCA section 408(p) order(s), would also inform those companies who sell a chemical that is used as a pesticide inert ingredient (other than test order recipients) that they may receive and become subject to an FFDCA section 408(p) order if they obtain the pesticide inert ingredient (either directly or indirectly) from a source who has not committed to generate the EDSP data but then sell the pesticide inert ingredient into the pesticide market. EPA intends to inform manufacturers who agree to generate the data that EPA intends to rely on them to bring to EPA's attention information indicating that a pesticide registrant appears to be obtaining the pesticide inert ingredient from an ''unapproved'' source. As indicated previously, EPA intends to issue ''catch-up'' orders to any manufacturer or importer of a pesticide inert ingredient who enters the market place after EPA has issued a test order for that ingredient.

4. *All test order recipients for a pesticide inert ingredient ''opt out'' of the pesticide market.* If no test order recipient has agreed to generate the required data, the Agency intends to issue a **Federal Register** notice informing registrants that the pesticide inert ingredient will no longer be available for use in formulating pesticide products unless someone commits to generate the required data. EPA intends to ask for a commitment to generate the required data within 6 months of publication. After that date, EPA would take steps to remove the pesticide inert ingredient from its list of cleared pesticide inerts and to revoke any tolerances or tolerance exemptions for the pesticide inert ingredient. EPA would also remind registrants that under existing regulations, they must apply to amend their registrations before they may sell a pesticide product that has a composition that differs from the approved Confidential Statement of Formula for the product. On a case-by-case basis, EPA may issue a DCI notice and/or a section 408(p) test order for the required data to registrants whose products contain the pesticide inert ingredient.

K. Adverse Effects Reporting Requirements

Under FIFRA section 6(a)(2), pesticide product registrants are required to submit adverse effects information about their products to the EPA. Among other things, the implementing regulations in 40 CFR part 159, subpart D provide registrants with detailed instructions on whether, when, and how to report information in the possession of the registrant or its agents.

In addition, under TSCA section 8(c), companies can be required to record, retain and in some cases report ''allegations of significant adverse reactions'' to any substance/mixture that they produce, import, process, or distribute. EPA's TSCA section 8(c) rule requires producers, importers, and certain processors of chemical substances and mixtures to keep records concerning significant adverse reaction allegations and report those records to EPA upon notice in the **Federal Register** or upon notice by letter. The TSCA section 8(c) rule also provides a mechanism to identify previously unknown chemical hazards in that it may reveal patterns of adverse effects which otherwise may not be otherwise noticed or detected. Further information is available under 40 CFR part 717.

Under TSCA section 8(e), U.S. chemical manufacturers, importers, processors, and distributors are required to notify EPA within 30 calendar days of new, unpublished information on their chemicals that may lead to a conclusion of substantial risk to human health or to the environment. The term ''substantial risk'' information refers to that information which offers reasonable support for a conclusion that the subject chemical or mixture poses a substantial risk of injury to health or the environment and need not, and typically does not, establish conclusively that a substantial risk exists. For additional information about TSCA section 8(e), please go to *http://www.epa.gov/oppt/chemtest/pubs/sect8e.htm*.

EPA does not require duplicate submission of EDSP results under FIFRA section 6(a)(2) or TSCA section 8(c) or (e). Any information submitted under FIFRA section 6(a)(2) or TSCA section 8(c) or 8(e) procedures does not need to be submitted again to satisfy the FFDCA section 408(p) test order. The test order recipient would instead submit the necessary information to cite to the previously submitted information as described earlier in this document.

V. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), EPA submitted this document to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of the Executive Order.

B. Paperwork Reduction Act (PRA)

The information collection requirements associated with issuing orders for Tier 1 screening under the EDSP have been submitted for review and approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. As a new ICR, the Agency does not yet have an OMB control number for this information collection activity. Once assigned, EPA will announce the OMB control number for this information collection in the **Federal Register**, and will add it to any related collection instruments or forms used, and include it in the orders issued.

A copy of the final ICR package submitted to OMB for review and approval under the PRA (identified under EPA ICR No. 2249.01) has been placed in the docket for this policy. A draft of the ICR package was issued for public comment pursuant to the PRA and 5 CFR 1320.8(d) on December 13, 2007 (72 FR 70839) (FRL–8155–8). The ICR has been revised to address comments received, and the following is a brief summary of the final ICR package that was submitted to OMB for approval under the PRA and which describes the information collection activities discussed in the final policy and procedures document, along with EPA's estimated burden in more detail.

Under the PRA, ''burden'' is defined at 5 CFR 1320.3(b). For the purposes of this ICR, the information collection activities include reviewing the order, providing the initial response, participating in a consortia, generating the data, preparing and submitting a progress report, submitting the data, requesting an extension, and maintaining records. As described in more detail in the ICR, the total estimated per chemical/per respondent paperwork burden is 3,008 hours, with an estimated cost of $212,369. Annualized over 3 years, the per

respondent burden is 1,003 hours, and the cost is $70,790. The total annualized estimated paperwork burden for this ICR is 108,364 hours, with an estimated total annual cost of $7,478,116 million. Although individual respondent burden varies based on their individual activities, this estimate assumes that the respondent actively participates in all potential activities, including developing consortia, generating all of the potential data, submitting a progress report, requesting an extension, and submitting the data.

Pursuant to 5 CFR 1320.12, the submission of the ICR to OMB, along with a solicitation of comments on that ICR, is addressed in a separate document published elsewhere in today's **Federal Register**. Please follow the instructions in that document to view the ICR and submit comments on the revised ICR.

VI. References

The following is a list of the documents that are specifically referenced in this document and placed in the docket that was established under Docket ID number EPA–HQ–OPPT–2007–1080. For information on accessing the docket, refer to the **ADDRESSES** unit at the beginning of this document.

1. EPA. Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) Final Report. August 1998. *http://www.epa.gov/scipoly/oscpendo/pubs/edspoverview/finalrpt.htm*.

2. Organization for Economic Cooperation and Development (OECD). Final Report of the OECD Workshop on Harmonization of Validation and Acceptance Criteria for Alternative Toxicological Test Methods. August 1996.

3. EPA. Response to Comments on the Endocrine Disruptor Screening Program: Draft Policies and Procedures for Initial Screening and Testing. March 2009.

4. EPA. EPA's Approach for Considering Other Scientifically Relevant Information (OSRI) under the Endocrine Disruptor Screening Program. March 17, 2009.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests, Reporting and recordkeeping.

Dated: April 3, 2009.

James Jones,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. E9–8706 Filed 4–14–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2004–0109; FRL–8399–7]

Final List of Initial Pesticide Active Ingredients and Pesticide Inert Ingredients to be Screened Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA) directs EPA to develop a chemical screening program using appropriate validated test systems and other scientifically relevant information to determine whether certain substances may have hormonal effects. In September 2005, EPA published its approach for selecting the initial list of chemicals for which testing will be required under the Endocrine Disruptor Screening Program (EDSP) and in June 2007, EPA published the draft list of the first group of chemicals proposed for screening in the Agency's EDSP. This document presents the final list of the first group of chemicals that will be screened in the Agency's EDSP. The list was produced using the approach described in the September 2005 notice and considers comments received in response to the June 2007 draft list. The list includes chemicals that the Agency, in its discretion, has decided should be tested first, based upon exposure potential. The Agency deleted 6 chemicals from the original list of 73 based upon recent information showing that the chemicals are no longer expected to be found in 3 exposure pathways. The first group of 67 chemicals identified for testing includes pesticide active ingredients and High Production Volume (HPV) chemicals used as pesticide inert ingredients (also known as other ingredients). This list should not be construed as a list of known or likely endocrine disruptors. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list these chemicals are suspected to interfere with the endocrine systems of humans or other species, and it would be inappropriate to do so. This document does not describe other aspects of the EDSP such as the administrative procedures EPA will use to require testing, which is addressed in a separate notice published in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Linda Phillips, Office of Science Coordination and Policy (7203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–1264; e-mail address: *phillips.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you produce, manufacture, use, consume, work with, or import pesticide chemicals. To determine whether you or your business may be affected by this action, you should carefully examine section 408(p) of FFDCA, 21 U.S.C. 346a(p). Potentially affected entities, using the North American Industrial Classification System (NAICS) codes to assist you and others in determining whether this action might apply to certain entities, may include, but are not limited to:

- Chemical manufacturers, importers and processors (NAICS code 325), e.g., persons who manufacture, import or process chemical substances.
- Pesticide, fertilizer, and other agricultural chemical manufacturers (NAICS code 3253), e.g., persons who manufacture, import or process pesticide, fertilizer and agricultural chemicals.
- Scientific research and development services (NAICS code 5417), e.g., persons who conduct testing of chemical substances for endocrine effects.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2004–0109. All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is

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

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*. You may access information about the EDSP at *http://www.epa.gov/scipoly/oscpendo/index.htm*.

II. Introduction

A. What Action is the Agency Taking?

EPA is announcing the final list of the first group of chemicals that will be screened in the Agency's Endocrine Disruptor Screening Program (EDSP) based on the approach described in the **Federal Register** notice of September 27, 2005 (70 FR 56449) (FRL–7716–9), and consideration of comments received on the draft list of chemicals published in the **Federal Register** notice of June 18, 2007 (72 FR 33486) (FRL–8129–3). The approach focused on human exposure-related factors rather than a combination of exposure- and effects-related factors. The approach did not include a literature search for or consideration of any data on potential endocrine effects. Because EPA developed this list of chemicals based upon exposure potential, it should not be construed as a list of known or likely endocrine disruptors, and it would be inappropriate to do so. Nothing in the approach for generating the initial list provides a basis to infer that by simply being on this list these chemicals are suspected to interfere with the endocrine systems of humans or other species.

The first group of chemicals to be tested consists of chemicals that section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires be screened, i.e., pesticide active ingredients and chemicals used as pesticide inert ingredients (also known as other ingredients) that are also HPV chemicals. EPA anticipates that it may, in the future, modify its approach to selecting chemicals for screening. Information and factors that EPA may consider in selecting chemicals could include: Public input; the results of testing chemicals on the initial list; management considerations to increase the integration of screening with other regulatory activities within the Agency; implementation considerations flowing from a decision to extend screening to additional categories of chemicals (e.g., non-pesticide chemical substances); and the availability of new priority setting tools (e.g., High Throughput Pre-screening or Quantitative Structure Activity Relationships models). More information on EPA's priority setting approach is available at *http://www.epa.gov/scipoly/oscpendo/pubs/prioritysetting*.

EPA's general focus in the approach for the initial list was on pesticide active ingredients and inert ingredients with relatively greater potential for human exposure. The emphasis on human exposure does not necessarily mean that the list will not contain substances that may not also have potentially high levels of environmental exposure to ecological receptors. This **Federal Register** document identifies the chemicals that were removed from the draft list and presents the final list of the first group of chemicals that will be screened in the Agency's EDSP in alphabetical order. This document does not describe other aspects of the EDSP such as the administrative procedures EPA will use to require testing, the validated tests and battery that will be included in the EDSP, or the timeframe for requiring the testing or receiving the data. These topics will be addressed in separate notices published in the **Federal Register**, with the administrative procedures described in a separate notice published in today's **Federal Register.**

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

Section 408(p) of FFDCA requires EPA to ''develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as [EPA] may designate.'' (21 U.S.C. 346a(p)). The statute generally requires EPA to ''provide for the testing of all pesticide chemicals.'' (21 U.S.C. 346a(p)(3)). However, EPA is authorized to exempt a chemical, by order upon a determination that ''the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.'' (21 U.S.C. 346a(p)(4)). ''Pesticide chemical'' is defined as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including all active and inert ingredients of such pesticide.'' (21 U.S.C. 321(q)(1)).

III. Background

EPA developed its EDSP in response to the Congressional mandate in section 408(p) of FFDCA to ''develop a screening program. . .to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effects as [EPA] may designate'' (21 U.S.C. 346a(p)). When carrying out the program, the statute requires EPA to ''provide for the testing of all pesticide chemicals.'' The statute also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' In addition, section 1457 of the Safe Drinking Water Act (SDWA) provides EPA with discretionary authority to provide for testing, under the FFDCA section 408(p) screening program, ''of any other substances that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.''

EPA initially set forth the EDSP in the August 11, 1998 **Federal Register** notice (63 FR 42852) (FRL–6021–3), and solicited public comment on the program in the December 28, 1998 **Federal Register** notice (63 FR 71542) (FRL–6052–9). The program set forth in these notices was based on the recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), which was chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, section 9(c). The EDSTAC was comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies,

worker protection and labor organizations, environmental and public health groups, and research scientists.

EDSTAC recommended that EPA's program address both potential human and ecological effects; examine effects on estrogen, androgen, and thyroid hormone-related processes; and include non-pesticide chemicals, contaminants, and mixtures in addition to pesticides (Ref. 1). Based on these recommendations, EPA developed a two-tiered approach, referred to as the EDSP. The purpose of Tier 1 screening (referred to as ''screening'') is to identify substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems using a battery of assays. The purpose of Tier 2 testing (referred to as ''testing'') is to identify and establish a dose-response relationship for any adverse effects that might result from the interactions identified through the Tier 1 assays. EDSTAC also recommended that EPA establish a priority-setting approach for choosing chemicals to undergo Tier 1 screening. EPA described this approach in the **Federal Register** of September 2005. More information on EPA's priority setting approach for the EDSP is available at *http://www.epa.gov/scipoly/oscpendo/prioritysetting*.

EPA currently is implementing its EDSP in three major parts that are being developed in parallel.

1. *Assay validation*. Under FFDCA section 408(p), EPA is required to use ''appropriate validated test systems and other scientifically relevant information'' to determine whether substances may have estrogenic effects in humans or other endocrine effects as the Administrator may designate. Validation is defined as the process by which the reliability and relevance of test methods are evaluated for the purpose of supporting a specific use. The proposed EDSP Tier 1 screening battery of assays was presented to the FIFRA Scientific Advisory Panel (SAP) during a public meeting on March 25–27, 2008. The FIFRA SAP report covering the meeting is available at *http://www.epa.gov/scipoly/sap/meetings/2008/march/minutes2008-03-25.pdf*. The final Tier 1 battery will be announced in a separate **Federal Register** document that the Agency anticipates issuing in spring 2009. EPA is also in the process of developing and validating Tier 2 tests. The status of each assay can be viewed on the EDSP website in the Assay Status table: *http://www.epa.gov/scipoly/oscpendo/pubs/assayvalidation/status.htm*.

2. *Priority setting*. EPA described its priority setting approach for the first group of pesticide chemicals to be tested in the **Federal Register** of September 2005, and proposed the draft list of initial chemicals for review and public comment in the **Federal Register** notice of June 18, 2007 (72 FR 33486) (FRL–8129–3). The Agency is responding to the public comments in a separate document (Ref. 2) posted in the docket that was established for this action (EPA–HQ–OPPT–2004–0109). This document today announces the final list of initial chemicals to undergo Tier 1 screening. More information on EPA's priority setting approach for the EDSP is available at *http:/ /www.epa.gov/scipoly/oscpendo/prioritysetting*.

3. *Procedures*. EPA intends to commence Tier 1 screening of the first group of pesticide chemicals by issuing test orders under FFDCA section 408(p) to chemical companies identified as the manufacturer or processor of the identified chemicals and/or the pesticide registrants. EPA published draft policies and procedures in the **Federal Register** notice of December 13, 2007 (72 FR 70842) (FRL–8340–3), that describes the procedures that EPA will use to issue orders, the procedures that Order recipients would use to respond to the order, how data protection and compensation will be addressed in the test orders, and other related procedures or policies. In addition, EPA developed a draft template for the test order and a draft information collection request (ICR) to obtain the necessary clearances under the Paperwork Reduction Act (PRA). Elsewhere is this issue of the **Federal Register**, the Agency is publishing the final policies and procedures, and the announcement of the ICR's submission to OMB.

Based on the current timing for each of the three major parts of the EDSP, the Agency intends to initiate the EDSP Tier 1 screening for the first group of pesticide chemicals by issuing test orders in 2009. This document deals only with the final list of chemicals initially selected to go through screening in the Tier 1 assays.

IV. Development of the Initial List of Chemicals

The development of the initial list of chemicals is described in detail in the September 2005 and the June 2007 **Federal Register** notices.

Comments on the Final List

EPA received comments on the proposed initial list including suggestions for additional chemicals, questions regarding the need for Tier 1 screening data, the future chemical selection approach, and claims for removal of chemicals from the list. One of the main concerns was whether and how EPA would consider existing data in determining what screening assays were necessary. Although EPA does not currently intend to tailor test orders based on existing information, as articulated in the *Reponse to Comments on the Draft List of Initial Pesticide Active Ingredients and Pesticide Inert Ingredients to be Screened under the Federal Food, Drug, and Cosmetic Act* (Ref. 2), EPA will provide a mechanism whereby test order recipients and the public can provide information on specific chemicals for which test orders are issued. A test order recipient can elect to cite or submit existing data the recipient believes can be used to satisfy part or all of the Tier 1 Order and/or otherwise inform the determination as to whether the substance may have an effect that is similar to an effect produced by a substance that interacts with the estrogen, androgen and/or thyroid hormonal systems. In order for EPA to review the submission in a timely manner, in submitting or citing existing data, the order recipient should consider providing an explanation of the relevance of the data to the order, including, where appropriate, a cogent and complete rationale for why it believes the information is sufficient to satisfy part or all of the Tier 1 Order. The recipient's response to test orders for Tier 1 assays will be evaluated by EPA to determine whether the cited data can be used to satisfy the order and/or otherwise inform the Tier 1 determination. This will require a case-by-case determination of whether the information submitted is of high quality and achieves the objective of Tier 1. This approach is consistent with ensuring effective and efficient use of societal and government resources in generating and reviewing data, as well as minimizing the use of animals in regulatory testing, to achieve the information base needed to support a specified objective.

These comments have been addressed in a document, entitled *Reponse to Comments on the Draft List of Initial Pesticide Active Ingredients and Pesticide Inert Ingredients to be Screened under the Federal Food, Drug, and Cosmetic Act* (Ref. 2), available in the docket for this action under docket ID number EPA–HQ–OPPT–2004–0109. In addition, the Agency has written a paper entitled *EPA's Approach for Considering Other Scientifically Relevant Information (OSRI) under the Endocrine Disruptor Screening Program*. This paper was developed by EPA to provide guidance to EPA staff and managers who will be reviewing the responses to Tier 1 Orders issued under the EDSP, and may also be of interest to

parties considering whether to submit other scientically relevant information to EPA. This paper provides general guidance and is not binding on either EPA or any outside parties. Anyone may provide other scientifically relevant information, and the Agency will assess the information for appropriateness on a case-by-case basis, responding to the submitter in writing, and making EPA's determination publicly available. A copy of this paper has been placed in the Docket for the Policies and Procedures for the Initial EDSP Screening (Docket ID number EPA–HQ–OPPT–2007–1080).

V. The Final List of Initial Pesticide Active Ingredients and Pesticide Inert Ingredients (also known as other ingredients) to be Considered for Screening under the FFDCA

A. Chemicals Removed from the Draft List of Proposed Chemicals for Initial Screening

No HPV pesticide inert ingredients were removed. Six pesticide active chemicals were removed from the draft list of proposed chemicals for initial screening that resulted in this final list. Two of the chemicals, azinphos-methyl and fenvalerate, were removed from the list because all uses of these pesticides have ended or will end before Tier 2 data could be generated in 2012. The remaining four chemicals were removed based on a reassessment of their uses that confirmed that they would only be expected to be present in two, instead of three, exposure pathways (i.e., the criterion for selecting chemicals for the initial list was the presence of the chemical in at least three of the four exposure pathways where the food and occupational exposure pathways were represented). Specifically, aldicarb, allethrin, dichlorvos, and methiocarb, were removed from the initial list because changes in their use and application methods has eliminated the potential for exposure in one or more pathways. As described in the September 2005 and June 2007 **Federal Register** notices, higher occupational exposure was based on the potential for agricultural workers to come into contact with a pesticide residue after its application (e.g., a worker pruning fruit trees or harvesting a crop). For occupational exposure, EPA relied on databases that assessed the exposure potential for workers who might enter a field or orchard after treatment with pesticides. In two cases (aldicarb and methiocarb), EPA regulation has either eliminated specific uses or changed the method of application which has eliminated or reduced the potential for post-application exposure below the threshold described in the previous **Federal Register** notices (September 2005 and June 2007) where EPA identified 14 work activities/crop categories (e.g., tree fruit crops) having the highest transfer coefficients. In the case of aldicarb, the pesticide can only be applied by soil incorporation while in the case of methiocarb, the remaining agricultural uses are granular applications in nurseries and greenhouses. There are currently no registered uses of dichlorvos that will result in occupational exposure pathways associated with the selected 14 work activities/crop categories having the highest transfer coefficients. Finally, current registrations for allethrin and methiocarb no longer include uses on food crops. Since these four chemicals no longer meet the listing criteria, they are being deleted from the initial list of chemicals to be screened. However, it should be noted that all pesticidal chemicals will eventually be screened for their potential to interact with the endocrine system as required by the statute. (21 U.S.C. 346a(p)(3)).

Table 1 presents an alphabetized list of the six pesticide active ingredients that were removed from the original list of 73 chemicals recommended for Tier 1 screening in the EDSP and provides the rationale for their removal from the list.

TABLE 1.—CHEMICALS REMOVED FROM THE INITIAL LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP (THESE ARE ALL PESTICIDE ACTIVE INGREDIENTS)

Chemical Name	CAS Number	Reason for Removal from Testing List
Aldicarb	116063	The initial analysis using the exposure based criteria for chemical selection found aldicarb in three exposure pathways: Food, water, and occupational. Due to changes in the use pattern, aldicarb is only present in two exposure pathways (food and water) and will not be tested at this time.
Allethrin	584792	The initial analysis using the exposure based criteria for chemical selection found allethrin in three exposure pathways: Food, residential, and occupational. There are currently no registered food uses for this chemical. Allethrin is only present in two exposure pathways (occupational and residential) and will not be tested at this time.
Azinphos–Methyl	86500	The initial analysis using the exposure based criteria for chemical selection found azinphos-methyl in three exposure pathways: Food, water, and occupational. All uses of azinphos-methyl will cease by 2012. For this reason azinphos-methyl will not be tested.
Dichlorvos	62737	The initial analysis using the exposure based criteria for chemical selection found dichlorvos in three exposure pathways: Food, residential, and occupational. There are currently no registered uses of dichlorvos that will result in occupational exposure pathways associated with the selected 14 work activities/crop categories having the highest transfer coefficients. Dichlorvos is only present in two exposure pathways (food and residential) and will not be tested at this time.

TABLE 1.—CHEMICALS REMOVED FROM THE INITIAL LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP (THESE ARE ALL PESTICIDE ACTIVE INGREDIENTS)—Continued

Chemical Name	CAS Number	Reason for Removal from Testing List
Fenvalerate	51630581	The initial analysis using the exposure based criteria for chemical selection found fenvalerate in three exposure pathways: Food, residential, and occupational. There are currently no registered food uses for this chemical. In addition, the registrant voluntarily ceased production of fenvalerate. As of the August 2007 deadline, no end use registrants have indicated a source of the technical grade active ingredient. The few remaining products under existing stocks are primarily for residential use with a few labeled for commercial use in food handling establishments. For this reason, fenvalerate will not be tested.
Methiocarb	2032657	The initial analysis using the exposure based criteria for chemical selection found methiocarb in four exposure pathways: Food, water, residential, and occupational. Due to changes in the use pattern, methiocarb is only present in two exposure pathways (water and residential) and will not be tested at this time.

B. The Final List of Pesticide Chemicals for Initial Screening

Table 2 presents an alphabetized list of the 67 pesticide active ingredients and HPV/pesticide inert chemicals for screening in the EDSP. Because this list of chemicals was selected on the basis of exposure potential only, it should neither be construed as a list of known or likely endocrine disruptors nor characterized as such.

TABLE 2.—FINAL LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP

Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
2,4-D	94757	x	
4,7–Methano–1H–isoindole–1,3(2H)–dione, 2–(2–ethylhexyl)–3a,4,7,7a–tetrahydro–	113484	x	
Abamectin	71751412	x	
Acephate	30560191	x	
Acetone	67641		x
Atrazine	1912249	x	
Benfluralin	1861401	x	
Bifenthrin	82657043	x	
Butyl benzyl phthalate	85687		x
Captan	133062	x	
Carbamothioic acid, dipropyl–, S–ethyl ester	759944	x	
Carbaryl	63252	x	
Carbofuran	1563662	x	
Chlorothalonil	1897456	x	
Chlorpyrifos	2921882	x	
Cyfluthrin	68359375	x	
Cypermethrin	52315078	x	
DCPA (or chlorthal–dimethyl)	1861321	x	
Diazinon	333415	x	
Dibutyl phthalate	84742		x
Dichlobenil	1194656	x	

TABLE 2.—FINAL LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP—Continued

Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
Dicofol	115322	x	
Diethyl phthalate	84662		x
Dimethoate	60515	x	
Dimethyl phthalate	131113		x
Di–sec–octyl phthalate	117817		x
Disulfoton	298044	x	
Endosulfan	115297	x	
Esfenvalerate	66230044	x	
Ethoprop	13194484	x	
Fenbutatin oxide	13356086	x	
Flutolanil	66332965	x	
Folpet	133073	x	
Gardona (cis–isomer)	22248799	x	
Glyphosate	1071836	x	
Imidacloprid	138261413	x	
Iprodione	36734197	x	
Isophorone	78591		x
Linuron	330552	x	
Malathion	121755	x	
Metalaxyl	57837191	x	
Methamidophos	10265926	x	
Methidathion	950378	x	
Methomyl	16752775	x	
Methyl ethyl ketone	78933		x
Methyl parathion	298000	x	
Metolachlor	51218452	x	
Metribuzin	21087649	x	
Myclobutanil	88671890	x	
Norflurazon	27314132	x	
o–Phenylphenol	90437	x	
Oxamyl	23135220	x	
Permethrin	52645531	x	
Phosmet	732116	x	
Piperonyl butoxide	51036	x	
Propachlor	1918167	x	
Propargite	2312358	x	

TABLE 2.—FINAL LIST OF CHEMICALS FOR TIER 1 SCREENING IN THE EDSP—Continued

Chemical Name	CAS Number	Pesticide Active Ingredient	HPV/Inert
Propiconazole	60207901	x	
Propyzamide	23950585	x	
Pyridine, 2-(1-methyl-2-(4-phenoxyphenoxy)ethoxy)-	95737681	x	
Quintozene	82688	x	
Resmethrin	10453868	x	
Simazine	122349	x	
Tebuconazole	107534963	x	
Toluene	108883		x
Triadimefon	43121433	x	
Trifluralin	1582098	x	

VI. References

These references are available in the docket as identified under **ADDRESSES**, under Docket ID No. EPA–HQ–OPPT–2004–0109, which is the docket for the chemicals selected for the initial round of screening under the EDSP. In addition, the first document referenced is available in Docket ID No. EPA–HQ–OPPT–2002–0066, which is the docket used for the proposed chemical selection approach described in the **Federal Register** notice of December 30, 2002 (67 FR 79611) (FRL–7286–6).

1. U.S. EPA. Endocrine Disruptor Screening and Testing Advisory Committee Final Report. August 1998. Available at: *http:// www.epa.gov/scipoly/oscpendo/edspoverview/finalrpt.htm.* (Document ID No. EPA–HQ–OPPT–2002–0066–0003).

2. U.S. EPA. ''Reponse to Comments on the Draft List of Initial Pesticide Active Ingredients and Pesticide Inert Ingredients to be Screened under the Federal Food, Drug, and Cosmetic Act.'' August 2008. Available at: *http://www.epa.gov/scipoly/oscpendo/pubs/prioritysetting/.* (Docket ID No. EPA–HQ–OPPT–2004–0109).

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides.

Dated: April 3, 2009.

James Jones,

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

[FR Doc. E9–8709 Filed 4–14–09; 8:45 am]

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