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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, September 16, 2008
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2008–0003]

Brucellosis in Cattle; State and Area Classifications; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Texas from Class A to Class Free. We determined that Texas meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Texas.

DATES: Effective on August 25, 2008, we are adopting as a final rule the interim rule published at 73 FR 6007–6008 on February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Debbi A. Donch, National Brucellosis Epidemiologist, Ruminant Health Programs Staff, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.*

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

In an interim rule [1] effective and published in the **Federal Register** on February 1, 2008 (73 FR 6007–6008, Docket No. APHIS–2008–0003), we amended the regulations by changing the classification of the State of Texas from Class A to Class Free. That action relieved certain restrictions on the interstate movement of cattle from Texas.

Comments on the interim rule were required to be received on or before April 1, 2008. We received one comment by that date, from an industry organization. The commenter supported the action taken in the interim rule to classify Texas as a Class Free State. Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 73 FR 6007–6008 on February 1, 2008.

Done in Washington, DC, this 19th day of August 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–19624 Filed 8–22–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0003.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0187; Airspace Docket No. 07–ASO–27]

Modification of Area Navigation Route Q–110 and Jet Route J–73; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on July 30, 2008; Airspace Docket No. 07–ASO–27, FAA Docket No. FAA–2008–0187. In that rule, an error was made in the navigation aid radials stated in the description for jet route J–73. This action corrects that error. The description of area navigation route Q–110 is correct as published in the rule.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. 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: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 30, 2008, a final rule for Airspace Docket No. 07–ASO–27, FAA Docket No. FAA–2008–0187 was published in the **Federal Register** (73 FR 44147) to modify area navigation route Q–110 and jet route J–73. The legal description for J–73 contained an error in the radials used to form an intersection on the route between the La Belle, FL, very high frequency omnidirectional range/tactical air navigation (VORTAC) aid and the Lakeland, FL, VORTAC. The rule incorrectly described the point as: ''* * * INT Labelle 314° and Lakeland, FL 162° radials. * * *'' The correct version should read ''* * * INT Labelle 313° and Lakeland, FL 161° radials. * * *'' This action corrects the error. The description of route Q–110 is correct as published in the rule.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on July 30, 2008 (73 FR 44147), Airspace Docket No. 07–ASO–27, FAA Docket No. FAA–2008–0187, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Amended]

Paragraph 2004 Jet Routes.

* * * * *

■ On page 44148 correct the legal description for J–73, to read as follows:

J–73 [Corrected]

From Dolphin, FL; LaBelle, FL; INT Labelle 313° and Lakeland, FL, 161° radials; Lakeland; Seminole, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

* * * * *

Issued in Washington, DC, on August 13, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–19276 Filed 8–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

[Docket No. USCBP–2008–0052; CBP Dec. 08–32]

19 CFR Parts 12 and 163

RIN 1505–AB98

Entry Requirements for Certain Softwood Lumber Products Exported From Any Country Into the United States

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document sets forth interim amendments to title 19 of the Code of Federal Regulations (CFR) that prescribe special entry requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. The softwood lumber and softwood lumber products subject to these interim entry requirements are those described in section 804(a) within Title VIII (Softwood Lumber Act of 2008 or ''the Act'') of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, enacted June 18, 2008). Within Title VIII, section 803 requires the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribes special entry requirements whereby importers must submit the export price, estimated export charge, if any, and an importer declaration with the entry summary. There are also new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits which are subject to declaration requirements, but which are not subject to the softwood lumber importer declaration program of section 803 of the Act. These interim amendments set forth the procedural and documentation requirements necessary to implement the entry requirements specified in the statute.

DATES: This interim rule is effective on September 18, 2008. Comments must be received on or before October 24, 2008.

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP 2008–0052.

• *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Joseph M. Rees, Director, Trade Agreements and Communications Division, Office of International Trade, Tel: (202) 863–6065.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

Background

I. Softwood Lumber Act of 2008: Importer Declaration Program

Section 3301, within Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) was enacted June 18, 2008, and amends the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*) by adding a new Title VIII, entitled the ''Softwood Lumber Act of 2008'' (''the Act''). The Act requires the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribes special entry requirements whereby importers must provide the export price, estimated export charge, if any, and an importer declaration with the entry summary documentation. The Act also imposes new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits.

Title VIII is comprised of sections 801 through 809, which set forth the components of the softwood lumber importer declaration program. These sections, in pertinent part:

• Define certain terms and phrases applicable to the program (section 802).

• Prescribe entry requirements and the establishment of an electronic record thereof (section 803).

• Establish the scope of the program and require the importer to retain and produce documentation pertaining to the entry of certain softwood lumber home packages and kits (section 804).

• Require the Department of Commerce to make monthly determinations as to export charges to be collected by a country of export from exporters of covered softwood lumber products to ensure compliance with any international agreements entered into by that country and the United States (section 805).

• Require the Secretary of the Treasury to conduct reconciliations to ensure the proper implementation and operation of international agreements entered into between a country of export of softwood lumber or softwood lumber products described in section 804(a) and the United States. The Secretary will reconcile: (1) The export price declared by a United States importer pursuant to section 803(b)(1) with the export price reported to the United States by the country of export, if any; and (2) the export price declared by a United States importer pursuant to section 803(b)(1) with the revised export price reported to the United States by the country of export, if any (section 806).

• Require the Secretary of the Treasury to periodically verify the declarations made by a United States importer pursuant to section 803(c), including a determination as to whether the export price declared by a United States importer is the same as the export price provided on the export permit, if any, issued by the country of export and whether the estimated export charge declared by a United States importer pursuant to section 803(b)(2) is consistent with the determination published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b) (section 807).

• Prescribe applicable penalties (section 808).

• Require the submission of congressional reports by various government entities (section 809).

II. Softwood Lumber Act of 2008: Entry Requirements

Section 803 requires importers of covered softwood lumber and softwood lumber products (*i.e.*, those products described in section 804(a) of the Act) to submit to CBP certain data with the entry summary. The required entry information consists of:

• The export price for each line of softwood lumber or softwood lumber products (as defined in section 802(5));

• The estimated export charge, if any, applicable to each line of softwood lumber or softwood lumber products as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce, pursuant to section 805, to the export price; and

• An importer declaration that verifies that ''the person has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b)'' and, to the best of the person's knowledge and belief, the export price provided is determined in accordance with the definition set forth in section 802(5), the export price provided is consistent with the export price provided on the export permit, if any, granted by the country of export, and the exporter has paid, or committed to pay, all export charges due in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States and consistent with the export charge determinations published by the Under Secretary for International Trade of the Department of Commerce.

III. Description of Softwood Lumber and Softwood Lumber Products Covered by the Softwood Lumber Act of 2008

Section 804 of the Act sets forth the scope of softwood lumber and softwood lumber products covered by the importer declaration program established under section 803. All softwood lumber and softwood lumber products classified under subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) are subject to the importer declaration program established under section 803 including the following softwood lumber, flooring, and siding:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or finger-jointed, of a thickness exceeding 6 millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed;

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed; and

(5) Coniferous drilled and notched lumber and angle cut lumber.

In addition, any product classified under subheading 4409.10.05 of the HTSUS that is continually shaped along its end or side edges, and unless excepted or excluded from the declaration requirement, softwood lumber products that are stringers, radius-cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46.95, 4421.90.70.40, or 4421.90.97.40 of the HTSUS are covered by the Act.

The following products are not subject to the importer declaration program established under section 803 because they are defined as *excluded* from the program:

(1) Trusses and truss kits, properly classified under subheading 4418.90 of the HTSUS;

(2) I-joist beams;

(3) Assembled box-spring frames;

(4) Pallets and pallet kits, properly classified under subheading 4415.20 of HTSUS;

(5) Garage doors;

(6) Edge-glued wood, properly classified under subheading 4421.90.97.40 of the HTSUS;

(7) Complete door frames;

(8) Complete window frames;

(9) Furniture;

(10) Articles brought into the United States temporarily and for which an exemption from duty is claimed under subchapter XIII of chapter 98 of the HTSUS; and

(11) Household and personal effects.

Also, the following softwood lumber products are not subject to the importer declaration program established under section 803 because they are defined as *excepted* from the program:

(1) Stringers (pallet components used for runners), if the stringers have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades; and are properly classified under subheading 4421.90.97.40 of the HTSUS;

(2) Box-spring frame kits, if the kits contain two wooden side rails; two wooden end (or top) rails; and varying numbers of wooden slats; and the side rails and the end rails are radius-cut at both ends. Box spring frame kits must

be individually packaged, and contain the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed one inch in actual thickness or 83 inches in length.

(3) Radius-cut box-spring frame components, not exceeding one inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round one corner.

(4) Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTSUS, one inch or less in actual thickness, up to eight inches wide, and six feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets (in the case of dog-eared fence pickets, the corners of the boards shall be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ of an inch or more).

(5) Lumber originating in the United States that is exported to another country for minor processing and imported into the United States if the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and the importer establishes to CBP's satisfaction upon entry that the lumber originated in the United States.

(6) Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign processor, or original United States producer establishes to CBP's satisfaction upon entry that the softwood lumber entered and documented as originating in the United States was first produced in the United States; and

(7) Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of the classification under the HTSUS, if the importer declares that the following requirements have been met: (i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design, or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design, or blueprint; (ii) the package or kit contains all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors; and if included in the purchase contract, the decking, trim, drywall, and roof shingles specified in the plan, design, or blueprint; (iii) prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design, plan, or blueprint, and the contract is signed by a customer not affiliated with the importer; and (iv) softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, are to be used solely for the construction of the single family home specified by the home design, plan, or blueprint matching the CBP import entry.

For each entry of softwood lumber products contained in a single family home package for which the importer declares that these four requirements are met, the importer must retain and make available to CBP upon request the following documentation:

(1) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States;

(2) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

(3) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported; and

(4) If a single contract involves multiple entries, an identification of all the items required to be listed under item (3) that are included in each individual shipment.

IV. Interim Amendments at 19 CFR 12.142 To Promulgate Softwood Lumber Importer Declaration Program

In accordance with the Act's requirements, this document makes interim amendments to part 12 of title 19 of the CFR to provide an appropriate regulatory basis with respect to shipments of softwood lumber and softwood lumber products for the collection of export price, estimated export charge, if any, importer declaration and, if applicable, softwood lumber home packages and kits documentation.

The interim amendments to 19 CFR part 12 set forth in this document add a new § 12.142 (19 CFR 12.142) which requires the importer to electronically transmit the export price, the estimated export charge, if any, and the importer declaration on the entry summary in any case in which softwood lumber or softwood lumber products described in section 804(a) of the Act are imported into the United States (entries of softwood lumber and softwood lumber products for which a Certificate of Origin has been issued from Canada's Maritime Lumber Bureau must be submitted to CBP in paper. *See* 19 CFR 12.140(c)). The new interim amendment also requires importers of softwood lumber home packages and kits described in section 804(c)(7)(A)(i) through (iv) of the Act to retain, and provide to CBP upon request, certain documentation pertaining to, *inter alia*, design plans, purchase contracts, and part listings.

It is noted that section 803(b)(1) and (2) of the Act require that information regarding the export price and estimated export charge be submitted for ''each shipment.'' Accordingly, the interim amendment requires that the requisite information associated with each shipment be included on a single line on the entry summary.

V. Recordkeeping Requirements

Any substantiating documentation that supports an importer's softwood lumber declaration, and copies of the softwood lumber home packages and kits documentation, are subject to the recordkeeping provisions set forth in part 163 of title 19 to the CFR.

The ''List of Records Required for the Entry of Merchandise'' set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) is amended by this document to include the softwood lumber home packages and kits documentation requirement mandated by the Act, as well as any substantiating documentation that supports an importer's softwood lumber declaration. This document amends section IV of the Appendix by adding a new § 12.142 that lists softwood lumber home packages and kits documentation and any substantiating documentation that supports an importer's softwood lumber importer declaration as new entry records.

VI. Penalties

Failure to timely provide the required softwood lumber entry data will constitute a breach of the terms of the importer's bond under § 113.62(b) of title 19 of the CFR (19 CFR 113.62) and could give rise to a claim for liquidated damages under the bond equal to the value of the merchandise involved in the default.

VII. Other Applicable Entry Requirements

The softwood lumber entry data elements required by these interim regulations are not otherwise collected by CBP at time of entry and are in addition to the entry and entry summary information otherwise required for

importation into the United States as per section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484).

In addition, imports of softwood lumber or softwood lumber products from Canada may also be subject to § 12.140 of title 19 to the Code of Federal Regulations (19 CFR 12.140), which sets forth the entry requirements prescribed by the Softwood Lumber Agreement entered into between the Governments of the United States and Canada on September 12, 2006 (''SLA 2006''). In this regard, it is also noted that even those importers of softwood lumber and softwood lumber products that are exempt from the terms of 19 CFR 12.140 remain subject to the softwood lumber entry requirements contained in 19 CFR 12.142.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), CBP has determined that it would be impracticable and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment and that there is good cause for this interim rule to become effective upon providing less then 30 days notice. These interim amendments conform the regulations to the entry requirements set forth in Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), which go into effect August 18, 2008, and inform the public of the procedures necessary to comply with the statutory requirements. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a 30-day delayed effective date.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this document are contained in § 12.142(c) and (d) (19 CFR 12.142(c) and (d)). This information is used by CBP to fulfill its information collection obligations under Title VIII of the Tariff Act of 1930, as added by section 3301 within Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), whereby importers of certain softwood lumber and softwood lumber products are required to submit the export price, estimated export charge, if any, and an importer declaration with the entry summary information or, where applicable, to submit additional documentation required for home packages and kits. The likely respondents are business organizations including importers and brokers.

The collection of information associated with the entry summary documentation (CBP Form 7501) was previously approved by the Office of Management and Budget under control number 1651–0052. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), CBP has submitted to OMB for review the following adjustments to the information provided to OMB for the previously approved OMB control number to account for the changes in this interim rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 266,000 hours.

Number of responses per respondent and/or recordkeeper: 1,905.

Estimated number of respondents and/or recordkeepers: 210.

Estimated annual frequency of responses: 400,000.

Estimated time per response: 40 minutes (.333 hours).

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim rule.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ For the reasons stated above, parts 12 and 163 of title 19 of the Code of Federal Regulations (19 CFR parts 12 and 163) are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The authority citation for part 12 continues and a new specific authority for § 12.142 is added to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

§ 12.142 also issued under 19 U.S.C. 1484; section 3301 of Pub. L. 110–246.

* * * * *

§ 12.140 [Undesignated center heading amended]

■ 2. The undesignated center heading ''Softwood Lumber from Canada'' preceding § 12.140 is amended by removing the words ''from Canada''.

■ 3. A new § 12.142 is added to read as follows:

§ 12.142 Entry of softwood lumber and softwood lumber products from any country into the United States.

(a) *In general.* This section, pursuant to the ''Softwood Lumber Act of 2008'' (''the Act'') (Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*)), prescribes entry requirements applicable to certain imports of softwood lumber and softwood lumber products exported from any country into the United States.

(b) *Softwood lumber products covered.* The softwood lumber and softwood lumber products covered by this section are those products described in section 804(a) of Title VIII

of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*).

(c) *Entry requirements for shipments subject to the importer declaration program.* For each shipment of softwood lumber or softwood lumber products described in section 804(a) of Title VIII to the Tariff Act of 1930, as amended, (19 U.S.C. 1202 *et seq.*) that is entered or withdrawn from warehouse for consumption, in the customs territory of the United States, the following information must be electronically submitted to CBP (except that, pursuant to 19 CFR 12.140(c), entries of softwood lumber and softwood lumber products for which a Certificate of Origin has been issued from Canada's Maritime Lumber Bureau must be submitted to CBP in paper):

(1) *Export price.* Each importer must provide the export price, expressed in U.S. dollars, on the entry summary in the designated space provided on the CBP Form 7501.

(i) For purposes of this section, ''export price'' means one of the following:

(A) In the case of softwood lumber or a softwood lumber product that has undergone only primary processing, the value that would be determined F.O.B. at the facility where the product underwent the last primary processing before export.

(B) In the case of softwood lumber or a softwood lumber product that underwent the last remanufacturing before export by a manufacturer who does not hold tenure rights provided by the country of export, did not acquire standing timber directly from the country of export, and is not related to the person who holds tenure rights or acquired standing timber directly from the country of export, the value that would be determined F.O.B. at the facility where the softwood lumber or softwood lumber product underwent the last primary processing.

(C) In the case of softwood lumber or a softwood lumber product that underwent the last remanufacturing before export by a manufacturer who holds tenure rights provided by the country of export, acquired standing timber directly from the country of export, or is related to the person who holds tenure rights or acquired standing timber directly from the country of export, the value that would be determined F.O.B. at the facility where the softwood lumber or softwood lumber product underwent the last processing before export.

(D) In the case of softwood lumber or a softwood lumber product described in paragraphs (c)(1)(i)(A), (B) or (C) of this section for which an F.O.B. value cannot be determined, the export price will be the market price for the identical softwood lumber or softwood lumber product sold in an arm's-length transaction in the country of export at approximately the same time as the exported softwood lumber or softwood lumber product. The market price will be determined in the following order of preference:

(*1*) The market price for the softwood lumber or softwood lumber product sold at substantially the same level of trade (as described in 19 CFR 351.412(c)) as the exported softwood lumber or softwood lumber product but in different quantities.

(*2*) The market price for the softwood lumber or softwood lumber product sold at a different level of trade (as defined in 19 CFR 351.412(c)) than the exported softwood lumber or softwood lumber product but in similar quantities.

(*3*) The market price for the softwood lumber or softwood lumber product sold at a different level of trade (as defined in 19 CFR 351.412(c)) than the exported softwood lumber or softwood lumber product and in different quantities.

(ii) For purposes of paragraph (c)(1) of this section, the following definitions apply:

(A) *F.O.B.* The term ''F.O.B.'' means a value consisting of all charges payable by a purchaser, including those charges incurred in the placement of merchandise on board of a conveyance for shipment, but does not include the actual shipping charges or any applicable export charges.

(B) *Related to the person.* The term ''related to the person'' means:

(*1*) A person bears a relationship to such other person described in section 152(a) of the Internal Revenue Code of 1986;

(*2*) A person bears a relationship to such person described in section 267(b) of the Internal Revenue Code of 1986, except that ''5 percent'' will be substituted for ''50 percent'' each place it appears;

(*3*) The person and such other person are part of a controlled group of corporations, as that term is defined in section 1563(a) of the Internal Revenue Code of 1986, except that ''5 percent'' will be substituted for ''80 percent'' each place it appears;

(*4*) The person is an officer or director of such other person; or

(*5*) The person is the employer of such other person.

(C) *Tenure rights.* The term ''tenure rights'' means rights to harvest timber from public land granted by the country of export.

(2) *Estimated export charge.* (i) Each importer must provide the estimated export charge, if any, to be collected by the country (including any political subdivision of the country) from which the softwood lumber or softwood lumber product was exported pursuant to an international agreement entered into by that country and the United States as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce to the export price. Any applicable estimated export charge must be expressed in U.S. dollars and reported on the entry summary in the designated space.

(ii) For purposes of this paragraph, the terms ''estimated export charge'' or ''export charge'' mean any tax, charge, or other fee collected by the country from which softwood lumber or a softwood lumber product, as described in section 804(a) within Title VIII of the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*), as amended, is exported pursuant to an international agreement entered into by that country and the United States.

(3) *Importer declaration.* (i) Each importer, except as provided in paragraph (c)(3)(ii) of this section, must provide a softwood lumber declaration on the electronic entry summary by entering the letter code ''Y'' in the first space of the field designated for the estimated export charge data.

(ii) Each importer of softwood lumber and softwood lumber products for which a Certificate of Origin has been issued from Canada's Maritime Lumber Bureau must provide a softwood lumber declaration on the paper entry summary by entering the letter code ''Y'' in the first space of the field designated for the estimated export charge. *See* 19 CFR 12.140(c),

(iii) The letter code ''Y'' represents the importer's declaration to CBP that:

(A) The importer has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*); and

(B) To the best of the person's knowledge and belief:

(*1*) The export price provided is determined in accordance with the definition set forth in section 802(5) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*);

(*2*) The export price provided is consistent with the export price provided on the export permit, if any, granted by the country of export; and

(*3*) The exporter has paid, or committed to pay, all export charges due in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States and consistent with the export charge determinations published by the Under Secretary for International Trade of the Department of Commerce.

(iv) Any substantiating documentation that supports an importer's softwood lumber declaration is subject to the recordkeeping provisions set forth in part 163 of title 19 to the CFR.

(d) *Entry requirements for home packages and kits—(1) Declaration and required documentation.* Home packages and kits as described in section 804(c)(7)(A)(i) through (iv) of the Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*) are not subject to the entry requirements set forth in paragraph (c) of this section. However, the importer is required to make a declaration pursuant to section 804(c)(7)(B) and is required to retain and produce upon demand by CBP, the following documentation:

(i) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States.

(ii) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer.

(iii) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported.

(iv) If a single contract involved multiple entries, an identification of all the items required to be listed under paragraph (d)(1)(iii) of this section that are included in each individual shipment.

(2) *Records and retention.* There is no requirement to present physical copies of the softwood lumber home packages and kits documentation to CBP at the time of filing the entry summary; however copies must be maintained in accordance with the applicable recordkeeping provisions set forth in part 163 of title 19 to the CFR.

(e) *Other softwood lumber entry requirements.* Other entry requirements may be applicable to certain imports of softwood lumber or softwood lumber from Canada. Importers are advised to refer to § 12.140 (19 CFR 12.140) of this chapter for information regarding applicability and entry requirements.

PART 163—RECORDKEEPING

■ 4. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 5. The Appendix to part 163 is amended by adding, in numerical order, a listing for § 12.142 under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 12.142 Softwood Lumber Importer Declaration Supporting Documentation, Softwood Lumber Home Packages and Kits Documentation.

* * * * *

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

Approved: August 20, 2008.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8–19641 Filed 8–22–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 141

[Docket No. USCBP–2008–0062]

RIN 1505–AB96; CBP Dec. 08–31

First Sale Declaration Requirement

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document establishes an importer declaration requirement pursuant to section 15422(a) of the Food, Conservation, and Energy Act of 2008 to assist Customs and Border Protection (CBP) in gathering information for all goods entered for consumption or withdrawn from warehouse for consumption on the transaction valuation of goods imported into the United States. Effective for a one-year period beginning August 20, 2008, all importers will be required to provide a declaration to CBP at the time of filing a consumption entry when, in a series of sequential sales, the transaction value of the imported merchandise is determined on the basis of the ''first or earlier sale'' of goods—the first sale in which the goods are ''sold for exportation to the United States'' or any other sale earlier than the last sale prior to the introduction of the merchandise into the United States. CBP will then report the frequency of the use of the ''first sale'' rule and other associated data to the International Trade Commission (ITC) on a monthly basis.

DATES: This interim rule is effective on August 20, 2008. Comments must be received on or before October 24, 2008.

ADDRESSES: You may submit comments, identified by *docket number*, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2008–0062.
- *Mail:* Trade and Commercial Regulations Branch, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of International Trade, Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW. (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 572–8835.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. Customs and Border Protection

(CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

The value of merchandise imported into the United States is determined primarily under transaction value which the U.S. value law, set forth in 19 U.S.C. 1401a, defines as ''the price actually paid or payable for the merchandise when sold for exportation to the United States'' plus specified additions to that amount. 19 U.S.C. 1401a(b)(1). The phrase ''sold for exportation to the United States'' is not defined in 19 U.S.C. 1401a, nor in the implementing regulations set forth in part 152 of title 19 of the Code of Federal Regulations (19 CFR part 152).

Notice of Proposed Interpretation

On January 24, 2008, CBP published in the **Federal Register** (73 FR 4254) a notice informing interested parties that CBP proposed a new interpretation of the expression ''sold for exportation to the United States'' for purposes of applying the transaction value method of valuation in a series of sales importation scenario. Under this proposed new interpretation in a transaction involving a series of sales, the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of an earlier sale, would be considered the price actually paid or payable for the imported goods when sold for exportation to the United States. CBP is withdrawing the notice of proposed interpretation.

Food, Conservation, and Energy Act of 2008

On May 22, 2008, Congress passed the Food, Conservation, and Energy Act of 2008 (the ''Act''), Public Law 110–234, 122 Stat. 1547 (19 U.S.C. 1484 note). Section 15422 of the Act, in pertinent part, requires:

- CBP must collect a declaration as to whether the transaction value of the imported merchandise is determined on the basis of the price paid in the first or earlier sale occurring prior to the introduction of the merchandise into the United States.
- CBP must provide the collected information to the ITC on a monthly basis.
- ITC must submit a report to the House Ways and Means Committee and the Senate Finance Committee within 90 days of receipt of CBP's final monthly report.
- A ''sense of Congress'' provision advises that CBP not amend its interpretation of ''sold for exportation to the United States'' for purposes of applying the transaction value of the imported merchandise in a series of sales before January 1, 2011. Beginning on January 1, 2011, CBP may propose to change its interpretation only if CBP: (1) Consults with and provides notice to the committees noted above not less than 180 days prior to proposing a change and not less than 90 days prior to publishing a change; (2) consults with, provides notice to, and takes into consideration views expressed by the Commercial Operations Advisory Committee not less than 120 days prior to proposing a change and not less than 60 days prior to publishing a change; and (3) receives the explicit approval of the Secretary of the Treasury prior to publishing a change. CBP should also take into consideration the ITC report before publishing any change to the expression ''sold for exportation to the United States.''

Required Information on Entry Summary (CBP Form 7501)

In addition to the entry and entry summary information otherwise required for importation into the United States, as per section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the Act obligates CBP to require that a U.S. importer of merchandise provide a declaration at the time of entry of the merchandise on the entry summary form, CBP Form 7501, as to whether the value of the imported merchandise was determined on the basis of the price paid by the buyer in the ''first or earlier sale.''

On June 10, 2008, CBP participated in a teleconference call with members of the Trade Support Network (TSN), a group of private-sector trade representatives that provides CBP with input on the development of Customs Modernization projects. Participants in the call discussed various ways to indicate when customs value is based on the ''first sale'' on CBP Form 7501. Initially, CBP had considered requiring importers to provide three data elements on CBP Form 7501. During the teleconference, CBP agreed with TSN members that requiring importers to provide as few data elements as possible would be the most efficient and least burdensome manner in which to implement the declaration requirement. CBP has concluded, based upon its consultation with the TSN, that it will require importers to provide one data element.

In order to implement the above requirement of the Act, importers will be required to insert a single code on CBP Form 7501 at the line-item level, indicating when first sale was used to determine the value of the imported merchandise. An importer will be required to enter an ''F'' next to the declared value if the value of the merchandise is based on transaction value, and the transaction value of the merchandise is based on the price paid by the buyer in the ''first or earlier sale.'' This special indicator code will enable CBP to fulfill its information collection obligation under the Act.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), CBP has determined that it would be impracticable and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment and that there is good cause for this interim rule to become effective immediately upon publication. These interim amendments to 19 CFR 141.61(g) conform the regulations to the information collection requirements set forth in section 15422(a) of the Food, Conservation, and Energy Act of 2008, Public Law 110–234, 122 Stat. 1547 (19 U.S.C. 1484 note), which is effective August 20, 2008. These interim amendments inform the public of the procedures necessary to comply with the statutory requirements. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these interim amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this document are contained in § 141.61(g) (19 CFR 141.61(g)). This information is used by CBP to fulfill its information collection obligations under section 15422(a) of the Food, Conservation, and Energy Act of 2008, Public Law 110–234, 122 Stat. 1547 (19 U.S.C. 1484 note), which mandates that CBP require a U.S. importer of merchandise to

provide information at the time of entry of the merchandise on the entry summary form, CBP Form 7501, as to whether the value of the imported merchandise was determined on the basis of the price paid by the buyer in the ''first or earlier sale.'' The likely respondents are business organizations including importers and brokers. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This collection of information falls under the previously approved collection 1651–0022 for the Entry Summary, CBP Form 7501.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of title 19 of the Code of Federal Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated above, part 141 of title 19 of the Code of Federal Regulations (19 CFR part 141) is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

■ 1. The general authority citation for part 141 continues to read, and the specific authority for § 141.16 is added, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.61 also issued under sec. 15422(a), Pub. L. 110–234, 122 Stat. 1547 (19 U.S.C. 1484 note) and 19 U.S.C. 1401a.

* * * * *

■ 2. Section 141.61 is amended by adding a new paragraph (g) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

* * * * *

(g) *Declaration of value.* Pursuant to section 15422(a) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234), for all goods entered for consumption or withdrawn from warehouse for consumption from August 20, 2008 through August 19, 2009, an importer of merchandise must enter an ''F'' next to the declared value on CBP Form 7501, or the electronic filing equivalent, when the declared transaction value of the imported merchandise is determined on the basis of the price paid by the buyer in a sale occurring earlier than the last sale prior to the introduction of the merchandise into the United States.

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

Approved: August 20, 2008.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8–19640 Filed 8–20–08; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 610, 640, 812, 814, 822, and 860

[Docket No. FDA–2008–N–0423]

FDA Regulations; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a regulatory hearing process regulation to correct an inaccurate citation, and regulations pertaining to biological products to correct two typographical errors. FDA is also amending certain medical device regulations to include references to and mailing address information for the Center for Biologics Evaluation and Research (CBER), Center for Drug Evaluation and Research (CDER), and Center for Devices and Radiological Health (CDRH). This action is being taken to ensure the accuracy of FDA's regulations.

DATES: This rule is effective August 25, 2008.

FOR FURTHER INFORMATION CONTACT: Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is amending 21 CFR 16.1 to correct an inaccurate citation and is amending 21 CFR 610.51 and 21 CFR 640.53 to correct typographical errors.

FDA is also amending its medical device regulations in 21 CFR 812, 814, and 860 to include references to and mailing addresses for CBER and CDER, and 21 CFR 822.8 to correct an inadvertent omission of the mailing address for CDRH. Submissions regarding a medical device must be sent to the address of the appropriate center that has regulatory responsibility for the medical device. Therefore, FDA is updating these regulations to include address information for all appropriate centers.

Publication of this document constitutes final action under the Administrative Procedures Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes to correct an inaccurate citation and typographical errors, and to update mailing addresses and other information, and is nonsubstantive.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 822

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 16, 610, 640, 812, 814, 822, and 860 are amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

■ 1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

§ 16.1 [Amended]

■ 2. Section 16.1 is amended in paragraph (b)(2), by removing ''§ 1270.15(e)'' and adding in its place ''§ 1270.43(e)''.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

■ 3. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.53 [Amended]

■ 4. Section 610.53 is amended in paragraph (c) in the table, under column A, by removing the words ''Cryoprecipitated AFH'' and adding in their place ''Cryoprecipitated AHF.''

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

■ 5. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 640.51 [Amended]

■ 6. Section 640.51 is amended in paragraph (b) by removing the word ''Plasmaphersis'' and adding in its place ''Plasmapheresis.''

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

■ 7. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

■ 8. Section 812.20 is amended by revising paragraph (d) to read as follows:

§ 812.20 Application.

* * * * *

(d) *Information previously submitted.* Information previously submitted to the Center for Devices and Radiological Health, the Center for Biologics Evaluation and Research, or the Center for Drug Evaluation and Research, as applicable, in accordance with this chapter ordinarily need not be resubmitted, but may be incorporated by reference.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 9. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 10. Section 814.42 is amended by revising the fourth sentence of paragraph (d)(2) to read as follows:

§ 814.42 Filing a PMA.

* * * * *

(d) * * *

(2) * * * If FDA does not reverse its decision not to file the PMA, the applicant may request reconsideration of the decision from the Director of the Center for Devices and Radiological Health, the Director of the Center for Biologics Evaluation and Research, or the Director of the Center for Drug Evaluation and Research, as applicable. * * *

* * * * *

■ 11. Section 814.100 is amended by revising paragraph (c)(2) to read as follows:

§ 814.100 Purpose and scope.

* * * * *

(c) * * *

(2) Submitting an HDE to the Office of Device Evaluation (ODE), Center for Devices and Radiological Health (CDRH), the Center for Biologics Evaluation and Research (CBER), or the Center for Drug Evaluation and Research (CDER), as applicable.

* * * * *

■ 12. Section 814.104 is amended by revising paragraph (d) to read as follows:

§ 814.104 Original applications.

* * * * *

(d) *Address for submissions and correspondence.* Copies of all original HDEs amendments and supplements, as well as any correspondence relating to an HDE, must be sent or delivered to the following:

(1) For devices regulated by the Center for Devices and Radiological Health, send this information to the Document Mail Center (HFZ–401), Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

(2) For devices regulated by the Center for Biologics Evaluation and Research, send this information to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(3) For devices regulated by the Center for Drug Evaluation and Research, send this information to the Central Document Control Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

PART 822—POSTMARKET SURVEILLANCE

■ 13. The authority citation for 21 CFR part 822 continues to read as follows:

Authority: 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

■ 14. Section 822.8 is amended by adding a sentence after the first sentence to read as follows:

§ 822.8 When, where, and how must I submit my postmarket surveillance plan?

* * * For devices regulated by the Center for Devices and Radiological Health, send three copies of your submission to the Postmarket Surveillance Document Center (HFZ–541), Epidemiology Branch, Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. * * *

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

■ 15. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

■ 16. Section 860.7 is amended by revising paragraph (g)(4) to read as follows:

§ 860.7 Determination of safety and effectiveness.

* * * * *

(g) * * *

(4) Required information that has been submitted previously to the Center for Devices and Radiological Health, the Center for Biologics Evaluation and Research, or the Center for Drug Evaluation and Research, as applicable, need not be resubmitted, but may be incorporated by reference.

■ 17. Section 860.123 is amended by revising paragraph (b)(1) to read as follows:

§ 860.123 Reclassification petition: Content and form.

* * * * *

(b) * * *

(1) For devices regulated by the Center for Devices and Radiological Health, addressed to the Food and Drug Administration, Center for Devices and Radiological Health, Regulations Staff

(HFZ–215), 1350 Piccard Dr., Rockville, MD 20857; for devices regulated by the Center for Biologics Evaluation and Research, addressed to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; for devices regulated by the Center for Drug Evaluation and Research, addressed to the Central Document Control Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266, as applicable.

* * * * *

Dated: August 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–19654 Filed 8–22–08; 8:45 am]

BILLING CODE 4160–01–S

PEACE CORPS

22 CFR Part 304

RIN 0420–AA23

Claims Against the Government Under the Federal Tort Claims Act

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: The Peace Corps is revising its regulation concerning claims filed under the Federal Tort Claims Act, to make the regulation internally consistent with another provision stating that the Chief Financial Officer has authority to approve claims for amounts under $5000.

DATES: The final rule is effective September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Associate General Counsel, Office of the General Counsel, 202–692–2150.

SUPPLEMENTARY INFORMATION: The Peace Corps published a proposed rule on July 9, 2008, for public review and comment. See 73 FR 39270, (July 9, 2008). The Peace Corps received no public comments and the Agency has made no further revisions. Therefore, this rule is final and will be effective on the date stated above.

On March 16, 2007, Peace Corps revised 22 CFR 304.7 to provide that the Chief Financial Officer ''has the authority to adjust, determine, compromise, and settle claims for less than $5,000.'' This final rule will rectify an omission in sec. 304.10 which did not refer to the Chief Financial Officer's authority for deciding claims worth less than $5,000.

This rule amends section 304.10(b) to provide that the Chief Financial Officer will make final determinations for claims worth less than $5,000.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects in 22 CFR Part 304

Claims.

■ Accordingly, Peace Corps amends 22 CFR part 304 as follows:

PART 304—CLAIMS AGAINST THE GOVERNMENT UNDER THE FEDERAL TORT CLAIMS ACT

■ 1. The authority citation for part 304 continues to read as follows:

Authority: 28 U.S.C. 2672; 22 U.S.C. 2503(b); E.O. 12137, as amended.

■ 2. Amend § 304.10 by revising paragraph (b) to read as follows:

§ 304.10 Review of claim.

* * * * *

(b) After legal review and recommendation by the General Counsel, the Director of the Peace Corps will make a written determination on the claim, unless the claim is worth less than $5,000, in which case the Chief Financial Officer will make the written determination.

Dated: August 18, 2008.

Tyler Posey,

General Counsel.

[FR Doc. E8–19642 Filed 8–22–08; 8:45 am]

BILLING CODE 6015–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 250, 251, 256, 280, 281, and 290

[Docket ID: MMS–2007–OMM–0065]

RIN 1010–AD43

Electronic Payment of Fees for Outer Continental Shelf Activities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule requires that all lessees, operators, permittees, and right-of-way holders pay all fees for processing plans, applications, and permits electronically. This rule will aid industry in payment processing and reduce payment processing errors. This rule will improve MMS processing efficiency and facilitate the correction of industry payment errors. The MMS will not accept checks, money orders, or cashier's checks for payment of fees after the effective date of this final rule. The final rule also adjusts certain cost recovery fees for inflation.

DATES: *Effective Date:* This rule becomes effective on September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Office of Offshore Regulatory Programs, Regulations and Standards Branch, (703) 787–1751.

SUPPLEMENTARY INFORMATION:

Background

The MMS published a proposed rule on December 21, 2007 (72 FR 72648), that would require all lessees, operators, pipeline right-of-way (ROW) holders, and permittees to submit payments for cost recovery service fees electronically. The comment period for the proposed rule closed February 19, 2008, and Chevron submitted the one and only comment on the proposed rule. The commenter supports the concept of submitting fees electronically through *Pay.gov.* The commenter stated concerns about only using *Pay.gov* and provided rule language to allow alternatives for a different payment portal if so needed. The MMS believes *Pay.gov* to be the best option for paying

electronically. *Pay.gov* is the U.S. Treasury's government-wide collection portal which was developed specifically for Federal agencies to process collections electronically using Internet technologies.

The MMS proposed the rulemaking to improve the application and fee process and to alleviate industry payment errors associated with non-electronic payments. Most errors encountered are associated with check payments. Examples of check payment errors include incorrect date, incorrect payment amount, check sent to a different address than application, and closing an account shortly after the check is sent to MMS. Check payment errors can result in delay or lead to denial of an application or permit due to non-payment. Rectifying a check payment error requires additional time and expense from industry, MMS, or both. Electronic payments are more efficient and less prone to mistakes than check payments.

This final rule has the same requirements as the proposed rule, with the exception of updating the cost recovery fees for inflation as allowed by 30 CFR 250.125(a). The proposed rule clearly states that the final rule will contain the updated fees. The following explains the methodology used to update the fees for inflation.

There are two sets of fees that are adjusted. The first set of fees is from the 2005 cost recovery rule published August 25, 2005 (70 FR 49871), and the second set of fees is from the 2006 cost recovery rule published July 19, 2006 (71 FR 40904). The fees in the 2005 cost recovery rule have been adjusted with inflation rates from 2005–2007 as shown in the following formula:

2005 Cost Recovery Fee Amount (Current Fee) + 2005 Annual Inflation Rate (AIR) of 3.23% = Adjusted Fee for 2005 AIR + 2006 AIR of 3.16% = Adjusted Fee for 2006 AIR + 2007 AIR of 2.66% = 2005 Cost Recovery Fee Adjusted for 2007 AIR (Updated Fee)

To update the 2005 cost recovery rule fees, we started with the 2005 fee amount and increased it by the 2005 inflation rate of 3.23 percent. We then used that adjusted amount and increased it by the 2006 inflation rate of 3.16 percent. Finally, we used that latest adjusted amount and increased it by the 2007 inflation rate of 2.66 percent. The results were rounded to the nearest dollar and are part of the new fee amounts in this rule. The 2005 cost recovery rule fees increase by approximately 9 percent.

The fees in the 2006 cost recovery rule are updated with inflation rates from 2006 and 2007 as shown in the following formula:

2006 Cost Recovery Fee Amount (Current Fee) + 2006 Annual Inflation Rate (AIR) of 3.16% = Adjusted Fee for 2006 AIR + 2007 AIR of 2.66% = 2006 Cost Recovery Fee Adjusted for 2007 AIR (Updated Fee)

To update the 2006 cost recovery rule fees, we used the fee amount set in the 2006 rule and increased it by the 2006 inflation rate of 3.16 percent. We then used that adjusted rate and increased it by the 2007 inflation rate of 2.66 percent. The results were rounded to the nearest dollar and are part of the new fee amounts in this rule. The 2006 cost recovery rule fees increase by approximately 6 percent.

The inflation rates are calculated from the percent difference between the gross domestic product for one year and the previous year as contained in the Bureau of Economic Analysis (BEA) Table 1.1.9., Implicit Price Deflators for Gross Domestic Product. The 2007 inflation rate of 2.66 percent is current as of the March 27, 2008, BEA table. We expect BEA to revise the rate during future updates and, as in the last few years, we expect revisions to be upward. Even if BEA revises the inflation rate, MMS will retain the published fee schedule until the next update or fee recalculation. The MMS also made a few minor additional changes to the proposed rule for clarity.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is not a significant rule as defined by E.O. 12866 and is not subject to review under E.O. 12866.

(1) This final rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This final rule will require all fees be paid electronically through *Pay.gov* and adjust certain cost recovery fees by inflation only. This rulemaking does slightly increase costs due to inflation of the cost recovery fees; however, the total annual increase in fees industry-wide is estimated at $800,000. No new equipment is required by this rulemaking.

(2) This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. By requiring electronic payment through the *Pay.gov* system, MMS is supporting the President's Management Agenda of expanding electronic government or ''E-Government.''

(3) This final rule will not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This final rule will not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes in the rule will affect lessees, operators of leases, pipeline right-of-way (ROW) holders in the OCS, and permittees. This could include about 130 active Federal oil and gas lessees, 88 pipeline ROW holders, and 10 geophysical companies. Small lessees that operate under this rule mostly fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) Codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small

company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small.

A pipeline ROW holder (non-producer) is a small entity if it is a liquid pipeline company with fewer than 1,500 employees, or a natural gas pipeline company with gross annual receipts of $6.5 million or less. We estimate that 18 entities could be categorized as small independent pipeline companies in the sense that they provide transportation services for several non-major oil or gas producers. These companies are classified by NAICS codes 486110, Pipeline Transportation of Crude Oil, and 486210, Pipeline Transportation of Natural Gas.

The SBA classifies geophysical surveying and mapping service companies under the NAICS Code 541360. The criteria for determining a small entity for this classification code is annual receipts of less than $4.5 million. All of the 10 geophysical companies potentially affected by this final rule have annual receipts greater than $4.5 million.

There are 228 companies affected by this proposed rule, of which 109 would be considered small businesses. This rule, therefore, affects a substantial number of small entities.

The changes in the rule will not have a significant economic effect on a substantial number of small entities. There is no credit card or automated clearing house (ACH) fee for using *Pay.gov.* We do not expect any company to incur significant other costs because no special software or other equipment is required to pay through *Pay.gov* or ACH. We have no information that any company will incur any costs associated with accounting processes, changes in business procedures, or other compliance costs.

Also, the cost recovery fees are being updated with only a small percentage rate accounting for inflation only. In the fiscal year 2007, MMS collected approximately $12 million in cost recovery fees from industry. After a simple economic analysis, once the fees are adjusted for inflation there will only be an industry-wide estimated annual increase of $800,000. The increases in fees are negligible compared to the costs of operating on the OCS and will not stop a company of any size from operating on the OCS.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation.

Small Business Regulatory Enforcement Fairness Act

The final rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have federalism implications. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, be written to minimize litigation, and promote simplification and burden reduction; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it has no substantial direct effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act

The rule contains no new reporting or recordkeeping requirements, and an Office of Management and Budget (OMB) submission under section 3507(d) of the Paperwork Reduction Act (PRA 44 U.S.C. 3507(a)) is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The regulations will specify that all operators, lessees, and ROW holders must now use *Pay.gov* for every fee that will be submitted to MMS. The revisions in this rulemaking refer to, but do not change, information collection requirements in numerous current regulations. The OMB approved the referenced information collection requirements under OMB Control Numbers 1010–0071, 1010–0114, 1010–0151, 1010–0141, 1010–0067, 1010–0043, 1010–0059, 1010–0149, 1010–0050, 1010–0051, 1010–0086, 1010–0142, 1010–0048, 1010–0006, and 1010–0072, respectively.

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. The MMS has analyzed this rule under the criteria of the National Environmental Policy Act, 516 Departmental Manual (DM) 2.3, and 516 DM 2, Appendix 1, and determined that it falls within the categorical exclusion for ''regulations * * * that are of an administrative, financial, legal, technical, or procedural nature.'' The MMS Categorical Exclusion Review for this action concluded that the provisions of this rule are administrative. Furthermore, MMS concluded that the rulemaking does not involve an extraordinary circumstance set forth in 516 DM 2, Appendix 2. For

these reasons, preparation of an environmental assessment or environmental impact statement is not required.

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 203

Continental shelf, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

30 CFR Part 251

Continental shelf, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 280

Continental Shelf, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 281

Administrative practice and procedure, Continental shelf, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 290

Administrative practice and procedure.

Dated: August 8, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR parts 203, 250, 251, 256, 280, 281, and 290 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for part 203 is revised to read as follows:

Authority: 25 U.S.C. 396; 25 U.S.C. 2107; 30 U.S.C. 189, 241; 30 U.S.C. 359; 30 U.S.C. 1023; 30 U.S.C. 1751; 31 U.S.C. 9701; and 43 U.S.C. 1334.

■ 2. Revise § 203.3 and its heading to read as follows:

§ 203.3 Do I have to pay a fee to request royalty relief?

When you submit an application or ask for a preview assessment, you must include a fee to reimburse us for our costs of processing your application or assessment. Federal policy and law require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), Office of Management and Budget Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–134, 110 Stat. 1321, April 26, 1996) authorize us to collect these fees.

(a) We will specify the necessary fees for each of the types of royalty relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs, as well as provide other information necessary to administer royalty relief.

(b) You must file all payments electronically through the *Pay.gov* Web site and you must include a copy of the *Pay.gov* confirmation receipt page with your application or assessment. The *Pay.gov* Web site may be accessed through a link on the MMS Offshore Web site at: *http://www.mms.gov/offshore/* homepage or directly through *Pay.gov* at: *https://www.pay.gov/paygov/.*

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 3. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 4. Revise the table in § 250.125(a) to read as follows:

§ 250.125 Service fees.

(a) * * *

SERVICE FEE TABLE

Service—processing of the following:	Fee amount	30 CFR citation
(1) Change in Designation of Operator	$164	§ 250.143(d).
(2) Right-of-Use and Easement for State lessee	$2,569	§ 250.165.
(3) Suspension of Operations/Suspension of Production (SOO/SOP) Request.	$1,968	§ 250.171(e).
(4) Exploration Plan (EP)	$3,442 for each surface location; no fee for revisions	§ 250.211(d).
(5) Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$3,971 for each well proposed; no fee for revisions	§ 250.241(e).
(6) Deepwater Operations Plan	$3,336	§ 250.292(p).
(7) Conservation Information Document	$25,629	§ 250.296(a).

SERVICE FEE TABLE—Continued

Service—processing of the following:	Fee amount	30 CFR citation
(8) Application for Permit to Drill (APD; Form MMS–123)	$1,959 for initial applications only; no fee for revisions	§ 250.410(d); § 250.411; § 250.460; § 250.513(b); § 250.515; § 250.1605; § 250.1617(a); § 250.1622.
(9) Application for Permit to Modify (APM; Form MMS–124).	$116	§ 250.460; § 250.465(b); § 250.513(b); § 250.515; § 250.613(b); § 250.615; § 250.1618(a); § 250.1622; § 250.1704(g).
(10) New Facility Production Safety System Application for facility with more than 125 components.	$5,030 A component is a piece of equipment or ancillary system that is protected by one or more of the safety devices required by API RP 14C (incorporated by reference as specified in § 250.198); $13,238 additional fee will be charged if MMS deems it necessary to visit a facility offshore, and $6,884 to visit a facility in a shipyard.	§ 250.802(e).
(11) New Facility Production Safety System Application for facility with 25–125 components.	$1,218 Additional fee of $8,313 will be charged if MMS deems it necessary to visit a facility offshore, and $4,766 to visit a facility in a shipyard.	§ 250.802(e).
(12) New Facility Production Safety System Application for facility with fewer than 25 components.	$604	§ 250.802(e).
(13) Production Safety System Application—Modification with more than 125 components reviewed.	$561	§ 250.802(e).
(14) Production Safety System Application—Modification with 25–125 components reviewed.	$201	§ 250.802(e).
(15) Production Safety System Application—Modification with fewer than 25 components reviewed.	$85	§ 250.802(e).
(16) Platform Application—Installation—Under the Platform Verification Program.	$21,075	§ 250.905(k).
(17) Platform Application—Installation—Fixed Structure Under the Platform Approval Program.	$3,018	§ 250.905(k).
(18) Platform Application—Installation—Caisson/Well Protector.	$1,536	§ 250.905(k).
(19) Platform Application—Modification/Repair	$3,601	§ 250.905(k).
(20) New Pipeline Application (Lease Term)	$3,283	§ 250.1000(b).
(21) Pipeline Application—Modification (Lease Term)	$1,906	§ 250.1000(b).
(22) Pipeline Application—Modification (ROW)	$3,865	§ 250.1000(b).
(23) Pipeline Repair Notification	$360	§ 250.1008(e).
(24) Pipeline Right-of-Way (ROW) Grant Application	$2,569	§ 250.1015(a).
(25) Pipeline Conversion of Lease Term to ROW	$219	§ 250.1015(a).
(26) Pipeline ROW Assignment	$186	§ 250.1018(b).
(27) 500 Feet From Lease/Unit Line Production Request	$3,608	§ 250.1101(f).
(28) Gas Cap Production Request	$4,592	§ 250.1101(f).
(29) Downhole Commingling Request	$5,357	§ 250.1106(d).
(30) Complex Surface Commingling and Measurement Application.	$3,760	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
(31) Simple Surface Commingling and Measurement Application.	$1,271	§ 250.1202(a); § 250.1203(b); § 250.1204(a).
(32) Voluntary Unitization Proposal or Unit Expansion	$11,698	§ 250.1303(d).
(33) Unitization Revision	$831	§ 250.1303(d).
(34) Application to Remove a Platform or Other Facility	$4,342	§ 250.1727.
(35) Application to Decommission a Pipeline (Lease Term).	$1,059	§ 250.1751(a) or § 250.1752(a).
(36) Application to Decommission a Pipeline (ROW)	$2,012	§ 250.1751(a) or § 250.1752(a).

* * * * *

■ 5. Revise § 250.126 to read as follows:

§ 250.126 Electronic payment instructions.

You must file all payments electronically through *Pay.gov*. This includes, but is not limited to, all OCS applications or filing fee payments. The *Pay.gov* Web site may be accessed through a link on the MMS Offshore Web site at: *http://www.mms.gov/offshore/* homepage or directly through *Pay.gov* at: *https://www.pay.gov/paygov/*.

(a) If you submitted an application through eWell, you must use the interactive payment feature in that system, which directs you through *Pay.gov*.

(b) For applications not submitted electronically through eWell, you must use credit card or automated clearing house (ACH) payments through the *Pay.gov* Web site, and you must include a copy of the *Pay.gov* confirmation receipt page with your application.

■ 6. Revise § 250.160(h) to read as follows:

§ 250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?

* * * * *

(h) You may make the rental payments required by paragraph (g)(1) and (g)(2) of this section on an annual basis, for a 5-year period, or for multiples of 5 years. You must make the first payment electronically through *Pay.gov* and you must include a copy of the *Pay.gov* confirmation receipt page with your right-of-use and easement application. You must make all subsequent payments before the respective time periods begin.

* * * * *

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

■ 7. The authority citation for part 251 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 8. Revise § 251.5(a) to read as follows:

§ 251.5 Applying for permits or filing Notices.

(a) *Permits.* You must submit a signed original and three copies of the MMS permit application form (Form MMS–327). The form includes names of persons; the type, location, purpose, and dates of activity; and environmental and other information. A nonrefundable service fee of $2,012 must be paid electronically through *Pay.gov* at: *https://www.pay.gov/paygov/*, and you must include a copy of the *Pay.gov* confirmation receipt page with your application.

* * * * *

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

■ 9. The authority citation for part 256 is revised to read as follows:

Authority: 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1334.

■ 10. Revise the table in § 256.63(a) to read as follows:

(a) * * *

SERVICE FEE TABLE

Service	Fee amount	30 CFR citation
(1) Record Title/Operating Rights (Transfer)	$186	§ 256.64
(2) Non-required Document Filing	27	§ 256.64

* * * * *

■ 11. Revise § 256.64(a)(8) to read as follows:

§ 256.64 How to file transfers.

* * * * *

(a) * * *

(8) You must pay electronically through *Pay.gov* at: *https://www.pay.gov/paygov/* the service fee listed in § 256.63 of this subpart and you must include a copy of the *Pay.gov* confirmation receipt page with your application for approval of any instrument of transfer you are required to file (Record Title/Operating Rights (Transfer) Fee). Where multiple transfers of interest are included in a single instrument, a separate fee applies to each individual transfer of interest. For any document you are not required to file by these regulations but which you submit for record purposes, you must also pay electronically through *Pay.gov* the service fee listed in § 256.63 (Non-required Document Filing Fee) per lease affected, and you must include a copy of the *Pay.gov* confirmation receipt page with your document. Such documents may be rejected at the discretion of the authorized officer.

* * * * *

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR ON THE OUTER CONTINENTAL SHELF

■ 12. The authority citation for part 280 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 13. Revise § 280.12(a) to read as follows:

§ 280.12 What must I include in my application or notification?

(a) *Permits.* You must submit to the Regional Director a signed original and three copies of the permit application form (Form MMS–134) at least 30 days before the startup date for activities in the permit area. If unusual circumstances prevent you from meeting this deadline, you must immediately contact the Regional Director to arrange an acceptable deadline. The form includes names of persons; the type, location, purpose, and dates of activity; and environmental and other information. A nonrefundable service fee of $2,012 must be paid electronically through *Pay.gov* at: *https://www.pay.gov/paygov/*, and you must include a copy of the *Pay.gov* confirmation receipt page with your application.

* * * * *

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

■ 14. The authority citation for part 281 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 15. Revise § 281.41(a)(2) to read as follows:

§ 281.41 Requirements for filing for transfers.

(a) * * *

(2) An application for approval of any instrument required to be filed will not be accepted unless a nonrefundable fee of $50 is paid electronically through *Pay.gov* at: *https://www.pay.gov/paygov/* and a copy of the *Pay.gov* confirmation receipt page is included with your application. For any document you are not required to file by these regulations but which you submit for record purposes, you must also pay electronically through *Pay.gov* a nonrefundable fee of $50 per lease affected, and you must include a copy of the *Pay.gov* confirmation receipt page with your document. Such documents may be rejected at the discretion of the authorized officer.

* * * * *

PART 290—APPEAL PROCEDURES

■ 16. The authority citation for part 290 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 359, 1023, 1701 *et seq.*, 1751(a); 31 U.S.C. 3716, 9701; and 43 U.S.C. 1334.

■ 17. Revise § 290.4(b) to read as follows:

§ 290.4 How do I file an appeal?

* * * * *

(b) A nonrefundable processing fee of $150 paid with the Notice of Appeal.

(1) You must pay electronically through *Pay.gov* at: *https://www.pay.gov/paygov/*, and you must include a copy of the *Pay.gov* confirmation receipt page with your Notice of Appeal.

(2) You cannot extend the 60-day period for payment of the processing fee.

[FR Doc. E8–19373 Filed 8–22–08; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0257; FRL–8707–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment of Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area for the 1997 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attained the 1997 $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on August 25, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0257. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Action Is EPA Taking?
II. What Is the Effect of This Action?
III. When Is This Action Effective?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is determining that the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area (Harrisburg Nonattainment Area) for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and monitoring data that continue to show attainment of the 1997 $PM_{2.5}$ NAAQS based on the 2005–2007 data. In addition, quality controlled and quality assured monitoring data submitted during the calendar year 2008, which are available in the EPA AQS database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the notice of proposed rulemaking (NPR) published on June 13, 2008 (73 FR 33755) and will not be restated here. No public comments were received in response to the NPR.

II. What Is the Effect of This Action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

III. When Is This Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the approval. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As noted above, this determination of attainment suspends the requirements for the Harrisburg nonattainment area to submit an attainment demonstration and associated reasonably available measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the standard for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, the Harrisburg nonattainment area's suspension from these requirements provide good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the Commonwealth of Pennsylvania, do not need time to adjust and prepare before the rule takes effect.

IV. Final Action

EPA is determining that the Harrisburg nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the standard based on the 2005–2007 data. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies 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.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, 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).

This rule also does not have tribal applications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks'' (62 FR 19885, April 23, 1997) because it determines that air quality in the affected area is meeting Federal standards.

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 because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures otherwise satisfying the provisions of the CAA.

This rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule involves a determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the Harrisburg nonattainment area clean data determination, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: August 12, 2008

W.T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2059 is amended by adding paragraph (c) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(c) *Determination of Attainment.* EPA has determined, as of August 25, 2008, the Harrisburg-Lebanon-Carlisle, Pennsylvania nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration and associated reasonably available measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. E8–19421 Filed 8–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0403; FRL–8707–7]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Iowa State Implementation Plan (SIP) and Operating Permits Program submitted by the state of Iowa for the purpose of modifying and clarifying requirements for certain types of grain elevators. Specifically, the new rule revises the SIP to add special requirements for grain elevators, and the associated chapters for definitions and emission standards will be revised accordingly. The Iowa Department of Natural Resources (IDNR) is requiring that owners or operators of grain elevators apply best management

practices and comply with the fugitive dust standard, as well as emission controls specified in required construction permits. These strategies will protect the ambient air and minimize the impact of emissions from each of the facilities.

DATES: This direct final rule will be effective October 24, 2008, without further notice, unless EPA receives adverse comment by September 24, 2008. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0403, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: Hamilton.heather@epa.gov.*
3. *Mail or Hand Delivery:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2008–0403. 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 through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. 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, i.e., 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 form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is a Part 70 operating permits program?
What is the Federal approval process for the operating permits program?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and a Part 70 revision been met?
What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is the Part 70 operating permits program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that

consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment, and our approval.

What is the Federal approval process for an operating permits program?

In order for state regulations to be included in the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA, including revisions to the state program, are included in the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What is being addressed in this document?

This rule revision modifies requirements for certain types of grain elevators by adding a new rule to the Iowa Administrative Code (IAC) with special requirements for these facilities. The rule amendments define each type of facility, and also specify the permitting requirements, emissions calculation methodology, emissions reporting and record keeping, and best management practices for controlling air pollution. A particulate matter (PM) emission standard for bin vents located at country grain elevators is described in subrule 23.4(7). Affected facilities are also required to comply with the fugitive dust standard to further minimize emissions. The deadline for affected facilities to comply with the new requirements was March 31, 2008.

The associated definitions are being revised or added to IAC 567 Chapters 20 and 22 as follows: Country grain elevator, country grain terminal elevator, feed mill equipment, grain, grain processing, grain storage elevator, grain terminal elevator, permanent storage capacity and potential to emit.

The new rule added into IAC 567 Chapter 22.10(455B) applies to permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. Compliance with the new requirements does not alleviate any affected person's duty to comply with any applicable state or Federal regulations. In particular, the emission standards set forth in 567 Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60 Subpart DD, as adopted by the state, may apply.

Also added to IAC 567–22.10(455B) are methods for calculating potential to emit (PTE) for PM and PM_{10} for the four subject facilities: Country grain elevators; country grain terminal elevators; grain terminal elevators, and feed mill equipment.

Grain elevators are classified in four groups as follows: Group 1—facilities with PTE less than 15 tons per year (tpy); Group 2—facilities with PTE greater than or equal to 15 tpy and less than or equal to 50 tpy; Group 3—facilities with PTE more than 50 tpy and not more than 100 tpy, and Group 4—facilities that emit greater than or equal to 100 tpy.

These categories of grain elevators are described below. As explained below, EPA has reviewed the rules changes and has determined that they do not result in an impermissible relaxation of the SIP under CAA Section 110(l).

An owner or operator of a Group 1 facility is required to provide registration with PTE calculations and to retain a record of the previous five calendar years of total annual grain handled. The calculation of the facility's potential PM_{10} is required to be submitted to IDNR annually by January 31 for the previous calendar year. If additions, removals or modifications to equipment are performed, emissions will be calculated prior to any changes and if emissions increase to 15 tpy or more, the owner or operator shall comply with requirements set forth in Groups 2 to 4 as applicable prior to making the additions, removals or modifications. The same procedures will apply if the owner or operator changes the facility classification or permanent grain storage capacity.

The owner or operator of a Group 2 facility, in lieu of obtaining source-specific air construction permits for each piece of emissions equipment, may submit a Group 2 permit application with PTE calculations on IDNR-provided forms; and, if qualified, may operate under a permit by rule. If one or more construction permits exist, it remains in full force and effect and is not invalidated by subsequent submittal of a Group 2 permit application pursuant to this rule. Restrictions on equipment included in a previously-issued construction permit may be incorporated into a Group 2 permit on a case-by-case basis by IDNR. Records will be maintained as specified in the Group 2 permit. If additions, removals, or modifications to equipment are performed, emissions changes due to these actions will be calculated prior to any changes; and if emissions increase beyond 50 tpy or more, the owner or operator must comply with requirements set forth in Groups 3 or 4 (source categories requiring source-specific permits, as discussed below) as applicable, prior to making the additions, removals or modifications. As with Group 1, the same procedures will apply if the owner or operator changes the facility classification or permanent grain storage capacity.

The owner or operator of a Group 3 facility must obtain the required source-specific construction permits as specified under existing subrule 22.1(1). Owners or operators of new facilities must obtain the required permits prior to construction or reconstruction of a facility. Records will be maintained as specified in the Group 3 permit. If additions, removals or modifications to equipment are performed, emissions will be calculated prior to any changes; and, if emissions increase to 100 tpy or more, the owner or operator must

comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the additions, removals or modifications. The same procedures will apply if the owner or operator changes the facility classification or permanent grain storage capacity. If the PTE for PM or PM_{10} triggers major source permitting, the owner or operator must comply with the requirements of 567 Chapter 33 (PSD) as applicable. Fugitive emissions as defined in 567–33.3(1) are included in the PTE calculation for determining PSD applicability. The owner or operator shall keep records of annual grain handled at the facility and annual PTE emissions on site for a period of five years.

The owner or operator of a Group 4 facility is required to obtain source-specific construction permits as specified under subrule 22.1(1) in the current SIP. The owner or operator of a new facility shall obtain the required permits prior to construction or reconstruction of a facility. Records will be maintained as specified in the Group 4 permit. If the PTE for PM or PM_{10} triggers major source permitting, the owner or operator must comply with the requirements of 567 Chapter 33 (PSD) as applicable. Fugitive emissions as defined in 567–33.3(1) are included in the PTE calculation for determining PSD applicability. The owner or operator shall keep records of annual grain handled at the facility and annual PTE emissions on site for a period of five years. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the annual PTE for PM or PM_{10} is equal to or greater than 100 tpy as specified in rules 567–22.100(455B) through 567–22.300(455B), which are part of the currently-approved Title V program. Fugitive emissions in the calculations will be included if the PTE for PM_{10} is greater than 100 tpy.

The rule revision means that Group 1 sources (sources emitting less than 15 tpy of PM or PM_{10}) will not be required to obtain source-specific permits if they adequately demonstrate that emissions are less than that threshold. The state has submitted a demonstration that grain elevators of this size would not adversely impact air quality. EPA believes the state has shown that sources of this size would not be expected to adversely impact air quality.

Group 2 sources (sources emitting between 15 and 50 tpy) are not required to obtain source-specific permits if they operate in accordance with the requirements of the rule (for example, requiring implementation of best management practices for controlling particulate matter emissions). These sources obtain standardized permits. The state retains the ability to require source-specific air quality analyses from these sources if the Group 2 application, or other information, indicates that a particular source might adversely impact air quality. EPA concludes there are sufficient safeguards in the rule to ensure that Group 2 sources will not adversely impact air quality.

The rule requires that Groups 3 and 4 sources obtain traditional source-specific permits. Therefore, there is no substantive change from the current SIP for sources in these groups.

As feed mill equipment does not fall under the grain elevator classifications, a separate section of the new rule sets forth the requirements with regard to permitting, emissions inventory, operating permits, and prevention of significant deterioration applicability. These requirements generally entail no change from the current SIP.

EPA is also approving a revision to Chapter 23 of the IAC with regard to grain handling and processing plants. The revision states that the owner or operator of equipment at a permanent installation shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas with the following exception: Particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas; particulate matter discharged from a grain bin vent at a country grain terminal elevator or a grain terminal elevator constructed before March 31, 2008, shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas, and particulate matter discharged from a grain bin vent at a country grain terminal elevator or a grain terminal elevator constructed after March 31, 2008, shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas. IDNR provided an analysis of PM emissions which showed that PM emissions would be less than 5 tpy at a facility with 35 million bushels per year throughput rate. The throughput is on the upper end of the throughput range for the majority of the grain elevators that will be affected by the rules; and based on the analysis of PM emissions, the revision would not be expected to adversely impact air quality. EPA has determined that the state's analysis of this rule change meets the requirements of CAA section 110(l).

Have the requirements for approval of a SIP revision and a Part 70 revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. These revisions are minor clarifications, updates, and corrections which do not affect the stringency of existing requirements. These revisions are also consistent with applicable EPA requirements in Title V of the CAA and 40 CFR Part 70.

What action is EPA taking?

EPA is approving the request to amend the Iowa SIP and Operating Permits Program to approve the modification of requirements for certain types of grain elevators. These modifications will not adversely affect the air quality in the state of Iowa and will not relax the SIP. The state provided adequate justification to this effect. We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). 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).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 approves a state rule implementing a Federal standard.

In reviewing SIP and Title V submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. 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 information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 15, 2008.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820(c) the table is amended by:

■ a. Revising entries for 567–20.2; 567–22.1 and 567–23.4; and

■ b. Adding in numerical order 567–22.10.

The revisions and addition read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title—Definitions—Forms—Rules of Practice				
*	*	*	*	*
567–20.2	Definitions	03/19/2008	08/25/2008 [*insert FR page number where the document begins*].	The definitions for anaerobic lagoon, odor, odorous substance, and odorous substance source are not SIP approved.

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	03/19/2008	08/25/2008 [*insert FR page number where the document begins*].	
* *	*	*	* *	*
567–22.10	Permitting Requirements for Country Grain Elevators, Country Grain Terminal Elevators, Grain Terminal Elevators and Feed Mill Equipment.	03/19/2008	08/25/2008 [*insert FR page number where the document begins*].	
* *	*	*	* *	*
Chapter 23—Emission Standards for Contaminants				
* *	*	*	* *	*
567–23.4	Specific Processes	03/19/2008	08/25/2008 [*insert FR page number where the document begins*].	Subrule 23.4(10) is not SIP-approved.
* *	*	*	* *	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to Part 70 is amended by adding paragraph (j) under ''Iowa'' to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

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(j) The Iowa Department of Natural Resources submitted for program approval rule 567–22.100(455B) on April 8, 2008. The state effective date was March 19, 2008. These revisions to the Iowa program are approved effective October 24, 2008.

* * * * *

[FR Doc. E8–19519 Filed 8–22–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–192

[FMR Amendment 2008–06; FMR Case 2003–102–1; Docket 2008–0001; Sequence 4]

RIN 3090–AH13

Federal Management Regulation; FMR Case 2003–102–1; Mail Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by revising the current mail management policy. This final rule incorporates changes made to the current interim rule.

DATES: This final rule is effective August 25, 2008.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Derrick Miliner, Office of Governmentwide Policy, Mail Management Policy, at (202) 273–3564, or e-mail at *derrick.miliner@gsa.gov*. The Regulatory Secretariat, Room 4041, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. Please cite FMR case 2003–102–1.

SUPPLEMENTARY INFORMATION:

A. Background

On May 29, 2001, the General Services Administration (GSA) published a proposed rule for mail management in the **Federal Register** (66 FR 29067). After considering all comments received on the proposed rule, GSA published an interim rule for mail management in the **Federal Register**, which was effective on its publication date, June 6, 2002 (67 FR 38896).

GSA chose to publish an interim rule in 2002 because we recognized that experience would identify some elements of the interim rule that would need to be changed. This final rule reflects that experience.

The significant changes between this final rule and the interim rule are:

1. This final rule removes Appendix A, titled ''Large Agency Mailers.'' The list of agencies that qualify as large, as defined in this regulation, changes slightly every year. GSA has determined, therefore, that it is better to publish this list on its web site, *www.gsa.gov/mailpolicy*, rather than in this regulation.

2. This final rule removes Appendix B titled ''Mail Center Security Plan.'' GSA has determined that this final rule should contain only the basic requirements for security plans, and that any additional guidance should be

provided through its web site, *www.gsa.gov/mailpolicy*. Best practices in mail center security evolve too quickly for inclusion in the FMR. See Subpart C for the minimum requirements for security plans and policies.

3. This final rule removes the minimum size for facilities to have written mail security plans. The Mail Regulation Interagency Working Group decided that any facility processing mail must have a written security plan, regardless of its size, and GSA has adopted that finding in this regulation.

4. This final rule removes from the definition of ''mail'' packages of any size or weight containing parts and supplies issued from materiel distribution centers. Packages up to 70 pounds containing paper, publications, and similar materials are still included in the definition of mail. GSA has made this change at the request of several agencies, including the Department of Defense and the National Aeronautics and Space Administration. Parts and supplies are not ''records,'' as envisioned by the Federal Records Management Amendments of 1976 (44 U.S.C. 2901–2904), which provides the authority for this Part.

5. This final rule reestablishes the requirement that every agency must have an agency mail manager and must have a mail center manager at every Federal facility that processes mail; this rule was first established in part 101–9 of the Federal Property Management Regulation (FPMR) (41 CFR part 101–9) and was inadvertently not included in the interim rule.

6. This final rule moves the due date for the annual mail management reports from March 30 to January 15.

7. The interim rule required that all agencies begin using commercial payment processes for mail and stop using the United States Postal Service (USPS) Official Mail Accounting System. Many agencies are currently operating under temporary deviations that give them additional time to meet this requirement. When GSA amended 41 CFR part 102–192 to change the date for this requirement to December 31, 2003, it also stated that ''all deviation requests will be required to include a discussion of how the agency has implemented, or plans to implement, an accountable system for making postage payments.'' This final rule requires that, in their annual report, all large agencies discuss how they are implementing an accountable system for postage payments, or how they plan to do so. It also requires that all agencies discuss how they plan to implement an accountable system for postage in any deviation requests related to this issue. At the same time, this final rule allows deviations that have not reached their expiration dates to continue in effect until they expire.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–192

Government contracts, Mail, Performance measurement, Records management, Reporting and recordkeeping requirements, Security.

Dated: May 21, 2008.

David L. Bibb,

Acting Administrator of General Services.

■ For the reasons set forth in the preamble, 41 CFR chapter 102 is amended by revising part 102–192 of Subchapter G to read as follows:

PART 102–192—MAIL MANAGEMENT

Subpart A—Introduction to this Part

Sec.
102–192.5 What does this part cover?
102–192.10 What authority governs this part?
102–192.15 How are ''I'', ''you'', ''me'', ''we'', and ''us'' used in this part?
102–192.20 How are ''must'' and ''should'' used in this part?
102–192.25 Does this part apply to me?
102–192.30 What types of mail does this part apply to?
102–192.35 What definitions apply to this part?
102–192.40 Where can we obtain more information about the classes of mail?
102–192.45 How can we request a deviation from these requirements, and who can approve it?

Subpart B—Financial Requirements for All Agencies

102.192.50 What payment processes are we required to use?
102–192.55 Why must we use these commercial payment processes?
102–192.60 How do we implement these commercial payment processes?
102–192.65 What features must our finance systems have to track mail costs?

Subpart C—Security Requirements for All Agencies

102–192.70 What security policies and plans must we have?
102–192.75 Why must we have written security policies and plans?
102–192.80 How do we develop written security policies and plans?

Subpart D—Reporting Requirements

102.192.85 Who must report to GSA annually?
102.192.90 What must we include in our annual mail management report to GSA?
102–192.95 Why does GSA require annual mail management reports?
102–192.100 How do we submit our annual mail management report to GSA?
102–192.105 When must we submit our annual mail management report to GSA?

Subpart E—Performance Measurement Requirements

102–192.110 At what level(s) in our agency must we have performance measures?
102–192.115 Why must we use performance measures?

Subpart F—Agency Mail Manager Requirements

102–192.120 Must we have an agency mail manager?
102.192.125 What is the appropriate managerial level for an agency mail manager?
102–192.130 What are your general responsibilities as an agency mail manager?

Subpart G—Mail Center Manager Requirements

102–192.135 Must we have a mail center manager at our facility?
102.192.140 What are your general responsibilities as a Federal mail center manager?

Subpart H—Program Level Mail Responsibilities

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102–192.170 What are GSA's responsibilities in mail management?
102–192.175 What types of support does GSA offer to Federal agency mail management programs?

Authority: 44 U.S.C. 2904; 40 U.S.C. 121(c).

Subpart A—Introduction to this Part

§ 102–192.5 What does this part cover?

This part prescribes policy and requirements for the effective, economical, and secure management of incoming, internal, and outgoing mail in Federal agencies.

§ 102–192.10 What authority governs this part?

This part is governed by Section 2 of Public Law 94–575, the Federal Records Management Amendments of 1976 (44 U.S.C. 2901–2904), as amended, that requires the Administrator of General Services to provide guidance and assistance to Federal agencies on records management and defines the processing of mail by Federal agencies as a records management activity.

§ 102–192.15 How are ''I'', ''you'', ''me'', ''we'', and ''us'' used in this part?

In this part, ''I'', ''me'', and ''you'' (in its singular sense) refer to agency mail managers and/or facility mail managers. The context makes it clear which usage is intended in each case. ''We'', ''us'', and ''you'' (in its plural sense) refer to your Federal agency.

§ 102–192.20 How are ''must'' and ''should'' used in this part?

In this part—

(a) ''Must'' identifies steps that Federal agencies are required to take; and

(b) ''Should'' identifies steps that the General Services Administration (GSA) recommends.

Note to § 102–192.20: In their internal policy statements, agencies may require steps that GSA recommends. However, agencies may not change required steps into non-mandatory recommendations.

§ 102–192.25 Does this part apply to me?

Yes, this part applies to you if you work in mail management in a Federal agency, as defined in § 102–192.35.

§ 102–192.30 What types of mail does this part apply to?

(a) This part applies to all materials that might pass through a Federal mail center, including—

(1) All internal, incoming, and outgoing materials, regardless of whether or not they currently pass through a mail center; this includes envelopes, publications, postal cards, bulk mail, expedited mail, and individual packages up to 70 pounds that contain paper or publications; and

(2) Materials carried by agency personnel, contractors, the United States Postal Service (USPS), and all other carriers of such items.

(b) This part does not apply to shipments of parts or supplies from a materiel distribution center (a material distribution center is a warehouse that maintains and distributes an inventory of parts and supplies).

§ 102–192.35 What definitions apply to this part?

The following definitions apply to this part:

Accountable mail means any mail for which the service provider and the mail center must maintain a record that shows where the mail piece is at any given time and when and where it was delivered; examples include USPS registered mail and all expedited mail (see definition below).

Agency mail manager means the person who manages the overall mail communications program of a Federal agency.

Class of mail means one of the five categories of domestic mail as defined by the United States Postal Service (USPS) in the Domestic Mail Manual, (C100 through C600.1.z). These are:

(1) Express mail.

(2) First class (includes priority mail).

(3) Periodicals.

(4) Standard mail (*e.g.*, bulk marketing mail).

(5) Package services.

Commingling means combining outgoing mail from one facility or agency with outgoing mail from at least one other source.

Commercial payment processes means mechanisms for paying for USPS postage that are essentially the same as those used by private sector mailers. This means paying for postage before the postage is used (which the U.S. Treasury has determined is appropriate for USPS postage). For meter or permit mail, this also means sending money to the USPS via Electronic Funds Transfer (EFT) transactions to commercial banks designated by the USPS as their financial agents. For stamps and other USPS services, this means paying the USPS directly via cash, charge card, debit card, and money order, depending on the specific service being purchased.

Expedited mail means mail designated for delivery more quickly than the USPS's normal delivery times (which vary by class of mail). Examples of expedited mail include USPS Express Mail and overnight and two-day delivery by other service providers.

Facility mail manager means the person responsible for mail in a specific Federal facility. There may be many facility mail managers within a Federal agency.

Federal agency (or agency), as defined in 44 U.S.C. 2901(14), means—

(1) Any executive department as defined in 5 U.S.C. 101;

(2) Any wholly owned Government corporation as defined in 31 U.S.C. 9101;

(3) Any independent establishment in the executive branch as defined in 5 U.S.C. 104; and

(4) Any establishment in the legislative branch, except the Senate, the House of Representatives, the Architect of the Capitol, and all activities under the direction of the Architect of the Capitol.

Federal facility (or facility) means any office building, installation, base, etc., where Federal agency employees work; this includes any facility where the Federal government pays postage expenses even though few or no Federal employees are involved in processing the mail.

Incoming mail means any mail that comes into a facility delivered by any service provider, such as the USPS, United Parcel Service (UPS), FedEx, or DHL.

Internal mail means mail generated within a Federal facility that is delivered within that facility or to a nearby facility of the same agency, so long as it is delivered by agency personnel or a dedicated agency contractor.

Large agency means a Federal agency whose total payments to all mail service providers exceed $1 million per fiscal year.

Mail means the types of mail described in § 102–192.30.

Mail center means an organization and/or place, within or associated with a Federal facility, where incoming and/or outgoing Federal mail is processed.

Mail costs means direct or allocated expenses for postage and all other mail costs (*e.g.*, payments to service providers, mail center personnel costs, mail center overhead, etc.).

Mail piece design means laying out and printing items to be mailed so that they can be processed efficiently and effectively by automated mail-processing equipment.

Official Mail Accounting System (OMAS) means the U.S. Postal Service's government-specific system used to track postage used by many Federal agencies.

Outgoing mail means mail generated within a Federal facility that is going

outside that facility and is delivered by a service provider.

Personal mail means incoming or outgoing mail that is not related to official business of the Federal government.

Postage means money due or paid to any service provider for the delivery of mail.

Presort means a mail preparation process used to receive a discounted mailing rate by sorting mail according to USPS standards.

Program level means a subsidiary part of a Federal agency that generates a significant quantity of outgoing mail (''significant'' in this context is relative to the overall size of the agency's mail budget; half of a small annual mail budget may not be significant in a small agency, whereas one-tenth or less might be significant in a large agency). The term program level may apply to an agency organizational entity, program, or project.

Program level mail manager is the person at the program level responsible for mail policy implementation, operations, and financial management; the program level counterpart of the agency mail manager.

Service provider means any agency or company that delivers mail. Some examples of service providers are USPS, UPS, FedEx, DHL, courier services, the Military Postal Service Agency, the Department of State's Diplomatic Pouch and Mail Division, and other Federal agencies providing mail services.

Special services means those mail services that require extra payment over basic postage; *e.g.*, certified mail, business reply mail, registered mail, merchandise return service, certificates of mailing, return receipts, and delivery confirmation.

Unauthorized use of agency postage means the use of penalty or commercial mail stamps, meter impressions, or other postage indicia for personal or unofficial use.

Worksharing means ways of processing outgoing mail that qualify for reduced postage rates; examples include presorting, bar coding, consolidating, and commingling.

§ 102–192.40 Where can we obtain more information about the classes of mail?

You can learn more about mail classes in the Domestic Mail Manual (DMM). The DMM is available online at *http://pe.usps.gov/default.asp* or you can order a copy from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954.

§ 102–192.45 How can we request a deviation from these requirements, and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part. The authority rests with the Administrator of General Services and those to whom the Administrator has delegated such authority.

Subpart B—Financial Requirements for All Agencies

§ 102–192.50 What payment processes are we required to use?

All payments to the United States Postal Service or authorized service providers must be made using commercial payment processes.

(a) Agencies may no longer use the Intergovernmental Payment and Collection Payment (IPAC) process associated with the Official Mail Accounting System (OMAS), except where GSA has approved a temporary deviation for a specific agency, office, or component.

(b) Any deviation related to the requirements of this section that has not reached its expiration date on the effective date of this rule will continue in effect until it expires.

(c) Any new deviation request, or any request to extend an existing deviation, must include a plan for the agency to implement an accountable system for postage, as discussed in § 102–192.65.

(d) GSA provides detailed guidance on commercial payment processes and accountability on its web site, *www.gsa.gov/mailpolicy*.

§ 102–192.55 Why must we use these commercial payment processes?

Federal agencies are required to use commercial payment processes because commercial payment requires obligation of the money before the postage is used (by contrast, use of the OMAS system allows the postage use and the obligation of funds to occur almost entirely independently of each other). Requiring the program level manager who generates the mail to obligate the money before the postage is used makes it much more likely that the same program level manager will be accountable for the money, thereby encouraging good judgment in using postage.

§ 102–192.60 How do we implement these commercial payment processes?

Guidance on implementing a compliant payment process is in the GSA Policy Advisory, Guidelines for Federal Agencies On Converting to Commercial Payment Systems for Postage, which can be found at *www.gsa.gov/mailpolicy*.

§ 102–192.65 What features must our finance systems have to keep track of mail costs?

All agencies must have an accountable system for making postage payments; that is, a system that allocates postage expenses at the program level within the agency and then makes program level managers accountable for obligating and tracking those expenses. The agency will have to determine the appropriate program level for this requirement, because the level at which it is cost-beneficial differs widely. The agency's finance system(s) should track all mail costs separately to the program level or below, and should—

(a) Show allocations and expenses for postage and all other mail costs (*e.g.*, payments to service providers, mail center personnel costs, mail center overhead, etc.) separate from all other administrative expenses;

(b) Allow mail centers to establish systems to charge their customers for mail costs; and

(c) Identify and charge mail costs that are part of printing contracts to the program level.

Note to § 102–192.65: To better accomplish these goals listed in this section, you should maintain separate accounts with the USPS and all other service providers for mail, as defined by this Part. Shipment of non-mail items should be arranged and paid for through other accounts. This will make it possible for your annual mail management report to reflect only amounts paid for mail, as defined in § 102–192.35.

Subpart C—Security Requirements for All Agencies

§ 102–192.70 What security policies and plans must we have?

(a) You must have a written mail security policy that applies throughout the agency.

(b) You also must have a written mail security plan for each facility that processes mail, regardless of the facility's mail volume.

(c) If a contract that is in place on August 25, 2008 does not fully meet the requirements of this section, the contract must be modified to meet the requirement for a security plan within one year of August 25, 2008, unless the contract will expire prior to that date.

(d) The scope and level of detail of each facility mail security plan should be commensurate with the size and responsibilities of each facility. For small facilities, you may provide a general, standardized plan that is used in many similar locations. For larger locations, you must develop a plan that

is specifically tailored to the threats and risks at your location. Agencies are free to determine for themselves which facilities are ''smaller'' and which are ''larger'' for the purposes of this section, so long as the basic requirement for a security plan is met at every facility.

(e) All mail facility managers should report annually the status of their facility mail security plans to agency headquarters. At a minimum, this report should assure that the facility mail security plan complies with the requirements of this part, including annual review by a subject matter expert and regular rehearsal of responses to various emergency situations by facility personnel.

(f) An outside security professional who has expertise in mail center security should review the agency's mail security plan annually. Review of facility mail security plans can be accomplished by outside subject matter experts such as agency security personnel. If these experts are not available within your agency, seek assistance from the Postal Inspection Service or other Federal authorities.

§ 102–192.75 Why must we have written security policies and plans?

All Federal mail programs must identify, prioritize, and coordinate the protection of all mail processing facilities in order to prevent, deter, and mitigate the effects of deliberate efforts to destroy, incapacitate, or exploit the mail center or the national mail infrastructure. Homeland Security Presidential Directive HSPD–7 requires all agencies to protect key resources from terrorist attacks, and this is spelled out in the Postal and Shipping Sector Plan, which is part of the National Infrastructure Protection Plan (NIPP) prescribed by HSPD–7. All Federal mail centers are key resources under that plan. Details on the Postal and Shipping Sector Plan are not publicly available. Federal employees needing access to the plan should contact the Department of Homeland Security (DHS) at NIPP@dhs.gov.

§ 102–192.80 How do we develop written security policies and plans?

Agency mail managers must coordinate with their agency security service and/or the Federal Protective Service to develop agency mail security policies and plans. The Federal Protective Service has, working with the Interagency Security Committee which it chairs, developed standards for building construction and management, including standards for mail centers. At a minimum, the agency mail security plan must address the following topics—

(a) Risk assessment;

(b) Plan to protect staff and all other occupants of agency facilities from hazards that might be delivered in the mail;

(c) Operating procedures;

(d) Plan to provide a visible mail screening operation;

(e) Training mail center personnel;

(f) Testing and rehearsing responses to various emergency situations by agency personnel;

(g) Managing threats;

(h) Communications plan;

(i) Occupant Emergency Plan (OEP);

(j) Continuity of Operations Plan (COOP); and

(k) Annual reviews.

Note to § 102–192.80: The agency mail manager and facility manager(s) need not prepare all of these plans themselves. They should participate actively in the development and implementation of each of these elements, but other parts of the agency or outside security professionals should take the lead in their respective areas of expertise.

Subpart D—Reporting Requirements

§ 102–192.85 Who must report to GSA annually?

Large agencies (all agencies that spend in excess of $1 million each fiscal year in total payments to mail service providers) must provide a Mail Management Report to GSA by January 15th of each year. If your agency is a cabinet-level or independent agency, the agency mail manager must compile all offices (or components) and submit one report for the department or agency as a whole (*e.g.*, the Department of Defense or the Department of Health and Human Services).

§ 102–192.90 What must we include in our annual mail management report to GSA?

Your annual report must—

(a) Identify your agency mail manager; in addition you must promptly report the name of the agency mail manager whenever there is a change of the person serving in this role.

(b) State the total amounts paid to each service provider during the previous fiscal year:

(1) These amounts should include only amounts paid for mail; not amounts paid to any service provider to ship parts and supplies from a materiel distribution center (see the definition of mail in § 102–192.30).

(2) These amounts should include all postage costs associated with mailing printed materials, regardless of whether the printing is accomplished by the agency or a contractor, and regardless of how the postage expense is paid (*e.g.*, GSA's Federal Acquisition Service (FAS) produces a publication called ''Marketips,'' which provides information about supplies and services available through GSA sources. GSA should include the postage that it uses to mail Marketips in the amounts that it reports, even though a printing company actually prints and mails the publication);

(c) Report actual results for the performance measures in use at the agency and facility levels;

(d) Describe your agency's accomplishments and plans to improve the economy and efficiency of mail operations in the current and future years;

(e) Identify how many Federal employees and contractors work in your agency's mail operations nationwide, and the number that have achieved industry certifications (*e.g.* Certified Mail and Distributions Systems Manager, Executive Mail Center Manager, Mailpiece Quality Control Specialist, Certified Mail Manager);

(f) Describe your agency's approach to ensuring that program level officials are accountable for postage; and

(g) Verify that a competent expert has reviewed your agency security policies and the mail security plan for each facility within the past year, or explain what steps your agency has taken in this regard.

Note to § 102–192.90: GSA is launching a long-term initiative to improve the usefulness of data collected through the annual mail management reports. The reports for each succeeding fiscal year will require an incrementally broader set of data, working towards measures that will give agency management a much clearer picture of the efficiency and effectiveness of their mail programs. The additional data will eventually require agencies to track cost per piece for all outgoing Federal mail.

§ 102–192.95 Why does GSA require annual mail management reports?

GSA requires annual agency mail management reports to—

(a) Ensure that Federal agencies have the policies, procedures, and data to manage their mail operations efficiently and effectively;

(b) Ensure that appropriate security measures are in place; and

(c) Allow GSA to fulfill its responsibilities under the Federal Records Act, especially with regards to sharing best practices, training, standards, and guidelines.

§ 102–192.100 How do we submit our annual mail management report to GSA?

If your agency is a large agency, as defined in § 102–192.35, you must

submit annual reports using the GSA web-based Electronic Performance Support Tool (EPST). Agency mail managers and other authorized users will receive training from GSA on how to use the EPST.

§ 102–192.105 When must we submit our annual mail management report to GSA?

Beginning with the report covering Fiscal Year 2009, your annual report will be due on January 15th of each year for the previous fiscal year.

Subpart E—Performance Measurement Requirements

§ 102–192.110 At what level(s) in our agency must we have performance measures?

You must have performance measures for mail operations at the agency level and in all facilities and for all program levels that spend more than $1 million per year on postage. GSA provides a list of suggested performance measures, as part of the format for the annual report. You may also find these measures on GSA's web site, at *www.gsa.gov/mailpolicy*.

§ 102–192.115 Why must we use performance measures?

Performance measures gauge the success of your mail management plans and processes by comparing performance over time and among organizations. Performance measures—

(a) Help define goals and objectives;

(b) Enhance resource allocation; and

(c) Provide accountability.

Subpart F—Agency Mail Manager Requirements

§ 102–192.120 Must we have an agency mail manager?

Yes, every Federal agency as defined in § 102–192.35 must have an agency mail manager. Agencies that are not ''large agencies'' as defined in § 102–192.35 may not need a full-time person in this position.

Note to § 102–192.120: GSA will post the names and official contact information for all large agency mail managers on its web site located at *www.gsa.gov/mailpolicy*.

§ 102–192.125 What is the appropriate managerial level for an agency mail manager?

The agency mail manager should be at a managerial level that enables him or her to speak for the agency and fulfill the requirements of Subparts B, C, D, E, and F of this part. GSA recommends professional mail certification for agency mail managers.

§ 102–192.130 What are your general responsibilities as an agency mail manager?

In addition to carrying out the responsibilities in Subparts B, C, D, and E of this part, an agency mail manager should—

(a) Establish written policies and procedures to provide timely and cost effective dispatch and delivery of mail;

(b) Ensure agency-wide awareness and compliance with standards and operational procedures established by all service providers used by the agency;

(c) Set policies for expedited mail, mass mailings, mailing lists, and couriers;

(d) Seek opportunities to implement cost-effective improvements and to enhance performance of the agency's mission;

(e) Develop and direct agency programs and plans for proper and cost-effective use of transportation, equipment, and supplies used for mail;

(f) Ensure that facility and program level mail personnel receive appropriate certifications and training in order to successfully perform their assigned duties;

(g) Promote professional certification for mail managers and mail center employees;

(h) Ensure that expedited mail and couriers are used only when authorized by the Private Express Statutes (39 U.S.C. 601–606) and when necessary and cost-effective;

(i) Establish written policies and procedures to minimize incoming and outgoing personal mail;

(j) Provide guidance to agency correspondence managers on correspondence management decisions such as development and design of mailing materials including Business Reply Mail, letterhead, and mail piece design; and

(k) Represent the agency in its relations with mail service providers (usually as a Contracting Officer's Technical Representative), other agency mail managers, and the GSA Office of Governmentwide Policy.

Subpart G—Mail Center Manager Requirements

§ 102–192.135 Must we have a mail center manager at our facility?

Yes, every facility that has more than two full time people dedicated to processing mail must have a mail center manager.

§ 102–192.140 What are your general responsibilities as a Federal mail center manager?

A Federal mail center manager should—

(a) Implement policies and procedures developed by the agency mail manager, including cost control procedures;

(b) Improve, streamline, and reduce the cost of mail practices and procedures by continually reviewing work processes throughout the facility and seeking opportunities for cost-effective change;

(c) Work closely with all facility personnel, especially printing specialists and the program level users who develop large mailings, to minimize postage and associated printing expenses through improved mail piece design, electronic transmission of data in lieu of mail, reducing the number of handwritten addresses on outgoing mail, and other appropriate measures;

(d) Ensure that all addresses on mailing lists have been validated using USPS-approved tools such as ancillary endorsements, CASS-certified software, Move Update, and NCOAlink® (more information can be found on the United States Postal Service website at *www.usps.com*);

(e) Keep current on new technologies that could be applied to reduce agency mailing costs;

(f) Collaborate and maintain professional relationships with the USPS and all other service providers;

(g) Establish performance measures and goals for mail center operations, such as a maximum time for processing and delivery of incoming mail;

(h) Ensure that expedited mail and couriers are used only when authorized by the Private Express Statutes (39 U.S.C. 601–606) and when necessary and cost-effective;

(i) Manage all incoming and outgoing mail processing activities at the facility, including all regularly scheduled, small package, and expedited service providers, couriers, equipment and personnel;

(j) Be attentive to unauthorized use, loss, or theft of postage, including any unauthorized use of penalty or commercial mail stamps, meter impressions or other postage indicia, and immediately report such incidents to the agency Inspector General, internal security office, the Postal Inspection Service, or other appropriate authority;

(k) Track incoming packages and accountable mail;

(l) Provide training to mail center employees at all levels on cost-effective mailing practices for incoming, outgoing, and internal mail, as well as mail security;

(m) Provide opportunities for training leading to professional certification for mail center personnel;

(n) Ensure that outgoing mail meets all the standards established by your service provider(s) for weight, size, hazardous materials content, etc.;

(o) Ensure that your facility has a written security plan, and implement that plan;

(p) Establish, publish, and maintain consistency in the facility's mail delivery and pickup times, based on need for service as established through study of mail volumes and service requirements;

(q) Collaborate with agency finance officials to establish procedures for timely processing of funds owed to service providers; and

(r) Report all information necessary for your agency's annual mail management report.

Subpart H—Program Level Mail Responsibilities

§ 102–192.145 Which program levels should have a mail manager?

Every program level within a Federal agency that generates a significant quantity of outgoing mail should have its own mail manager. Each agency must decide which programs will have a full-time or part-time mail manager. In making this determination, the agency should consider the total volume of outgoing mail that is put into the mail stream by the program itself or by printers, presort contractors, or others on the program's behalf.

§ 102–192.150 What are your general responsibilities as a program level mail manager?

Your responsibilities at the program level include—

(a) Working closely with the agency mail manager and mail center managers who handle significant quantities of mail or print functions for your program, as well as mail technical experts;

(b) Ensuring that your program complies with all applicable mail policies and procedures, including this part;

(c) Coordinating with your program personnel to minimize postage and associated printing expenses through improved mail piece design, electronic transmission of data in lieu of mail, and other appropriate measures;

(d) Ensuring that all addresses on mailing lists have been validated using USPS-approved tools such as ancillary endorsements, CASS-certified software, Move Update, and NCOAlink® (more information can be found on the United States Postal Service website at *www.usps.com*);

(e) Keeping current on new technologies and practices that could reduce your mailing costs or make your use of mail more effective;

(f) Coordinating all of your program's large mailings and associated print jobs to ensure that the most efficient and effective procedures are used;

(g) Providing mail training opportunities to your program level personnel;

(h) Collaborating with agency finance officials to establish procedures for timely processing of funds owed to service providers; and

(i) Reporting total amounts paid to each service provider during the previous fiscal year to the agency mail manager (See § 102–192.90(b)(1) for more information).

Subpart I—Other Agency Responsibilities

§ 102–192.155 What should our agency-wide mail management policy statement cover?

You should have a written, agency-wide mail management policy statement that, at a minimum, addresses—

(a) Mail center security, as discussed in §§ 102–192.70, 102–192.75 and 102–192.80;

(b) Your expectations regarding program level accountability, postage expenditure data, and commercial payment processes;

(c) Your approach to performance measurement and performance management for mail;

(d) Centralized mail processing, worksharing, consolidation, and commingling to obtain postage savings;

(e) Tracking incoming packages and accountable mail;

(f) Maintaining centralized control of outgoing mail, especially outgoing express packages and letters;

(g) Tracking and managing mail costs within printing contracts;

(h) Training and professional certification for mail center managers and employees;

(i) Addressing, including machine readability, formatting, use of correct street addresses, and minimizing use of hand-written addresses;

(j) Ensuring that a USPS mail piece design analyst is consulted when creating a new mail piece;

(k) Reviewing large mailings by mail managers before they are sent to printing or a print contractor;

(l) Acceptance and processing of incoming and outgoing personal mail;

(m) Limiting unsolicited mail and mail addressed to unknown persons and former employees; and

(n) Reporting all activities to include all postage costs associated with mailing, printing, and materials, to the agency mail manager.

Note (1) to § 102–92.155 (l) and (m): Every agency should establish specific policies for incoming and outgoing personal mail. In general, personal mail should be discouraged or prohibited. However, an agency may establish a policy to accept and process personal mail for personnel living on a Federal facility, personnel stationed outside the United States, or personnel in other situations who would otherwise suffer hardship.

Note (2) to § 102–92.155 (l) and (m): Mailing costs associated with filing travel vouchers, and the payment of Government sponsored travel card billings, are considered to be ''incidental expenses'' covered by the traveler's ''per diem allowance,'' as provided for in the Federal Travel Regulation (41 CFR 300–3.1). Such mailing costs must, therefore, be paid out of the employee's per diem allowance.

Note (3) to § 102–92.155 (l) and (m): Every reasonable attempt must be made to deliver first class mail, priority mail, and express mail (regardless of carrier), or to return it to the sender if the addressee cannot be identified. On the other hand, agencies may establish written policies that permit discarding of unwanted periodicals, bulk mail, and bound printed matter under specified circumstances.

§ 102–192.160 What less costly alternatives to expedited mail and couriers should your agency-wide mail management policy address?

Your policy statement should address the following alternatives to expedited mail and couriers:

(a) Electronic transmission via e-mail.

(b) Facsimile transmission.

(c) Internet.

§ 102–192.165 What authorities must I follow when contracting out all or part of the mail function?

Any contract for a mail function must require compliance with—

(a) This part (41 CFR part 102–192);

(b) The Private Express Statutes (39 U.S.C. 601–606);

(c) All agency policies, procedures, and plans, including the agency-wide mail security plan and, if applicable, facility mail security plans; and

(d) All applicable acquisition statutes and regulations.

Subpart J—GSA's Responsibilities and Services

§ 102–192.170 What are GSA's responsibilities in mail management?

44 U.S.C § 2904(b) directs the Administrator of General Services to provide guidance and assistance to Federal agencies to ensure economical and efficient records management. 44 U.S.C. § 2901(2) and (4) (C) define the processing of mail by Federal agencies as part of records management. In

carrying out its responsibilities under the Act, GSA is required to—

(a) Promulgate standards, procedures, and guidelines;

(b) Conduct research to improve practices and programs;

(c) Collect and disseminate information on training programs, technological developments, etc.;

(d) Establish an interagency committee (*i.e.*, the Interagency Mail Policy Council) to provide an exchange of information among Federal agencies;

(e) Conduct studies, inspections, or surveys;

(f) Promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies; and

(g) In the event of an emergency, communicate with agencies.

§ 102–192.175 What types of support does GSA offer to Federal agency mail management programs?

GSA supports Federal agency mail management programs by—

(a) Assisting in the development of agency policy and guidance in mail management and mail operations;

(b) Identifying better business practices and sharing them with Federal agencies;

(c) Developing and providing access to a Governmentwide management information system for mail;

(d) Helping agencies develop performance measures and management information systems for mail;

(e) Maintaining a current list of agency mail managers;

(f) Establishing, developing and maintaining interagency mail committees;

(g) Maintaining liaison with the USPS and other service providers at the national level;

(h) Maintaining a web site for mail communications policy; and

(i) Serving as a point of contact for mail issues.

Note to § 102–192.180: You may contact GSA at: General Services Administration, Office of Governmentwide Policy, Mail Management Policy Division (MTT), 1800 F Street, NW., STE 1221, Washington, DC 20405; or e-mail: *federal.mail@gsa.gov*.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XJ94

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels greater than or equal to 60 feet (≥ 18.3 meters (m)) length overall (LOA) using hook-and-line gear to the B season allocation for vessels using jig gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2008 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective August 19, 2008, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet (≥ 18.3 m) LOA using hook-and-line gear in the BSAI is 303 metric tons (mt) as established by the final 2008 and 2009 harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

The Acting Administrator, Alaska Region, NMFS, has determined that catcher vessels greater than or equal to 60 feet (≥ 18.3 m) length LOA using hook-and-line gear will not be able to harvest 150 mt of the 2008 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*3*). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS allocates 150 mt of Pacific cod from the catcher vessels greater than or equal to 60 feet (≥ 18.3 m) length LOA using hook-and-line gear allocation to the B season allocation for vessels using jig gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) are revised as follows: 177 mt to the B season allocation for vessels using jig gear and 153 mt to catcher vessels ≥ 60 feet (18.3 m) LOA using hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod from catcher vessels ≥ 60 feet (18.3 m) LOA using hook-and-line gear to the B season allocation for vessels using jig gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 18, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19578 Filed 8–19–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XJ95

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2008 total allowable catch (TAC) of Greenland turbot in the Bering Sea subarea of the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 19, 2008, though 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Greenland turbot TAC in the Bering Sea subarea of the BSAI is 1,563 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) and the reallocation on July 14, 2008 (73 FR 40193).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of Greenland turbot in the Bering Sea subarea of the BSAI has been reached. Therefore, NMFS is requiring that Greenland turbot caught in the Bering Sea subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of Greenland turbot in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 18, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19576 Filed 8–19–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XH70

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Gulf of Alaska

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

ACTION: Final rule; agency decision.

SUMMARY: NMFS announces the Commerce Secretary's approval of Amendment 79 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 79 amends the FMP and requires the North Pacific Fishery Management Council (Council) to recommend an aggregate overfishing level and acceptable biological catch for the ''other species'' category in the Gulf of Alaska as part of the annual groundfish harvest specifications process. The ''other species'' category in the Gulf of Alaska consists of sharks, sculpins, squid, and octopus. Amendment 79 is necessary to allow the Council and NMFS to incorporate the best and most recent scientific and socioeconomic information for the specification of the ''other species'' total allowable catch, acceptable biological catch, and overfishing level. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: This agency decision is effective on August 20, 2008.

ADDRESSES: Copies of Amendment 79 and the Environmental Assessment (EA) for this action may be obtained from the NMFS Alaska Region at 709 West 9th Street, Room 420A, Juneau, AK 99802, or from the Alaska Region website at *http://alaskafisheries.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fisheries management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The Council submitted Amendment 79 to NMFS on May 19, 2008. The notice of availability for Amendment 79 was published in the **Federal Register** on May 29, 2008 (73 FR 30875). The public comment period closed on July 28, 2008. NMFS received no comments on the proposed amendment.

In April 2008, the Council unanimously recommended Amendment 79 to the FMP. The purpose of Amendment 79 is to provide a sound biological basis for the setting of the ''other species'' total allowable catch (TAC) and to provide for an annual review of the stock status of the ''other species'' category to further reduce the risk of overfishing the species in this category. Amendment 79

authorizes the Council to recommend an aggregate overfishing level (OFL) and acceptable biological catch (ABC) for the ''other species'' category in the Gulf of Alaska as part of the annual groundfish harvest specifications process. The revised process allows the Council to incorporate the best and most recent scientific and socioeconomic information and public testimony in its recommendation for an annual ''other species'' TAC. Amendment 79 is intended to comply with the Magnuson-Stevens Act, particularly National Standard 1 and section 303(a), and other applicable laws.

An EA was prepared for Amendment 79 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socioeconomic impacts of the alternatives (see **ADDRESSES**). The aggregate overfishing level, acceptable biological catch, and total allowable catch for the ''other species'' category will be presented in the proposed 2009 and 2010 harvest specifications.

Dated: August 20, 2008.

Samuel D. Rauch III,

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

[FR Doc. E8–19665 Filed 8–22–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 165
Monday, August 25, 2008

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–90; NRC–2008–0279]

Natural Resources Defense Council; Receipt of Petition for Rulemaking; Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; reopening of public comment period.

SUMMARY: On May 27, 2008 (73 FR 30321), the Nuclear Regulatory Commission (NRC) published for public comment a notice of receipt of a petition for rulemaking, dated March 24, 2008, which was filed with the Commission by Thomas B. Cochran and Matthew G. McKinzie on behalf of the Natural Resources Defense Council. The petition was docketed by the NRC on April 3, 2008, and has been assigned Docket No. PRM–50–90. On August 4 and August 6, 2008, several external stakeholder groups requested a 45 day extension of the public comment period owing to the details provided in the initial petition, short initial comment period, importance of the rulemaking, and the need for directly impacted stakeholders to provide substantive comments to the rulemaking process. The NRC is reopening the comment period on the petition for an additional 45 days from the original August 11, 2008 deadline. The comment period closes on September 25, 2008.

DATES: The comment period has been reopened and now expires on September 25, 2008. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Please include *PRM–50–90* in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0279]. Address questions about NRC dockets to Carol Gallagher, 301–415–5905; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: rulemaking.comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays, telephone number 301–415–1677.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101. Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the Federal eRulemaking Portal *http://www.regulations.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

A paper copy of the petition may be obtained by contacting Betty Golden, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–6863, toll-free 1–800–368–5642, or by e-mail to *Betty.Golden@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7163 or toll-free 1–800–368–5642.

For the U.S. Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of August 2008.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–19609 Filed 8–22–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143544–04]

RIN 1545–BD84

Regulations Enabling Elections for Certain Transactions Under Section 336(e)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 336(e) of the Internal Revenue Code. These proposed regulations, when finalized, would permit taxpayers to make an election to treat certain sales, exchanges, and distributions of another corporation's stock as taxable sales of that corporation's assets. These proposed regulations will affect corporations and their shareholders.

DATES: Written or electronic comments and requests for a public hearing must be received by November 24, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–143544–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–143544–

04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–143544–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Mark J. Weiss, (202) 622–7750; concerning submissions of comments and the hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments on the collection of information should be received by October 24, 2008.

The collection of information in this proposed regulation is in proposed §§ 1.336–2(h) and 1.336–4(c)(4)). This information is required by the IRS to allow certain parties to make a section 336(e) election and for certain shareholders to make a gain recognition election. The likely recordkeepers are business or other for-profit institutions.

The estimated burden is as follows:

Estimated total annual reporting and/or recordkeeping burden: 500 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 250.

Estimated annual frequency of responses: Once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Any such comments should be submitted not later than October 24, 2008.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Section 336(e) of the Internal Revenue Code (Code) authorizes the issuance of regulations under which a corporation (seller) that owns stock in another corporation (target) meeting the requirements of section 1504(a)(2) and sells, exchanges, or distributes all of such stock may make an election to treat the sale, exchange, or distribution of the target stock as a sale of all of target's underlying assets. Section 336(e) was enacted as part of the legislation repealing the General Utilities rule and, like an election under section 338(h)(10), is meant to provide taxpayers relief from a potential multiple taxation at the corporate level of the same economic gain which can result when a transfer of appreciated corporate stock is taxed to a corporation without providing a corresponding step-up in the basis of the assets of the corporation. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, 198, 204 (1986), 1986–3 C.B., Vol. 4, 198–207.

A. Scope of the Proposed Regulations

Pursuant to section 336(e), regulations may authorize a section 336(e) election in a broad set of circumstances. The IRS and Treasury Department have limited the scope of these proposed regulations, however, in order to provide guidance to a large number of taxpayers in the most efficient manner possible. These proposed regulations, when finalized, will provide the requirements and mechanics for, and consequences of, treating a stock sale, exchange, or distribution that would not otherwise be eligible for a section 338 election as a deemed asset sale.

The IRS and Treasury Department do not presently intend to authorize the making of section 336(e) elections under all the circumstances described within the statutory grant of authority. However, the IRS and Treasury Department are interested in comments regarding transactions beyond the scope of these proposed regulations for which such elections should be allowed and under what terms and conditions. For example, these proposed regulations do not apply to transactions between related persons. For this purpose, persons are related if stock in a corporation owned by one of the persons would be attributed to the other person under section 318(a), other than section 318(a)(4). See proposed § 1.336–1(b)(11). The IRS and Treasury Department continue to study the possibility of making a section 336(e) election available for such transactions. Accordingly, comments are requested regarding dispositions to related persons, including special rules needed to prevent the use of net operating losses to offset liquidation gains, manipulation of earnings and profits, and changes of accounting methods. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II at 204 (1986).

Additionally, these proposed regulations do not apply to transactions in which either the seller or the target is a foreign corporation. The IRS and Treasury Department request comments regarding how the rules of the proposed regulations should be modified to take into account the policies of international tax provisions if the proposed regulations were extended to apply to foreign sellers and/or foreign targets. For example, comments are requested regarding: (1) How the principles of section 338(h)(16) should apply; (2) how the foreign tax allocation rule of § 1.338–9(d) should apply; (3) the characterization of the gain recognized on the deemed asset disposition for purposes of section 954(c)(1)(B); (4) whether special earnings and profits rules are necessary (see, for example, the rules described in Prop. Treas. Reg. § 1.367(b)–8); and (5) how the withholding tax provisions of section 1445 should apply to the deemed asset disposition (if relevant).

The IRS and Treasury Department continue to study issues related to elections made under section 338(g) in the international area. Comments are requested on issues in this area, including the interaction of section 338(h)(16) with sections 902 and 960.

Absent the issuance of further guidance, it is intended that these regulations would provide the exclusive means of making elections under section 336(e). See proposed § 1.336–2(a).

B. General Principles

1. General Adoption of Section 338(h)(10) Principles

The legislative history to section 336(e) provides that principles similar to those of section 338(h)(10) should apply in the case of a section 336(e) election. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204

(1986). These proposed regulations implement such principles. Accordingly, except to the extent inconsistent with the purposes of section 336(e) or as otherwise described, the results of a section 336(e) election coincide with those of a section 338(h)(10) election. Whenever possible, these proposed regulations rely upon and use the structure and principles established under section 338(h)(10) and the underlying regulations. For example, these regulations refer to principles under the section 338 regulations regarding the allocation of consideration, application of the asset and stock consistency rules, treatment of minority shareholders, and the availability of the section 453 installment method. In other instances, definitions and concepts from section 338 and the underlying regulations have been modified to reflect principles applicable to section 336(e). For example, these proposed regulations generally use the term ''disposition'' rather than ''acquisition or purchase'' and the term ''sale, exchange, or distribution'' instead of ''sale.'' Thus, a qualified stock disposition is defined as any transaction or series of transactions in which stock meeting the requirements of section 1504(a)(2) of a domestic corporation is either sold, exchanged, or distributed, or any combination thereof, by another domestic corporation in a disposition, within the meaning of proposed § 1.336–1(b)(4), during the 12-month disposition period. See proposed § 1.336–1(b)(5).

These proposed regulations also provide that a transaction that satisfies the definition of both a qualified stock disposition and a qualified stock purchase (as defined in section 338(d)(3)) generally will be treated only as a qualified stock purchase and thus does not qualify for an election under these regulations. See proposed § 1.336–1(b)(5)(ii)).

2. Requirements for a Section 336(e) Election

Section 336(e) requires that a seller own stock in another corporation meeting the requirements of section 1504(a)(2) and sell, exchange, or distribute all of such stock to qualify for a section 336(e) election. For purposes of these proposed regulations, a seller is a domestic corporation that makes a qualified stock disposition and includes a transferor and a distributor of target stock. See proposed § 1.336–1(b)(1). Generally, all members of a seller's consolidated group are treated as a single seller. See proposed § 1.336–2(g)(2). Thus, similar to a section 338(h)(10) election, a section 336(e) election is available to a seller that directly owns stock of target meeting the requirements of section 1504(a)(2) and to sellers which are members of a consolidated group for the taxable year that includes the disposition date that in the aggregate own stock of target meeting the requirements of section 1504(a)(2). Because section 336(e) requires a corporate seller, the election is not available with respect to the stock of an S corporation. See proposed § 1.336–1(b)(5). Cf. § 1.338(h)(10)–1(c)(1).

These proposed regulations interpret section 336(e) as requiring only that an amount of stock meeting the requirements of section 1504(a)(2) be disposed of and not that every share of stock owned by the seller be disposed of. Accordingly, the seller, or a member of seller's consolidated group, may retain a portion of its target stock. See proposed §§ 1.336–2(b)(1)(v) and 1.336–2(b)(2)(iv). Furthermore, these proposed regulations permit amounts of target stock sold, exchanged, and distributed to be aggregated for purposes of determining whether there has been a qualified stock disposition. For example, a domestic corporation's sale of 50 percent of target's stock to an unrelated person and a distribution to its unrelated shareholders of the remaining 50 percent within a 12-month period would constitute a qualified stock disposition. See proposed § 1.336–1(b)(5).

In contrast to section 338, which requires a corporate purchaser, these proposed regulations define a purchaser as any person or persons who receive stock of target in a qualified stock disposition. Accordingly, a section 336(e) election is available for sales, exchanges, or distributions (or a combination thereof) of target stock to both corporate and non-corporate purchasers, provided that the target stock is not sold, exchanged, or distributed to a related person. See proposed §§ 1.336–1(b)(2) and 1.336–1(b)(4)(i)(C).

Any stock sold, exchanged, or distributed to a related party is not considered to be disposed of for purposes of determining whether there has been a qualified stock disposition. See proposed §§ 1.336–1(b)(4)(i)(C) and 1.336–1(b)(5)(i). Relatedness generally is determined immediately after the sale, exchange, or distribution of target stock occurs (see proposed §§ 1.336–1(b)(4)(iii), 1.336–1(b)(11), and 1.338–3(b)(3)).

C. Sales or Exchanges of Target Stock

In general, if a seller sells or exchanges target stock in a qualified stock disposition, the treatment of old target, seller, and purchaser are similar to the treatment of old target (old T), S, and P under section 338(h)(10). See § 1.338(h)(10)–1. If an election is made under section 336(e), the seller disregards the actual sale or exchange of target stock. Instead, target (old target) is treated as selling all of its assets to an unrelated corporation in a single transaction at the close of the disposition date (the deemed asset disposition). Old target recognizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while it is a subsidiary of seller. After the deemed asset disposition, old target is then treated as liquidating into seller which in most cases will be treated as a distribution in complete liquidation to which section 332 and section 336 or 337 applies. Additionally, consistent with a section 338 election, the deemed purchase of the assets of old target by new target constitutes a deemed purchase of any subsidiary stock owned by target. Accordingly, a section 336(e) election is available for the deemed purchase of the stock of a target subsidiary if it constitutes a qualified stock disposition. A section 336(e) election generally does not change the tax consequences of the acquisition to a purchaser of target stock.

D. Distributions of Target Stock Not Described in Section 355(d)(2) or (e)(2)

A section 336(e) election can be made for a distribution of target stock, and the legislative history to section 336(e) provides that ''[t]he conferees do not intend this election to affect the manner in which a corporation's distribution to its shareholders will be characterized for purposes of determining the shareholder level income tax consequences.'' H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204 (1986). Accordingly, additional rules are required to address distributions and to ensure that the income tax consequences to a distributee are generally the same as if a section 336(e) election was not made.

Specifically, these proposed regulations provide that if seller (the distributor) distributes old target stock in the qualified stock disposition, seller is deemed to purchase from new target on the disposition date, immediately after the deemed liquidation of old target, the amount of stock distributed in the qualified stock disposition and to have distributed such new target stock

to its shareholders. Seller recognizes no gain or loss on the distribution. See proposed § 1.336–2(b)(1)(iv). The distributee's tax consequences generally shall be the same as if it received the target stock pursuant to the underlying distribution. However, the Federal income tax consequences of the deemed asset disposition and liquidation of target may affect the distributee's income tax consequences. For example, if seller distributes the stock of target to its shareholders in a qualified stock disposition for which a section 336(e) election is made, any increase in seller's earnings and profits as a result of old target's deemed asset disposition and liquidation into seller may alter the amount of the distribution to the shareholders constituting a dividend under section 301(c)(1) from the amount that would have resulted if seller recognized gain on the stock distribution. See proposed § 1.336–2(c).

If a seller actually distributed stock of a subsidiary or assets under section 301, it generally would be prevented from recognizing any loss. See section 311(a). The IRS and Treasury Department believe that it would be inconsistent with the general treatment of distributions to allow losses to be recognized on the section 336(e) deemed asset disposition to the extent the qualified stock disposition was the result of a stock distribution. Therefore, under these proposed regulations, only a portion of the losses realized on the deemed asset disposition may be recognized. The portion of any realized loss that may be recognized is based on a fraction equal to the value of the target stock sold or exchanged in the qualified stock disposition on or before the disposition date over the total value of target stock disposed of in the qualified stock disposition on or before the disposition date. In the case of a section 336(e) election for a subsidiary of target, for purposes of determining the amount of loss that may be recognized by the subsidiary on the deemed asset disposition, only the percentage of the stock of the target subsidiary deemed sold by target equal to the percentage of the stock of target sold or exchanged is considered to have been sold or exchanged. See proposed §§ 1.336–2(b)(1)(i)(B)(*2*) and (*3*). Thus, losses realized in the deemed asset disposition are not recognized to the extent the qualified stock disposition is attributable to the distribution of target stock.

E. Section 355 Distributions

1. Availability of Section 336(e) Election for Certain Section 355 Distributions

The legislative history to section 336(e) indicates that the election is intended to be available for taxable transactions. Specifically, the Conference Report provides that, ''principles similar to those of section 338(h)(10) may be applied to taxable sales or distributions of controlled corporation stock.'' H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess., Vol. II, at 204 (1986). The legislative history to section 355(e) provides that although there is no adjustment to the basis of stock or assets as a result of the recognition of gain under section 355(e), ''[t]here is no intention to limit the otherwise applicable Treasury regulatory authority under section 336(e) of the Code.'' H.R. Conf. Rep. 220, 105th Cong., 1st Sess., 531–532, footnote 13 (1997), 1997–4 C.B. Vol. 4, 531, 532. Accordingly, these proposed regulations would allow a corporation that would otherwise recognize the full amount of the gain realized with respect to a qualified stock disposition resulting, in whole or in part, from a disposition described in section 355(d)(2) or (e)(2) to make a section 336(e) election. Without a section 336(e) election, such provisions may create a triple layer of taxation, one at the controlled corporation level, one at the distributing corporation level and, ultimately, one at the shareholder level. Allowing a section 336(e) election in these circumstances limits taxation to two layers, one at the controlled corporation level and one at the shareholder level when the controlled corporation stock is disposed of, and thus is consistent with *General Utilities* repeal.

2. Special Rules for Distributions Described in Section 355(d)(2) or 355(e)(2)

Generally, a section 336(e) election, like a section 338(h)(10) election, results in a deemed sale of old target's assets followed by a liquidation of old target into seller, which if made in a transaction to which section 381 applied, results in old target's attributes being transferred to the seller. Accordingly, consistent with a taxable asset acquisition, after the transaction new target generally has no tax attributes or earnings and profits, and holds its assets with a cost basis. In contrast, a section 355 distribution is generally tax-free to the distributing corporation's shareholders, even if the transaction is described in section 355(d)(2) or 355(e)(2). Further, following a section 355 distribution, the controlled corporation generally retains tax attributes and earnings and profits. The IRS and Treasury Department believe that, except as necessary to carry out the purposes of section 336(e), the section 355 consequences generally should continue to apply in such a transaction. For example, if the controlled corporation were treated as a new corporation, with no earnings and profits, the controlled corporation may be able to distribute its assets to its shareholders without recognizing any dividend consequences under section 301(c)(1). Therefore, to preserve the consequences of section 355 distributions, the proposed regulations provide special rules.

If a section 336(e) election is made for a distribution of the controlled corporation stock in a transaction described in section 355(d)(2) or 355(e)(2), the controlled corporation is treated as if it sold its assets to an unrelated person in the deemed asset disposition and then it reacquired those assets (sale-to-self treatment). Following the deemed asset disposition, the controlled corporation (old target) is not deemed to liquidate into the distributing corporation (seller). See proposed § 1.336–2(b)(2)(i)(A). Instead, the controlled corporation (old target) is treated as acquiring all of its assets from an unrelated person in a single, separate transaction at the close of the disposition date, and then the distributing corporation is treated as distributing the stock of the controlled corporation (old target) to its shareholders. See proposed § 1.336–2(b)(2)(ii) and (iii). Because no liquidation of old target into seller is deemed to occur, the controlled corporation (old target) will generally retain the tax attributes it would have had if the section 336(e) election had not been made. The proposed regulations further provide that the controlled corporation (old target) will take the effects of the deemed asset disposition into account and increase or decrease its earnings and profits immediately before allocating earnings and profits pursuant to § 1.312–10. See proposed § 1.336–2(b)(2)(vi). Finally, the deemed sale and reacquisition of target's assets (and, in the case of a parent-subsidiary chain of corporations making section 336(e) elections, a target subsidiary's assets) pursuant to the deemed asset disposition will not cause the transaction to fail to satisfy the requirements of section 355. See proposed § 1.336–2(b)(2)(v).

Similar to a qualified stock disposition resulting from a distribution not involving a transaction described in section 355(d)(2) or (e)(2), old target's

losses in the deemed asset disposition will be recognized, but only in relation to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. See §§ 1.336–2(b)(2)(i)(B)(*2*) and (*3*).

Notwithstanding the fact that the sale-to-self treatment applies to a distribution of stock described in section 355(d)(2) or (e)(2), if old target has any subsidiaries for which a section 336(e) election is made, the general deemed asset disposition methodology shall apply. Accordingly, old target subsidiary is treated as though it sold all its assets to an unrelated person, new target subsidiary is deemed to purchase all its assets from an unrelated person, and old target subsidiary is deemed to liquidate into old target. If the sale-to-self treatment was applied, target subsidiary's attributes would remain with target subsidiary. The IRS and Treasury Department do not believe that taxpayers should have the option of whether the attributes become those of target, by doing an actual sale of target subsidiary's assets followed by a liquidation of target subsidiary, or remain with target subsidiary, by making a section 336(e) election for target subsidiary. Accordingly, the regulations apply the general deemed asset disposition methodology for section 336(e) elections for target subsidiaries in a distribution of target stock described in section 355(d)(2) or (e)(2).

3. Intragroup Sales, Exchanges, or Distributions Prior to External Sales, Exchanges, or Distributions

Generally, if the stock of a target is transferred within an affiliated group and then is further transferred outside the affiliated group, a section 336(e) election is not available for the intragroup transfer because a qualified stock disposition may not be made between related sellers and purchasers. Thus, stock level gain may be recognized on the intragroup transfer. While a section 336(e) election may be available for the external transfer, this election would result in the affiliated group recognizing gain both on target's assets and the target stock, contrary to the intent of these proposed regulations. Comments are requested on how to address this concern. Further, because section 355(f) provides that section 355 does not apply to an intragroup distribution prior to an external distribution described in section 355(e)(2), these comments should address the concerns that section 355(f) is intended to address for distributions described therein.

F. Aggregate Deemed Asset Disposition Price (ADADP) and Adjusted Grossed Up Basis (AGUB)

These proposed regulations create a new term, aggregate deemed asset disposition price (ADADP). These proposed regulations retain the term adjusted grossed up basis (AGUB) as used in section 338. See § 1.338–5. In general, these proposed regulations treat ADADP and AGUB similarly to the way aggregate deemed sale price (ADSP) and AGUB are treated under the section 338 regulations. See proposed §§ 1.336–3 and 1.336–4. Old target recognizes all of the gain realized on the deemed transfer of its assets in exchange for the ADADP and allocates the ADADP among the assets held as of the disposition date (in the same manner as ADSP is allocated under §§ 1.338–6 and 1.338–7). See proposed §§ 1.336–2(b)(1)(i) and 1.336–2(b)(2)(i). ADADP is calculated by adding the grossed-up amount realized on the sale, exchange, or distribution of recently disposed target stock and the liabilities of old target. See proposed § 1.336–3(b)(1). These proposed regulations account for the fact that there is no actual amount realized in a distribution of stock by treating the grossed-up amount realized on the sale, exchange, or distribution as including in the amount realized the fair market value of recently disposed target stock distributed in the qualified stock disposition. See proposed § 1.336–3(c)(1)(i)(B).

These proposed regulations also create a new term, nonrecently disposed stock. The term nonrecently disposed stock has a similar meaning to the term nonrecently purchased stock in section 338(b)(6)(B). In a transaction for which a section 338 election is made, there is only one purchasing corporation (or an affiliated group treated as a purchasing corporation). Accordingly, in most cases, it should be relatively easy to determine the purchaser's basis in nonrecently purchased stock in order to determine AGUB. However, in a section 336(e) election, there can be multiple purchasers or multiple distributees, many of whom may have acquired small amounts of target stock prior to the 12-month disposition period. While a more precise determination of AGUB would require the determination of the basis of all such stockholdings, the IRS and Treasury Department recognize that it would often be impractical to require a seller to determine and track all the purchasers (and distributees) possessing small amounts of nonrecently purchased stock. Generally, purchasers holding at least 10 percent of the total voting power or value of the stock of target should be readily identifiable through mandatory SEC filings and other sources. Thus, in order to balance a desire for precision with a practical application, nonrecently disposed stock is defined as stock in a target corporation which is held on the disposition date by a purchaser or a person related to a purchaser who owns, on the disposition date, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of the stock of target, and which is not recently disposed stock. See proposed § 1.336–1(b)(17).

In general, proposed § 1.336–4 uses the same principles as paragraphs (b) through (g) of § 1.338–5 to determine the amount of AGUB for target and the consequences of a gain recognition election. Proposed § 1.336–4(b) contains modifications to the principles of § 1.338–5 to reflect the principles of section 336(e).

New target is treated as acquiring all of its assets from an unrelated person in a single transaction at the close of the disposition date, but before the deemed liquidation (or, in the case of a transaction described in section 355(d)(2) or (e)(2), before the distribution) in exchange for an amount equal to the AGUB as determined under proposed § 1.336–4. New target allocates the consideration deemed paid in the same manner as new target would as described in §§ 1.338–6 and 1.338–7 in order to determine the basis in each of the transferred assets. See proposed §§ 1.336–2(b)(1)(ii) and 1.336–2(b)(2)(ii). In the case of a disposition described in section 355(d)(2) or (e)(2), any reference to new target is treated as referring to old target in its capacity as the purchaser of assets pursuant to the section 336(e) election. See proposed § 1.336–4(b)(4).

Consistent with the principles of a section 338(h)(10) election, any stock retained by a seller or a member of seller's consolidated group after the 12-month disposition period is treated as acquired by the seller on the day after the disposition date at its fair market value. For this purpose, the fair market value of all the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock. See proposed §§ 1.336–2(b)(1)(v) and 1.336–2(b)(2)(iv). A minority shareholder (that is, a shareholder that is neither the seller that disposes of 80 percent of the voting power and value of target stock nor a member of seller's consolidated group) is generally not affected by a section 336(e) election. Accordingly, such a minority shareholder that disposes of its

target stock will recognize gain or loss on the stock without regard to the section 336(e) election, and a minority shareholder that retains its target stock retains its basis and holding period in its target stock. See proposed § 1.336–2(d).

Under proposed § 1.336–4(c), a holder of nonrecently disposed stock may make a gain recognition election, similar to the gain recognition election under section 338, which treats the nonrecently disposed stock as being sold as of the disposition date. The gain recognition election is mandatory if a purchaser owns (after the application of the rules of section 318(a), other than section 318(a)(4)) 80 percent or more of the voting power or value of target stock. See proposed §§ 1.336–1(b)(15) and 1.336–4(c)(2). Cf. §§ 1.338(h)(10)–1(d)(1) and 1.338–5(d). Once made, a gain recognition election is irrevocable. See proposed § 1.336–4(c)(1). The IRS and Treasury Department request comments on whether the rules regarding gain recognition elections in these proposed regulations are appropriate, and whether the gain recognition election rules in regulations promulgated under section 338 should continue to apply. Also, see the ''Correction to section 1.338–5'' section of this preamble addressing a correction to the definition of the term *basis amount,* the amount used in determining the purchasing corporation's gain on the deemed sale of stock pursuant to the gain recognition election and in determining AGUB.

G. Making the Section 336(e) Election

These proposed regulations provide that a section 336(e) election is made by seller attaching a statement to its timely filed Federal income tax return for the taxable year that includes the disposition date. See proposed § 1.336–2(h). If the seller is a member of a consolidated group, the statement is filed with the group's consolidated return.

The IRS and Treasury Department believe that it is appropriate to allow the seller (or the common parent of the seller's consolidated group) to unilaterally make the section 336(e) election. The IRS and Treasury Department believe that in a distribution of target stock, it would be impractical to require each distributee, who generally will hold relatively small percentages of the target stock, to join in the election. Further, the distributees' interests should generally be protected because of the distributing corporation's fiduciary responsibilities to its shareholders. In the case of a sale or exchange, the purchasers should be able to protect their interests in any purchase contract. Comments are requested regarding whether it is appropriate to allow such unilateral section 336(e) elections in all cases.

The information required on a section 336(e) election statement is similar to that required on Form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases. In the case of a gain recognition election, the section 336(e) election statement must include information pertaining to the gain recognition election.

When finalized, these proposed regulations will permit taxpayers to make a protective section 336(e) election if they are unsure of whether a transaction constitutes a qualified stock disposition. If such an election is made, it will not have any effect if the transaction does not constitute a qualified stock disposition but will otherwise be binding and irrevocable. See proposed § 1.336–2(j).

H. Correction to § 1.338–5

Section 338(b)(3)(A) authorizes regulations under which the purchasing corporation may elect to step up its basis in nonrecently purchased stock (gain recognition election) to a ''basis amount.'' Under section 338(b)(3)(B), the basis amount is equal to the grossed-up basis of the purchasing corporation's recently purchased stock multiplied by a fraction, the numerator of which is the percentage of target stock attributable to the purchasing corporation's nonrecently purchased stock and the denominator of which is 100 percent minus the numerator amount.

Section 1.338–5(d) provides for the above described gain recognition election. Section 1.338–5(d)(3)(ii) provides that the basis amount is equal to the amount in § 1.338–5(c)(1) (the purchasing corporation's basis in recently purchased target stock determined without regard to acquisition costs) multiplied by a fraction, the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Section 1.338–5(d)(3)(ii) goes on to state, ''[t]hus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.''

However, unless the purchasing corporation purchases all of the outstanding stock of target (other than the purchasing corporation's nonrecently purchased stock) within the 12-month acquisition period on or before the acquisition date, the formula in the regulations will not result in the purchasing corporation's basis in each share of nonrecently purchased stock equaling the average price of the recently purchased stock. Only if the basis in the recently purchased stock is grossed-up (as provided by the Code) will such result be achieved. In fact, § 1.338–5(g), *Example 1,* paragraph (v), in demonstrating the effect of a gain recognition election, uses the grossed-up basis in the recently purchased stock, not the non-grossed-up basis, consistent with both the Code and the intent of the regulation. Accordingly, § 1.338–5(d)(3)(ii) is corrected to use the grossed-up basis of recently purchased stock in determining the basis amount, rather than the non-grossed-up basis.

I. Proposed Effective/Applicability Date

These proposed regulations are proposed to apply to any qualified stock disposition for which the disposition date is on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations do not have a substantial economic impact because they merely provide for an election in the context of certain sales, exchanges, and distributions of stock of corporations. Moreover, they are expected to apply predominantly to transactions involving larger businesses because the election is only applicable for certain dispositions of stock of an affiliated subsidiary. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations,

consideration will be given to any written comments (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble, the IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Mark J. Weiss of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.336–1 is also issued under 26 U.S.C. 336. * * *

Section 1.336–2 is also issued under 26 U.S.C. 336. * * *

Section 1.336–3 is also issued under 26 U.S.C. 336. * * *

Section 1.336–4 is also issued under 26 U.S.C. 336. * * *

Section 1.336–5 is also issued under 26 U.S.C. 336. * * *

Par. 2. Sections 1.336–0 through 1.336–5 are added to read as follows:

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§ 1.336–1 General principles, nomenclature, and definitions for a section 336(e) election.

(a) *Overview.* Section 336(e) authorizes the promulgation of regulations under which, in certain circumstances, a sale, exchange, or distribution of the stock of a subsidiary may be treated as an asset sale. This section and §§ 1.336–2 through 1.336–5 provide the rules for and consequences of making such election. This section provides the definitions and nomenclature. Generally, except to the extent inconsistent with section 336(e), the results of a section 336(e) election should coincide with those of a section 338(h)(10) election. Accordingly, to the extent not otherwise addressed in these regulations nor inconsistent with section 336(e), the principles of section 338 and the regulations under section 338 apply for purposes of these regulations. For example, § 1.338–8 (concerning asset and stock consistency)

and § 1.338(h)(10)–1(d)(8) (concerning the availability of the section 453 installment method) may apply with respect to a section 336(e) election.

(b) *Definitions.* For purposes of §§ 1.336–1 through 1.336–5 (except as otherwise provided):

(1) *Seller.* The term *seller* means any domestic corporation that makes a qualified stock disposition of stock of another corporation. A seller includes both a transferor and a distributor of target stock. Generally, all members of a consolidated group that dispose of target stock are treated as a single seller. See § 1.336–2(g)(2).

(2) *Purchaser.* The term *purchaser* means one or more persons that receive the stock of another corporation in a qualified stock disposition. A purchaser includes both a transferee and a distributee of target stock.

(3) *Target; target corporation; old target; new target.* The term *target* or *target corporation* means any domestic corporation the stock of which is sold, exchanged, or distributed by another domestic corporation in a qualified stock disposition. In the case of a transaction not described in section 355(d)(2) or (e)(2), ''old target'' refers to target for periods ending on or before the close of target's disposition date and ''new target'' refers to target for subsequent periods. In the case of a transaction described in section 355(d)(2) or (e)(2), ''old target'' refers to target for periods ending on or before the disposition date as well as for subsequent periods.

(4) *Disposed of; disposition*—(i) *In general.* The term *disposed of* refers to a transfer of stock in a disposition. The term *disposition* means any sale, exchange, or distribution of stock, but only if—

(A) The basis of the stock in the hands of the purchaser is not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired or under section 1014(a) (relating to property acquired from a decedent),

(B) Except as provided in paragraph (b)(4)(ii) of this section, the stock is not sold, exchanged, or distributed in a transaction to which section 351, 354, 355, or 356 applies and is not sold, exchanged, or distributed in any transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized in the transaction, and

(C) The stock is not sold, exchanged, or distributed to a related person.

(ii) *Exception for disposition of stock in certain section 355 transactions.* Notwithstanding paragraph (b)(4)(i)(B) of this section, a distribution of stock to a person who is not a related person in a transaction in which the full amount of stock gain would be recognized pursuant to section 355(d)(2) or (e)(2) shall be considered a disposition.

(iii) *Transactions with related persons.* In determining whether stock is sold, exchanged, or distributed to a related person, the principles of section 338(h)(3)(C) and § 1.338–3(b)(3) shall apply.

(iv) *No consideration paid.* Stock in a target may be considered disposed of if, under general principles of tax law, the seller is considered to sell, exchange, or distribute stock of the target notwithstanding that no amount may be paid for (or allocated to) the stock.

(v) *Disposed of stock reacquired by certain persons.* Stock disposed of to another person under this section which is reacquired by the seller or a member of the seller's consolidated group within the 12-month disposition period shall not be considered as disposed of.

(5) *Qualified stock disposition*—(i) *In general.* The term *qualified stock disposition* means any transaction or series of transactions in which stock meeting the requirements of section 1504(a)(2) of a domestic corporation is either sold, exchanged, or distributed, or any combination thereof, by another domestic corporation in a disposition, within the meaning of paragraph (b)(4) of this section, during the 12-month disposition period.

(ii) *Overlap with qualified stock purchase*—(A) *In general.* Except as provided in paragraph (b)(5)(ii)(B) of this section, a transaction satisfying the definition of a qualified stock disposition under paragraph (b)(5)(i) of this section which also qualifies as a qualified stock purchase (as defined in section 338(d)(3)) will not be treated as a qualified stock disposition.

(B) *Exception.* If, as a result of the deemed sale of old target's assets pursuant to a section 336(e) election, there would be, but for paragraph (b)(5)(ii)(A) of this section, a qualified stock disposition of the stock of a subsidiary of target, then paragraph (b)(5)(ii)(A) shall not apply.

(6) *12-month disposition period.* The term *12-month disposition period* means the 12-month period beginning with the date of the first sale, exchange, or distribution of stock included in a qualified stock disposition.

(7) *Disposition date.* The term *disposition date* means, with respect to any corporation, the first day on which there is a qualified stock disposition with respect to the stock of such corporation.

(8) *Disposition date assets. Disposition date assets* are the assets of the target held at the beginning of the day after the disposition date (but see § 1.338–1(d) (regarding certain transactions on the disposition date)).

(9) *Domestic corporation.* The term *domestic corporation* has the same meaning as in § 1.338–2(c)(9).

(10) *Section 336(e) election.* A section 336(e) election is an election to apply section 336(e) to target. A section 336(e) election is made by making an election for target under § 1.336–2(h).

(11) *Related persons.* Two persons are related if stock of a corporation owned by one of the persons would be attributed under section 318(a), other than section 318(a)(4), to the other.

(12) *Liquidation.* Any reference to a liquidation is treated as a reference to the transfer described in § 1.336–2(b)(1)(iii) notwithstanding its ultimate characterization for Federal income tax purposes.

(13) *Deemed asset disposition.* The deemed sale of old target's assets is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset disposition.

(14) *Deemed disposition tax consequences.* Deemed disposition tax consequences refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset disposition. Deemed disposition tax consequences also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset disposition.

(15) *80-percent purchaser.* An 80-percent purchaser is any purchaser that, after application of the attribution rules of section 318(a), other than section 318(a)(4), owns 80 percent or more of the voting power or value of the target corporation stock.

(16) *Recently disposed stock.* The term *recently disposed stock* means any stock in the target corporation which is not held by a seller or a member of the seller's consolidated group immediately after the close of the disposition date and which was sold, exchanged, or distributed by a seller during the 12-month disposition period. If, within the 12-month disposition period, stock is sold, exchanged, or distributed, then reacquired by a seller, and then sold, exchanged, or distributed again, only the last sale, exchange, or distribution of the reacquired stock in the 12-month disposition period may be recently disposed stock.

(17) *Nonrecently disposed stock.* The term *nonrecently disposed stock* means stock in the target corporation which is held on the disposition date by a

purchaser or a person related (as described in § 1.336–1(b)(11)) to the purchaser who owns, on the disposition date, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of the stock of target and which is not recently disposed stock.

(c) *Nomenclature.* For purposes of §§ 1.336–1 through 1.336–5, except as otherwise provided, Parent, Seller, Target, Target Subsidiary, and Sub are domestic corporations and A, B, C, and D are individuals, none of whom are related to Parent, Seller, Target, Target Subsidiary, Sub, or each other.

§ 1.336–2 Availability, mechanics, and consequences of section 336(e) election.

(a) *Availability of election.* A section 336(e) election is available if a seller makes a disposition of stock of another corporation (target) in a qualified stock disposition (as defined in § 1.336–1(b)(5)). A section 336(e) election is irrevocable. A section 336(e) election is not available for transactions described in section 336(e) that do not constitute qualified stock dispositions, as defined in § 1.336–1(b)(5).

(b) *Deemed transaction*—(1) *Dispositions not described in section 355(d)(2) or (e)(2)*—(i) *Old target-deemed asset disposition*—(A) *In general.* This paragraph (b)(1) provides the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2). For the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), see paragraph (b)(2) of this section. In general, if a section 336(e) election is made, the seller is treated as not having sold, exchanged, or distributed the stock disposed of in the qualified stock disposition. Instead, old target is treated as selling its assets to an unrelated person in a single transaction at the close of the disposition date (but before the deemed liquidation described in paragraph (b)(1)(iii) of this section) in exchange for the aggregate deemed asset disposition price (ADADP) as determined under § 1.336–3. ADADP is allocated among the disposition date assets in the same manner as ADSP is allocated under §§ 1.338–6 and 1.338–7 in order to determine the amount realized from each of the sold assets. Old target realizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while old target is owned by seller.

(B) *Gains and losses*—(1) *Gains.* Except as provided in § 1.338(h)(10)–1(d)(8) (regarding the installment method), old target shall recognize all of the gain realized on the deemed asset disposition.

(*2*) *Losses.* Old target shall recognize loss, if any, on the deemed sale of each of its assets with respect to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. Old target shall not recognize loss on the deemed sale of each of its assets with respect to the amount of stock distributed in the qualified stock disposition on or before the disposition date. The amount of loss recognized by old target with respect to an asset is the amount of loss realized on the deemed sale of the asset multiplied by a fraction (loss recognition fraction). The numerator of the loss recognition fraction is the value of the target stock, determined on the disposition date, sold or exchanged in the qualified stock disposition on or before the disposition date. The denominator of the loss recognition fraction is the total value of the target stock, determined on the disposition date, disposed of in the qualified stock disposition on or before the disposition date. For purposes of determining the amount of loss recognized by a subsidiary of old target for which a section 336(e) election is made, only the fraction of the old target subsidiary stock deemed sold in the deemed asset disposition of old target's assets that is equal to the loss recognition fraction is considered to have been sold or exchanged. In addition, to the extent old target or a subsidiary of old target otherwise recognizes losses from the deemed asset disposition, such losses may be disallowed under other provisions of the Internal Revenue Code or general principles of tax law, in the same manner as if such assets were actually sold to an unrelated person.

(*3*) *Examples.* The following examples illustrate this paragraph (b)(1)(i)(B).

Example 1. (i) *Facts.* Seller owns 98 of the 100 outstanding shares of Target common stock, the only class of Target stock outstanding. On March 1 of Year 1, Seller sells 30 shares of Target stock to A for cash. On April 1 of Year 1, Seller sells 10 shares of Target stock to R, a related individual. On July 1 of Year 1, Seller distributes 50 shares of target stock to its unrelated shareholders. On December 1 of Year 1, Seller sells 5 shares of Target stock to B. Seller retains its remaining 3 shares of Target stock. The value of the Target stock on July 1 equals $100 per share. A section 336(e) election is made.

(ii) *Consequences.* Because at least 80 percent of the Target stock ((30 + 50 + 5)/100) was disposed of by Seller within the 12-month disposition period, a qualified stock disposition has occurred. July 1 of Year 1, the first date on which there was a qualified stock disposition with respect to the Target stock, is the disposition date. Old Target recognizes all of its gain on the deemed asset disposition. However, only 30 shares of Target stock were sold or exchanged in the qualified stock disposition on or before the disposition date. Therefore, only a portion of the loss, if any, on the deemed sale of each of Target's assets is recognized for Federal income tax purposes. The portion of the loss recognized is equal to a fraction, the numerator of which is $3,000, the value, determined on July 1, the disposition date, of the 30 shares sold by Seller in the qualified stock disposition on or before the disposition date, and the denominator of which is $8,000, the value of the Target stock on July 1, the disposition date, that was disposed of in the qualified stock disposition on or before the disposition date. Accordingly, only 37.5 percent ($3,000/$8,000) of Old Target's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

Example 2. (i) *Facts.* The facts are the same as in Example 1 with the following additional facts: Target also owns 80 shares of Target Subsidiary common stock, the only class of Target Subsidiary common stock outstanding, and Seller owns the remaining 20 shares of Target Subsidiary stock. Seller, Target, and Target Subsidiary file a consolidated Federal income tax return. Also on July 1 of Year 1, Seller distributes 15 shares of Target Subsidiary stock to its unrelated shareholders and sells 5 shares of Target Subsidiary stock to C for cash. The Target Subsidiary stock is worth $10 a share on July 1. A section 336(e) election is also made with respect to the Target Subsidiary stock.

(ii) *Consequences.* The consequences with respect to the Target stock are the same as described in *Example 1* except that no gain or loss is recognized by Target on the deemed sale of its Target Subsidiary stock. With respect to Target Subsidiary, because at least 80 percent of the Target Subsidiary stock ((80 + 15 +5)/100) was disposed of (or deemed disposed of) by members of Seller's consolidated group within the 12-month disposition period, a qualified stock disposition of Target Subsidiary has occurred. Old Target Subsidiary recognizes all of its gain on the deemed asset disposition. Notwithstanding that all 80 of Target's shares in Target Subsidiary were deemed sold in the deemed asset disposition of Target, only 37.5 percent of such shares were deemed sold as a result of a sale or exchange of Target stock. Accordingly, in determining the amount of loss on each of Target Subsidiary's assets that is recognized in the deemed sale of its assets, only 37.5 percent of the 80 shares of Target Subsidiary deemed sold by Target, 30 shares, are considered to have been sold or exchanged by Target. Therefore, the amount of loss recognized by Target Subsidiary is equal to a fraction, the numerator of which is the sum of $300, the value, determined on July 1, the disposition date, of the 30 shares of Target Subsidiary deemed sold by Target in the

qualified stock disposition, and $50, the value, determined on July 1, the disposition date, of the 5 shares of Target Subsidiary stock sold by Seller on or before the disposition date, and the denominator of which is $1,000, the value of the Target Subsidiary stock on July 1, the disposition date, that was disposed of in the qualified stock disposition of Target Subsidiary on or before the disposition date. Accordingly, only 35 percent (($300 + $50)/($1,000)) of Old Target Subsidiary's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

(C) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed asset disposition of a higher-tier subsidiary is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(ii) *New target—deemed purchase.* New target is treated as acquiring all of its assets from an unrelated person in a single transaction at the close of the disposition date (but before the deemed liquidation) in exchange for an amount equal to the adjusted grossed up basis (AGUB) as determined under § 1.336–4. New target shall allocate the consideration deemed paid in the transaction in the same manner as new target would under §§ 1.338–6 and 1.338–7 in order to determine the basis in each of the purchased assets. Notwithstanding paragraph (b)(1)(iii) of this section (deemed liquidation of old target), new target remains liable for the tax liabilities of old target (including the tax liability for the deemed disposition tax consequences). For example, new target remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old target joined in the same consolidated return. See § 1.1502–6(a).

(iii) *Old target and seller—deemed liquidation*—(A) *In general.* Old target and seller are treated as if, before the close of the disposition date, after the deemed asset disposition described in paragraph (b)(1)(i)(A) of this section, and while owned by seller, old target transferred all of its assets to seller and ceased to exist. The transfer from old target to seller is characterized for Federal income tax purposes in the same manner as if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. For example, the transfer may be treated as a distribution in pursuance of a plan of reorganization, a distribution in complete cancellation or redemption of all its stock, one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or part of a circular flow of cash. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 332 and section 336 or 337 applies.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed liquidation of a lower-tier subsidiary corporation is considered to precede the deemed liquidation of a higher-tier subsidiary.

(iv) *Seller—distribution of target stock.* In the case of a distribution of target stock in the qualified stock disposition, seller (the distributor) is deemed to purchase from new target on the disposition date, immediately after the deemed liquidation of old target, the amount of stock distributed in the qualified stock disposition and to have distributed such new target stock to its shareholders. Seller recognizes no gain or loss on the distribution of stock.

(v) *Seller—retention of target stock.* If a seller retains any target stock after the 12-month disposition period, the seller is treated as purchasing the stock so retained from new target (new target stock) on the day after the disposition date for its fair market value. The holding period for the retained stock starts on the day after the disposition date. For purposes of this paragraph (b)(1)(v), the fair market value of all of the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target (see § 1.336–3(c)).

(2) *Dispositions described in section 355(d)(2) or (e)(2)*—(i) *Old target—deemed asset disposition*—(A) *In general.* This paragraph (b)(2) provides the Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition resulting, in whole or in part, from a disposition described in section 355(d)(2) or (e)(2). Old target is treated as selling its assets to an unrelated person in a single transaction at the close of the disposition date in exchange for the ADADP as determined under § 1.336–3. ADADP is allocated among the disposition date assets in the same manner as ADSP is allocated under §§ 1.338–6 and 1.338–7 in order to determine the amount realized from each of the sold assets. Old target realizes the deemed disposition tax consequences from the deemed asset disposition before the close of the disposition date while old target is owned by seller. Unlike a section 338(h)(10) election or a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2), old target is not deemed to liquidate.

(B) *Gains and losses*—(*1*) *Gains.* Except as provided in § 1.338(h)(10)–1(d)(8) (regarding the installment method), old target shall recognize all of the gain realized on the deemed asset disposition.

(*2*) *Losses.* Old target shall recognize loss, if any, on the deemed sale of each of its assets with respect to the amount of stock sold or exchanged in the qualified stock disposition on or before the disposition date. Old target shall not recognize loss on the deemed sale of each of its assets with respect to the amount of stock distributed in the qualified stock disposition on or before the disposition date. The amount of loss recognized by old target with respect to an asset is the amount of loss realized on the deemed sale of the asset multiplied by a fraction (loss recognition fraction). The numerator of the loss recognition fraction is the value of the target stock, determined on the disposition date, sold or exchanged in the qualified stock disposition on or before the disposition date. The denominator of the loss recognition fraction is the total value of the target stock, determined on the disposition date, disposed of in the qualified stock disposition on or before the disposition date. In addition, to the extent old target otherwise recognizes losses from the deemed asset disposition, such losses may be disallowed under other provisions of the Internal Revenue Code or general principles of tax law, in the same manner as if such assets were actually sold to an unrelated person.

(*3*) *Example.* The following example illustrates this paragraph (b)(2)(i)(B).

Example. (i) *Facts.* Seller owns 95 of the 100 outstanding shares of Target common stock, the only class of Target stock outstanding. On January 1 of Year 1, Seller sells 4 shares of Target stock to A for cash. On February 1 of Year 1, Seller sells 5 shares of Target stock to R, a related individual. On May 1 of Year 1, Seller distributes 6 shares of Target stock to its unrelated shareholders in a distribution not described in section 355(d)(2) or (e)(2). In an unrelated transaction, on July 1 of Year 1, Seller distributes its remaining 80 shares of Target stock to its unrelated shareholders in a distribution described in section 355(d)(2) or (e)(2). The value of the Target stock on July 1 equals $100 per share. A section 336(e) election is made.

(ii) *Consequences.* Because at least 80 percent of the Target stock ((4 + 6 + 80)/100) was disposed of by Seller within the 12-month disposition period, a qualified stock disposition has occurred. July 1 of Year 1, the first date on which there was a qualified stock disposition with respect to the Target stock, is the disposition date. Old Target

recognizes all of its gain on the deemed asset disposition. However, only 4 shares of Target stock were sold or exchanged in the qualified stock disposition on or before the disposition date. Therefore, only a portion of the loss, if any, on the deemed sale of each of Target's assets is recognized for Federal income tax purposes. The portion of the loss recognized is equal to a fraction, the numerator of which is $400, the value, determined on July 1, the disposition date, of the 4 shares sold by Seller in the qualified stock disposition on or before the disposition date, and the denominator of which is $9,000 ($400 + $600 + $8,000), the total value of the Target stock determined as of July 1, that was disposed of in the qualified stock disposition on or before the disposition date. Accordingly, only $400/$9,000 of Old Target's loss (if any) with respect to each asset sold in the deemed asset disposition is recognized.

(C) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections, the deemed asset disposition of a higher-tier subsidiary is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(ii) *Old target—deemed purchase*—(A) *In general.* Immediately after the deemed asset disposition described in paragraph (b)(2)(i)(A) of this section, old target is treated as acquiring all of its assets from an unrelated person in a single, separate transaction at the close of the disposition date (but before the distribution described in paragraph (b)(2)(iii)(A) of this section) in exchange for an amount equal to the AGUB as determined under § 1.336–4. Old target shall allocate the consideration deemed paid in the transaction in the same manner as new target would under §§ 1.338–6 and 1.338–7 in order to determine the basis in each of the purchased assets.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), old target's deemed purchase of all its assets is considered to precede the deemed asset disposition of a lower-tier subsidiary.

(iii) *Seller—distribution of target stock*—(A) *In general.* Immediately after old target's deemed purchase of its assets described in paragraph (b)(2)(ii) of this section, seller is treated as distributing the stock of old target actually distributed to its shareholders in the qualified stock disposition. No gain or loss is recognized by seller on the distribution. Additionally, if stock of target is sold or exchanged as part of a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), no gain or loss is recognized by seller on the sale or exchange.

(B) *Tiered targets.* In the case of parent-subsidiary chains of corporations making section 336(e) elections with respect to a qualified stock disposition described, in whole or in part, in section 355(d)(2) or (e)(2), the Federal income tax consequences of the section 336(e) election for a subsidiary of target shall be determined under paragraph (b)(1) of this section. The deemed liquidation of a lower-tier subsidiary corporation pursuant to paragraph (b)(1)(iii) of this section is considered to precede the deemed liquidation of a higher-tier subsidiary. The deemed liquidation of the highest tier subsidiary of target is considered to precede the distribution of old target stock described in paragraph (b)(2)(iii)(A) of this section.

(iv) *Seller—retention of target stock.* If a seller retains any target stock after the 12-month disposition period, the seller is treated as having disposed of the old target stock so retained, on the disposition date, in a transaction in which no gain or loss is recognized, and then, on the day after the disposition date, purchasing the stock so retained from old target for its fair market value. The holding period for the retained stock starts on the day after the disposition date. For purposes of this paragraph (b)(2)(iv), the fair market value of all of the target stock equals the grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target (see § 1.336–3(c)).

(v) *Qualification under section 355.* Old target's deemed sale of all its assets to an unrelated person and old target's deemed purchase of all its assets from an unrelated person will not cause the distribution of old target to fail to satisfy the requirements of section 355. Similarly, the deemed sale of all of the assets of a subsidiary of target to an unrelated person and the subsidiary's deemed purchase of all its assets from an unrelated person will not cause the distribution of old target to fail to satisfy the requirements of section 355. For purposes of applying section 355(a)(1)(D), seller is treated as having disposed of any stock disposed of in the qualified stock disposition on the date seller actually sold, exchanged, or distributed such stock. Further, seller's deemed disposition of retained old target stock under paragraph (b)(2)(iv) of this section is disregarded for purposes of applying section 355(a)(1)(D).

(vi) *Earnings and profits.* The earnings and profits of seller and target shall be determined pursuant to § 1.312–10 and, if applicable, § 1.1502–33(e). For this purpose, target will not be treated as a newly created controlled corporation and any increase or decrease in target's earnings and profits pursuant to the deemed asset disposition will increase or decrease, as the case may be, target's earnings and profits immediately before the allocation described in § 1.312–10.

(c) *Purchaser.* Generally, the making of a section 336(e) election will not affect the Federal income tax consequences to which the purchaser would have been subject with respect to the acquisition of the target stock if a section 336(e) election was not made. Thus, notwithstanding §§ 1.336–2(b)(1)(i)(A), 1.336–2(b)(1)(iv), and 1.336–2(b)(2)(iii)(A), the purchaser will still be treated as having purchased, received in an exchange, or received in a distribution, the stock of target so acquired on the date actually acquired. However, see section 1223(1)(B) with respect to the holding period for stock acquired pursuant to a distribution qualifying under section 355 (or so much of section 356 that relates to section 355). The Federal income tax consequences of the deemed asset disposition and liquidation of target may affect the purchaser's consequences. For example, if seller distributes the stock of target to its shareholders in a qualified stock disposition for which a section 336(e) election is made, any increase in seller's earnings and profits as a result of old target's deemed asset disposition and liquidation into seller may increase the amount of the distribution to the shareholders constituting a dividend under section 301(c)(1).

(d) *Minority shareholders*—(1) *In general.* This paragraph (d) describes the treatment of shareholders of old target other than the seller (or a member of seller's consolidated group), whether or not they sell, exchange, or distribute their stock of target. A shareholder to which this paragraph (d) applies is referred to as a minority shareholder.

(2) *Sale, exchange, or distribution of target stock by a minority shareholder.* A minority shareholder recognizes gain or loss (as permitted under the general principles of tax law) on its sale, exchange, or distribution of target stock.

(3) *Retention of target stock by a minority shareholder.* A minority shareholder who retains its target stock does not recognize gain or loss under this section with respect to its shares of target stock. The minority shareholder's basis and holding period for that target stock are not affected by the section 336(e) election. Notwithstanding the treatment to the minority shareholder, if a section 336(e) election is made, target will still be treated as disposing of all of its assets in the deemed asset disposition.

(e) *Treatment consistent with an actual asset disposition.* Except as otherwise provided, no provision in this section shall produce a Federal income tax result under subtitle A of the Internal Revenue Code that would not occur if the parties had actually engaged in the transactions deemed to occur because of this section, taking into account other transactions that actually occurred or are deemed to occur. See § 1.338–1(a)(2) regarding the application of other rules of law.

(f) *Treatment of target under other provisions of the Internal Revenue Code.* The provisions § 1.338–1(b) apply with respect to the treatment of new target after a section 336(e) election, treating any reference to section 338 or 338(h)(10) as a reference to section 336(e).

(g) *Special rules*—(1) *Target as two corporations.* Although the target is a single corporation under corporate law, if a section 336(e) election is made, then, except with respect to a distribution described in section 355(d)(2) or (e)(2) and as provided in § 1.338–1(b)(2), two separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code.

(2) *Treatment of members of a consolidated group.* For purposes of §§ 1.336–1 through 1.336–5, all members of the seller's consolidated group are treated as a single seller, regardless of whether the member actually disposes of any stock. Accordingly, any dispositions of stock made by members of the same consolidated group shall be treated as made by one corporation, and any stock owned by members of the same consolidated group and not disposed of will be treated as stock retained by the seller.

(3) *Miscellaneous international provisions*—(i) *Source and foreign tax credit.* The principles of section 338(h)(16) apply to section 336(e) elections for target corporations with foreign operations to ensure that the source and foreign tax credit limitation are properly determined.

(ii) *Allocation of foreign taxes.* If a section 336(e) election is made for target and target's taxable year under foreign law (if any) does not close at the end of the disposition date, foreign income taxes attributable to the foreign taxable income earned by the target during such foreign taxable year are allocated to old target and new target under the principles of § 1.1502–76(b).

(h) *Making the section 336(e) election.* A section 336(e) election is made by the seller attaching a section 336(e) election statement to its timely filed (including extensions) Federal income tax return for the taxable year which includes the disposition date entitled ''THIS IS AN ELECTION UNDER SECTION 336(e) TO TREAT THE DISPOSITION OF THE STOCK OF [insert name and employer identification number of target] AS A DEEMED SALE OF SUCH CORPORATION'S ASSETS.'' If the seller is a member of a consolidated group, the statement is filed with the Federal income tax return of the consolidated group. The seller must provide a copy of the statement to the target. The relevant information for each consolidated group member that disposes of target stock and each member that retains target stock must be set forth individually, not in the aggregate. In the case of a section 336(e) election for lower-tier targets, an additional statement must be filed for each lower-tier target. However, in preparing the statement, the seller of the directly disposed of target shall be treated as the seller of the lower-tier target. The section 336(e) election statement must include:

(1) The name, address, employer identification number (EIN), tax year, and state of incorporation of the target corporation;

(2) The name, address, EIN, tax year, and state of incorporation of the seller(s);

(3) The name, address, EIN (or Social Security number), tax year, and state of incorporation (if any) of any 80-percent purchaser;

(4) The disposition date;

(5) The percentage of target stock that was disposed of by each seller in the qualified stock disposition;

(6) The percentage of target stock that was disposed of on the disposition date by each seller in the qualified stock disposition;

(7) The percentage of target stock that was sold or exchanged by each seller in the qualified stock disposition on or before the disposition date;

(8) The percentage of target stock that was distributed by each seller in the qualified stock disposition on or before the disposition date;

(9) The percentage of target stock that was retained by each seller immediately after the 12-month disposition period; and

(10) Whether any purchaser made a gain recognition election pursuant to § 1.336–4(c). A copy of the gain recognition election statement must be attached to the section 336(e) election statement.

(i) [Reserved]

(j) *Protective section 336(e) election.* Taxpayers may make a protective election under section 336(e) in connection with a transaction. Such an election will have no effect if the transaction does not constitute a qualified stock disposition, as defined in § 1.336–1(b)(5), but will otherwise be binding and irrevocable.

(k) *Examples.* The following examples illustrate the provisions of this section.

Example 1. Sale of 100 percent of target stock. (i) *Facts.* Parent owns all 100 shares of Target's only class of stock. The stock has a basis of $80 per share. Target's only assets are two parcels of land. Parcel 1 has a basis of $5,000 and Parcel 2 has a basis of $4,000. Target has no liabilities. On July 1 of Year 1, Parent sells all 100 shares of Target stock to A for $100 per share. Parent incurs no selling costs and A incurs no acquisition costs. On July 1, the value of Parcel 1 is $7,000 and the value of Parcel 2 is $3,000. Parent makes a section 336(e) election.

(ii) *Consequences.* The sale of Target stock constitutes a qualified stock disposition. July 1 of Year 1 is the disposition date. Accordingly, pursuant to the section 336(e) election, for Federal income tax purposes, rather than treating Parent as selling the stock of Target to A, the following events are deemed to occur. Target is treated as if, on July 1, it sold all of its assets to an unrelated person in exchange for the ADADP, $10,000, which is allocated $7,000 to Parcel 1 and $3,000 to Parcel 2 (see § 1.336–3 for the determination and allocation of ADADP). Target recognizes gain of $2,000 on Parcel 1 and loss of $1,000 on Parcel 2. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, $10,000 (see § 1.336–4 for the determination of AGUB). Old Target is treated as liquidating into Parent immediately thereafter, distributing the $10,000 deemed received in exchange for its assets in a transaction qualifying under section 332. Parent recognizes no gain or loss on the liquidation. A's basis in New Target stock equals $100 per share, the amount paid for the stock.

Example 2. Sale of 80 percent of target stock. (i) *Facts.* The facts are the same as in *Example 1* except that Parent only sells 80 shares of its Target stock to A and retains the other 20 shares.

(ii) *Consequences.* The results are the same as in *Example 1* except that Parent also is treated as purchasing from New Target on July 2, the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually sold to A, for their fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share).

Example 3. Distribution of 100 percent of target stock. (i) *Facts.* The facts are the same as in *Example 1* except that instead of Parent selling 100 shares of Target stock to A, Parent distributes 100 shares to its shareholders, all of whom are unrelated to Parent, in a transaction that does not qualify under section 355.

(ii) *Consequences.* The results are the same as in *Example 1* except that Target does not recognize the $1,000 of loss realized with respect to Parcel 2 (see § 1.336–

2(b)(1)(i)(B)(*2*)) and on July 1, immediately after the deemed liquidation of Target, Parent is deemed to purchase from New Target 100 shares of New Target stock and distribute those New Target shares to its shareholders. Parent recognizes no gain or loss on the deemed distribution of the shares under § 1.336–2(b)(1)(iv). The shareholders receive the New Target stock as a distribution pursuant to section 301 and their basis in the New Target stock received is its fair market value pursuant to section 301(d).

Example 4. Distribution of 80 percent of target stock. (i) *Facts.* The facts are the same as in *Example 3* except that Parent distributes only 80 shares of Target stock to its shareholders and retains the other 20 shares.

(ii) *Consequences.* The results are the same as in *Example 3* except that Parent is treated as purchasing on July 1 only 80 shares of New Target stock and as distributing only 80 shares of New Target stock to its shareholders and then as purchasing (and retaining), on July 2, the day after the disposition date, 20 shares of New Target stock at their fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share).

Example 5. Part sale, part distribution. (i) *Facts.* Parent owns all 100 shares of Target's only class of stock. The stock has a basis of $80 per share. Target has two assets, both of which are buildings used in its business. Building 1 has a basis of $6,000 and Building 2 has a basis of $5,100. Target has no liabilities. On January 1 of Year 1, Parent sells 50 shares of Target to A for $88 per share. Parent incurred no selling costs with respect to the sale of Target stock and A incurred no acquisition costs with respect to the purchase. On July 1 of Year 1, when the value of the Target stock is $120 per share, Parent distributes 30 shares of Target to its unrelated shareholders. Parent retains the remaining 20 shares. On July 1, the value of Building 1 is $7,800 and the value of Building 2 is $4,200. A section 336(e) election is made.

(ii) *Consequences.* Because the sale of the 50 shares and the distribution of the 30 shares occurred within a 12-month disposition period, the 80 shares of Target stock sold and distributed were disposed of in a qualified stock disposition. July 1 of Year 1 is the disposition date. On July 1, Target is treated as if it sold its assets to an unrelated person in exchange for the ADADP, $10,000, which is allocated $6,500 to Building 1 and $3,500 to Building 2 (see § 1.336–3 for the determination and allocation of ADADP). Target realizes and recognizes gain of $500 on the deemed sale of Building 1 ($6,500–$6,000). Target realizes loss of $1,600 on the deemed sale of Building 2 ($3,500–$5,100). However, pursuant to § 1.336–2(b)(1)(i)(B)(*2*), because only a portion of the stock disposed of in the qualified stock disposition was sold or exchanged, only a portion of the loss on Building 2 is recognized. The amount of loss recognized on Building 2 is the $1,600 loss realized multiplied by a fraction, the numerator of which is $6,000, the value on July 1, of the 50 shares that were sold in the qualified stock disposition on or before the disposition date and the denominator of which is $9,600, the value on July 1, of all of the Target shares disposed of in the qualified stock disposition on or before the disposition date. Thus, only $1,000 ($1,600 × ($6,000/$9,600)) of the loss on the deemed sale of Building 2 is recognized by Old Target. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, $10,000 (see § 1.336–4 for the determination of AGUB). Old Target is treated as liquidating into Parent immediately after the deemed asset disposition, distributing the $10,000 deemed received in exchange for its assets in a transaction qualifying under section 332. Parent recognizes no gain or loss on the liquidation. Parent is then deemed to purchase 30 shares of New Target stock from New Target on July 1, and distribute those 30 New Target shares to its shareholders. Parent recognizes no gain or loss on the deemed distribution of the 30 shares under § 1.336–2(b)(1)(iv). Parent is then deemed to purchase (and retain), on July 2, the day after the disposition date, 20 shares of New Target stock at their fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share). A is treated as having purchased the 50 shares of New Target stock on January 1 of Year 1 at a cost of $88 per share, the same as if no section 336(e) election had been made. Parent's shareholders are treated as receiving the New Target stock on July 1 of Year 1 as a distribution pursuant to section 301 and their basis in the New Target stock received is its fair market value pursuant to section 301(d), the same as if no section 336(e) election had been made.

Example 6. Sale of Target stock by consolidated group members. (i) *Facts.* Parent owns all the stock of Sub and 50 of the 100 outstanding shares of Target stock. Sub owns the remaining 50 shares of Target stock. Parent and Sub each hold their Target stock with a basis of $80 per share. Target's assets have an aggregate basis of $9,000. Target has no liabilities. Parent, Sub, and Target file a consolidated Federal income tax return. On February 1 of Year 1, Parent sells 30 shares of its Target stock to A for $2,400. On March 1 of Year 1, Sub sells all 50 shares of its Target stock to B for $5,600. Neither Parent nor Sub incurred any selling costs. Neither A nor B incurred any acquisition costs. A section 336(e) election is made. Assume that if the sale of the Target stock constitutes a qualified stock disposition, the value allocated to each of Target's assets under § 1.336–3 will exceed the asset's basis.

(ii) *Consequences.* Because Parent and Sub are members of the same consolidated group, their sale of Target stock is treated as made by one seller (see paragraph (g)(2) of this section), and the sales of Target stock constitute a qualified stock disposition. March 1 of Year 1 is the disposition date. For Federal income tax purposes, Parent and Sub are not treated as selling the stock of Target to A and B, respectively. Instead, the following events are deemed to occur. Target is treated as if, on March 1, it sold all its assets to unrelated person in exchange for the ADADP, $10,000 (see § 1.336–3 for determination of ADADP), recognizing gain of $1,000. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction in exchange for the AGUB, $10,000 (see § 1.336–4 for the determination of AGUB). Old Target is treated as liquidating into Parent and Sub immediately thereafter, distributing the $10,000 deemed received in exchange for its assets in a transaction qualifying under section 332 (see § 1.1502–34). Neither Parent nor Sub recognize gain or loss on the liquidation. Parent is then treated as purchasing from New Target on March 2, the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually sold, for its fair market value as determined under § 1.336–2(b)(1)(v), $2,000 ($100 per share). A is treated as having purchased 30 shares of New Target stock on February 1 of Year 1 at a cost of $2,400 ($80 per share), the same as if no section 336(e) election had been made. B is treated as having purchased 50 shares of New Target stock on March 1 of Year 1 at a cost of $5,600 ($112 per share), the same as if no section 336(e) election had been made.

Example 7. Sale of target stock by non-consolidated group members. (i) *Facts.* The facts are the same as in *Example 6* except that Parent, Sub, and Target do not join in the filing of a consolidated Federal income tax return. A section 336(e) election is made.

(ii) *Consequences.* Because Parent and Sub do not join in a consolidated Federal income tax return and no single seller sells, exchanges, or distributes Target stock meeting the requirements of section 1504(a)(2), the transaction does not constitute a qualified stock disposition. The section 336(e) election made with respect to the disposition of Target stock has no effect.

Example 8. Distribution of 80 percent of Target stock in complete redemption of a greater-than-50-percent shareholder. (i) *Facts.* A and B own 51 and 49 shares, respectively, of Seller's only class of stock. Seller owns all 100 shares of Target's only class of stock. Seller distributes 80 shares of Target stock to A in complete redemption of A's 51 shares of Seller in a transaction that does not qualify under section 355. A section 336(e) election is made.

(ii) *Consequences.* Prior to the redemption, Seller and A would be related persons because, under section 318(a)(2)(C), any stock of a corporation that is owned by Seller would be attributed to A because A owns 50 percent or more of the value of the stock of Seller. However, for purposes of §§ 1.336–1 through 1.336–5, the determination of whether Seller and A are related is made immediately after the redemption of A's stock. See §§ 1.336–1(b)(4)(iii) and 1.338–3(b)(3)(ii)(A). After the redemption, A no longer owns any stock of Seller. Accordingly, A and Seller are not related persons, as defined in § 1.336–1(b)(11), and the distribution of Target stock constitutes a qualified stock disposition. For Federal income tax purposes, rather than Seller distributing the stock of Target to A, the following is deemed to occur. Target is treated as if it sold its assets to an unrelated person. New Target is then treated as acquiring all its assets from an unrelated person in a single transaction. Immediately thereafter, Old Target is liquidated into Seller

in a transaction qualifying under section 332. Seller recognizes no gain or loss on the liquidation. Seller is then treated as purchasing 80 shares of New Target stock from New Target and then distributing the stock of New Target to A in exchange for A's 51 shares of Seller stock. Seller recognizes no gain or loss on the distribution of New Target stock pursuant to § 1.336–2(b)(1)(iv). Seller is then treated as purchasing from New Target, on the day after the disposition date, the 20 shares of Target stock (New Target stock) not actually distributed, for its fair market value as determined under § 1.336–2(b)(1)(v). The Federal income tax consequences to A are the same as if no section 336(e) election had been made.

Example 9. Pro-rata distribution of 80 percent of target stock. (i) *Facts.* A and B own 60 and 40 shares, respectively, of Seller's only class of stock. Seller owns all 100 shares of Target's only class of stock. Seller distributes 48 shares of Target stock to A and 32 shares of Target stock to B in a transaction that does not qualify under section 355. A section 336(e) election is made.

(ii) *Consequences.* Any stock of a corporation that is owned by Seller would be attributed to A under section 318(a)(2)(C) because, after the distribution, A owns 50 percent or more of the value of the stock of Seller. Therefore, after the distribution, A and Seller are related persons, as defined in § 1.336–1(b)(11), and the distribution of Target stock to A is not a disposition. Because only 32 percent of the Target stock was sold, exchanged, or distributed to nonrelated persons, there has not been a qualified stock disposition. Accordingly, the section 336(e) election made with respect to the distribution of the Target stock has no effect.

Example 10. Distribution of target stock described in section 355(e)(2). (i) *Facts.* Seller owns all 100 shares of Target's only class of stock. Target owns all 100 shares of Target Subsidiary's only class of stock. Seller distributes all 100 shares of Target stock to its shareholders, all of whom are unrelated to Seller, in a distribution that qualifies under section 355 (see paragraph (iv) of this *Example 10*). As part of the plan involving the distribution of the Target stock, the shareholders of Seller sell all of the stock of Seller, and section 355(e)(2) applies to the distribution. Section 336(e) elections are made with respect to Target and Target Subsidiary.

(ii) *Consequences—Old Target deemed asset sale.* Because the Target stock was distributed to persons who are unrelated to Seller, and the distribution is described in section 355(e)(2), the distribution constitutes a qualified stock disposition. See proposed §§ 1.336–1(b)(4) and 1.336–1(b)(5). Target's deemed disposition of the stock of Target Subsidiary as a result of the section 336(e) election also constitutes a qualified stock disposition. See § 1.336–1(b)(5)(ii). For Federal income tax purposes, rather than Seller distributing the stock of Target to unrelated shareholders, the following is deemed to occur. Old Target is treated as if it sold all of its assets to an unrelated person for the ADADP, determined under § 1.336–3. Old Target recognizes gain, but not loss, on the deemed sale of each of its assets, other than the stock of Target Subsidiary. See § 1.336–2(b)(2)(i)(B)(*2*). Old Target is then treated as acquiring all of its assets from an unrelated person in a single transaction in exchange for an amount equal to the AGUB, as determined under § 1.336–4.

(iii) *Consequences—Old Target Subsidiary deemed asset sale and liquidation.* After Old Target's deemed purchase of all of its assets, Old Target Subsidiary is then treated as if it sold all of its assets to an unrelated person for the ADADP, determined under § 1.336–3. Old Target Subsidiary recognizes gain, but not loss, on the deemed sale of each of its assets. See § 1.336–2(b)(1)(i)(B)(*2*). New Target Subsidiary is then treated as acquiring all of its assets from an unrelated person in a single transaction in exchange for an amount equal to the AGUB, as determined under § 1.336–4. Old Target Subsidiary is then deemed to liquidate into Old Target immediately thereafter, distributing the amount deemed received in exchange for its assets, in a transaction qualifying under section 332. Old Target recognizes no gain or loss on the liquidation of Old Target Subsidiary.

(iv) *Consequences—Seller distribution of Old Target.* After the deemed liquidation of Old Target Subsidiary, Seller is then treated as distributing the stock of Old Target to the unrelated shareholders. Pursuant to paragraph (b)(2)(v) of this section, neither Old Target's and Old Target Subsidiary's deemed sales of all their assets to unrelated persons nor Old Target's and New Target Subsidiary's deemed purchases of all their assets from unrelated persons will cause the distribution of Old Target to fail to satisfy the requirements of section 355. The distributee shareholders have the same Federal income tax consequences with respect to the receipt of the Target stock as if a section 336(e) election had not been made.

§ 1.336–3 Aggregate deemed asset disposition price; various aspects of taxation of the deemed asset disposition.

(a) *Scope.* This section provides rules under section 336(e) to determine the aggregate deemed asset disposition price (ADADP) for target. ADADP is the amount for which old target is deemed to have sold all of its assets in the deemed asset disposition. ADADP is allocated among target's assets in the same manner as ADSP is allocated under § 1.338–6 to determine the amount for which each asset is deemed to have been sold. When a subsequent increase or decrease is required under general principles of tax law with respect to an element of ADADP, the redetermined ADADP is allocated among target's assets in the same manner as redetermined ADSP is allocated under § 1.338–7.

(b) *Determination of ADADP*—(1) *General rule.* ADADP is the sum of—

(i) The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target; and

(ii) The liabilities of old target.

(2) *Time and amount of ADADP*—(i) *Original determination.* ADADP is initially determined at the beginning of the day after the disposition date of target. General principles of tax law apply in determining the timing and amount of the elements of ADADP.

(ii) *Redetermination of ADADP.* ADADP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, for the elements of ADADP. For example, ADADP is redetermined because of an increase or decrease in the amount realized on the sale or exchange of recently disposed stock of target or because liabilities not originally taken into account in determining ADADP are subsequently taken into account. Increases or decreases with respect to the elements of ADADP result in the reallocation of ADADP among target's assets in the same manner as ADSP under § 1.338–7.

(c) *Grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target*—(1) *Determination of amount.* The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of target is an amount equal to—

(i) The sum of (A) the amount realized on the sale or exchange of recently disposed stock of target, determined as if the seller(s) were required to use old target's accounting methods and characteristics and the installment method were not available and determined without regard to the selling costs taken into account under paragraph (c)(1)(iii) of this section and (B) the fair market value of recently disposed stock of target, determined on the date of each distribution, distributed in the qualified stock disposition;

(ii) Divided by the percentage of target stock (by value, determined on the disposition date) attributable to the recently disposed stock;

(iii) Less the selling costs incurred by the seller in connection with the sale or exchange of recently disposed stock that reduce its amount realized on the sale or exchange of the stock (for example, brokerage commissions and any similar costs to sell the stock).

(2) *Example.* The following example illustrates this paragraph (c):

Example. Target has two classes of stock outstanding, voting common stock and preferred stock described in section 1504(a)(4). Seller owns all 100 shares of each class of stock. On March 1 of Year 1, Seller sells 10 shares of Target voting common stock to A for $75. On April 1 of Year 2, Seller distributes 15 shares of voting common stock with a fair market value of $120 to B.

On May 1 of Year 2, Seller distributes 10 shares of voting common stock with a fair market value of $110 to C. On July 1 of Year 2, Seller sells 55 shares of Target voting common stock to D for $550. On July 1 of Year 2, the fair market value of all the Target voting common stock is $1,000 ($10 per share) and the fair market value of the preferred stock is $600. Seller incurs $20 of selling costs with respect to the sale to A and $60 of selling costs with respect to the sale to D. The grossed-up amount realized on the sale, exchange, or distribution of recently disposed stock of Target corporation is calculated as follows: The sum of the amount realized on the sale or exchange of recently disposed stock sold or exchanged (without regard to selling costs) and the fair market value of the recently disposed stock distributed is $780 ($120 + $110 + $550) (the 10 shares sold to A on March 1 of Year 1 is not recently disposed stock because it was not disposed of during the 12-month disposition period). The percentage of Target stock by value on the disposition date attributable to recently disposed stock equals 50% ($800/($1,000 + $600). The grossed-up amount realized equals $1,500 (($780/.50) − $60 selling costs).

(d) *Liabilities of old target*—(1) *In general.* In general, the liabilities of old target are measured as of the beginning of the day after the disposition date. However, if a target for which a section 336(e) election is made engages in a transaction outside the ordinary course of business on the disposition date after the event resulting in the qualified stock disposition of the target or a higher-tier corporation, the target and all persons related thereto (either before or after the qualified stock disposition) under section 267(b) or section 707 must treat the transaction for all Federal income tax purposes as occurring at the beginning of the day following the transaction and after the deemed disposition by old target. In order to be taken into account in ADADP, a liability must be a liability of target that is properly taken into account in an amount realized under general principles of tax law that would apply if old target had sold its assets to an unrelated person for consideration that included the discharge of its liabilities. See § 1.1001–2(a). Such liabilities may include liabilities for the tax consequences resulting from the deemed asset disposition.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining ADADP and the amount of the liabilities taken into account is determined as if old target had sold its assets to an unrelated person for consideration that included the discharge of the liabilities by the unrelated person. For example, if no amount of a target liability is properly taken into account in an amount realized as of the beginning of the day after the disposition date, the liability is not initially taken into account in determining ADADP (although it may be taken into account at some later date).

(e) *Deemed disposition tax consequences.* Gain or loss on each asset in the deemed asset disposition is computed by reference to the ADADP allocated to that asset. ADADP is allocated in the same manner as is ADSP under § 1.338–6. Although deemed disposition tax consequences may increase or decrease ADADP by creating or reducing a tax liability, the amount of the tax liability itself may be a function of the size of the deemed disposition tax consequences. Thus, these determinations may require trial and error computations.

(f) *Other rules apply in determining ADADP.* ADADP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed asset disposition for purposes of determining ADADP.

§ 1.336–4 Adjusted grossed-up basis.

(a) *Scope.* Except as provided in paragraphs (b) and (c) of this section or as the context otherwise requires, the principles of paragraphs (b) through (g) of § 1.338–5 apply in determining the adjusted gross-up basis (AGUB) for target and the consequences of a gain recognition election. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under § 1.336–2(b)(1)(ii), or the amount for which old target is deemed to have purchased all of its assets in the deemed purchase under § 1.336–2(b)(2)(ii). AGUB is allocated among target's assets in accordance with § 1.338–6 to determine the price at which the assets are deemed to have been purchased. When a subsequent increase or decrease with respect to an element of AGUB is required under general principles of tax law, redetermined AGUB is allocated among target's assets in accordance with § 1.338–7.

(b) *Modifications to the principles in § 1.338–5.* Solely for purposes of applying §§ 1.336–1 through 1.336–4, the principles of § 1.338–5 are modified as follows—

(1) *Purchasing corporation; purchaser.* Any reference to the ''purchasing corporation'' shall be treated as a reference to a purchaser, as defined in § 1.336–1(b)(2).

(2) *Acquisition date; disposition date.* Any reference to the ''acquisition date'' shall be treated as a reference to the disposition date, as defined in § 1.336–1(b)(7).

(3) *Section 338 election; section 338(h)(10) election; section 336(e) election.* Any reference to a ''section 338 election'' or a ''section 338(h)(10) election'' shall be treated as a reference to a section 336(e) election, as defined in § 1.336–1(b)(10).

(4) *New target; old target.* In the case of a disposition described in section 355(d)(2) or (e)(2), any reference to ''new target'' shall be treated as a reference to ''old target'' in its capacity as the purchaser of assets pursuant to the section 336(e) election.

(5) *Recently purchased stock; recently disposed stock.* Any reference to *recently purchased stock* shall be treated as a reference to recently disposed stock, as defined in § 1.336–1(b)(16). In the case of a distribution of stock, for purposes of determining the purchaser's grossed-up basis of recently disposed stock, the purchaser's basis in recently disposed stock shall be deemed to be such stock's fair market value on the date it was acquired.

(6) *Nonrecently purchased stock; nonrecently disposed stock.* Any reference to *nonrecently purchased stock* shall be treated as a reference to nonrecently disposed stock, as defined in § 1.336–1(b)(17).

(c) *Gain recognition election*—(1) *In general.* Any holder of nonrecently disposed stock of target may make a gain recognition election. The gain recognition election is irrevocable. Each owner of nonrecently disposed stock determines its basis amount, and therefore, the gain recognized pursuant to the gain recognition election, by applying §§ 1.338–5(c) and 1.338–5(d)(3)(ii) by reference to its own recently disposed stock and nonrecently disposed stock, and not by reference to all recently disposed stock and nonrecently disposed stock.

(2) *80-percent purchaser.* If a section 336(e) election is made for target, any 80-percent purchaser and all persons related to the 80-percent purchaser are automatically deemed to have made a gain recognition election for its nonrecently disposed target stock.

(3) *Non-80-percent purchaser.* A gain recognition election is actually made by a non-80-percent purchaser by providing to the seller, and seller including with the section 336(e) election statement, a gain recognition election statement, as described in paragraph (c)(4) of this section. If a non-80-percent purchaser makes a gain recognition election, all related persons to the non-80-percent purchaser must also make a gain recognition election. Otherwise, the gain recognition election

for the non-80-percent purchaser will have no effect.

(4) *Gain recognition election statement.* A gain recognition election statement must include the following declarations (or substantially similar declarations):

(i) [Insert name, address, and taxpayer identifying number of person for whom gain recognition election is actually being made] has elected to recognize gain under § 1.336–4(c) with respect to [his, hers, or its] nonrecently disposed stock.

(ii) [Insert name of person for whom gain recognition election is actually being made] agrees to report any gain under the gain recognition election on [his, hers, or its] Federal income tax return (including an amended return, if necessary) for the taxable year that includes the disposition date of [insert name and EIN of target corporation].

(d) *Examples. The following examples illustrate the provisions of this section.*

Example 1. On January 1 of Year 1, Seller owns 85 shares of Target stock, A owns 8 shares, B owns 4 shares, and C owns the remaining 3 shares. Each of A's 8 shares, B's 4 shares, and C's 3 shares have a $5 basis. Assume that Target has no liabilities. On July 1 of Year 2, Seller sells 70 shares of Target stock to A for $10 per share. On September 1 of Year 2, Seller sells 5 shares of Target stock to B and 5 shares of Target stock to C for $14 per share. A incurs $25 of acquisition costs, and B and C each incur $10 of acquisition costs in connection with their respective Year 2 purchases. These costs are capitalized in the basis of the Target stock. September 1 of Year 2 is the disposition date. Because A owns at least 10 percent of the Target stock on September 1, the disposition date, and A's original 8 shares of Target stock owned on January 1 of Year 1 were not disposed of in the qualified stock disposition, A's original 8 shares of Target stock are nonrecently disposed stock. Although B's original 4 shares and C's original 3 shares were not disposed of in the qualified stock disposition, because neither B nor C owns, with the application of section 318(a), other than section 318(a)(4), at least 10 percent of the total voting power or value of Target stock on the disposition date, their original shares are not nonrecently disposed stock. The grossed-up basis of recently disposed Target stock is $1011, determined as follows: The purchasers' (A, B, and C) aggregate basis in the recently disposed target stock, determined without regard to acquisition costs, is $840 ((70 × $10) + (5 × $14) + (5 × $14)). This amount is multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of the Target stock which is nonrecently disposed stock, and the denominator of which is 80, the percentage of Target stock disposed of in the qualified stock disposition ($840 × 92/80 = $966). This amount is then increased by the $45 of acquisition costs incurred by A, B, and C to arrive at the $1011 grossed-up basis of recently disposed Target stock ($966 + $45 = $1011). New Target's AGUB is $1051, the sum of $1011, the grossed-up basis of recently disposed Target stock and $40 (8 × $5), A's basis in his nonrecently disposed Target stock.

Example 2. The facts are the same as in *Example 1* except that A makes a gain recognition election. Pursuant to the gain recognition election, A is treated as if it sold on September 1 of Year 2, the disposition date, its 8 shares of nonrecently disposed target stock for the basis amount, and A's basis in nonrecently disposed target stock immediately after the deemed sale is the basis amount. A's basis amount equals his basis in his recently disposed Target stock without regard to acquisition costs, $700 (70 × $10), multiplied by a fraction, the numerator of which is 100 minus 8, the percentage of the Target stock, by value, determined on the disposition date, which is A's nonrecently disposed Target stock, and the denominator of which is 70, the percentage of the Target stock, by value, determined on the disposition date, disposed of to A in the qualified stock disposition, which is then multiplied by a fraction, the numerator of which is 8, the percentage of target stock, by value, determined on the disposition date, attributable to A's nonrecently disposed Target stock and the denominator of which is 100 minus the numerator amount. Accordingly, A's basis amount is $80 ($700 × 92/70 × 8/92). A therefore recognizes gain of $40 under the gain recognition election ($80 basis amount minus A's $40 basis in his nonrecently disposed stock prior to the gain recognition election). New Target's AGUB is $1091, the sum of $1011, the grossed-up basis of all recently disposed Target stock and $80, A's basis in his nonrecently disposed Target stock pursuant to the gain recognition election.

§ 1.336–5 Effective/Applicability date.

The provisions of §§ 1.336–1 through 1.336–4 apply to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 1.338–0 is amended by adding entries for §§ 1.338–1(e) and 1.338–5(h) to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–1 General principles; status of old target and new target.

* * * * *

(e) *Effective/applicability date.*

* * * * *

§ 1.338–5 Adjusted grossed-up basis.

* * * * *

(h) *Effective/applicability date.*

Par. 4. Section 1.338–1 is amended by adding two new sentences after the parenthetical that follows the third sentence of paragraph (a)(1), by revising the first sentence in paragraph (c)(1), and adding a new paragraph (e) to read as follows:

§ 1.338–1 General principles; status of old target and new target.

(a) * * *

(1) * * * However, if, as a result of the deemed purchase of old target's assets pursuant to a section 336(e) election, there would be both a qualified stock purchase and a qualified stock disposition of the stock of a subsidiary of the target, neither a section 338(g) election nor a section 338(h)(10) election may be made with respect to the qualified stock purchase of the subsidiary. Instead, a section 336(e) election may be made with respect to such purchase. See § 1.336–1(b)(5)(ii). * * *

* * * * *

(c) * * *

(1) *In general.* The rules of this paragraph (c) apply for purposes of applying the regulations under sections 336(e), 338, and 1060. * * *

* * * * *

(e) *Effective/applicability date.* Paragraphs (a)(1) and (c)(1) of this section are applicable to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.338–5 is amended by revising the first sentence in paragraph (d)(3)(ii) and by adding a new paragraph (h) to read as follows:

§ 1.338–5 Adjusted grossed-up basis.

* * * * *

(d) * * *

(3) * * *

(ii) *Basis amount.* The basis amount is equal to the amount determined by applying paragraphs (c)(1) and (2) of this section (the purchasing corporation's grossed-up basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section) multiplied by a fraction the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. * * *

* * * * *

(h) *Effective/applicability date.* Paragraph (d)(3)(ii) of this section is applicable to any qualified stock disposition for which the disposition date is on or after the date of publication of the Treasury decision adopting these

rules as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[REG–155087–05]

RIN 1545–BF17

Alcohol Fuel and Biodiesel; Renewable Diesel; Alternative Fuel; Diesel-Water Fuel Emulsion; Taxable Fuel Definitions; Excise Tax Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–155087–05) that was published in the **Federal Register** on Tuesday, July 29, 2008 (73 FR 43890) relating to credits and payments for alcohol mixtures, biodiesel mixtures, renewable diesel mixtures, alternative fuel mixtures, and alternative fuel sold for use or used as a fuel, as well as proposed regulations relating to the definition of gasoline and diesel fuel.

These regulations reflect changes made by the American Jobs Creation Act of 2004, the Energy Policy Act of 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and the Tax Technical Corrections Act of 2007. These regulations affect producers of alcohol, biodiesel, and renewable diesel; producers of alcohol, biodiesel, renewable diesel, and alternative fuel mixtures; sellers and users of alternative fuel; and certain persons liable for the tax on removals, entries, or sales of gasoline or diesel fuel.

FOR FURTHER INFORMATION CONTACT: Stephanie Bland, Taylor Cortright, or DeAnn Malone, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 4081 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–155087–05) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–155087–05), which was the subject of FR Doc. E8–17270, is corrected as follows:

§ 48.4081–1 [Corrected]

On page 43895, column 3, § 48.4081–1(b), line 5 of the column, the language ''pursuant to section 211 of the Clear Air'' is corrected to read ''pursuant to section 211 of the Clean Air''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–19598 Filed 8–22–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0403; FRL–8707–6]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) and Operating Permits Program revision submitted by the state of Iowa for the purpose of modifying and clarifying requirements for certain types of grain elevators. Specifically, the new rule revises the SIP to add special requirements for grain elevators, and the associated chapters for definitions and emission standards will be revised accordingly. The Iowa Department of Natural Resources is requiring that owners or operators of grain elevators apply best management practices and comply with the fugitive dust standard, as well as emission controls specified in required construction permits. These strategies will protect the ambient air and minimize the impact of emissions from each of the facilities.

DATES: Comments on this proposed action must be received in writing by September 24, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0403, by mail to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision and Title V revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 15, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8–19518 Filed 8–22–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 73, No. 165
Monday, August 25, 2008

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0042]

Control of Russian Knapweed; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the environmental release of the gall wasp *Aulacidea acroptilonica* for the biological control of Russian knapweed (*Acroptilon repens*). The environmental assessment documents our review and analysis of environmental impact associated with, and alternatives to, the release of this biological control agent. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Johnson, Branch Chief, Permits, Registrations, Imports and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–5055.

SUPPLEMENTARY INFORMATION:

Background

Russian knapweed (*Acroptilon repens*) is an aggressive, long-lived perennial in the *Asteraceae* or sunflower family that thrives in both irrigated and arid environments, and in cropland, pastures, rangeland, shrubland, and wasteland. It is difficult to control in alfalfa, clover, other forage crops, and pastures. It reduces wildlife habitat and suppresses the growth of other plants.

Russian knapweed has no known beneficial qualities. It is not utilized for forage because of its bitter taste, and may cause neurological disorders in horses if consumed. The quality of flour or other grain products that have been contaminated by Russian knapweed is reduced due to the bitter taste it imparts. Studies indicate that the spread of Russian knapweed may have a significant economic impact.

Russian knapweed reproduces primarily vegetatively from a primary vertical root with numerous lateral roots. It is a strong competitor and produces compounds that exclude other plant species. Russian knapweed seeds may be spread through infested hay or crop seeds or through the movement of cattle, as the seeds are able to survive the digestive system of these animals.

Estimated Russian knapweed acreage for the Western United States and Canada for the year 2000 totaled over 1,561,714 acres, with 80 percent of the affected acreage located in the States of Washington, Idaho, Colorado, and Wyoming.

Aulacidea acroptilonica is a small gall-forming wasp that has been demonstrated through specificity testing and field observations reported in scientific literature to attack only Russian knapweed. Gall induction diverts nutrients from flower formation, seed production, and the normal growth of plant tissues, thus reducing the plant's competitive ability and seed production.

On April 24, 2008, we published in the **Federal Register** (73 FR 22127–22128, Docket No. APHIS–2008–0042) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment entitled ''Field Release of *Aulacidea acroptilonica* (Hymenoptera: Cynipidae), an Insect for Biological Control of Russian Knapweed (*Acroptilon repens*), in the Continental United States'' (January 22, 2008) that examined the potential environmental impacts associated with the proposed use of *A. acroptilonica* as an agent for the biological control of Russian knapweed.

We solicited comments on the environmental assessment for 30 days ending May 27, 2008. We did not receive any comments by that date.

In this document, we are advising the public of our decision and finding of no significant impact regarding the release of the gall wasp *Aulacidea acroptilonica* as an agent for the biological control of Russian knapweed. This decision is based upon the updated environmental assessment, entitled ''Field Release of *Aulacidea acroptilonica* (Hymenoptera: Cynipidae), an Insect for Biological Control of Russian Knapweed (*Acroptilon repens*), in the Continental United States'' (June 2008). This version of the environmental assessment contains minor editorial changes and addresses our compliance with Executive Order 13175, which requires APHIS to consult with Indian Tribal governments regarding the proposed release of *Aulacidea acroptilonica.*

The updated environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site (see footnote 1). Copies of the updated environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead at (202) 690–2817 to facilitate entry into the reading room. You may request paper copies of the updated environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS's NEPA Implementing Procedures (7 CFR part 372).

[1] To view the notice, the environmental assessment, and the finding of no significant impact, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0042.*

Done in Washington, DC, this 19th day of August 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–19623 Filed 8–22–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the Special Milk Program for Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service invites the general public and other public agencies to comment on proposed information collections. The proposed collection is an extension of a currently approved collection for the Special Milk Program for Children.

DATES: Comments on this notice must be received or postmarked by October 24, 2008.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to: Ms. Cynthia Long, Director, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to: Ms. Cynthia Long at the address above or telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Special Milk Program.

OMB Number: 0584–0005.

Expiration Date: March 31, 2009.

Type of Request: Extension of a currently approved collection.

Abstract: Section 3 of the Child Nutrition Act (CNA) of 1966, (42 U.S.C. 1772) authorizes the Special Milk Program (SMP). It provides for the appropriation of such sums as may be necessary to enable the Secretary of Agriculture to encourage the consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a food service program authorized under the CNA or the National School Lunch Act.

Section 10 of the CNA (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the National School Lunch Act. Pursuant to that provision, the Secretary has issued 7 CFR Part 215, which sets forth policies and procedures for the administration and operation of the SMP. State and local operators of the SMP are required to meet Federal reporting and accountability requirements. The vast majority of reporting relates to information regarding eligibility determinations of the children, the number of milk servings, and revenues received from milk sales. State and local operators are also required to maintain records regarding eligibility to operate the program, review results, and accounts of revenues and expenditures.

Affected Public: 55 State agencies, 4,150 School food authorities/Sponsors, 4,910 schools, 533 child care institutions and 853 camps.

Estimated Number of Respondents: 10,501.

Estimated Number of Responses per Respondent: 14.

Estimated Total Annual Responses: 147,014.

Estimated Time per Response: .29.

Estimated Total Reporting Annual Burden hours: 42,634.06.

Number of Recordkeepers: 10,501.

Estimated Number of Responses per Respondent: 39.

Estimated Total Annual Responses: 409,539.

Estimated Time per Response: .17.

Estimated Total Annual Recordkeeping Burden Hours: 69,621.63.

Total Request Annual Reporting and Recordkeeping Burden Hours: 112,255.69.

Dated: August 12, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8–19668 Filed 8–22–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Willamette National Forest, USDA Forest Service.

ACTION: Notice of Proposed New Fee Site.

SUMMARY: The Willamette National Forest is planning to charge a fee at Benson Lake Trailhead and adjacent Scott Lake Campground beginning the summer of 2009. Benson Lake Trailhead was in the recreation fee demonstration project prior to 2005, and fees are being reestablished to help maintain facilities and services including toilet, picnic tables, garbage collection, interpretive and informational signing, and visitor security. A $5 day use fee is being proposed and recreation passes would be honored including: The Northwest Forest Pass, Interagency Passes and Golden Passports.

Implementation Date: New fees would begin in August 2009.

ADDRESSES: Dallas Emch, Forest Supervisor, Willamette National Forest, 211 East 7th Avenue, Eugene, Oregon 97401.

FOR FURTHER INFORMATION CONTACT: Sandy Ratliff, McKenzie River Recreation Staff at (541) 822–7238. Information about proposed fee changes can also be found on the Willamette National Forest Web site: *http://www.fs.fed.us/r6/willamette.*

To send comments about fee proposals please submit by September 15, 2008 to: McKenzie River Ranger

District. Attn: Recreation Fee Program, 57600 McKenzie Hwy, McKenzie Bridge, OR 97413 or at *http://www.fs.fed.us/r6/willamette/recreation/rea-feechange/.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, new fee proposals will he reviewed by the Pacific Northwest Recreation Resource Advisory Committee (RRAC). The RRAC will discuss and forward their recommendation to the Regional Forester who makes the final decision on behalf of the Secretary of Agriculture. Information about the Pacific Northwest Recreation Resource Advisory Committee, RRAC meeting dates and location can be found on the Region 6 (Oregon/Washington) Forest Service Web site at: *http://www.fs.fed.us/r6/passespermits/rrac.shtml.* A tentative meeting is scheduled for the end of October of 2008.

Date: August 14, 2008.

Dallas Emch,

Forest Supervisor.

[FR Doc. E8–19458 Filed 8–22–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

North Forest Acres Levee/Road Project City of Seward, AK

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: 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 regulations (40 CFR part 1500); and the regulations of the Natural Resources Conservation Service (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice of a Finding of No Significant Impact based on the Environmental Assessment and its Supplemental for the North Forest Acres Road/Levee Project.

DATES: The agency must receive comments on or before September 26, 2008.

ADDRESSES: Natural Resources Conservation Service, 800 West Evergreen, Suite 100, Palmer, Alaska 99645–6539.

FOR FURTHER INFORMATION CONTACT: Phil Naegele, 907–761–7758.

SUPPLEMENTARY INFORMATION: A limited number of copies of the Environmental Assessment and the Supplemental Environmental Assessment are available to fill single copy requests at the above address. Copies of the environmental documents are also available for review at the above address.

Dated: August 15, 2008.

Robert N. Jones,

Alaska State Conservationist, Natural Resources Conservation Service.

Finding of No Significant Impact

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to examine the environmental impacts of all Federal actions affecting the quality of the human environment. I have determined, based upon the evaluation of impacts in the Environmental Assessment (EA) prepared in 2003 and the Supplemental Environmental Assessment (SEA) prepared in 2007, that there would be no significant individual or cumulative impacts on the quality of the human environment as a result of implementing the North Forest Acres Levee/Road Project in Seward, Alaska. The EA and SEA are attached hereto and made a part hereof. Based on the documented findings, I have determined that an Environmental Impact Statement is not required.

The city of Seward, Alaska, has experienced flood damage from the Resurrection River and Japanese Creek several times in the past. Damages from the 1995 flood alone totaled 9.8 million dollars. A multi-agency task force recommended five complementary actions to minimize the risk of future damage. Three of these actions (a levee on Japanese Creek, dredging at the mouth of the Resurrection River and widening of the highway bridges) have been completed. The North Forest Levee/Road Project, along with widening of the railroad bridges are the final components of the flood control strategy. Congress has authorized funding for this project in the Natural Resources Conservation Service (NRCS) budget.

An Environmental Assessment was completed for this project in 2003. Based on the findings of the EA a preferred alternative was selected (West 2b and East 3) as the best viable option of the eight considered, including the no-action. This decision was based on an analysis of the environmental impacts for each alternative, public comment, and State and Federal agency comments. A Finding of No Significant Impact (FONSI) was issued based on the preferred alternative and published in the **Federal Register** (69 FR 2110–2111). The Seward City Council and the residents of the effected areas raised objections to the FONSI and the preferred alternative. The objections were based primarily on the close proximity of the dyke and road to the residential subdivision. A decision was made to rescind the original FONSI and prepare a Supplemental Environmental Analysis to address these concerns.

The SEA assessed the impacts of an additional alignment further to the north of the original alternatives addressed in the EA. This alternative had the support of the City and the nearby residents. This alternative also had greater adverse impacts (than the original routes) on the floodplain, wetlands, and Japanese Creek. Based on comments received from State and Federal agencies it was clear that the northerly route would require a more in-depth study and in all probability would create the need for the preparation of an Environmental Impact Statement (EIS) with no guarantee of support for the City's preferred alternative. For the purpose of furthering the project, the Seward City Council has dropped their objections to the preferred alternative identified in the 2003 EA.

The current preferred alternative is the same as the preferred alternative identified in the 2003 EA with a slight modification. The eastern half of the alignment has been moved slightly further south so as to further reduce any impacts to those wetlands. The western half of the route remains as identified in the 2003 preferred alternative. This alternative minimizes impact to the wetlands, minimizes encroachment on the floodplain, and results in no significant rise of floodwaters in Resurrection River. There are no stream crossings of Japanese Creek and no culverts or flood gates to operate and maintain.

Based on the information presented in the attached North Forest Levee/Road Project EA and SEA, I find that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, an EIS is not required.

Dated: August 15, 2008.

Robert Jones,

Alaska State Conservationist, Natural Resources Conservation Service.

[FR Doc. E8–19597 Filed 8–22–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals: Fiscal Year 2008 Funding Opportunity for Research on the Economic Impact of Cooperatives

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Initial notice of request for proposals.

SUMMARY: Rural Business-Cooperative Service programs are administered through USDA Rural Development. USDA Rural Development announces the availability of $491,535 in competitive cooperative agreement funds for fiscal year (FY) 2008 to conduct research on the national economic impact of all types of cooperatives. USDA Rural Development hereby requests proposals from institutions of higher education interested in applying for a competitively awarded cooperative research agreement. This funding is a follow on to funding awarded in FY 2006 and FY 2007, the intent of which was to encourage research on the critical issue of the economic value of cooperatives. Funding for FY 2008 is expected to expand upon research undertaken with FY 2006 and FY 2007 funds.

DATES: Interested parties may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be received by September 19, 2008, to be eligible for FY 2008 funding. Electronic copies must be received by September 19, 2008, to be eligible for FY 2008 funding. Late applications are not eligible for FY 2008 funding.

ADDRESSES: Applicants may obtain application forms, guides, and materials for the cooperative agreement at *http://www.rurdev.usda.gov/rbs/coops/reic.htm* or by contacting USDA Rural Development at (202) 720–8460, (TDD: (800) 877–8339, Federal Information Relay Service) and ask for the cooperative research agreement application kit.

Submit completed paper applications for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558.

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/reic.htm,* which contains application guidance, including an Application Guide and application forms. Or you may contact USDA Rural Development at (202) 720–8460 (TDD: (800) 877–8339 Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by USDA Rural Development. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A)). Because the RFP is expected to receive less than 10 respondents, the Paperwork Reduction Act does not apply.

Overview

Federal Agency: Rural Business–Cooperative Service.

Funding Opportunity Title: Research on the Economic Impact of Cooperatives.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.778

Dates: You may submit completed applications for the cooperative agreement on paper or electronically according to the following deadlines:

Paper copies must be received by September 19, 2008, to be eligible for FY 2008 funding. Late applications are not eligible for FY 2008 funding.

Electronic copies must be received by September 19, 2008, to be eligible for FY 2008 funding. Late applications are not eligible for FY 2008 funding.

I. Funding Opportunity Description

This solicitation is issued pursuant to the Consolidated Appropriations Act, 2008 (Pub. L. 110–161) directing funds ''for a cooperative research agreement with a qualified academic institution to conduct research on the national economic impact of all types of cooperatives.'' The Secretary of Agriculture has delegated the program's administration to USDA Rural Development.

The primary objective of this cooperative research agreement program is to facilitate university research on the national economic impact of cooperatives. This cooperative research agreement is a continuation of research conducted in USDA Rural Development cooperative research agreements RD–06–01 and RBS–07–31. As further described below, data generated and results produced in cooperative research agreements RD–06–01 and RBS–07–31 will be accessible to the institution awarded this cooperative research agreement. To the extent that this research program will generate further data, existing Web-based methodologies will be used to enable cooperatives to enter financial and other impact data on a periodic basis; apply the methodology to collect data updates estimates of economic impact of cooperatives; analyze the impact of cooperatives on local wealth creation and retention, and analyze the total returns to investment in cooperatives. Methodologies will need to account for cooperative organizational complexity, such as a single organization's several local, regional, and national locations, as well as sector differences.

The cooperative agreement proposal must address specifically, and in detail sufficient to assess the effectiveness of proposed work, how the following deliverables will be provided:

1. An analysis of how and the extent to which cooperatives facilitate the creation and retention of wealth within the local communities they serve. The analysis should include the identification of cooperative models and practices that could enhance cooperative contribution to local wealth creation. An estimate of cooperative wealth creation should be made for the U.S. and for each of the following four categories or classes of cooperatives:

i. Commercial sales or marketing—includes farm supply and marketing, grocery and consumer goods, business-to-business, the emerging ethanol and biofuels related industry, and manufacturing.

ii. Social and public services—includes housing, health care, day care/elder care, transportation, and educational services.

iii. Financial services—includes credit unions, banks, and mutual insurance.

iv. Utilities—includes electric, telephone, water, waste, and other regulated utilities.

2. An analysis of the total returns to investment in cooperatives, including returns to the cooperative businesses at the enterprise level as well as the impact of cooperative returns and services to the cooperatives' members at their enterprise levels. Total returns to investment should be analyzed using the same classification scheme as describe in Deliverable 1 above.

3. Development of sound methodologies to utilize available and newly-generated data to identify and measure the economic impacts of cooperatives as to the following:

i. Local and regional significance and impact analysis using appropriate input-output, social accounting matrix, and multiplier tools;

ii. Differential economic impacts of cooperatives as compared to other types of organizations performing the same general functions, including but not limited to (a) the differential impacts of local ownership versus ownership from outside the region and (b) any special economic impacts generated by the patron-oriented characteristics of cooperative businesses;

iii. Whether a non-cooperative business enterprise would exist in the local or regional economy if the cooperative did not exist;

iv. Displacement or replacement of other businesses by cooperatives;

v. Departure of a cooperative including a cooperative's replacement by another type of business; and

vi. Impact on local, regional, and national tax generation and on infrastructure.

4. Because output of the FY 2006 research will likely not be available before January 2009, USDA Rural Development will arrange for the winner of this competition to obtain updates and preliminary data from the University of Wisconsin, the FY 2006 and FY 2007 award recipient, as progress is being made on the FY 2006 and FY 2007 research. Data available to the FY 2008 award recipient will include:

i. number and headquarters location of cooperatives,

ii. volume measures appropriate for each sector (revenues, dollar value, and other appropriate size indicators),

iii. number of persons impacted by the cooperative (members, patrons, or investors), and

iv. number of full-time equivalent jobs and other economic impact variables.

v. Cooperative data will be identified using the North American Industry Classification System (NAICS).

5. Economic impact analyses as described in deliverables 3 and 4 above to be conducted on a sector basis. Sectors to be analyzed include:

i. Housing,

ii. health care,

iii. daycare/elder care,

iv. financial services,

v. grocery/consumer retail,

vi. business-to-business (wholesaling, manufacturing),

vii. agricultural marketing (including organic and conventional),

viii. agricultural supplies and services,

ix. public services (including transportation and education),

x. renewable energy, and

xi. utilities.

6. The population of a database for individual cooperative and summary data collected and additional data generated as necessary to obtain economic impacts as described in deliverables 3 and 4 above. The database is to be delivered to USDA Rural Development. USDA Rural Development will work with the grantee to integrate data from this deliverable into existing database applications.

7. The performance of subcontracting services, oversight, and financial controls for the overall project.

8. The submission of quarterly progress reports and quarterly financial reports to USDA Rural Development; and

9. The preparation and submission of publishable quality written reports for Deliverables 1 through 5 to USDA Rural Development.

USDA Rural Development will competitively award one cooperative agreement to fund the collection and analysis of data to determine the national economic impact of cooperatives. An institution of higher education may subcontract or collaborate with others on the research and data collection. A formal consortium of academic institutions is allowed.

Definitions

The definitions at 7 CFR 3019.2 are incorporated by reference.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2008.

Approximate Total Funding: $491,535.

Approximate Number of Awards: 1.

Approximate Average Award: $491,535.

Floor of Award Range: None.

Ceiling of Award Range: $491,535.

Anticipated Award Date: September 25, 2008.

Budget Period Length: 24 months.

Project Period Length: 24 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be institutions of higher education. Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations funded by a group of colleges or universities.

B. Cost Sharing or Matching

Matching funds are not required but are highly encouraged. Applicants must verify in their applications that matching funds are available for the time period of the agreement if the matching funds are required to complete the project. Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Indirect Cost Eligibility: Public Law 110–161, ''Consolidated Appropriations Act, 2008'' continues the provision which states ''No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties.'' Indirect costs in excess of 10 percent of the direct cost, therefore, will be ineligible for funding.

Activity Eligibility: A cooperative agreement reflects a relationship between the United States Government and an eligible recipient where the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out the desired research; and substantial involvement is anticipated between USDA Rural Development acting for the United States Government and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. *Therefore, the project proposed must include a description of USDA Rural Development's substantial participation.* USDA Rural Development may subsequently negotiate the nature of its participation before the cooperative agreement is executed.

Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible, and the application will not be considered for funding. However, if an application with 10 percent or less of ineligible costs is selected for funding, all ineligible costs must be removed from the project and replaced with eligible activities or the amount of the award will be reduced accordingly.

Cooperative Agreement Period Eligibility: Applications that have a timeframe of more than 24 months will

be considered ineligible and will not be considered for funding. Applications that request funds for a time period ending after September 30, 2010, will not be considered for funding.

Completeness Eligibility: Applications without sufficient information to determine eligibility will not be considered for funding. Applications that are missing any required elements (in whole or in part) will not be considered for funding.

IV. Application and Submission Information

A. Address To Request Application Package

If you plan to apply using a paper application, you can obtain the application package for this funding opportunity at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.* If you plan to apply electronically, you must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

You may submit your application in paper or in an electronic format. You may view the Application Guide at *http://www.rurdev.usda.gov/rbs/coops/reic.htm.*

If you submit your application in paper form, you must submit one signed original of your complete application along with two additional copies.

If you submit your application electronically, you must follow the instructions given at *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding:

1. Form SF–424, ''Application for Federal Assistance.'' In order for this form to be considered complete, it must contain the legal name of the applicant, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number, the applicant's complete mailing address, the name and telephone number of a contact person, the employer identification number (EIN), the start and end dates of the project, the Federal funds requested, other funds that will be used as matching funds, an answer to the question, ''Is applicant delinquent on any Federal debt?'', the name and signature of an authorized representative, the telephone number of the authorized representative, and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for an application to be considered complete.

The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Applicants can receive a DUNS number at no cost by accessing *http://www.dnb.com/us/* or calling (866) 705–5711.

2. Form SF–424A, ''Budget Information—Non-Construction Programs.'' In order for this form to be considered complete, the applicant must fill out Sections A, B, C, and D. The applicant must include both Federal and any matching funds to be included.

3. Form SF–424B, ''Assurances—Non-Construction Programs.'' In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date.

4. Title Page. The title page must include the title of the project as well as any other relevant identifying information. The length should not exceed one page.

5. Table of Contents. For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the title page.

6. Executive Summary. A summary of the proposal, not to exceed one page, must briefly describe the project, including goals, tasks to be completed, and other relevant information that provides a general overview of the project. In the event an applicant submits more than one page for this element, only the first page submitted will be considered.

7. Eligibility Discussion. A detailed discussion, not to exceed four pages, will describe how the applicant meets the eligibility requirements. In the event that more than four pages are submitted, only the first four pages will be considered.

i. Applicant Eligibility. The applicant must first describe how it meets the definition of an institution of higher education.

ii. Purpose Eligibility. The applicant must describe how the project purpose is eligible for funding. The project purpose is comprised of two components. First, the applicant must describe how the proposed project consists of activities needed to determine the national economic impact of all types of cooperatives. Second, the applicant must demonstrate that the combined activities are sufficient to estimate the national economic impact of all types of cooperatives.

8. Proposal Narrative. The narrative must include the following information:

i. Project Title. The title of the proposed project must be brief, not to exceed 75 characters, yet describe the essentials of the project. It should match the project title submitted on the SF–424. The project title does not need to appear on a separate page. It can be included on the title page and/or on the information sheet.

ii. Information Sheet. A separate one-page information sheet listing each of the evaluation criteria referenced in this funding announcement followed by the page numbers of all relevant material contained in the proposal that address or support each criterion.

iii. Goals of the Project. A clear statement of the ultimate goals of the project must be included. There must be an explanation of how economic benefit will be measured.

iv. Workplan. The narrative must contain a description of the project and set forth the tasks involved in reasonable detail. The description should specify the activity, who will perform the activity, during what timeframe the activity will take place, and the cost of the activity. Please note that one of the proposal evaluation criteria evaluates the workplan and budget. Applicants should only submit the workplan and budget once, either in this section or as part of the workplan/budget evaluation criterion discussion.

v. Proposal Evaluation Criteria. Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form.

9. Certification of Judgment. Applicants must certify that the United States has not obtained a judgment against them. No Federal funds shall be used to pay a judgment obtained by the United States. It is suggested that applicants use the following language for the certification. ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained a judgment against it.'' A separate signature is not required.

10. Verification of Matching Funds. Applicants must provide a budget to support the workplan showing all sources and uses of funds during the project period. Applicants will be required to verify any and all matching funds, both cash and in-kind. All proposed matching funds must be specifically documented in the application. If the matching funds are to be provided by an in-kind contribution

from the applicant, the application must include a signed letter from an authorized representative of the applicant verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Applicants should note that only goods or services for which no expenditure is made can be considered in-kind. If the applicant is paying for goods and services as part of the matching funds contribution, the expenditure is considered a cash match, and should be verified as such. If the matching funds are to be provided by a third party in cash, the application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Verification of funds donated outside the proposed time period of the cooperative agreement will not be accepted. If the matching funds are to be provided by a third party in-kind donation, the application must include a signed letter from the third party verifying the goods or services to be donated, when the goods and services will be donated, and the value of the goods or services. Verification of in-kind contributions donated outside the proposed time period of the cooperative agreement will not be accepted. Verification of in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the award may not be made.

If matching funds are in cash, they must be spent on goods and services that are eligible expenditures for this cooperative agreement program. If matching funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this program. The matching funds must be spent or donated during the agreement period. (See 7 CFR parts 3015 and 3019 for funds use eligibility rules.)

If acceptable verification for all proposed matching funds is missing from the application by the application deadline, the application will receive zero points for the Funding Match part of the evaluation criteria.

C. Submission Dates and Times

Application Deadline Date: September 19, 2008.

Explanation of Deadlines: Paper applications must be RECEIVED by the deadline date (see Section IV.F. for the address). Final electronic applications must be RECEIVED by *http://www.grants.gov* by the deadline date. If your application does not meet the deadline above, it will not be considered for funding. You will be notified whether or not your application was received on time.

D. Intergovernmental Review of Applications

Executive Order 12372, Intergovernmental Review of Federal Programs, does not apply to this program.

E. Funding Restrictions

Funding restrictions apply to both Federal funds and matching funds. Funds may only be used for activities related to determining the economic impact of cooperatives.

No funds made available under this solicitation shall be used to:

1. Pay for the preparation of the cooperative agreement application;
2. Pay expenses not directly related to the funded project;
3. Fund political or lobbying activities;
4. Fund any activities prohibited by 7 CFR parts 3015 or 3019;
5. Duplicate current services or replace or substitute support previously provided;
6. Pay costs of the project incurred prior to the date of agreement approval; or
7. Pay any judgment or debt owed to the United States.

F. Other Submission Requirements

You may submit your paper application for a cooperative agreement to USDA Rural Development's Cooperative Programs, Attn: Cooperative Research, Mail STOP 3250, Room 4016–South, 1400 Independence Ave., SW., Washington, DC 20250–3250. The phone number that should be used for FedEx packages is (202) 720–7558. You may also choose to submit your application electronically at *http://www.grants.gov.* Final applications may not be submitted by electronic mail, facsimile, or by hand-delivery. Any application submission in a non-electronic format must contain all required documents in one envelope.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria and maximum point allowances. Failure to address any one of the following criteria by the application deadline will result in a determination of incomplete and the application will not be considered for funding. The total points available for the set of criteria are 100.

1. Relevance of the project proposal (30 points). Proposals will be evaluated on how directly they address the stated objective of demonstrating economic impact of all types of cooperatives in the United States. Factors to be weighed by evaluators in scoring a proposal's relevance will include the:

- Definition of clear and objective measures of impact;
- Definition of specific measurement strategies for obtaining impact measures from each major cooperative sector and each category of persons impacted by cooperatives; and
- Description of sound data collection and analysis methodology.

2. Quality of Workplan (30 points). The quality evaluation criterion will be based on whether the proposal outlines a sound plan of work that will meet the objectives in a timely and cost-efficient manner. Factors to be weighed by evaluators in scoring a proposal's workplan will include:

- How well the steps for carrying out the work are defined;
- The logic of the sequence of proposed steps and the likelihood they will achieve their intended result;
- The establishment of clear benchmarks and timetables to measure the progress of the project;
- The detail, accuracy, and reasonableness of the project's proposed budget; and
- The ability to replicate measures from the FY 2006 and FY 2007 funding cycles.

3. Quality of personnel and management plan (20 points). The quality of the management plan and the personnel involved in carrying out the proposed project will evaluate the capabilities of the individuals and institutions to implement the work plan in an effective manner. Factors to be weighed by evaluators in scoring a proposal's personnel and management plan will include the:

- Experience of project leaders and the lead institution in managing complex research projects;
- Demonstration of a clear understanding of business models and general economic development;
- Management controls, progress measurements, and reporting systems within a structured project management plan; and
- Experience and relevant skills of researchers, consultants, and

subcontractors assigned to carry out specific roles in the project.

4. Funding match and cooperative community support (20 points). Points will be awarded on the basis of the percentage match provided by the applicant and the level of support for the proposal from the cooperative community as evidenced by contribution of resources to the match and other indications of support.

• Up to 20 points will be awarded for matching funds provided by or arranged for by the applicant. Two points will be awarded for each 5 percent match, up to a maximum of 20 points for a 50 percent match.

B. Review and Selection Process

Each application will be initially reviewed by Rural Development personnel for eligibility and to determine whether all required elements are complete. A list of required elements follows:

• SF–424
• SF–424A
• SF–424B
• Title Page
• Table of Contents
• Executive Summary
• Applicant Eligibility Discussion
• Purpose Eligibility Discussion
• Project Title
• Information Sheet
• Goals of the Project
• Work Plan
• Proposal Evaluation Criterion 1
• Proposal Evaluation Criterion 2
• Proposal Evaluation Criterion 3
• Proposal Evaluation Criterion 4
• Certification of Judgment
• Verification of any Matching Funds

Any incomplete or ineligible applications will not be further evaluated or considered for funding.

All eligible and complete proposals will be evaluated by a team of at least three reviewers based on criteria 1 through 4 described in paragraph A of this section. Reviewers will represent the Rural Development broad mission area, and will include at least three employees of USDA.

Once the scores for criteria 1 through 4 have been independently completed by the three reviewers, the scores will be used to rank the proposals. If the three reviewers rank the best proposal differently then, with the aid of a facilitator, the three reviewers will develop a consensus ranking. If the three reviewers cannot reach a consensus, two additional reviewers will review the proposals and be added to the rankings. A final ranking will be obtained based on the consensus rankings of the three member review panel, or, if appointed, the average of the five reviewers' rankings. Final award recommendation will be sent to the Under Secretary for Rural Development for final selection concurrence.

After the award selection is made, all applicants will be notified of the status of their applications by mail. The awardee must meet all statutory and regulatory program requirements in order to receive the award. In the event that an awardee cannot meet the requirements, the award will be withdrawn.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selection is expected to occur on or about September 25, 2008.

VI. Award Administration Information

A. Award Notices

The successful applicant will receive a notification of tentative selection for funding from USDA Rural Development. The applicant must sign a mutually agreed to cooperative agreement and comply with all applicable statutes, regulations, and this notice before the award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

This award is subject to 7 CFR parts 3015 and 3019. These regulations may be accessed at *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1*.

The following additional documentation requirements apply to the awardee selected for this program:

• Agency Approved Cooperative Agreement
• Form RD 1940–1, ''Request for Obligation of Funds''
• Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions''
• Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions''
• Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants)''
• Form RD 400–1, ''Equal Opportunity Agreement''
• Form RD 400–4, ''Assurance Agreement''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/reic.htm*.

Reporting Requirements: You must provide USDA Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your Cooperative Agreement. Failure to submit satisfactory reports on time may result in suspension or termination of your award.

1. Form SF–269 or SF–269A. A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a quarterly basis. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends.

2. Quarterly performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the workplan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reporting periods end each December 31, March 31, June 30, and September 30. Reports are due 30 days after the reporting period ends. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, questionnaire or interview guides, publications of research findings, summaries of data collected, and any other documentation related to how funds were spent.

3. Final Project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the workplan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds should be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks include, but are not limited to, publications of research findings, summaries of data collected, documentation of data and software delivered to USDA Rural Development, and any other documentation related to how funds were spent. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact the USDA Rural Development's Cooperative Programs, Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250, Telephone: (202) 720–8460 (TDD: (800) 877–8339 Federal Information Relay Service), e-mail: *cpgrants@wdc.usda.gov*.

VIII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: August 4, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8–19599 Filed 8–22–08; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 46–2008]

Foreign–Trade Zone 38 - Spartanburg County, SC, Application for Subzone Status, Cornell Dubilier Marketing, Inc. (Electrolytic Capacitors)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special–purpose subzone status for the aluminum electrolytic capacitor manufacturing plant of Cornell Dubilier Marketing, Inc. (CDM), located in Liberty, South Carolina. 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 August 18, 2008.

The CDM facility (308 employees/34 acres/152,520 sq.ft.) is located at 140 Technology Place in Liberty (Pickens County), South Carolina. The plant is used to produce aluminum electrolytic capacitors (up to 6,100 units annually) for export and the domestic market. The manufacturing process involves slitting, formation, winding, and electrolyte impregnation of etched aluminum foil using domestically–sourced material inputs and foreign–origin etched aluminum foil (HTSUS 7607.19, 5.3%; aluminum foil represents about 37% of finished capacitor value).

FTZ procedures would exempt CDM from customs duty payments on the foreign etched aluminum foil used in export production. On domestic shipments, the company could be able to elect the duty rate that applies to finished aluminum electrolytic capacitors (duty free) for the foreign etched aluminum foil. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy 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 October 24, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 10, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Office of the Port Director, U.S. Customs and Border Protection, 150–A West Phillips Road, Greer, SC 29650; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. For further information, contact Pierre Duy at pierre__duy@ita.doc.gov, or (202) 482–1378.

Dated: August 19, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–19643 Filed 8–22–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2008, the Department of Commerce (''the Department'') initiated the third administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC'') covering the period January 1, 2007, through December 31, 2007. *See Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China*, 73 FR 12387 (March 7, 2008) (''*Initiation Notice*''). Between March 7 and June 5, 2008, several parties withdrew their requests for review. Therefore, the Department is rescinding the administrative review of sales of wooden bedroom furniture with respect to the entities for whom all review requests have been withdrawn.

EFFECTIVE DATE: August 25, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3434.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published in the **Federal Register** the antidumping duty order on wooden bedroom furniture from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005). On January 2, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC for the period January 1, 2007, through December 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 73 FR 158 (January 2, 2008).

The Department received multiple timely requests for review and on March

7, 2008, in accordance with section 751(a) of Tariff Act of 1930, as amended (''the Act''), published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of wooden bedroom furniture from the PRC for the 2007 period of review. *See Initiation Notice*.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. Because all requesting parties withdrew their respective requests for review of the following entities within 90 days of the date of publication of the notice of initiation, the Department is rescinding this review with respect to these entities, in accordance with 19 CFR 351.213(d)(1):

- Ace Furniture & Crafts Ltd., Deqing Ace Furniture & Crafts Ltd.
- Alexandre International Corp., Southern Art Development Ltd., Alexandre Furniture (Shenzhen) Co. Ltd., Southern Art Furniture Factory
- Art Heritage International Ltd., Super Art Furniture Co. Ltd., Artwork Metal & Plastic Co., Ltd., Jibson Industries Ltd., Always Loyal International
- Baigou Crafts Factory of Fengkai
- Beijing New Building Materials Co., Ltd. (BNBM Co. Ltd.)
- Best King International Ltd.
- Billy Wood Industrial (Dong Guan), Great Union Industrial (Dongguan) Co., Ltd., Time Faith Ltd.
- Changshu HTC Import & Export Co. Ltd.
- Chen Meng Furniture (PTE) Co., Ltd., Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.
- Chuan Fa Furniture Factory
- Classic Furniture Global Co., Ltd.
- Clearwise Co., Ltd.
- Dalian Guangming Furniture Co., Ltd.
- Dalian Huafeng Furniture Co., Ltd.
- Dalian Pretty Home Furniture Co., Ltd.
- Der Cheng Wooden Works of Factory
- Dong Guan Golden Fortune Houseware Co., Ltd.
- Dongguan Cambridge Furniture Co., Ltd., Glory Oceanic Co., Ltd.
- Dongguan Chunsan Wood Products Co., Ltd, Trendex Industries Limited
- Dongguan Creation Furniture Co., Ltd., Creation Industries Co., Ltd.
- Dongguan Dihao Furniture Co., Ltd.
- Dongguan Fortune Furniture Ltd.
- Dongguan Grand Style Furniture Co., Ltd., Hong Kong DaZhi Furniture Company Ltd.
- Dongguan Great Reputation Furniture Co., Ltd.
- Dongguan Hero Way Woodwork Co., Ltd., Hero Way Enterprises, Ltd., Dongguan Da Zhong Woodwork Co., Ltd., Well Earth International Ltd.
- Dong Guan Hua Ban Furniture Co., Ltd.
- Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd.
- Dongguan Kin Feng Furniture Co., Ltd.
- Dongguan Kingstone Furniture Co., Ltd., Kingstone Furniture Co., Ltd.
- Dongguan Liaobushangdun Huada Furniture Factory, Great Rich (HK) Enterprises Co., Ltd.
- Dongguan Lung Dong Furniture Co., Ltd., Dongguan Dong He Furniture Co., Ltd.
- Dongguan New Technology Import & Export Co., Ltd.
- Dongguan Singways Furniture Co., Ltd.
- Dongguan Sunpower Enterprise Co., Ltd.
- Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry Co., Ltd, Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs
- Dongying Huanghekou Furniture Industry Co., Ltd.
- Dorbest Ltd., Rui Feng Woodwork Co., Ltd., Rui Feng Lumber Development Co., Ltd., aka, Dorbest Ltd., Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development (Shenzhen) Co., Ltd.
- Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (PTE) Ltd.
- Ever Spring Furniture Co., Ltd. S.Y.C. Family Enterprise Co., Ltd.
- Fine Furniture (Shanghai) Ltd.
- Fortune Furniture Ltd.
- Foshan Guanqiu Furniture Co., Ltd.
- Furnmart Ltd.
- Gaomi Yatai Wooden Ware Co., Ltd., Team Prospect International Ltd., Money Gain International Co.
- Garri Furniture (Dong Guan) Co., Ltd., Molabile International, Inc. Weei Geo Enterprise Co., Ltd.
- Green River Wood (Dongguan) Ltd.
- Guangdong New Four Seas Furniture Manufacturing, Ltd.
- Guangming Group Wumahe Furniture Co., Ltd.
- Guangzhou Lucky Furniture Co., Ltd.
- Guangzhou Maria Yee Furnishings, Ltd., Pyla HK Ltd., Maria Yee, Inc.
- Hainan Jong Bao Lumber Co., Ltd. Jibbon Enterprise Co., Ltd.
- Hang Hai Woodcrafts Art Factory Co. Ltd.
- Hong Yu Furniture (Shenzhen) Co., Ltd.
- Hualing Furniture (China) Co., Ltd., Tony House Manufacture (China) Co., Ltd., Buysell Investments Ltd., Tony House Industries Co., Ltd.
- Hung Fai Wood Products Factory Ltd.
- Inni Furniture
- Jardine Enterprise, Ltd.
- Jiangmen Kinwai Furniture Decoration Co., Ltd.
- Jiangmen Kinwai International Furniture Co., Ltd.
- Jiangsu Weifu Group Company Fullhouse Furniture Manufacturing Corp
- Jiangsu Xiangsheng Bedtime Furniture Co., Ltd., aka Xiangsheng Jiangsu Bedtime Furniture Co., Ltd.
- Jiangsu Yuexing Furniture Group Co., Ltd.
- Jiedong Lehouse Furniture Co., Ltd.
- Kalanter (Hong Kong) Furniture Company Limited
- King Kei Trading Co. Ltd., King Kei Furniture Factory, Jiu Ching Trading Co., Ltd.
- King Wood Furniture Co., Ltd.
- King's Way Furniture Industries Co., Ltd., Kingsyear, Ltd.
- Kuan Lin Furniture (Dong Guan) Co., Ltd., Kuan Lin Furniture Factory, Kuan Lin Furniture Co., Ltd.
- Kunshan Lee Wood Product Co., Ltd.
- Kunshan Summit Furniture Co. Ltd.
- Kunwa Enterprise Company
- Langfang TianCheng Furniture Co., Ltd.
- Leefu Wood (Dongguan) Co., Ltd. King Rich International, Ltd.
- Link Silver Ltd. (V.I.B.), Forward Win Enterprises Co. Ltd., Dongguan Haoshun Furniture Ltd.
- Locke Furniture Factory, Kai Chan Furniture Co. Ltd., Kai Chan (Hong Kong) Enterprise Ltd., Taiwan Kai Chan Co. Ltd.
- Longrange Furniture Co. Ltd.
- Mei Jia Ju Furniture Industrial Shenzhen Co., Ltd.
- Nanhai Baiyi Woodwork Co. Ltd.
- Nanhai Jiantai Woodwork Co. Ltd., Fortune Glory Industrial, Ltd. (HK Ltd.)
- Nanjing Nanmu Furniture Co., Ltd.
- Nantong Yangzi Furniture Co., Ltd.
- Nantong Yushi Furniture Co., Ltd.
- Nathan International Ltd., Nathan Rattan Factory
- Ningbo Furniture Industries Limited, Techniwood Industries Ltd., Ningbo Hengrun Furniture Co., Ltd.
- Passwell Corporation, Pleasant

Wave Ltd.
- Perfect Line Furniture Co., Ltd.
- Po Ying Industrial Co.
- Primewood International Co., Ltd., Prime Best International Co., Ltd., Prime Best Factory, Liang Huang (Jiaxing) Enterprise Co., Ltd.
- Profit Force Limited
- PuTian JingGong Furniture Co., Ltd.
- Qingdao Beiyuan Industry Trading Co. Ltd.
- Qingdao Beiyuan–Shengli Furniture Co., Ltd.
- Qingdao Liangmu Co., Ltd.
- Red Apple Trading Co., Ltd.
- Restonic (Dongguan) Furniture Ltd., Restonic Far East (Samoa) Ltd.
- Season Furniture Manufacturing Co., Season Industrial Development Co.
- Sen Yeong International Co. Ltd., Sheh Hau International Trading Ltd.
- Shanghai Jian Pu Export & Import Co., Ltd.
- Shanghai Maoji Imp. & Exp. Co. Ltd.
- Sheng Jing Wood Products (Beijing) Co., Ltd., Telstar Enterprises Ltd.
- Shenyang Kunyu Wood Industry Co., Ltd.
- Shenyang Shining Dongxing Furniture Co., Ltd.
- Shenzhen Dafuhao Industrial Development Co., Ltd.
- Shenzhen Forest Furniture Co., Ltd.
- Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd.
- Shenzhen New Fudu Furniture Co., Ltd.
- Shenzhen Tiancheng Furniture Co., Ltd., Winbuild Industrial Ltd., Red Apple Furniture Co., Ltd.
- Shenzhen Wonderful Furniture Co., Ltd.
- Shenzhen Xiande Furniture Factory
- Shenzhen Xingli Furniture Co., Ltd.
- Shing Mark Enterprise Co., Ltd., Carven Industries Ltd. (BVI), Carven Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., Dongguan Yongpeng Furniture Co., Ltd.
- Shun Feng Furniture Co., Ltd.
- Sino Concord International Corporation
- Songgang Jasonwood Furniture Factory, Jasonwood Industrial Co., Ltd. S.A.
- Starwood Furniture Manufacturing Co., Ltd.
- Starwood Industries Ltd.
- Strongson Furniture (Shenzhen) Co., Ltd., Strongson Furniture Co., Ltd., Strongson (HK) Co.
- Sunforce Furniture (Hui–Yang) Co., Ltd., SunFung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co. Ltd., Stupendous International Co. Ltd.
- Superwood Co. Ltd., Lianjiang Zongyu Art Products Co., Ltd.
- T.J. Maxx International Co., Ltd.
- Tarzan Furniture Industries, Ltd., Samso Industries Ltd.
- Teamway Furniture (Dong Guan) Co. Ltd., Brittomart Inc.
- Tianjin First Wood Co., Ltd.
- Tianjin Fortune Furniture Co. Ltd.
- Tianjin Master Home Furniture
- Tianjin Phu Shing Woodwork Enterprise Co., Ltd.
- Top Art Furniture Factory/Sanxiang Top Art Furniture/Ngai Kun Trading
- Top Goal Development Co.
- Tradewinds Furniture Ltd.
- Tube–Smith Enterprises (ZhangZhou) Co., Ltd., Tube–Smith Enterprise (Haimen) Co., Ltd., Billionworth Enterprise, Ltd.
- Union Friend International Trade Co., Ltd.
- U–Rich Furniture (ZhangZhou) Co., Ltd., U–Rich Furniture, Ltd.
- Wan Bao Cheng Group Hong Kong Co., Ltd.
- Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., Dongguan Wanhengtong Industry Co., Ltd.
- Winmost Enterprises Limited
- Woodworth Wooden Industries (Dong Guan) Co., Ltd.
- Xiamen Yongquan Sci–Tech Development Co., Ltd.
- Xilinmen Group Co., Ltd.
- Yangchun Hengli Co., Ltd.
- Yichun Guangming Furniture Co., Ltd.
- Yongxin Industrial (Holdings) Limited
- Zhang Zhou Sanlong Wood Product Co., Ltd.
- Zhangjiagang Daye Hotel Furniture Co., Ltd.
- Zhangjiagang Zheng Yan Decoration Co. Ltd.
- Zhangzhou Guohui Industrial & Trade Co. Ltd.
- Zhanjiang Sunwin Arts & Crafts Co., Ltd.
- Zhong Cheng Furniture Co., Ltd.
- Zhong Shan Fullwin Furniture Co., Ltd.
- Zhongshan Fookyik Furniture Co., Ltd.
- Zhongshan Golden King Furniture Industrial Co., Ltd.
- Zhoushan For–Strong Wood Co., Ltd.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries for the above–named entities. For those companies for which this review has been rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP 15 days after the publication of this notice in the **Federal Register**.

In addition, the Department is rescinding this review with respect to the following entities which did not receive a separate rate in any completed prior segment of this proceeding. For purposes of initiation of this administrative review, the Department accepted requests for review of these entities based upon the premise that such entities would seek to demonstrate in this review that they were, in law and in fact, separate from the PRC–wide entity, and therefore, entitled to a rate separate from the rate established for the PRC–wide entity. However, as the requests for review of these entities have been withdrawn, these entities may be subject to this review as part of the single PRC–wide entity.[1] Therefore, the Department will provide assessment instructions to CBP for the PRC–wide entity, which includes the following companies, after the final results of this administrative review.

- Bao An Guan Lan Winmost Furniture Factory
- Beijing MingYaFeng Furniture Co., Ltd.
- Best King International Ltd., Bouvrie International Limited
- C.F. Kent Co., Inc., C.F. Kent Hospitality, Inc. Shanghai Kent Furniture Co., Ltd., and Shanghai Hospitality Product Mfg., Co., Ltd.
- Conghua J.L. George Timber & Co., Ltd.
- Contact Co., Ltd.
- Denny's Furniture Associates Corp.
- Der Cheng Furniture Co., Ltd.
- Dongguan Huada Furniture Co., Ltd.
- Dongguan Mu Si Furniture Co., Ltd.
- Dongguan Sea Eagle Furniture Co., Ltd.
- Dongguan Wanhengtong Furniture Co. Ltd.
- Engmost Investments Limited
- Evershine Enterprise, Ltd.
- Four Seas Furniture Manufacturing Ltd.
- Gainwell Industries Limited
- Grand Style Furniture Co., Ltd.

[1] If one of the companies remaining under review does not qualify for a separate rate, all other exporters of wooden bedroom furniture from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC-wide entity of which the named exporter is a part.

- Guangdong Gainwell Industrial Furniture Co., Ltd.
- Hainan Rulai Furniture Co., Ltd.
- Hong Kong Boliya Industry Development Co., Ltd.
- Hong Kong Jingbi Group
- Huizhou Jadom Furniture Co., Ltd., Jadom Furniture Co., Ltd.
- Hwangho New Century Furniture (Dongguan) Corp. Ltd., Trade Rich Furniture (Dongguan) Corp., Ltd.
- Kong Fong Furniture, Kong Fong Mao Iek Hong
- Kunshan Junsen Furniture Co., Ltd.
- Nanjing Jardine Enterprise Ltd.
- Nantong Dongfang Orient Furniture Co., Ltd.
- Nathan China Group
- Ningbo Fubang Furniture Industries Limited
- Ningbo Techniwood Furniture Industries Limited
- Ningbo Furniture Industries Company Limited
- Northeast Lumber Co., Ltd.
- Passwell Wood Corporation
- Putian Ou Dian Furniture Co., Ltd.
- Shanghai Season Industry & Commerce Co., Ltd.
- Sino Concord (Zhangzhou) Furniture Co., Ltd.
- Speedy International Ltd.
- Starcorp Furniture Co., Ltd., Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., Shanghai Star Furniture Co., Ltd., Shanghai XingDing Furniture Industrial Co., Ltd.
- Techniwood (Macao Commercial Offshore) Limited,
- Time Crown (U.K.) International Ltd., China United International Company
- Top Goal Furniture Co., Ltd. (Shenzhen)
- Tradewinds International Enterprise Ltd.
- Trendex Industries Limited (BVI)
- Triple J Furniture Enterprises Co., Mandarin Furniture (Shenzhen) Co., Ltd.
- Winky Top Ltd.
- Zhejiang NiannianHong Industrial Co., Ltd.
- Zhongshan Fengheng Furniture Co., Ltd.
- Zhongshan Yiming Furniture Co. Ltd.
- Zhongshan Youcheng Wooden Arts & Crafts Co., Ltd.

The review will continue with respect to all other entities identified in the *Initiation Notice*.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders (''APOs'')

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 18, 2008.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–19664 Filed 8–22–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–827]

Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 2008.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro at (202) 482–0238 or Shane Subler at (202) 482–0189; 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 28, 2008, the Department published a notice of initiation of 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 Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008). The current deadline for the preliminary results of this administrative review is September 2, 2008.[1]

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

The Department requires additional time to review and analyze the sales and cost responses in this administrative review. Moreover, the Department requires additional time to analyze complex issues related to surrogate value selections. Because the Department requires additional time to analyze the information, issue supplemental questionnaires, and possibly verify the information, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by September 2, 2008). Therefore, the Department is extending the time limit for completion of the preliminary results by 112 days to not later than December 22, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

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[1] We note that Monday, September 1, 2008, is 245 days after December 31, 2007, the last day of the anniversary month of the antidumping order for this proceeding. September 1, 2008, is Labor Day. When a deadline falls on a weekend or federal holiday, the Department's practice is to use the next business day as the appropriate deadline. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

Dated: August 18, 2008.

Edward C. Yang,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E8–19663 Filed 8–22–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Foothill/Eastern Transportation Corridor Agency

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of stay—closure of administrative appeals decision record.

SUMMARY: This announcement provides notice that the Secretary of Commerce has stayed, for a period of 60 days, closure of the decision record in an administrative appeal filed by Foothill/Eastern Transportation Corridor Agency and its Board of Directors (TCA).

DATES: The decision record for the Foothill/Eastern Transportation Corridor Agency Consistency Appeal will now close on October 24, 2008.

ADDRESSES: Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Thomas Street or Gladys Miles, Attorney-Advisors, Office of the General Counsel, via e-mail at *gcos.inquiries@noaa.gov*, or at (301) 713–2967.

SUPPLEMENTARY INFORMATION: On February 15, 2008, TCA filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 C.F.R. Part 930, Subpart H. TCA appealed an objection to its construction of an extension to California State Route 241 in northern San Diego and southern Orange Counties, California.

Under the CZMA, the Secretary must close the decision record in an appeal 160 days after the notice of appeal is published in the **Federal Register**. 16 U.S.C. 1465. However, the CZMA authorizes the Secretary to stay closing the decision record for up to 60 days when the Secretary determines it necessary to receive, on an expedited basis, any supplemental information specifically requested by the Secretary to complete a consistency review or any clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency. 16 U.S.C. 1465(b)(3).

The decision record is currently scheduled to close on August 25, 2008. After reviewing the decision record developed to date, the Secretary has decided to solicit supplemental and clarifying information. In order to allow receipt of this information, the Secretary hereby stays closure of the decision record until October 24, 2008.

Additional information about the TCA Consistency Appeal and the CZMA appeals process is available from the Department of Commerce CZMA appeals Web site *http://www.ogc.doc.gov/czma.htm*.

Dated: August 20, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

[FR Doc. E8–19667 Filed 8–22–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ31

Fisheries of the Northeast Region; Fisheries of the Southeast Region; Highly Migratory Species

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

ACTION: Notification of determination of overfished and overfishing conditions.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that northeast smooth skate, South Atlantic red snapper, and Gulf of Mexico gray triggerfish are overfished and that northeast thorny skate is subject to overfishing. NMFS notified the respective regional fishery management councils (Councils) responsible for these fisheries of its determination. The Councils are required to take action within 1 year following notification by NMFS that overfishing is occurring, a stock is approaching overfishing, a stock is overfished, a stock is approaching an overfished condition, or existing remedial action taken to end overfishing or rebuild an overfished stock has not resulted in adequate progress. In addition, the Secretary has determined that the highly migratory species blacknose shark is overfished and overfishing is occurring.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, telephone: (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS, on behalf of the Secretary, notifies fishery management councils when overfishing is occurring, a stock is approaching overfishing, a stock is overfished, a stock is approaching an overfished condition, or existing action taken to end previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

On June 20, 2008, the NMFS approved Amendment 30A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico and implemented it with a final rule published in the **Federal Register** (73 FR 38139; July 3, 2008). Amendment 30A established management targets and thresholds for Gulf of Mexico gray triggerfish that were previously undefined. Based on these new status determination criteria the NMFS found that the Gulf of Mexico gray triggerfish is overfished using an earlier stock assessment (SEDAR 9, 2006). Amendment 30A includes a rebuilding plan for Gulf of Mexico gray triggerfish.

On July 8, 2008, the NMFS Southeast Regional Administrator sent a letter notifying the South Atlantic Fishery Management Council (South Atlantic Council) that South Atlantic red snapper is overfished. The South Atlantic Council must submit a rebuilding plan for red snapper within one year of that notification.

On July 21, 2008, the NMFS Northeast Regional Administrator sent a letter notifying the New England Fishery Management Council (New England Council) that smooth skate is overfished and that thorny skate is undergoing overfishing. Thorny skate is currently under a rebuilding plan. The New England Council must therefore ensure that overfishing is ended and that the stock rebuilds on schedule. Copies of the notification letters sent to the fishery management councils for the aforementioned determinations are available at *http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm*.

NMFS previously published the Secretary's determination that blacknose shark is overfished and subject to overfishing (73 FR 25665; May 7, 2008). It is included in this notice to provide complete documentation of the overfished and overfishing determinations made between April 1, 2008 and June 30, 2008.

Within 1 year of a notification under Magnuson–Stevens Act sections 304(e)(2) or (e)(7), the respective Council must take remedial action in response to the notification, to end overfishing if overfishing is occurring; rebuild an overfished stock or stock complex to the abundance that can produce maximum sustainable yield within an appropriate time frame; prevent overfishing from occurring if a stock is approaching overfishing; and/or prevent a stock from becoming overfished if it is approaching an overfished condition (see implementing regulations at 50 CFR 600.310(e)(3)). Such action must be submitted to NMFS within 1 year of notification and may be in the form of a new fishery management plan (FMP), an FMP amendment, or proposed regulations.

Dated: August 19, 2008.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–19666 Filed 8–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–80]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–80 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 15, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

AUG 01 2008
In reply refer to:
USP008749-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-80, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $1.5 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-80

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Australia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .05 billion
Other	$1.45 billion
TOTAL	$1.50 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** follow-on support of the F/A-18 aircraft to include up to 4 AIM-9X SIDEWINDER Captive Air Training Missiles, 10 AN/ALE-47 Electronic Warfare Countermeasure Systems, 8 AN/ALQ-214 Radio Frequency Countermeasure Systems, and 10 AN/ALR-67(V)3 Electronic Warfare Countermeasure Receiving Sets. Also included: avionics software, engine component improvement and spare parts, technical ground support equipment, spare and repair parts, supply support, publications and technical data, engineering change proposals, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support.

(iv) **Military Department:** Navy (AYD, Amd #1, KMO, KMP, RBS, GQY, and SAF, Amd #2)

(v) **Prior Related Cases, if any:**

FMS case SAF - $2.4B – 9May07
FMS case SAF(A1) - $225M – 7Feb08

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See annex attached.

(viii) **Date Report Delivered to Congress:** AUG 0 1 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia – Follow-On Support for F/A-18E/F Aircraft

The Government of Australia has requested a possible sale of follow-on support of the F/A-18 aircraft to include up to 4 AIM-9X SIDEWINDER Captive Air Training Missiles, 10 AN/ALE-47 Electronic Warfare Countermeasure Systems, 8 AN/ALQ-214 Radio Frequency Countermeasure Systems, and 10 AN/ALR-67(V)3 Electronic Warfare Countermeasure Receiving Sets. Also included: avionics software, engine component improvement and spare parts, technical ground support equipment, spare and repair parts, supply support, publications and technical data, engineering change proposals, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of program support. The estimated cost is $1.5 billion.

Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. Australia's efforts in peacekeeping and humanitarian operations in Iraq and in Afghanistan have had a significant impact on regional political and economic stability and have served U.S. national security interests. This proposed sale is consistent with those objectives and facilitates burden-sharing with our allies.

The Government of Australia needs this follow-on support, contractor maintenance, and technical services to maintain the operational capabilities of its aircraft.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Raytheon Missile Systems of Tucson, AZ, Boeing Company of St. Louis, MO, Raytheon EW Systems of Goleta, CA, ITT EW Systems of Clifton, NJ, and Symetrics Industries of Melbourne, FL. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-80

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-9X SIDEWINDER Missile represents a substantial increase in missile acquisition and kinematics performance over previous AIM-9 variants. The missile includes a high off bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Joint Helmet Mounted Cueing System. The software algorithms are the most sensitive portions of the AIM-9X missile. No software source code or algorithms will be released. Sensitive and/or classified (up to Secret) elements of the AIM-9X missiles include equipment/hardware, and software, and classified portions of operational performance. Maintenance training documentation is unclassified up to and including missile sectionalization training. The external view of the AIM-9X Sidewinder Missile is Unclassified and is not sensitive. The seeker/guidance and control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Specifically, the infrared seeker sensitivity is a significant improvement over the previous AIM-9 variants. Manuals and technical documents for the AIM-9X that support the ability to integrate with aircraft sensors are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

2. The AN/ALE-47 Countermeasures Dispensing Systems is classified Secret. The AN/ALE-47 is a threat-adaptive dispensing system that dispenses chaff, flares, and expendable jammers for self-protection against airborne and ground based Radio Frequency (RF) and Infrared threats. The ALE-47 Programmer is classified Confidential. The OFP and Mission Data Files used in the AN/ALE-47 are classified Secret. Those software programs contain algorithms used to calculate the best defense against specific threats.

3. The AN/ALQ-214 is an advanced air-borne Integrated Defensive Electronic Countermeasures (IDECM) programmable modular automated system capable of intercepting, identifying, processing received radar signals (pulsed and continuous) and applying an optimum countermeasures technique in the direction of the radar signal, thereby improving individual aircraft probability of survival from a

variety of surface-to-air and air-to-air RF threats. The system operates in a standalone or Electronic Warfare (EW) suite mode. In the EW suite mode, the ALQ-214 operates in a fully coordinated mode with the towed dispensable decoy, Radar Warning Receiver (RWR), and the onboard radar in the F/A-18E/F in a coordinated, non-interference manner sharing information for enhanced information. The ALQ-214 was designed to operate in a high-density Electromagnetic Hostile Environment with the ability to identify and counter a wide variety of multiple threats, including those with Doppler characteristics. Hardware within the AN/ALQ-214 is classified Confidential.

4. The AN/ALR-67(V)3 Electric Warfare Countermeasures Receiving Set is classified Confidential. The AN/ALR-67(V)3 provides the F/A-18F aircrew with radar threat warnings by detecting and evaluating friendly and hostile radar frequency threat emitters and providing identification and status information about the emitters to on-board Electronic Warfare (EW) equipment and the aircrew. The OFP and User Data Files (UDF) used in the AN/ALR-67(V)3 are classified Secret. Those software programs contain threat parametric data used to identify and establish priority of detected radar emitters.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–19500 Filed 8–22–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0144]

Federal Acquisition Regulation; Submission for OMB Review; Payment by Electronic Funds Transfer

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0144).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning payment by electronic funds transfer. A request for public comments was published in the **Federal Register** at 73 FR 30611, May 28, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 24, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0144, Payment by Electronic Funds Transfer, in all correspondence.

FOR FURTHER INFORMATION CONTACT Ms. Meredith Murphy, Contract Policy Division, GSA, (202) 208–6925.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires certain information to be provided by contractors which would enable the Government to make payments under the contract by electronic funds transfer (EFT). The information necessary to make the EFT transaction is specified in clause 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, which the contractor is required to provide prior to award, and clause 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, which requires EFT information to be provided as specified by the agency to enable payment by EFT.

B. Annual Reporting Burden

Respondents: 14,000.
Responses Per Respondent: 10.
Annual Responses: 140,000.
Hours Per Response: .5.
Total Burden Hours: 70,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the

information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0144, Payment by Electronic Funds Transfer, in all correspondence.

Dated: August 15, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–19669 Filed 8–22–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Wetlands Involvement for the Abengoa Biorefinery Project Near Hugoton, KS (DOE/EIS 0407)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement, conduct a public scoping meeting, and opportunity for public comment; Notice of Wetlands Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021) to assess the potential environmental impacts of a project proposed by Abengoa Bioenergy Biomass of Kansas, LLC (ABBK), to construct and operate a biomass-to-ethanol and energy facility near Hugoton, Kansas (hereinafter termed ''Abengoa Biorefinery Project'' or the ''Project''). DOE's proposed action is to provide cost-share Federal funding to ABBK to construct and operate the Project. DOE is issuing this Notice of Intent to inform the public about the proposed action; announce plans to conduct a public scoping meeting; invite public participation in the scoping process; and solicit public comments for consideration in establishing the scope of the EIS, including the range of reasonable alternatives and the potential environmental impacts to be analyzed.

DATES: The public scoping period begins on August 25, 2008, and will continue through October 9, 2008. DOE will consider all comments received or postmarked by October 9, 2008, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. A public scoping meeting will be held in Memorial Hall at the Stevens County Courthouse, Hugoton, Kansas, on September 10, 2008 from 6 p.m. to 8 p.m. Written and oral comments will be given equal weight.

ADDRESSES: Written comments on the scope of the EIS should be directed to Kristin Kerwin at the U.S. Department of Energy Golden Field Office, 1617 Cole Boulevard, Golden, Colorado 80401. You may also contact Ms. Kerwin by telephone at 303–275–4968, fascimilie at 303–275–4790, or e-mail: *kristin.kerwin@go.doe.gov*. Envelopes and the subject line of e-mails should be labeled ''Abengoa EIS Scoping Comments.''

The public scoping meeting will be held on September 10, 2008 from 6 p.m. to 8 p.m. at the following location: Memorial Hall, Stevens County Courthouse, 200 East 6th St., Hugoton, Kansas 67951–2606.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project, information on how to comment, or to receive a copy of the draft EIS when it is issued, contact Kristin Kerwin by any of the means described in the **ADDRESSES** section above.

For further information on the DOE Office of Energy Efficiency and Renewable Energy Integrated Biorefinery Program, contact Jacques Beaudry-Losique, Biomass Program Manager, U.S. Department of Energy, 1000 Independence Avenue, SW., EE–2E, 5H–021, Washington, DC 20585, telephone: 202–586–5188, facsimile: 202–586–1640, e-mail: *eere_biomass@ee.doe.gov*.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0103; e-mail: *AskNEPA@hq.doe.gov*; telephone: 202–586–4600; leave a message at 1–800–472–2756; or facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action: The Energy Policy Act of 2005 (EPAct 2005), Section 932, directs the Secretary of Energy to conduct a program of research, development, demonstration, and commercial application for bioenergy, including, integrated biorefineries that may produce biopower, biofuels, and bioproducts. Section 932 provides that ''the goals of the biofuels and bioproducts programs shall be to develop, in partnership with industry and institutes of higher education—

(1) Advanced biochemical and thermochemical conversion technologies capable of making fuels from lignocellulosic feedstocks that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles;

(2) Advanced biotechnology processes capable of making biofuels and bioproducts with emphasis on development of biorefinery technologies using enzyme-based processing systems;

(3) Advanced biotechnology processes capable of increasing energy production from lignocellulosic feedstocks, with emphasis on reducing the dependence of industry on fossil fuels in manufacturing facilities; and

(4) Other advanced processes that will enable the development of cost-effective bioproducts, including biofuels.''

Section 932(d) provides that ''the Secretary shall carry out a program to demonstrate the commercial application of integrated biorefineries. The Secretary shall ensure geographical distribution of biorefinery demonstration under this subsection. The Secretary shall not provide more than $100,000,000 under this subsection for any single biorefinery demonstration. In making awards under this subsection, the Secretary shall encourage—

(A) The demonstration of a wide variety of lignocellulosic feedstocks;

(B) The commercial application of biomass technologies for a variety of uses, including—

i. Liquid transportation fuels;

ii. High-value biobased chemicals;

iii. Substitutes for petroleum-based feedstocks and products; and

iv. Energy in the form of electricity or useful heat; and

(C) The demonstration of the collection of treatment of a variety of biomass feedstocks.''

Section 932(d) further directs the Secretary to solicit proposals for demonstration of advanced biorefineries and to select only proposals that demonstrate economic viability without Federal subsidy after initial construction costs are paid and for projects that are replicable.

In implementing section 932, DOE's goal is to demonstrate that commercial-scale integrated biorefineries that use a wide variety of lignocellulosic feedstocks (biomass), can operate profitably once constructed, and can be replicated. Lignocellulosic feedstock includes energy crops, corn fiber, wood wastes, agricultural wastes such as corn

stover, and certain municipal solid wastes. DOE notes that, while the refining process for ethanol from biomass is more complex than the refining process for ethanol derived from grain, cellulosic ethanol can yield a greater net energy benefit and result in lower greenhouse gas emissions.

Accordingly, DOE issued a funding opportunity announcement for the construction and operation of commercial-scale integrated biorefineries intended to demonstrate the use of a wide variety of cellulosic feedstocks. On February 28, 2007, DOE announced the selection of six biorefinery projects for negotiation of financial assistance awards. In that announcement, DOE proposes to invest up to $385 million in the six projects over the next four years.

Abengoa Bioenergy Biomass of Kansas, LLC (ABBK) of Chesterfield, Missouri, was one of the six applicants competitively selected for negotiation of award under DOE's funding opportunity announcement. Abengoa proposed an innovative approach to biorefinery operations that involves production of a biofuel and of energy in the form of steam that can be used to meet energy needs and displace fossil fuels such as coal and natural gas. In addition, siting the facility in Kansas would qualify Abengoa for state tax credits for biofuels, which would make the biorefinery a more viable commercial operation.

DOE granted an initial award to ABBK to advance the conceptual design; to initiate the permitting process; and to support an environmental review under NEPA for ABBK's proposed biomass-to-ethanol-and-energy facility near Hugoton, KS. DOE requires that ABBK fulfill these design, permitting, and environmental review obligations prior to deciding whether to cofund the construction and operation phase of the project. The total anticipated cost of this initial work is $37.5 million of which DOE is funding 40% ($15 million) and ABBK is providing 60% ($22.5 million).

As described below, DOE is now proposing to negotiate a second financial assistance agreement for approximately $61 million for the construction and operation of the biomass to ethanol facility, whose anticipated total cost is approximately $190.5 million.

ABBK is also planning to construct and operate a traditional grain-to-ethanol production facility at the same site that would integrate the biomass-to-ethanol facility into the overall facility. This grain-to-ethanol facility would use a traditional starch conversion process to produce ethanol from grain feedstocks (sorghum or corn) along with distillers grains with solubles, which is a product. While the traditional grain-to-ethanol facility would be constructed and operated with private funds, DOE plans to analyze the traditional grain-to-ethanol facility as a connected action in the EIS.

Proposed Action: DOE is proposing to provide approximately $61 million in Federal funding to ABBK for the construction and operation of a commercial-scale biomass-to-ethanol and energy facility near Hugoton, KS. The total estimated cost (beyond the initial award) for construction and operation of the biomass-to-ethanol portion of the project is approximately $190.5 million.

The biomass-to-ethanol facility would process 400 dry metric tons per day of biomass to produce approximately 12 million gallons per year (MGPY) of denatured ethanol. The biomass-to-ethanol facility would utilize an enzymatic hydrolysis process for converting biomass feedstocks to ethanol and co-products, and a gasification technology to convert biomass to synthesis gas. Biomass feedstock would be supplied from waste products from the production of crops produced within a 30 mile radius of the facility, and may include sorghum stubble, corn stover, switchgrass, and other opportunity feedstocks that are available in the area.

The traditional grain-to-ethanol process would use 32 million bushels of grain (sorghum and corn) to produce approximately 88 MGPY of denatured ethanol annually, two-thirds of which (i.e. that derived from sorghum) would qualify as *Advanced Biofuels* under Section 207 of the Energy Independence and Security Act of 2007 (EISA) (Per EISA, *Advanced Biofuels* includes all biofuels except corn-based ethanol). Solids from the process will be converted to animal feed, resulting in the production of up to 781,800 tons per year wet distillers grain with solubles (WDGS). The facility will have the capability to dry up to 50 percent of the WDGS, producing a maximum of 152,000 tons per year of dried distiller's grains with solubles (DDGS). The difference between the two sources of animal feed is moisture; DDGS contains approximately 10 percent moisture while WDGS contains approximately 65 percent moisture.

The overall integrated biorefinery, comprising both the proposed biomass-to-ethanol facility and the grain-to-ethanol facility, would be capable of producing about 100 MGPY of denatured ethanol and would be located on approximately 800 acres, which includes the combined facility footprint of about 385 acres and a buffer area between the proposed biorefinery and the City of Hugoton to the east. Hugoton has a population of about 3,700 and is located in Stevens County in southwest KS. Land use in the area is primarily agricultural in nature with cropland being the dominant use and grassland being the secondary use. The area has diverse biomass feedstocks, numerous large cattle feedlots, and a variety of grains grown locally.

The project site itself currently consists of row-cropped agricultural land and is adjoined by grain elevators, an asphalt plant, industrial park, and airport to the south; golf course and agricultural land to the west; two residences to the northwest; and agricultural cropland to the north. About 65 % of the site would qualify as prime farmland if it were irrigated. The proposed biorefinery site and additional buffer area to the east are currently zoned Agricultural, but the biorefinery location is proposed for a change to Heavy Industrial zoning.

Infrastructure required to operate the proposed biorefinery would include the following:

- Water, which would be supplied from wells on-site and near the project site utilizing water rights acquired from local owners;
- Electricity, which would be brought to the project site by Pioneer Electric from an existing substation located a few miles to the north of the project site;
- Natural gas, which would be brought through a lateral connection to one of the nearby interstate pipelines or through the local distribution company;
- Wastewater treatment—wastewater would be treated on-site, non-contact cooling water will be used for irrigation;
- Railroad service would be provided by the Cimarron Valley Short Line which runs adjacent to the project site; and
- Road access would be via a truck bypass route that the City of Hugoton intends to construct prior to the completion of the project.

During construction, truck traffic to the site would be expected to average about 30 shipments a day. During operations, truck traffic would be expected to increase to about 470 shipments a day. Most of the grain and biomass would be obtained from growers located near the proposed facility, but about 8 million tons of grain would be shipped to the facility from non-local sources each year.

Alternatives: NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS. To implement the requirements of

EPAct 2005, Section 932(d), in a separate, earlier proceeding DOE conducted a competitive solicitation. DOE received 24 applications in the response to the solicitation. Of these, nine did not comply with statutory requirements for eligibility under Section 932. DOE reviewed the remaining 15 applications on their merits and, having considered the objectives set forth in Section 932, selected six proposals, including ABBK's proposal for appropriate NEPA review. DOE selected ABBK's proposal for negotiation of a funding agreement in part because of its particular scale, location, and technology.

DOE will consider reasonable only alternatives to the proposed action that meet its purpose and need. Accordinly, DOE proposes to analyze the following alternatives in detail in the EIS: (1) To provide federal funding for the Abengoa Biorefinery Project as proposed by ABBK (the Proposed Action); (2) to provide federal funding for the Abengoa Biorefinery Project contingent on implementation of environmental mitigation measures, which would be determined based on the environmental impact analysis in the EIS; and (3) to not provide federal funding for the proposed project (the No Action alternative).

Preliminary Identification of Environmental Issues: The purpose of this Notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this Notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list identifies resource areas that may be affected by construction and operation of the proposed Project and that DOE plans to analyze in the EIS. This list is not intended to be all-inclusive or to imply any predetermination of impacts. DOE welcomes comments on this list and other suggestions on the scope of the EIS.

1. Water Resources: Potential impacts on surface and groundwater resources and water quality, including effects of water usage, wastewater management, storm water management.
2. Potential impacts on apparent isolated wetlands at the project site.
3. Utility and transportation infrastructure requirements for delivery of feedstocks and process chemicals to the facility and distribution of products from the facility to the marketplace.
4. Land Use: Changes in land use, including the proposed site and the geographical area that will provide feedstock to the proposed facility.
5. Local and Regional Air Quality.
6. Cultural Resources: Including potential effects on historic and archaeological resources and Native American tribal resources.
7. Ecological Resources: Terrestrial and aquatic plants and animals including state and Federally listed threatened and endangered species and other protected resources.
8. Health and safety impacts: Including construction-related safety and process-related safety associated with handling and management of process chemicals.
9. Noise: Potential impacts resulting from construction and operation of the proposed plant and from transportation of feedstocks, process materials, and plant byproducts.
10. Socioeconomic impacts: Potential socioeconomic impacts of plant construction and operation, including effects on public services and infrastructure resulting from the influx of construction personnel and plant operating staff, and environmental justice issues.
11. Aesthetic and scenic resources: Potential visual effects associated with plant structures and operations.
12. Cumulative impacts that result from the incremental impacts of the proposed plant when added to the other past, present, and reasonably foreseeable future activities within the regions of influence. This may include potential impacts resulting from widespread replication of this type of technology.
13. Global Climate Change: Potential greenhouse gas emissions and impacts on global climate change that may result from this project.

Public Scoping Process: Interested agencies, organizations, Native American tribes, and members of the public are encouraged to submit comments or suggestions concerning the content of the EIS, including the range of reasonable alternatives and the potential environmental impacts to be analyzed. DOE invites oral comments and suggestions at the public scoping meeting. The public scoping period will be open until October 9, 2008.

Written comments should be sent to Kristin Kerwin as described in the **ADDRESSES** section of this Notice. The public scoping meeting will be held at the location, date, and time listed in the **DATES** and **ADDRESSES** sections of this notice. This meeting will be informal. A presiding officer designated by DOE will establish procedures governing the conduct of the meeting and an overview of the proposed Project will be provided. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements will not be cross-examined by other speakers. However, DOE representatives may ask speakers questions to help ensure that DOE fully understands their comments or suggestions. To request time to speak at the meeting, please contact Kristin Kerwin via telephone, mail, fax or e-mail as listed in the **ADDRESSES** section of this Notice. Persons may also sign up to speak before the meeting at the reception desk at the entrance to the meeting and will be provided opportunities to speak after previously scheduled speakers have spoken, as time allows. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to speak, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization when they sign up to speak.

A complete transcript of the public scoping meeting will be retained by DOE and made available to the public for review via the Golden Field Office Online Public Reading Room at: *http://www.eere.energy.gov/golden/Reading_Room.aspx* and during business hours at the Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E–90, 1000 Independence Avenue, SW., Washington, DC 20585–0001. Additional copies of the public scoping meeting transcripts will be made available during business hours at the following location: Stevens County Library, 500 S. Monroe Street, Hugoton, Kansas 67951.

Draft EIS Schedule and Availability: The draft EIS is scheduled to be issued in late 2008. The availability of the draft EIS will be announced in the **Federal Register** and local media. The draft EIS will be made available for public inspection at the location listed above and on the Internet. Comments on the Draft EIS will be considered in preparing the Final EIS.

Interested parties who do not wish to submit comments at this time, but who would like to receive a copy of the draft EIS should contact Kristin Kerwin as provided in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on this 19th day of August, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–19633 Filed 8–22–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, September 16, 2008, 8:30 a.m.–5 p.m.; Wednesday, September 17, 2008, 8:30 a.m.–5 p.m.

ADDRESSES: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia, Phone: (703) 524–6400, Fax: (703) 524–8964.

FOR FURTHER INFORMATION CONTACT: E. Douglas Frost, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Phone: (202) 586–5619.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics

Tuesday, September 16, 2008

○ Engineering and Technology Panel and Roundtable Discussion

○ Communications and External Affairs Presentation and Roundtable Discussion

○ Waste and Materials Disposition Panel and Roundtable Discussion

Wednesday, September 17, 2008

○ EM Update Presentation and Roundtable Discussion

○ Round Robin: Top Three Site-Specific Issues and EM SSAB Accomplishments

○ Strategic Planning and Transition Panel and Roundtable Discussion

○ EM SSAB Roundtable Discussion

• Public Outreach and Recruitment Strategies

• Annual Reports and Member Surveys

• Product Development

Public Participation: The meeting is open to the public. Written statements may be filed either before or after the meeting with the Designated Federal Officer, E. Douglas Frost, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact E. Douglas Frost. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling E. Douglas Frost at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC on August 19, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–19632 Filed 8–22–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC). Federal Advisory Committee Act (Pub. L. No. 94–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, September 23, 2008, 9 a.m.–5:15 p.m.

Location: The meeting will be held at the L'Enfant Plaza Hotel located at 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. John Boger, Designated Federal Officer, U.S. Department of Energy, 19901 Germantown Rd, Germantown, MD 20874; telephone (301) 903–4495; e-mail *john.boger@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background:

The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide expert advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. The committee is composed of 12 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that cover such topics as the current status of the Global Nuclear Energy Partnership (GNEP), Next Generation of Nuclear Power, Nuclear Power 2010, and Idaho National Laboratory. The agenda may change to accommodate committee business. For updates, one is directed the NEAC Web site: *http://www.ne.doe.gov/neac/neNeacOverview.html.*

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Tuesday, September 23, 2008. Approximately one-half hour will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Dr. John Boger, 19901 Germantown Rd, Germantown, MD 20874, or e-mail *john.boger@hq.doe.gov.*

Minutes: The minutes of the meeting will be available by contacting Dr. John Boger at the address above or on the Department of Energy, Office of Nuclear Energy Web site at *http://www.ne.doe.gov/neac/neNeacOverview.html.*

Issued in Washington, DC on August 19, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–19631 Filed 8–22–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Revised Record of Decision for the Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Revised Record of Decision.

SUMMARY: The Department of Energy (DOE) is further revising [1] the Record of Decision (61 FR 25092; May 17, 1996) on the *Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel* (DOE/EIS–218, February 1996), to allow the United States to take title to spent nuclear fuel and target material from foreign research reactors located in countries of any income at locations other than the port of entry into the United States.

FOR FURTHER INFORMATION CONTACT: For further information on DOE's Foreign Research Reactor Spent Nuclear Fuel Acceptance Program or this Revised Record of Decision, contact: Mr. Andrew Bieniawski, Assistant Deputy Administrator for Defense Nonproliferation, Office of Global Threat Reduction (NA–21), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Attn: 955 L'Enfant, 202–586–9215.

For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE, with the Department of State as a cooperating agency, issued the *Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel* (FRR SNF EIS, DOE/EIS–218) in February 1996. The Record of Decision was issued on May 13, 1996, and was published in the **Federal Register** on May 17, 1996 (61 FR 25092). In the FRR SNF EIS, DOE and the Department of State considered the potential impacts of a proposed policy to manage U.S.-origin spent nuclear fuel and target material from foreign research reactors. After consideration of public comments submitted on the Draft and Final EIS, DOE, in consultation with the Department of State, decided to implement the proposed policy as identified in the Preferred Alternative contained in the Final EIS, subject to additional stipulations specified in Section VII of the Record of Decision. The Record of Decision stated, ''DOE would take title to the foreign research reactor spent nuclear fuel and target material that is shipped by sea after it is unloaded from the ship at the port of entry * * *'' In its initial decision, DOE announced that eligible spent fuel that is irradiated and discharged from reactors before May 13, 2006, is eligible for acceptance through May 12, 2009. DOE later extended the program for an additional 10 years, until May 12, 2016, for irradiation of eligible fuel, and until May 12, 2019, for fuel acceptance (69 FR 69901; December 1, 2004).

DOE subsequently determined that the need may arise during implementation of the policy for the United States to take title to spent nuclear fuel and target material from foreign research reactors located in countries with other-than-high-income economies at locations other than the port of entry into the United States. Foreign governments had raised a concern in cases where transportation casks from multiple countries were on a single vessel regarding who would be liable for any potential damage when spent fuel from one country is in the territory of another during the shipment. DOE was informed that shipowners willing to transport spent nuclear fuel from these countries without coverage under the Price-Anderson Act had not been identified. After determining that the point at which title to the spent nuclear fuel and target material transfers from the reactor operator to the United States had no effect on the physical processes that would take place under the acceptance policy, and thus would not have any effect on the potential impacts to the environment, workers, or the public, DOE issued its Revision to the Record of Decision (61 FR 38720; July 25, 1996) to allow DOE to take title to spent nuclear fuel and target material from foreign research reactors located in countries with other-than-high-income economies, as defined in the Final EIS, at locations other than the port of entry into the United States. This revised policy did not extend to reactors in countries with high-income economies, since reactor operators in these countries, at that time, were able to provide sufficient liability insurance for transporting their own spent nuclear fuel to the United States.

Reason for the Revision

Recently, the need has arisen during implementation of the policy for the United States also to take title to spent nuclear fuel and target material from foreign research reactors located in countries with high-income economies at locations other than the port of entry into the United States.

Nuclear insurance pools covering individual reactor operators in countries with high-income economies have begun to require additional coverage. This rise in premiums affects, in particular, some smaller foreign research reactors in high-income economy countries that are in many cases operated by educational and research institutions that do not have the funding to pay for additional coverage, estimated to cost approximately $50,000 per shipping participant. Since some smaller foreign research reactors would have significant difficulties obtaining additional funding, they could decide not to participate at all in future shipments. One reactor in a high-income economy country recently refused to participate in a shipment without reimbursement of additional insurance costs.

DOE anticipates that liability insurance costs will continue to increase in the coming years for reactors in countries of all incomes. If research reactors in high-income economy countries are increasingly unable to participate in shipments due to lack of liability insurance, the program's nonproliferation goal of repatriating U.S.-origin highly enriched uranium would be jeopardized.

DOE's experience since 1996 in taking title to material from reactors in other-than-high-income economy countries has confirmed that the point at which title to the spent nuclear fuel and target material transfers from the reactor operator to the United States has no effect on the physical processes that take place under the acceptance policy. There are, for example, no changes in the applicable requirements or handling practices that ensure worker and public safety and environmental protection. Thus, the location of title change does not have any effect on the potential impacts to the environment.

Therefore, in place of the current policy that allows DOE to take title to spent nuclear fuel or target material at a location other than the U.S. port of entry only from foreign research reactors in other-than-high-income-economy countries, DOE is herein revising the Record of Decision to allow the title transfer location for spent nuclear fuel or target material from reactors located in countries of any income to be determined on a case-by-case basis by DOE, and the terms and conditions of the title transfer to be specified in DOE's individual contracts with the reactor operators. As with the policy in the prior Revised Record of Decision (61 FR 38720; July 25, 1996), title could

[1] The Record of Decision was previously revised three times: July 25, 1996 (61 FR 38720); July 19, 2000 (65 FR 44767); and December 1, 2004 (69 FR 69901).

transfer as early as the departure of the loaded cask from the reactor site or at the foreign port-of-origin, or as late as entry into the United States.

Decision

For the reasons set forth above, Section VII (''Decision'') of the Record of Decision (61 FR 25092; May 17, 1996) as previously revised (61 FR 38720; July 25, 1996) is further revised by replacing the current Paragraph E with a new Paragraph E to read as follows:

E. The United States may take title to the spent nuclear fuel and target material of research reactors from countries of any income at a location other than the port of entry into the United States. On a case-by-case basis, the United States will determine whether it is in its best interests, with regard to the execution of this policy, to take title to certain spent nuclear fuel and target material before it reaches the port of entry into the United States. The title transfer location will be specified in the contract with the affected reactor operator. In implementing this policy, the Administrator for the National Nuclear Security Administration must make, on a case-by-case basis, any decision to accept title to foreign research reactor spent nuclear fuel outside the United States. The authority to make this decision cannot be delegated.

In addition, Section IX (''Basis for the Decision''), Paragraph G (''Title Transfer Location'') of the Record of Decision is revised to read as follows:

G. Title Transfer Location—The alternative points at which DOE might take title to the spent nuclear fuel and target material are discussed in Sections 2.2.1.4 and 2.2.2.4 of the Final EIS. The point at which title will be transferred has no effect on the physical processes that would take place, and thus will not have any effect on the impacts on the environment, workers, or the public. However, the point of title transfer does affect financial responsibility for risks associated with the shipments.

Under United States law, the Price-Anderson Act would provide indemnification coverage for spent nuclear fuel and target material shipments from foreign research reactors upon entry of material into the United States regardless of when title is transferred to the United States. However, Price-Anderson coverage outside U.S. territory is provided only if the material is owned by, and used by, or under contract with the United States. For countries with other-than-high-income economies, DOE has provided Price-Anderson Act coverage on a case-by-case basis per the Revised Record of Decision issued in 1996 (61 FR 38720; July 25, 1996). Recently, reactor operators in countries with high-income economies have been unable to afford nuclear liability insurance due to increasing costs.

The approach for transfer of title discussed in Section VII.E. permits DOE to take title to spent fuel at locations other than the U.S. port of entry, regardless of the income status of the country repatriating the spent fuel or target material to the United States. This policy revision allows DOE, on a case-by-case basis, to extend Price-Anderson Act coverage and assume financial responsibility for shipments from the point at which DOE takes title. This removes the need for reactors for whom sufficient liability insurance is unaffordable to purchase such insurance for shipment to the U.S. port of entry. This provision will provide a mechanism whereby liability coverage can be provided for segments of the transportation process that the reactor operators are unable themselves to provide. In implementing this policy, the Administrator for the National Nuclear Security Administration must make, on a case-by-case basis, any decision to accept title to foreign research reactor spent nuclear fuel outside the United States. The authority to make this decision cannot be delegated.

The revision of the Record of Decision set forth in this Notice complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021. Because there are no environmental impacts associated with changing the title transfer location, no further environmental review is required under the National Environmental Policy Act or Executive Order 12114 (January 4, 1979) in order to effectuate the revision.

Issued in Washington, DC, on August 13, 2008.

Thomas P. D'Agostino,

Under Secretary for Nuclear Security and Administrator, National Nuclear Security Administration.

[FR Doc. E8–19630 Filed 8–22–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 20, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP01–503–008.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America LLC submits Original Sheet 477A et al. to FERC Gas Tariff, Seventh Revised Volume 1, effective 9/15/08.

Filed Date: 08/15/2008.

Accession Number: 20080819–0109.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP06–231–008. RP06–365–006.

Applicants: Norstar Operating, LLC v. *Columbia Gas Transmission Corporation.*

Description: Columbia Gas Transmission Corporation submits Second Substitute Fifth Revised Sheet 406 to FERC Gas Tariff, Second Revised Volume 1, to be effective 6/1/07.

Filed Date: 08/18/2008.

Accession Number: 20080820–0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: RP08–34–003.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Kinder Morgan Illinois Pipeline, LLC submits First Revised Sheet 213 et al. to FERC Gas Tariff, Original Volume 1, to be effective 9/15/08.

Filed Date: 08/15/2008.

Accession Number: 20080819–0110.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–464–000.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Request for Extension of Time of Stingray Pipeline Company, L.L.C.

Filed Date: 07/30/2008.

Accession Number: 20080730–5019.

Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: RP08–466–000.

Applicants: Mississippi Canyon Gas Pipeline, L.L.C.

Description: Request of Mississippi Canyon Gas Pipeline, L.L.C. for Extension of Time to Implement an Electronic Short-Term Capacity Release Bidding System.

Filed Date: 07/30/2008.

Accession Number: 20080730–5023.

Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: RP08–469–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Request for Limited Waiver of Order No. 712 Implementation Date of Gulf South Pipeline Company, LP.

Filed Date: 07/30/2008.

Accession Number: 20080730–5050.

Comment Date: 5 p.m. Eastern Time on Monday, August 25, 2008.

Docket Numbers: RP08–495–001.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Second Revised Volume 1 et al. effective 9/1/08.
Filed Date: 08/15/2008.
Accession Number: 20080818–0218.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–500–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Fiftieth Revised Sheet 17 from its FERC Gas Tariff, Second Revised 1 and Twenty-Second Sheet 14 from its FERC Gas Tariff 2 effective 10/1/08.
Filed Date: 08/15/2008.
Accession Number: 20080818–0219.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–501–000.
Applicants: ANR Storage Company.
Description: ANR Storage Company submits Thirteenth Revised Sheet 5 from its FERC Gas Tariff 1 and Fifteenth Revised Sheet 1(a) from its FERC Gas Tariff 2 effective 10/1/08.
Filed Date: 08/15/2008.
Accession Number: 20080818–0220.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–502–000.
Applicants: Cheyenne Plains Gas Pipeline Company LLC.
Description: Cheyenne Plains Gas Pipeline Company submits Original Volume 1 et al. to its FERC Gas Tariff et al. effective 10/1/08.
Filed Date: 08/15/2008.
Accession Number: 20080818–0221.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–504–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits First Revised Third Revised Sheet 29.01 to its FERC Gas Tariff, Second Revised 1–A.
Filed Date: 08/15/2008.
Accession Number: 20080818–0223.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–505–000.
Applicants: Mojave Pipeline Company.
Description: Mojave Pipeline Company submits Twenty-Second Revised Sheet 11 to its FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 08/15/2008.
Accession Number: 20080818–0224.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–506–000.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company, LTD submits Twenty-First Revised Sheet 48 to its FERC Gas Tariff, Second Revised 2.
Filed Date: 08/15/2008.
Accession Number: 20080818–0225.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–507–000.
Applicants: Dominion South Pipeline Company, LP.
Description: Dominion South Pipeline Company, LP submits Third Revised Sheet 50 and 51 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.
Filed Date: 08/15/2008.
Accession Number: 20080819–0108.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–508–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc submits its Thirty-Fifth Revised Sheet 31 et al. to FERC Gas Tariff, Third Revised Volume 1.
Filed Date: 08/15/2008.
Accession Number: 20080819–0107.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–509–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Dominion Cove Point LNG, LP submits the Ninth Revised Sheet 5 et al. to FERC Gas Tariff, Original Volume 1.
Filed Date: 08/15/2008.
Accession Number: 20080819–0106.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: RP08–510–000.
Applicants: Blue Lake Gas Storage Company.
Description: Blue Lake Gas Storage Company submits Thirteenth Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/08.
Filed Date: 08/18/2008.
Accession Number: 20080820–0103.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: RP08–511–000.
Applicants: Tuscarora Gas Transmission Company.
Description: Tuscarora Gas Transmission Company submits Tenth Revised Sheet 4 et al. to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.
Filed Date: 08/18/2008.
Accession Number: 20080820–0104.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: RP08–512–000.
Applicants: North Baja Pipeline, LLC.
Description: North Baja Pipeline, LLC submits Sixth Revised Sheet 4 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/08.
Filed Date: 08/18/2008.
Accession Number: 20080820–0105.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: RP08–513–000.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corp submits Fourteenth Revised Sheet 4 et al. to FERC Gas Tariff, Third Revised Volume 1–A, to be effective 10/1/08.
Filed Date: 08/18/2008.
Accession Number: 20080820–0106.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 02, 2008.

Docket Numbers: CP06–5–011.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc submits Substitute Original Sheet No. 130 to FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission's 12/21/06 order.
Filed Date: 08/18/2008.
Accession Number: 20080820–0102.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Docket Numbers: CP08–17–002.
Applicants: Cimarron River Pipeline, LLC.
Description: Cimarron River Pipeline, LLC submits Substitute Original Sheet No. 17 of its proposed FERC Gas Tariff, Original Volume No. 1, with an effective date of 9/1/08.
Filed Date: 08/14/2008.
Accession Number: 20080818–0088.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 27, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–19644 Filed 8–22–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0522; FRL–8373–3]

North American Free Trade Agreement Technical Working Group on Pesticides; Proposed Five-Year Strategy, 2008-2013; Notice of Availability

Correction

In notice document E8–16381 beginning on page 42798 in the issue of Wednesday, July 23, 2008, make the following correction:

On page 42798, in the third column, under the **DATES** heading, in the second line ''August 18, 2008'' should read ''August 22, 2008''.

[FR Doc. Z8–16381 Filed 8–22–08; 8:45 am]

BILLING CODE 1505–01–D

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 11, 2008, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes:*
August 14, 2008.

B. *New Business:*
- Bookletter on Director Candidate Disclosures.

C. *Reports:*
- Mission-Related Investments-Annual Report.
- FCS Building Association Quarterly Report.

*Closed Session:**
- OSMO Supervisory and Oversight Activities.

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: August 21, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–19790 Filed 8–21–08; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 15, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 24, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0695.

Title: Section 87.219, Automatic Operations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 60 respondents; 60 responses.

Estimated Time Per Response: .7 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 42 hours.

Annual Cost Burden: $6,468.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements, recordkeeping and/or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission has adjusted the number of respondents and responses due to an increase in the number of respondents for this information collection. Therefore, we are reporting a +7 hour adjustment in the total annual burden.

Section 87.219 requires that if airports have control towers or Federal Aviation Administration (FAA) flight service stations, and more than one licensee wants to have an automated aeronautical advisory station (Unicom), they must write an agreement outlining who will be responsible for the Unicom's operation, sign the agreement and keep a copy of the agreement with each licensee's station authorization.

Specifically, only one automated Unicom may be operated at an uncontrolled airport. Prior to the operation of an automated Unicom at an airport with more than one Unicom licensee, all of the licensees at that airport must sign a letter of agreement stating which licensee(s) control the automated Unicom operations, and, if control is to be shared among several operators, how that control will be divided or scheduled. The original or a copy of the letter of agreement must be kept with each licensee's station records. Within 90 days of the date upon which a new Unicom operator is licensed at an airport where more than one Unicom is authorized, and an automated Unicom is being operated, an amended letter of agreement that includes the new licensee's signature must be sign or automated Unicom operations must cease.

The information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating Unicom.

OMB Control No.: 3060–0740.

Title: Section 95.1015, Disclosure Policies.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 26 respondents; 26 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 26 hours.

Annual Cost Burden: $1,300.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements, recordkeeping and/or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Manufacturers of Low Power Radio Service (LPRS) transmitters used for auditory assistance, health care assistance, and law enforcement tracking purposes must include with each transmitting device the following statement: ''This transmitter is authorized by rule under the Low Power Radio Service (47 CFR Part 95) and must not cause harmful interference to TV reception or United States Navy SPASUR installations. You do not need an FCC license to operate this transmitter. This transmitter may only be used to provide: auditory assistance to persons with disabilities, persons who require language translation, or persons in educational settings; health care services to the ill; law enforcement tracking services under agreement with a law enforcement agency; or automated maritime telecommunications system (AMTS) network control communications. Two-way voice communications and all other types of uses not mentioned above are expressly prohibited.''

Prior to operating a LPRS transmitter for AMTS purposes, an AMTS licensee must notify, in writing, each television station that may be affected by such operations, as defined in 47 CFR 80.215(h) of the Commission's rules. The notification provided with the station's license application is sufficient to satisfy this requirement if no new television stations would be affected.

The information is used by Commission staff and affected television stations to be aware of the location of potential harmful interference from AMTS operations. If this information was not available, the location of potential harmful interference from AMTS operations would be negatively affected.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19548 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 12, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 24, 2008. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0223.

Title: Section 90.129, Supplemental Information to be Routinely Submitted with Applications, Non-type Accepted Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and State, local or tribal governments.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: .33 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 4 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: There is no need for confidentiality. This information collection does contain personally identifiable information (PII) on individuals. The FCC maintains a system of records notice (SORN), FCC/WTB–1, ''Wireless Services Licensing Records,'' that covers the collection, purpose(s), storage, safeguards, and disposal of the PII that individual private land mobile radio licensees maintain under 47 CFR 90.129.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Section 90.129 requires that applicants proposing to use transmitting equipment that is not type-certified by FCC laboratory personnel to provide a description of the proposed equipment. This assures that the equipment is capable of performing within certain tolerances that limit the interference potential of the device.

Additionally, this rule section requires that each application under this part that is received by the Commission, through the application process outlined in 47 CFR part 1, subpart F, must be accompanied by the applicable supplementary information described in the paragraphs in 47 CFR 90.129. The information is used by FCC engineers to determine the interference potential of the proposed equipment.

OMB Control No.: 3060–0770.

Title: Sections 61.49 and 69.4, Price Cap Performance Review for Local Exchange Carriers, FCC 99–206 (New Services).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 21 respondents; 21 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 210 hours.

Annual Cost Burden: $16,275.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission is not requesting that the respondents submit confidential information to the FCC. However, respondents who wish to request confidential treatment of the information they believe to be confidential, may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

In the Fifth Report and Order in FCC 99–206, the Commission permitted price cap local exchange carriers (LECs) to introduce new services on a streamlined basis, without prior approval. The Commission adopted rules to eliminate the public interest showing required by section 69.4(g) and eliminated the new services test (except in the case of loop-based new services) required under sections 69.49(f) and (g). These modifications eliminated delays that existed for the introduction of new services as well as encouraging efficient investment and innovation.

The information is used by the Commission to determine whether this is in the public interest for the incumbent LEC to offer a proposed new switched access service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19549 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 13, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 24, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an email to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0989.

Title: Sections 63.01, 63.03, 63.04, Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 86 respondents; 86 responses.

Estimated Time Per Response: 1.5–12 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 959 hours.

Annual Cost Burden: $76,235.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. The FCC is not requiring applicants to submit confidential information to the Commission. If applicants want to request confidential treatment of the documents they submit to Commission, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

A Report and Order, FCC 02–78, adopted and released in March 2002 (Order), set forth the procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended, to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the Act, carriers must obtain FCC approval before constructing, acquiring, or operating an interstate transmission line. Acquisitions involving interstate common carriers require affirmative action by the Commission before the acquisition can occur.

This information collection contains filing procedures for domestic transfer of control applications under sections 63.03 and 63.04.

(a) Section 63.03 and 63.04 requires domestic section 214 applications involving domestic transfers of control, at a minimum, should specify: (1) The name, address and telephone number of each applicant; (2) the government, state, or territory under the laws of which each corporate or partnership applicant is organized; (3) the name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed; (4) the name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent); (5) certification pursuant to 47 CFR 1.2001 through 1.2003 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988; (6) a description of the transaction; (7) a description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area; (8) a statement as to how the application fits into one or more of the presumptive streamlined categories in section 63.03 or why it is otherwise appropriate for streamlined treatment; (9) identification of all other Commission applications related to the same transaction; (10) a statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure; (11) identification of any separately filed waiver request being sought in conjunction with the transaction; and (12) a statement showing how grant of the application will serve the public interest, convenience, and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets. Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant must submit information that satisfies the requirements of 47 CFR section 63.18. In the attachment to the international application, the applicant must submit information described in 47 CFR section 63.04(a)(6)–(a)(12).

When the Commission, acting through the Wireline Competition Bureau, determines that applicants have submitted a complete application qualifying for streamlined treatment, it shall issue a public notice commencing a 30-day review period to consider whether the transaction serves the public interest, convenience and necessity. Parties will have 14 days to file any comments on the proposed transaction, and applicants will be given 7 days to respond.

(b) Applicants are not required to file post-consummation notices of *pro forma* transactions, except that a post transaction notice must be filed with the Commission within 30 days of a *pro forma* transfer to a bankruptcy trustee or a debtor-in-possession. The notification can be in the form of a letter (in duplicate to the Secretary, Federal Communications Commission). The letter or other form of notification must also contain the information listed in sections (a)(1) through (a)(4) of section 63.04. A single letter may be filed for more than one such transfer of control. The information will be used by the Commission to ensure that applicants comply with the requirements of 47 U.S.C. 214.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19645 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

August 18, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Leslie Haney, *Leslie.Haney@fcc.gov*, (202) 418–1002.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1119.

OMB Approval Date: August 12, 2008.

Expiration Date: August 31, 2011.

Title: Information Collection regarding Redundancy, Resiliency and Reliability of 911 and E911 Networks and/or Systems as set forth in the Commission's Rules (47 CFR 12.3).

Form No.: Not applicable.

Estimated Annual Burden: 74 responses; 120 hours for local exchange carriers, 72 hours for commercial mobile radio service providers, and 40 hours for interconnected Voice over Internet Protocol service providers per response; 7,792 hours total per year.

Obligation to Respond: Mandatory.

Nature and Extent of Confidentiality: These reports will contain sensitive data and, for reasons of national security and the prevention of competitive injury to reporting entities, Section 12.3 of the Commission's rules specifically states that all reports will be afforded confidential treatment. Data in these reports will be considered confidential information that is exempt from routine public disclosure under the Freedom of Information Act (FOIA) Exemption 4. See 47 CFR 0.457 and 5 U.S.C. 552(b)(4); see also Homeland Security Presidential Directive 7, Part 10. These reports will be shared pursuant to a protective order with only the following three entities, if the entities file a request for the information: The National Emergency Number Association, The Association of Public Safety Communications Officials, and The National Association of State 9–1–1 Administrators. All other access to these reports must be sought pursuant to procedures set forth in 47 CFR 0.461. Notice of any requests for inspection of these reports will be provided to the filers of the reports pursuant to 47 CFR 0.461(d)(3).

Needs and Uses: The Commission, in order to help fulfill its statutory obligation to make wire and radio communications services available to all people in the United States for the purpose of the national defense and promoting safety of life and property, released an Order (FCC 07–107) that adopted a rule requiring analysis of 911 and E911 networks and/or systems and reports to the Commission on the redundancy, resiliency and reliability of those networks and/or systems (47 CFR 12.3). It is critical that Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service. These analyses and reports on the redundancy, resiliency, and dependability of 911 and E911 networks and systems will further this goal. This requirement will serve the public interest and further the Commission's statutory mandate to promote the safety of life and property through the use of wire and radio communication. See 47 U.S.C. 151.

This rule obligates local exchange carriers (LECs), commercial mobile radio service (CMRS) providers that are required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules, and interconnected Voice over Internet Protocol (VoIP) service providers to analyze their 911 and E911 networks and/or systems and file a detailed report to the Commission on the redundancy, resiliency and reliability of those networks and/or systems. LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules, non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules are exempt from this rule. The reports are due 120 days from the date that the Commission or its staff announces activation of the 911/E911 network and system reporting process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19648 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

August 19, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Leslie Haney, *Leslie.Haney@fcc.*gov, (202) 418–1002.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0805.

OMB Approval Date: July 2, 2008.

Expiration Date: July 31, 2011.

Title: 700 MHz Eligibility, Regional Planning Requirements, Interference Protection Criteria and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, 90.545, and 90.1211).

Form No.: Not applicable.

Estimated Annual Burden: 21,116 responses; 2.89236 hours per response; 61,075 hours total per year.

Obligation to Respond: Mandatory (47 CFR 90.523); required to obtain or retain benefits (47 CFR 90.523, 90,527, and 90.545); and voluntary.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Section 90.523 requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. *Section 90.527* requires 700 MHz regional planning committees to submit a plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 763–775 MHz and 793–805 MHz. It advocates a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that

seek inclusion in the plan to obtain future licenses are considered third party respondents. *Section 90.545* TV/DTV interference protection criteria, provides that public safety base, control and mobile transmitters in the 763–775 MHz and 793–805 MHz band applicants select one of three ways to meet the TV/DTV interference protection requirements: (1) By utilizing geographic separation in the rule; (2) submitting an engineering study to justify other separations, or (3) obtain concurrence from applicable TV/DTV station(s). *Section 90.1211* authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of 4940–4990 MHz (4.9 GHz) band. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff will use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. Information provided to, or exchanged among, third parties will be used to establish eligibility and to prevent harmful interference. This information collection request includes rules to govern the operation and licensing of the 700 MHz and 4.9 GHz bands to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19655 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 14, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before *October 24, 2008.* If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0742.

Title: Sections 52.21 through 52.33, Telephone Number Portability (47 CFR Part 52, Subpart C), CC Docket No. 95–116.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,990 respondents; 1,990 responses.

Estimated Time Per Response: 2 hours–50 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 5,850 hours.

Total Annual Cost: $91,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which the respondent believes is confidential, they may request confidential treatment of such information pursuant to Section 0.459 of the Commission's rules (*see* 47 CFR 0.459).

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) as an extension after this 60 day comment period to obtain the full three year clearance from them. There is no change to the reporting, recordkeeping and/or third party disclosure requirements. However, the Commission is reporting an adjusted increase in the number of respondents filing information with the Commission, and the tariff and cost support estimate has been reduced from 149 hours per response to 50 hours per response.

Thereby, reducing the total annual burden by 8,483 hours. There are four information collection requirements in

this information collection subject to OMB review and approval under the Paperwork Reduction Act. They are: (1) Requests for long-term number portability; (2) petitions to extend implementation deadlines; (3) tariffs and cost support; and (4) recordkeeping requirement. The reporting requirements and recordkeeping requirement are as follows:

(a) Requests for long-term number portability—Long-term number portability (LNP) must be provide by Local Exchange Carriers (LECs) and Commercial Mobile Radio Service (CMRS) providers in switches for which another carrier has made a specific request for number portability, according to the Commission's deployment schedule. Wireline carriers began providing LNP in 1998. CMRS providers began offering LNP in 2003.

(b) Petitions to extend implementation deadline—Carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed.

(c) Tariffs and cost support—Incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Commission certain number portability charges. Incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order. For instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new costs incremental to and resulting from the provision of long-term number portability.

(d) Recordkeeping requirement—Incumbent LECs are required to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability.

The information collected and used by the Commission to determine compliance with Section 251 of the Communications Act, as amended, and the Commission's LNP orders and rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19660 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

August 19, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before September 24, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167; and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via Internet at *Cathy.Williams@fcc.gov* and/or *PRA@fcc.gov*. Include in the comments the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918, or via Internet at *Cathy.Williams@fcc.gov*, and/or *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0854.

Title: Truth-in-Billing Format, CC Docket No. 98–170 and CG Docket No. 04–208.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,588 respondents; 41,858 responses.

Estimated Time per Response: 2 to 243 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 3,872,876 hours.

Total Annual Cost: $15,418,200.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), and section 258, 47 U.S.C. 258, Public Law No. 104–104, 110 Stat. 56. The Commission's implementing rules are codified at 47 CFR 64.2400–01.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 18, 2005, the Commission released *Truth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98–170, CG Docket No. 04–208, 20 FCC

Rcd 6448 (2005) (*2005 Second Report and Order and Second Further Notice*); published at 70 FR 29979 and 70 FR 30044, May 25, 2005, which determined, *inter alia,* that Commercial Mobile Radio Service providers no longer should be exempted from 47 CFR 64.2401(b), which requires billing descriptions to be brief, clear, non-misleading and in plain language. The *2005 Second Further Notice* proposed and sought comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications service providers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19661 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change The Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: AMERICAN EDUCATIONAL BROADCASTING, INC., Station KLKA, Facility ID 82692, BPED–20080627ABN, From GLOBE, AZ, To CASA GRANDE, AZ; CHRISTIAN BROADCASTING SYSTEM, LTD., Station WLCM, Facility ID 42076, BMP–20080620AEG, From CHARLOTTE, MI, To HOLT, MI; CITICASTERS LICENSES, L.P., Station WCKY–FM, Facility ID 70526, BPH–20080619AHQ, From TIFFIN, OH, To PEMBERVILLE, OH; COMMUNITY PUBLIC RADIO, INC., Station WIVL, Facility ID 122086, BMPED–20080703AGV, From PATTERSON, GA, To ATHENS, GA; EDUCATIONAL MEDIA FOUNDATION, Station KQBE, Facility ID 52035, BPH–20080617ADE, From ELLENSBURG, WA, To SELAH, WA; EDUCATIONAL MEDIA FOUNDATION, Station KAIC, Facility ID 78758, BPED–20080627ABL, From TUCSON, AZ, To MAMMOTH, AZ; ELECTRONIC APPLICATIONS RADIO SERVICE, INC., Station WBOO, Facility ID 174726, BMPED–20080702AAK, From MORGANFIELD, KY, To WADESVILLE, IN; FINCH JR, DANIEL W, Station WSGD, Facility ID 165958, BMPH–20080616ADB, From ARNOLDSBURG, WV, To FAYETTEVILLE, WV; FRANDSEN MEDIA COMPANY, LLC, Station KGNT, Facility ID 38274, BPH–20070119AFJ, From FORT BRIDGER, WY, To SMITHFIELD, UT; FRANKLIN COMMUNICATIONS, INC., Station WODB, Facility ID 54556, BPH–20080724AAL, From DELAWARE, OH, To WESTERVILLE, OH; HORIZON CHRISTIAN FELLOWSHIP, Station KHRW, Facility ID 166062, BMPH–20080718AHI, From WRIGHT, WY, To RANCHESTER, WY; JODESHA BROADCASTING, INC., Station KANY, Facility ID 164149, BPH–20080710AJA, From OCEAN SHORES, WA, To MONTESANO, WA; JODESHA BROADCASTING, INC., Station KSWW, Facility ID 60544, BPH–20080710AJE, From MONTESANO, WA, To OCEAN SHORES, WA; M. KENT FRANDSON, Station KNYN, Facility ID 87470, BPH–20070119AEV, From FRANKLIN , ID, To FORT BRIDGER, WY; MAGNUS, EDWARD F, Station NEW, Facility ID 165991, BMPH–20080519ABU, From WISHEK, ND, To LINTON, ND; MARIA E. JUAREZ, Station KDIL, Facility ID 161412, BMP–20080708AFX, From DILLON, MT, To TWIN FALLS, ID; MATINEE RADIO, LLC, Station KANM, Facility ID 164213, BMPH–20071106ABR, From MAGDALENA, NM, To SKYLINE–GANIPA, NM; NEW INSPIRATION BROADCASTING COMPANY, Station KFSH–FM, Facility ID 2195, BPH–20080626ABS, From ANAHEIM, CA, To LA MIRADA, CA; RADIO ONE LICENSES, LLC, Station WWIN–FM, Facility ID 54710, BPH–20080701ACS, From GLEN BURNIE, MD, To ARBUTUS, MD; RADIOACTIVE, LLC, Station WUPZ, Facility ID 164243, BPH–20080619AIU, From CRYSTAL FALLS, MI, To CHOCOLAY TOWNSHIP, MI; RADIOACTIVE, LLC, Station WTRW, Facility ID 164253, BPH–20080716AGZ, From TWO RIVERS, WI, To GLENMORE, WI; RADIOJONES, LLC, Station WXRS–FM, Facility ID 36212, BPH–20080724AAT, From SWAINSBORO, GA, To PORTAL, GA; ROGER L. HOPPE, II, Station KLIM, Facility ID 25185, BMP–20080613ACF, From LIMON, CO, To BLACK FOREST, CO; SAGA COMMUNICATIONS OF ILLINOIS, LLC, Station WXTT, Facility ID 28195, BPH–20080811AAS, From DANVILLE, IL, To SAVOY, IL; SKYWEST MEDIA L.L.C., Station KXML, Facility ID 164259, BMPH–20080411AHN, From SALMON, ID, To FAIRFIELD, ID; SUN VALLEY RADIO, INC, Station KKEX, Facility ID 63834, BPH–20070119AFG, From SMITHFIELD, UT, To PRESTON, ID; TEAM RADIO LLC, Station KLOR–FM, Facility ID 52678, BPH–20080708AOL, From PONCA CITY, OK, To CHENEY, KS; THE ST. LAWRENCE UNIVERSITY, Station WXLQ, Facility ID 176918, BMPED–20080813ABE, From VERGENNES, VT, To BRISTOL, VT; TICHENOR LICENSE CORPORATION, Station KPTI, Facility ID 479, BPH–20080711AEC, From CRYSTAL BEACH, TX, To WINNIE, TX; WAMC, Station WRUN, Facility ID 73969, BP–20060202AAI, From UTICA, NY, To NEW HARTFORD, NY; WHITE PARK BROADCASTING, INC., Station KHNA, Facility ID 166001, BMPH–20070117AFI, From HANNA, WY, To WARREN AIR FORCE BASE, WY; XANA DUKE RADIO PARTNERS, LLC, Station KZID, Facility ID 88203, BMPH–20080116AAX, From OROFINO, ID, To CULDESAC, ID.

DATES: Comments may be filed through October 24, 2008.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm* . A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E8–19646 Filed 8–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 2008.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. WebFive, MHC and WebFive Financial Services, Inc., both of Webster, Massachusetts; to become bank holding companies, by acquiring Webster Five Cents Savings Bank, Webster, Massachusetts.

Board of Governors of the Federal Reserve System, August 20, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–19629 Filed 8–22–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 2008.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Harleysville National Corporation and Harleysville National Bank and Trust Company, both of Harleysville, Pennsylvania; to acquire Willow Financial Bancorp, Inc., Wayne, Pennsylvania, and thereby acquire Willow Financial Bank, Wayne, Pennsylvania, and thereby engage in operating a savings and loan association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 20, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–19628 Filed 8–22–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice; initial publication of systems of records.

SUMMARY: This notice is being published pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, in order to update and create systems of records established by a Federal agency containing information on individuals.

EFFECTIVE DATE: This proposed action will be effective without further notice on September 24, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Comments may be sent to Megan Graziano, Assistant General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Megan Graziano at (202) 942–1660.

SUPPLEMENTARY INFORMATION: FRTIB–2, Personnel Security Files, updates Agency systems of records so that they are compliant with both HSPD–12 and the Privacy Act and conform to the Privacy Act notices on the standard forms which are used to initiate the HSPD–12 process. FRTIB–10, Identity Management Systems, covers the HSPD–12 process after adjudication determines the individual can receive an identification card. FRTIB–10 includes both mandatory and optional information necessary to the request for a card, registration, verification, and issuance procedures, the index/database of active and invalid cards, and the information stored on the cards. FRTIB–10 may include records maintained by agencies of individuals who entered and exited facilities or accessed systems.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted to the House Committee on Government Reform, the Senate Committee on Homeland Security and Government Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Thomas K. Emswiler,

General Counsel, Federal Retirement Thrift Investment Board.

FRTIB–2

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

SECURITY CLASSIFICATION:

Most personnel identity verification records are not classified. However, in some cases, records of certain individuals, or portions of some records, may be classified in the interest of national security.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to federal facilities, information technology systems, or information classified in the interest of

national security, including applicants for employment or contracts, federal employees, contractors, students, interns, volunteers, affiliates, individuals authorized to perform or use services provided in Agency, and individuals formerly in any of these positions. The system also includes individuals accused of security violations or found in violation of security policies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, former names, birth date, birth place, Social Security number, home address, phone numbers, employment history, residential history, education and degrees earned, names of associates and references and their contact information, citizenship, names of relatives, birth dates and places of relatives, citizenship of relatives, names of relatives who work for the federal government, criminal history, mental health history, drug use, financial information, fingerprints, summary report of investigation, results of suitability decisions, level of security clearance, date of issuance of security clearance, requests for appeal, witness statements, investigator's notes, tax return information, credit reports, security violations, circumstances of violation, and agency action taken.

Forms: SF–85, SF–85P, SF–86, SF–87, FRTIB–2008.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Depending upon the purpose of your investigation, the Federal Retirement Thrift Investment Board is authorized to ask for this information under Executive Orders 10450, 10865, 12333, and 12356; sections 3301 and 9101 of title 5, U.S. Code; sections 2165 and 2201 of title 42, U.S. Code; sections 781 to 887 of title 50, U.S. Code; parts 5, 732, and 736 of title 5, Code of Federal Regulations; and Homeland Security Presidential Directive 12 Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004.

PURPOSE(S):

The records in this system of records are used to document and support decisions regarding clearance for access to classified information, the ability to receive and the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, including students, interns, or volunteers to the extent their duties require access to federal facilities, information, systems, or applications. The records may be used to document security violations and supervisory actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Justice when: (a) The FRTIB; (b) any employee of the FRTIB in his or her official capacity; (c) any employee of the FRTIB in his or her individual capacity where the FRTIB or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FRTIB determines that the records are both relevant and necessary to the litigation and the use of such records by DOJ is therefore deemed by the FRTIB to be for a purpose compatible with the purpose for which the FRTIB collected the records.

To a court or adjudicative body in a proceeding when: (a) The FRTIB; (b) any employee of the FRTIB in his or her official capacity; (c) any employee of the FRTIB in his or her individual capacity where the FRTIB or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FRTIB determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the FRTIB to be for a purpose that is compatible with the purpose for which the FRTIB collected the records.

Except as noted on Forms SF–85, SF–85P, SF–86, or FRTIB–2008, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

To FRTIB contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

To any source or potential source from which information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

To a Federal, State, local, foreign, or tribal or other public authority the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative personnel or regulatory action.

To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy, consistent with Freedom of Information Act standards.

To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

To the Office of Management and Budget when necessary to the review of private relief legislation pursuant to OMB Circular No. A–19.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and electronically in a secure location.

RETRIEVABILITY:

Background investigation files are retrieved by name, Social Security number (SSN), or fingerprint.

SAFEGUARDS:

Records are maintained in secured areas and electronic systems and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are retained and disposed of in accordance with General Records Schedule 18, item 22a, approved by the National Archives and Records Administration (NARA). The records are disposed in accordance with FRTIB disposal policies which call for burning or shredding or purging from the Agency's electronic record keeping systems. Records are destroyed upon notification of death or not later than five years after separation or transfer of employee to another agency or department, whichever is applicable.

SYSTEM MANAGERS AND ADDRESS:

The Chief Financial officer maintains the Agency's electronic background information data and all other records in FRTIB–2. The Chief Financial Officer may be contacted in writing at 1250 H Street, NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should send inquiries to the Chief Financial Officer at Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. When requesting notification of or access to records covered by FRTIB–2, an individual should provide his/her full name, date of birth, Social Security number, and home address in order to establish identity.

RECORDS ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the Chief Financial Officer. Individuals must supply their full name for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the Chief Financial Officer. Individuals must furnish their full names for their records to be located and identified. Individuals should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete. Rules regarding amendment of Privacy Act records appear in 5 CFR part 1630.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the employee, contractor, or applicant via use of the SF–85, SF–85P, SF–86, or FRTIB–2008, and personal interviews; employers' and former employers' records; FBI criminal history records and other databases; financial institutions and credit reports; medical records and health care providers; educational institutions; interviews of witnesses such as neighbors, friends, co-workers, business associates, teachers, landlords, or family members; tax records; and other public records. Security violation information is obtained from a variety of sources, such as guard reports, security inspections, witnesses, supervisor's reports, audit reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Upon publication of a final rule in the **Federal Register**, this system of records will be exempt in accordance with 5 U.S.C. 552a(k)(5). Information will be withheld to the extent it identifies witnesses promised confidentiality as a condition of providing information during the course of the background investigation.

FRTIB–10

SYSTEM NAME:

Identity Management System (IDMS).

SYSTEM LOCATION:

Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington DC 20005. Some data covered by this system may be at Federal buildings and Federally-leased space where staffed guard-stations have been established in facilities that have installed the Personal Identity Verification (PIV) system, as well as the physical security offices or computer security offices of those locations.

SECURITY CLASSIFICATION:

Most identity records are not classified. However, in some cases, records of certain individuals, or portions of some records, may be classified in the interest of national security.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to Agency facilities, information technology systems, or information classified in the interest of national security, including applicants for employment or contracts, federal employees, contractors, students, interns, volunteers, affiliates, and individuals formerly in any of these positions. The system also includes individuals authorized to perform or use services provided in agency facilities.

The system does not apply to occasional visitors or short-term guests to whom the Federal Retirement Thrift Investment Board will issue temporary identification and credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on individuals issued credentials by the Federal Retirement Thrift Investment Board include the following data fields: Full name, Social Security number; date of birth; signature; image (photograph); fingerprints; hair color; eye color; height; weight; organization/office of assignment; company name; telephone number; copy of background investigation form; PIV card issue and expiration dates; personal identification number (PIN); results of background investigation; PIV request form; PIV registrar approval signature; PIV card serial number; emergency responder designation; copies of documents used to verify identification or information derived from those documents such as document title, document issuing authority, document number, document expiration date, document other information); level of national security clearance and expiration date; computer system user name; user access and permission rights, authentication certificates; digital signature information.

Records maintained on card holders entering Federal Retirement Thrift Investment Board facilities or using Federal Retirement Thrift Investment Board systems include: Name, PIV Card serial number; date, time, and location of entry and exit; company name; level of national security clearance and expiration date; digital signature information; computer networks/applications/data accessed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Federal Information Security Act (Pub. L. 104–106, sec. 5113); Electronic Government Act (Pub. L. 104–347, sec. 203); the Paperwork Reduction Act of 1995 (44 U.S.C. 3501); and the Government Paperwork Elimination Act (Pub. L. 105–277, 44 U.S.C. 3504); Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Federal Property and Administrative Act of 1949, as amended.

PURPOSES:

The primary purposes of the system are: (a) To ensure the safety and security of Federal Retirement Thrift Investment Board facilities, systems, or information, and our occupants and users; (b) To verify that all persons entering federal facilities, using federal information resources, or accessing classified information are authorized to do so; (c) to track and control PIV cards issued to persons entering and exiting the facilities, using systems, or accessing classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

To the Department of Justice when: (a) The FRTIB; or (b) any employee of the FRTIB in his or her official capacity; (c) any employee of the FRTIB in his or her individual capacity where the FRTIB or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FRTIB determines that the records are both relevant and necessary to the litigation and the use of such records by DOJ is therefore deemed by the agency to be for a purpose compatible with the purpose for which the FRTIB collected the records.

To a court or adjudicative body in a proceeding when: (a) The FRTIB; (b) any employee of the FRTIB in his or her official capacity; (c) any employee of the FRTIB in his or her individual capacity where the FRTIB or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FRTIB determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the FRTIB to be for a purpose that is compatible with the purpose for which the agency collected the records.

Except as noted on Forms SF–85, SF–85P, SF–86, or FRTIB–2008, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

To FRTIB contractors, grantees, or volunteers who have been engaged to assist the FRTIB in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

To a Federal, State, local, foreign, or tribal or other public authority the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative personnel or regulatory action.

To the Office of Management and Budget when necessary to the review of private relief legislation pursuant to OMB Circular No. A–19.

To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

To notify another federal agency when, or verify whether, a PIV card is no longer valid.

To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy, consistent with Freedom of Information Act standards.

Note: Disclosures within the Federal Retirement Thrift Investment Board of data pertaining to date and time of entry and exit of an agency employee working in the District of Columbia may not be made to supervisors, managers or any other persons (other than the individual to whom the information applies) to verify employee time and attendance record for personnel actions because 5 U.S.C. 6106 prohibits Federal Executive agencies (other than the Bureau of Engraving and Printing) from using a recording clock within the District of Columbia, unless used as a part of a flexible schedule program under 5 U.S.C. 6120 *et seq.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and electronically in a secure location.

RETRIEVABILITY:

Identity records are retrieved by name, Social Security number (SSN), or fingerprint.

SAFEGUARDS:

Records are maintained in secured areas and electronic systems and are available only to authorized personnel whose duties require access. Access to individuals working at guard stations will be password-protected; each person granted access to the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice will appear on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the client PCs at the guard

stations and badging office will be encrypted. Backup tapes will be stored in a locked and controlled room in a secure, off-site location. An audit trail is maintained and reviewed periodically to identify unauthorized access. Persons given roles in the PIV process will be required to complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information.

RETENTION AND DISPOSAL:

These records are retained and disposed of in accordance with General Records Schedule 18, item 22a, approved by the National Archives and Records Administration (NARA). The records are disposed in accordance with our disposal policies which call for burning or shredding or purging from the Agency's electronic record keeping systems. Records are destroyed upon notification of death or not later than five years after separation or transfer of employee to another agency or department, whichever is applicable.

Records relating to persons' access covered by this system are retained in accordance with General Records Schedule 18, Item 17 approved by the National Archives and Records Administration (NARA). The records are disposed in accordance with our disposal policies which call for burning or shredding or purging from the Agency's electronic record keeping systems. Unless retained for specific, ongoing security investigations, records are maintained for two years and then destroyed.

All other records relating to individuals are retained and disposed of in accordance with General Records Schedule 18, item 22a, approved by NARA. The records are disposed in accordance with our disposal policies which call for burning or shredding or purging from the Agency's electronic record keeping systems. Records are destroyed upon notification of death or not later than five years after separation or transfer of employee, whichever is applicable.

In accordance with HSPD–12, PIV Cards are deactivated within 18 hours of cardholder separation, loss of card, or expiration. The information on PIV Cards is maintained in accordance with General Records Schedule 11, Item 4. PIV Cards are destroyed by cross-cut shredding no later than 90 days after deactivation.

SYSTEM MANAGERS AND ADDRESS:

The Chief Financial Officer maintains the Agency's electronic identity data and all other records in FRTIB–10. The Chief Financial Officer may be contacted in writing at 1250 H Street, NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should send inquiries to the Chief Financial Officer at Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. When requesting notification of or access to records covered by FRTIB–10, an individual should provide his/her full name, date of birth, social security number, and home address in order to establish identity.

RECORDS ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the Chief Financial Officer. Individuals must supply their full names for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the Chief Financial Officer. Individuals must furnish full name for their records to be located and identified. Individuals should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete. Rules regarding amendment of Privacy Act records appear in 5 CFR part 1630.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the employee, contractor, or applicant via use of the SF–85, SF–85P, SF–86, or FRTIB–2008, and personal interviews; employers' and former employers' records; FBI criminal history records and other databases; financial institutions and credit reports; medical records and health care providers; educational institutions; interviews of witnesses such as neighbors, friends, co-workers, business associates, teachers, landlords, or family members; tax records; and other public records. Security violation information is obtained from a variety of sources, such as guard reports, security inspections, witnesses, supervisor's reports, audit reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Upon publication of a final rule in the **Federal Register**, this system of records will be exempt in accordance with 5 U.S.C. 552a(k)(5). Information will be withheld to the extent it identifies witnesses promised confidentiality as a condition of providing information during the course of the background investigation.

[FR Doc. E8–19590 Filed 8–22–08; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Family Violence Prevention and Services: Grants to States; Native American Tribes and Alaskan Native Villages; and State Domestic Violence Coalitions.

OMB No.: 0970–0280.

Description: The Family Violence Prevention and Services Act (FVPSA), as amended authorizes the Department of Health and Human Services to award grants to States, Territories, Tribes and Tribal organizations, and State Domestic Violence Coalitions for family violence prevention and intervention activities. The proposed information collection activities will be used to make grant decisions and to monitor grant performance.

Respondents: State agencies administering FVPSA grants; Tribal governments and Tribal organizations; and State Domestic Violence Coalitions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
FVPSA State Grant Application	53	1	10	530
FVPSA Tribal Grant Application	200	1	10	2,000

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
FVPSA State Domestic Violence Coalition Application	52	1	10	520
FVPSA State Grant Performance Report	53	1	15	795
FVPSA Tribal Grant Performance Report	200	1	15	3,000

Estimated Total Annual Burden Hours: 6,845.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: August 18, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–19441 Filed 8–22–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Performance Measures for Healthy Marriage and Promoting Responsible Fatherhood Grant Programs.

OMB No.: New Collection.

Description: The Office of Family Assistance (OFA), Administration for Children and Families (ACE), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget (OMB) for the collection of performance measures from grantees for the Healthy Marriage and Promoting Responsible Fatherhood discretionary grant programs. The performance measure data obtained from the grantees will be used by OFA to report on the overall performance of this grant program and to inform the Program Assessment Rating Tool (PART) process if the program is selected for PART review.

Data will be collected from all 123 Healthy Marriage and 99 Responsible Fatherhood grantees in the CPA program. Grantees will report on program outputs and outcomes in such areas as participants improvement in knowledge, skills, attitudes, and behaviors related to healthy marriage and responsible fatherhood. Grantees will be asked to input data for selected outputs and outcomes for activities funded under the grant. Grantees will extract data from program records and will report the data twice yearly through an on-line data collection tool. Training and assistance will be provided to grantees to support this data collection process.

Respondents: Office of Family Assistance Funded Healthy Marriage and Promoting Responsible Fatherhood Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance measure reporting form	222	2	0.60	266.40

Estimated Total Annual Burden Hours: 266.40.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 18, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E8–19559 Filed 8–22–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Evaluation of the Transitional Living Program (TLP).

OMB No.: New Collection.

Description: The Runaway and Homeless Youth Act (RHYA), as amended by Public Law 106–71 (42 U.S.C. 5701 *et seq.*), provides for the Transitional Living Program (TLP), a residential program lasting up to 18 months designed to prepare older homeless youth ages 16–21 for a healthy and self-sufficient adulthood. Section 119 of RHYA requires a study on the long-term housing outcomes of youth after exiting the program. In addition to collecting information on housing outcomes, the study will also consider the living, employment, education, and family situation of the youth before and after their time in the TLP. This information will be used to better understand the most effective practices in improving long-term outcomes of youth in an effort to guide program improvements.

Respondents: (1) Youth ages 16–21 participating in Transitional Living Programs and (2) the Executive Director and Program Manager representing TLP grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grantee Survey	70	1	1	70
	760	1	0.50	380
	760	1	0.50	380
	760	1	0.50	380
	760	1	0.50	380

Estimated Total Annual Burden Hours: 1,590.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 18, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–19561 Filed 8–22–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level from a State Program Funded Under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0004.

Description: The Department of Health and Human Services is required to collect these data under section 1124 of Title I of the Elementary and Secondary Education Act, as amended by Public Law 103–382. The data are used by the U.S. Department of Education for allocation of funds for programs to aid disadvantaged elementary and secondary students. Respondents include various components of State Human Service agencies.

Respondents: The 52 respondents include the 50 States, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Statistical Report on Children in Foster Homes and Children Receiving Payments in Excess of the Poverty Level From a State Program Funded Under Part A of Title IV of the Social Security Act	52	1	264.35	13,746.20

Estimated Total Annual Burden Hours: 13,746.20

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: August 19, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–19583 Filed 8–22–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Performance Measures for Healthy Marriage and Promoting Responsible Fatherhood Grant Programs.

OMB No.: New Collection.

Description: The Office of Family Assistance (OFA), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget (OMB) for the collection of performance measures from grantees for the Healthy Marriage and Promoting Responsible Fatherhood discretionary grant programs. The performance measure data obtained from the grantees will be used by OFA to report on the overall performance of this grant program and to inform the Program Assessment Rating Tool (PART) process if the program is selected for PART review.

Data will be collected from all 123 Healthy Marriage and 99 Responsible Fatherhood grantees in the OFA program. Grantees will report on program outputs and outcomes in such areas as participants_ improvement in knowledge, skills, attitudes, and behaviors related to healthy marriage and responsible fatherhood. Grantees will be asked to input data for selected outputs and outcomes for activities funded under the grant. Grantees will extract data from program records and will report the data twice yearly through an on-line data collection tool. Training and assistance will be provided to grantees to support this data collection process.

Respondents: Office of Family Assistance Funded Healthy Marriage and Promoting Responsible Fatherhood Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance measure reporting form	222	2	0.60	266.40

Estimated Total Annual Burden Hours: 266.40

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 19, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–19587 Filed 8–22–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Regional Partnership Grant (RPG) Program Data Collection.

OMB No.: New Collection.

Description:

On September 30, 2007, the Administration for Children and Families (ACE), Children's Bureau awarded multi-year grants to 53 regional partnerships grantees (RPGs) to improve the safety, permanency and well-being of children affected by methamphetamine or other substance abuse who have been removed or are at-risk of removal from their home. The Child and Family Services Improvement Act of 2006, the authorizing legislation for the RPG program, required that a set of performance indicators be established

to periodically assess the grantees' progress on achieving certain outcomes. The legislation mandated that these performance indicators be developed through a consultative process involving ACE, the Substance Abuse and Mental Health Services Administration (SAMHSA), and representatives of the State or Tribal agencies who are members of the regional partnerships.

The final set of RPG performance indicators was approved by ACF and disseminated to the funded grantees in January 2008. It includes a total of 23 indicators across four outcome domains: child/youth (9 indicators), adult (7 indicators), family/relationship (5 indicators), and regional partnership/service capacity (2 indicators). It also includes a core set of child and adult demographic elements that will provide important context needed to properly analyze, explain and understand the outcomes. No other national data collection measures these critical child, adult, family, and RPG outcomes specifically for these children and families. The data also will have significant implications for policy and program development for child well-being programs nationwide.

The purpose of this request is to obtain OMB approval to collect this legislatively required performance and outcome data from the RPGs.

To minimize grantee data collection and reporting burden, many of the data elements are already being collected by counties and States in order to report Federally-mandated data for the Adoption and Foster Care Analysis and Reporting System (AFCARS), the Treatment Episode Data Set (TEDS) and the National Outcome Measures (NOMs); in addition, all States voluntarily submit data for the Federal National Child Abuse and Neglect Data System (NCANDS). Therefore, most child welfare data elements included in the RPG performance measures can be found in a State's automated case management system, which is often a Federally-funded Statewide Automated Child Welfare Information System (SACWIS) TEDS admission and discharge data are collected by State substance abuse agencies according to their own information systems for monitoring substance abuse treatment admissions and transmitted monthly or quarterly to the SAMHSA contractor.

In short, as a result of prior Federal government reporting requirements, States are already collecting several data elements needed by the RPGs. The RPGs can download information from these existing State child welfare and substance abuse treatment data systems to obtain data to monitor their RPG program outcomes, thereby reducing the amount of primary data collection needed.

Beginning in year two, grantees will submit a data file with their required indicator data, according to their final set of indicators, every six months.

Respondents: RPG Grantees.

ANNUAL BURDEN ESTIMATES

Information collection	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Private Sector	22	2	175.5	7,722
State, Local, or Tribal Governments	31	2	175.5	10,881

Estimated Total Annual Burden Hours: 18,603

Additional Information: ACE is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by September 30, 2008. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACE, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Dated: August 18, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E8–19443 Filed 8–22–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0144]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Certification to Accompany Drug, Biological Product, and Device Applications or Submissions (Form FDA 3674)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 24, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0616. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Certification to Accompany Drug, Biological Product, and Device Applications or Submissions (Form FDA 3674) (OMB Control Number 0910–0616) — Extension

The information required under section 402(j)(5)(B) of the Public Health Service Act (PHS Act) (42 U.S.C. 282(j)(5)(B)) will be submitted in the form of a certification to accompany applications and submissions currently submitted to FDA under part 312 (21

CFR part 312) and 21 CFR part 314 (human drugs) and approved under OMB control numbers 0910–0014 (expires May 31, 2009) and 0910–0001 (expires May 31, 2011), respectively; submitted to FDA under part 312 and 21 CFR part 601 (biological products) and approved under OMB control numbers 0910–0014 and 0910–0338 (expires June 30, 2010); and submitted to FDA under 21 CFR parts 807 and 814 (devices) and approved under OMB control numbers 0910–0120 (expires August 31, 2010) and 0910–0231 (expires November 30, 2010), respectively.

Title VIII of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85) amended the PHS Act by adding section 402(j) (42 U.S.C. 282(j)). The new provisions require additional information to be submitted to the clinical trials data bank (ClinicalTrials.gov)[1] previously established by the National Institutes of Health/National Library of Medicine, including expanded information on clinical trials and information on the results of clinical trials. The provisions include new responsibilities for FDA as well as several amendments to the Federal Food, Drug, and Cosmetic Act (FD&C Act).

One new provision, section 402(j)(5)(B) of the PHS Act, requires that a certification accompany human drug, biological, and device product submissions made to FDA. Specifically, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 355, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification that all applicable requirements of section 402(j) of the PHS Act have been met. Where available, such certification must include the appropriate National Clinical Trial (NCT) numbers.

The proposed collection of information is necessary to satisfy the previously mentioned statutory requirement.

The importance of obtaining these data relates to adherence to the legal requirements for submissions to the clinical trials registry and results data bank and ensuring that individuals and organizations submitting applications or reports to FDA under the listed provisions of the FD&C Act or the PHS Act adhere to the appropriate legal and regulatory requirements for certifying to having complied with those requirements. The failure to submit the certification required by section 402(j)(5)(B) of the PHS Act, and the knowing submission of a false certification are both prohibited acts under section 301 of the FD&C Act (21 U.S.C. 331). Violations are subject to civil money penalties.

Investigational New Drug Applications

FDA's Center for Drug Evaluation and Research (CDER) received 1,837 investigational new drug applications (INDs) and 20,969 new IND amendments in Fiscal Year (FY) 2004. CDER received 4,764 annual reports in FY 2004. CDER anticipates that IND, amendment, and annual report submission rates will remain at or near this level in the near future.

FDA's Center for Biologics Evaluation and Research (CBER) received 206 new INDs and 826 new IND amendments in FY 2004. CBER received 878 annual reports in FY 2004. CBER anticipates that IND, amendment, and annual report submission rates will remain at or near this level in the near future.

The estimated total number of submissions (new INDs, new submissions, and annual reports) subject to mandatory certification requirements under 42 U.S.C. 282(j)(5)(B), section 402(j)(5)(B) of the PHS Act, is 27,570 for CDER plus 1,910 for CBER, or 29,480 submissions per year. The minutes per response is the estimated number of minutes that a respondent would spend preparing the information to be submitted to FDA under 42 U.S.C. 282(j)(5)(B), section 402(j)(5)(B) of the PHS Act, including the time it takes to type the necessary information.

Based on its experience reviewing INDs and consideration of the previous information, FDA estimated that approximately 15.0 minutes on average would be needed per response for certifications which accompany IND applications and submissions. It is assumed that most submissions to investigational applications will reference only a few protocols for which the sponsor/applicant/submitter has obtained a National Clinical Trial (NCT) number from ClinicalTrials.gov prior to making the submission to FDA. It is also assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

Marketing Applications/Submissions

In 2004, CDER and CBER received 214 new drug applications (NDA)/biologics license applications (BLA)/resubmissions and 4,451 NDA/BLA amendments for which certifications are needed. CDER and CBER received 259 efficacy supplements/resubmissions to previously approved NDAs/BLAs, and 1,273 labeling submissions in FY 2004. CDER received 7,753 annual reports and CBER received 629 annual reports in FY 2004. CDER and CBER anticipate that new drug/biologic, efficacy supplement, and annual report submission rates will remain at or near this level in the near future.

FDA's Center for Devices and Radiological Health (CDRH) received 51 new applications for premarket approvals (PMA), 364 510(k) submissions containing clinical information, and 9 applications for humanitarian device exemptions (HDE), for a total of 424 new applications/submissions in FY 2004. CDRH received 2,267 PMA/510(k)/HDE amendments in FY 2004. CDRH received 2,526 PMA/510(k)/HDE supplements in FY 2004. CDRH received 433 annual reports in FY 2004. CDRH anticipates that application, amendment, supplement, and annual report submission rates will remain at or near this level in the near future.

FDA's Office of Generic Drugs (OGD) received 563 abbreviated new drug applications (ANDAs) in FY 2004. OGD received 477 bioequivalence amendments/supplements and 723 labeling supplements in FY 2004. OGD received 5,173 annual reports in FY 2004. OGD anticipates that application, amendment, supplement, and annual report submission rates will remain at or near this level in the near future.

The estimated total number of new submissions (new marketing applications/submissions, amendments, supplements, and annual reports) subject to the mandatory certification requirements under 42 U.S.C. 282(j)(5)(B), section 402(j)(5)(B) of the PHS Act, is 14,579 for CDER and CBER, 5,650 for CDRH, plus 6,936 for OGD or 27,165 new submissions per year. The minutes per response is the estimated number of minutes that a respondent would spend preparing the information to be submitted to FDA under 42 U.S.C. 282(j)(5)(B), section 402(j)(5)(B) of the PHS Act, including the time it takes to type the necessary information and compile a list of relevant NCT numbers.

Based on its experience reviewing NDAs, BLAs, PMAs, HDEs, 510(k)s, and ANDAs and consideration of the previous information, FDA estimated

[1] FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.

that approximately 45.0 minutes on average would be needed per response for certifications which accompany NDA, BLA, PMA, HDE, 510(k), and ANDA applications and submissions. It is assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

In the **Federal Register** of March 5, 2008 (73 FR 11926), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received a number of comments concerning such issues as FDA's legal interpretation of the statutory language, clarification of the instructions to the form, concerns with FDA's estimates of the amount of time required to fill out the form, and suggestions for technical formatting changes to the form.

(Comment 1) A number of respondents maintained that, because section 402(j)(5)(B) of the PHS Act does not apply to INDs submitted to FDA under section 505(i) of the FD&C Act, a certification form need not accompany INDs submitted to FDA. As previously stated, section 402(j)(5)(B) of the PHS Act, requires that, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 355, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification that all applicable requirements of section 402(j) of the PHS Act have been met. The comments challenge the agency's interpretation of Section 402(j)(5)(B) of the PHS Act on several fronts. The respondents maintain that IND submissions are not ''applications'' in the terminology of the FD&C Act. Some comments rely upon language found in HR 2900, an earlier version of the legislation that was eventually enacted as FDAAA, to support their assertion that Congress both understood the distinction between ''applications'' on the one hand, and ''submissions'' and ''exemptions'' on the other, and that Congress explicitly omitted exemptions from the scope of the certification requirement. The language in HR 2900 would have required the FDA to verify that the requirements of section 402(j) were met for each applicable clinical trial submitted when considering a drug for an exemption under section 505(i). Section 402(j) no longer includes this verification requirement, and the explicit reference to section 505(i) in HR 2900 was omitted from section 402(j)(5)(B) of the PHS Act. Commenters further stated that submitting a certification of compliance when submitting an IND is illogical because an IND must be submitted to FDA prior to enrolling subjects in the clinical trials, yet registration in the clinical trials data bank is not generally required until 21 days after the first subject is enrolled in the clinical trial. In addition, some of the comments noted that the conforming amendment to section 505(i) of the FD&C Act relates only to informed consent documentation and includes no reference to the certification requirement.

(Response) FDA does not agree with these conclusions. FDA agrees that the word ''application'' is not used in section 505(i) of the FD&C Act in reference to an IND. However, section 505(i)(1) directed the Secretary of Health and Human Services to issue regulations exempting from the requirements of section 505 of the FD&C Act drugs intended solely for investigational use. The regulations issued by FDA under this authority define an IND as ''an investigational new drug application.'' 21 CFR 312.3 (emphasis added). Furthermore, these regulations repeatedly use the term ''application'' in reference to an IND. Therefore, FDA considers an IND to be an application under section 505 of the FD&C Act . Congress is familiar with FDA regulations and could have specifically exempted INDs from the certification process by directly excluding 505(i) from the scope of section 402(j)(5)(B) of the PHS Act.

FDA disagrees with the commenters' conclusions that the precursor language in HR 2900 demonstrates that Congress intended to exclude INDs from the certification requirement and that Congress understood the difference between marketing applications and IND submissions and exemptions. FDA has concluded that the reference to section 505 of the FD&C Act was simply a streamlined reference to all applications and submissions possible under section 505 of the FD&C Act. The scope of Title VIII of FDAAA, the numerous requirements for updating the clinical trials registry information, the inclusion of a new clinical trials results data bank, and the new enforcement provisions (including making failure to file a certification a prohibited act) indicate that Congress intended that the clinical trials data bank include information about clinical trials throughout the product development life cycle. Clearly, the IND phase is an extremely important phase of this process. The certification required by section 402(j)(5)(B) of the PHS Act is one means of ensuring that the clinical trial registry information is submitted when required. This information is required to be submitted to the registry data bank well before an NDA is ever filed with FDA. If the certification did not accompany INDs, there would be no means of ensuring that information is submitted to the registry data bank during the investigational stage, which would be inconsistent with the statute's intent to have such information available.

Further, submission of the certification with INDs helps to ensure that the clinical trial information is submitted to the registry data bank for trials that are never submitted in an NDA or a BLA. Many trials are never submitted in an NDA or a BLA. Requiring that the certification accompany INDs helps ensure that applicable clinical trials that are not included in an NDA or BLA are registered as required. The fact that an original IND application is filed with FDA before the responsible party is required to register a trial does not require the conclusion that certifications were intended to be inapplicable to INDs. Throughout the life of an IND, there are numerous opportunities for filing IND amendments, many of which will be filed after the trial is required to be registered. Submission of the certification with these IND amendments helps to ensure that the requirements of section 402(j) of the PHS Act are met.

The lack of a conforming amendment for INDs is not an indicator that certifications are not required to be submitted with INDs. There is also no conforming amendment for BLAs, but it is clear from the wording of section 402(j)(5)(B) of the PHS Act that the certification is required to be submitted with applications under section 351 of the PHS Act. The statute must be considered in its entirety; in light of the other provisions of the statute discussed in the previous paragraph, and the language of section 402(j)(5)(B), FDA has concluded that the absence of those two conforming amendments does not detract from the statutory language requiring submission of a certification when submitting an application under section 505 of the FD&C Act (or when submitting a BLA under section 351 of the PHS Act). Accordingly, FDA concludes that the certification form should accompany INDs.

(Comment 2) A number of comments challenged FDA's conclusion that the term ''application'' refers to supplements, annual reports, or adverse event reports.

(Response) The term ''application'' is used in the context of many filings made with FDA, particularly with products handled by CDER and CBER. Supplements, annual reports, and other submissions are all characterized as ''applications'' by FDA and are identified as such throughout parts 312 and 314 of FDA's regulations. For example, the form with which sponsors submit most IND, NDA, and BLA-related submissions is the Form FDA 356h, which is titled ''Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use,'' includes check boxes for submitting, among other things, annual reports, efficacy supplement, labeling supplement and chemistry manufacturing and controls supplement. As stated previously, FDA assumes that Congress was familiar with FDA regulations when it drafted section 402(j) of the PHS Act.

FDA appreciates that there are many routine filings that fall under this broader definition of application; however, the relevant statutory language is itself written very broadly. FDA recognizes the burden associated with submitting certifications with all of these filings, and FDA continues to work to identify filings which may not need to be accompanied by a certification. In April 2008, FDA issued a draft guidance describing FDA's current thinking on the types of information and documents that need not be accompanied by a certification. (See, Guidance For Sponsors, Industry, Researchers, Investigators, and Food And Drug Administration Staff: Certifications To Accompany Drug, Biological Product, And Device Applications/Submissions: Compliance With Section 402(J) of The Public Health Service Act, Added By Title VIII of The Food And Drug Administration Amendments Act of 2007, April 2008, available at *http://www.fda.gov/oc/initiatives/fdaaa/guidance_certifications.html*).

FDA will address any suggestions made by the respondents that are relevant to the issues contained in the draft guidance when FDA finalizes that draft guidance.

(Comment 3) A number of comments concerned the burden estimate and stated that FDA underestimated the amount of time needed to prepare the form. Related to these comments were comments that requested the form be PDF fillable; that it be able to be electronically saved in order to be used repeatedly; and/or that the form be combined with other existing forms.

(Response) In evaluating the burden, FDA considered the fact that multiple certifications relating to a single IND or NDA may be filed with FDA. FDA anticipated that many submitters would pre-fill and save electronic versions of the forms necessary for existing applications. When an NCT number becomes available or a new one is issued related to a particular application, it then can simply be added to the previously completed form. Although the draft certification form was not PDF fillable and was not able to be saved electronically, the form currently is PDF fillable and is able to be saved electronically, which means it can be amended by submitters as necessary. FDA further determined that, over time, familiarity with the form and the requirements of section 402(j) of the PHS Act would significantly reduce the amount of time needed to prepare the form for filing.

With regard to the suggestion that the certification be incorporated into existing forms, section 402(j)(5) of the PHS Act requires that the certification ''accompany'' an application or submission, and we infer from this wording that the certification is not intended to be part of that application or submission. Because the existing forms are considered to be part of the application or submission, it is not appropriate to add the certification to those forms. FDA notes, however, that it is possible that, as FDA's information technology systems continue to evolve, more forms and submissions will be filed electronically, and there will be a means to transfer information from an application onto the certification form.

(Comment 4) One comment requested that the form be modified to remove the second sentence above the signature block. The second sentence currently reads: ''Warning: A willfully and knowingly false statement is a criminal offense, U.S. Code, title 18, section 1001.'' The rationale for requesting removal of the sentence was that ''FDAAA does not authorize FDA to bring a perjury action for failure to certify accurately.''

(Response) The sentence requested to be removed does not entail a perjury charge. In the draft certification form circulated for comment in December 2007, FDA did include a sentence that indicated a charge of perjury could be brought. After further consideration of the statute and the certification form, FDA concluded that this sentence should be removed. However, the knowing and willful inclusion of a materially false statement in any government document is subject to 18 U.S.C. 1001, which allows a criminal charge to be brought for violations of that section. Accordingly, this reference to 18 U.S.C. 1001 will not be removed from the form.

(Comment 5) A number of respondents commented that the certification should apply only to clinical trials sponsored by the applicant and the form should not require certification with regard to trials over which the manufacturer/sponsor had no control.

(Response) The certification provision, section 402(j)(5)(B) of the PHS Act, does not make a distinction between trials conducted by the sponsor and trials relied upon in the application but conducted by entities other than the sponsor. FDA is aware that sponsors or applicants will be required to certify as to trials they did not conduct or register in the clinical trials data bank. FDA has addressed this concern by requiring the submitter to declare that the information submitted is accurate, true, and complete ''to the best of her/his knowledge.''

(Comment 6) Respondents made a number of miscellaneous suggestions related to the certification form such as changing the FDA Form 3674 to eliminate sections 9.A and 9.B.; clarifying the certification form's instructions; and updating the eCTD (electronic common technical document) specifications to account for the certification form.

(Response) At the current time, the form will remain the same. The boxes 9.A and 9.B in the certification form will not be removed. These boxes provide information allowing FDA to determine if there are clinical trials referenced in the application /submission to which the requirements of section 402(j) of the PHS Act apply without having to review each clinical trial included in the application or submission. However, we have updated the instructions to provide additional clarity for sponsors in filling out the information required. Lastly, as the eCTD specifications are updated, FDA intends to consider adding an appropriate leaf module for the certification form.

Estimated Annual Reporting Burden

Table 1 of this document provides an estimate of the annual reporting burden for the submission of information to satisfy the requirements of section 402(j)(5)(B) of the PHS Act. The annual reporting burden reflects changes made based on certain applications/submissions either removed from the burden calculations made in the original estimates or new applications/submissions added to the burden calculations. Those applications/submissions removed include those we currently have determined do not

typically require that a certification form accompany the application/submission, as described in our April 2008 Draft Guidance. Added to the burden were generic applications/submissions, which were originally not included in the burden calculations, but have since been determined to require a certification form accompany the application/submission.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	Investigational Applications	Marketing Applications	Hours per Response	Total Hours
CDER (new application)	1,837	----	.25	459
CBER (new application)	206	----	.25	52
CDER (amendment)	20,969	----	.25	5,242
CBER (amendment)	826	----	.25	207
CDER (annual report)	4,764		.25	1,191
CBER (annual report)	878		.25	220
CDER/CBER (new application/resubmission)	----	214	.75	161
CDRH (new application)	----	424	.75	318
CDER/CBER (amendment)	----	4,451	.75	3,338
CDRH (amendment)	----	2,267	.75	1,700
CDER/CBER (efficacy supplement/resubmission)	----	259	.75	194
CDER (annual report)	----	7,753	.75	5,815
CBER (annual report)	----	629	.75	472
CDER/CBER (labeling supplement)	----	1,273	.75	955
CDRH (supplement)	----	2,526	.75	1,895
CDRH (annual report)		433	.75	325
OGD (original)		563	.75	422
OGD (BE amendment/supplement)		477	.75	358
OGD (labeling supplement)		723	.75	542
OGD (annual report)		5,173	.75	3,880
TOTAL				27,746

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe the estimate of 27,746 hours per year accurately reflects the burden. We recognize that individuals or entities less familiar with FDA forms and the clinical trials data bank (ClinicalTrials.gov) may require greater than 15 and 45 minutes (depending on the type of application/submission) per response.

Dated: August 19, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–19625 Filed 8–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0259]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 24, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0389. Also include the FDA docket number found

in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review—(OMB Control Number 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to address an unmet medical need. Under FDAMA section 112(b), FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collection of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product: (1) Is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a premeeting package which may include additional information supporting a request to participate in certain fast track programs. The premeeting package serves as background information for the meeting and should support the intended objectives of the meeting. As with the request for fast track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (i.e., foreign studies), and information to support a request for accelerated approval. If such information has already been submitted to FDA, the information may be summarized in the premeeting package. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB Control No. 0910–0014); 356h (OMB Control No. 0910–0338); and 3397 (OMB Control No. 0910–0297).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research is approximately 64, and the number of requests received is approximately 77 annually. FDA estimates that the number of hours needed to prepare a request for fast track designation is approximately 60 hours per request.

Not all requests for fast track designation may meet the statutory standard. Of the requests for fast track designation made per year, the agency granted 60 from 54 respondents, and for each of these granted requests a pre-meeting package was submitted to the agency. FDA estimates that the preparation hours are approximately 100 hours per pre-meeting package.

In the **Federal Register** of May 6, 2008 (73 FR 25016), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Reporting Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation Request	64	1.28	82	60	4,915
Premeeting Packages	54	1.11	60	100	6,000

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Reporting Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total	118	2.39	142	160	10,915

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–19626 Filed 8–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0087] (formerly Docket No. 2007N–0461)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Mental Models Study of Communicating With Health Care Providers About the Risks and Benefits of Prescription Drug Use for Pregnant and Nursing Women With Chronic Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 24, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title, ''Mental Models Study of Communicating with Health Care Providers about the Risks and Benefits of Prescription Drug Use for Pregnant and Nursing Women with Chronic Conditions.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Mental Models Study of Communicating With Health Care Providers About the Risks and Benefits of Prescription Drug Use for Pregnant and Nursing Women With Chronic Conditions

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

The proposed information collection will help FDA advance public health by identifying misperceptions and knowledge gaps about how health care providers use information to make decisions about the use of prescription drugs for the targeted patient groups. Knowledge of these misperceptions and gaps provides opportunities for FDA to target its communications more precisely to such gaps and areas of misperception in health care providers' mental models regarding treatment decisions.

FDA engages in various communication activities to ensure that patients and health care providers have the information they need to make informed decisions about treatment options, including the use of prescription drugs. FDA regulations (21 CFR 201.57) describe the content of required product labeling, and FDA reviewers ensure that labeling contains accurate and complete information about the known risks and benefits of each drug. This data collection and analysis is designed to identify knowledge gaps that FDA could then address, which would ultimately improve decision making and potentially improve health outcomes.

The project will use ''mental modeling,'' a qualitative research method that compares a model of the decision-making processes of a group or groups to an ''expert model'' of the same decision-making processes developed from expert knowledge and experience. In this study, the decision models of certain health care providers concerning treatment options for pregnant and nursing women will be compared to an expert model concerning such treatment options that was derived from the knowledge and experience of FDA reviewers responsible for product labeling. FDA will use telephone interviews to determine from the health care providers the factors that influence their treatment decisions for pregnant and nursing women with chronic conditions. A comparison between expert and health care provider models based on the collected information may identify consequential knowledge gaps that can be redressed through messages or information campaigns designed by FDA.

Using a protocol derived from the research that resulted in the ''expert model,'' trained interviewers will conduct one-on-one telephone discussions with 24 to 30 members of each of 2 categories of health care providers (described in the following paragraph) who provide health care services to pregnant and nursing women.

The two categories of health care providers are:

(1) Those who directly care for pregnant and nursing women, including obstetricians, OB/GYNs (obstetrician/gynecologists), nurse midwives, and primary care practitioners.

(2) Selected specialties of healthcare providers who directly care for women of reproductive age who have chronic health conditions (allergists, psychiatrists, neurologists, and cardiologists).

In the **Federal Register** of December 11, 2007 (72 FR 70328), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60	1	1	1.0	60.0

[1] There are no capital costs or operating and maintenance costs for this information collection.

The study will involve about 60 respondents and take approximately 1 hour each to complete. These estimates are based on the contractor's extensive experience with mental models research. FDA conducted pretests of the mental models protocol with six health care providers. These resulted in the current protocol.

Dated: August 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–19653 Filed 8–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0453]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements of FDA's regulations implementing the Federal Import Milk Act (FIMA).

DATES: Submit written or electronic comments on the collection of information by October 24, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Regulations Under the Federal Import Milk Act—21 CFR Part 1210 (OMB Control Number 0910–0212)—Extension

Under FIMA (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit (21 U.S.C. 141). Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50° F (21 U.S.C. 142).

FDA's regulations in part 1210 (21 CFR part 1210) implement the provisions of FIMA. Sections 1210.11 and 1210.14 require reports on the sanitary conditions of, respectively, dairy farms and plants producing milk and/or cream to be shipped to the United States. Section 1210.12 requires reports on the physical examination of herds, while § 1210.13 requires the reporting of tuberculin testing of the herds. In addition, the regulations in part 1210 require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address (§ 1210.22). Section 1210.20 requires that an application for a permit to ship or transport milk or cream into the United States be made by the actual shipper. Section 1210.23 allows permits to be granted based on certificates from accredited officials.

TABLE 1.— ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1210.11	FDA 1996/Sanitary inspection of dairy farms	8	200	1,600	1.5	2,400
1210.12	FDA 1995/Physical examination of cows	1	1	1	0.5	0.5
1210.13	FDA 1994/Tuberculin test	1	1	1	0.5	0.5
1210.14	FDA 1997/Sanitary inspections of plants	8	1	8	2.0	16.0
1210.20	FDA 1993/Application for permit	8	1	8	0.5	4.0
1210.23	FDA 1815/Permits granted on certificates	8	1	8	0.5	4.0
Totals						2,425.0

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
1210.15	8	1	8	0.05	0.40

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of respondents and hours per response are based on FDA's experience with the import milk permit program and the average number of import milk permit holders over the past 3 years. FDA estimates that eight respondents will submit approximately 200 Form FDA 1996 reports annually, for a total of 1,600 responses. FDA estimates the reporting burden to be 1.5 hours per response, for a total burden of 2,400 hours.

The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995. To date, Form FDA 1815 has been submitted in lieu of these forms. Because FDA has not received any Forms FDA 1994 and 1995 in the last 3 years, the agency estimates no more than one will be submitted annually. FDA estimates the reporting burden for each to be 0.5 hours per response for a total burden reporting burden of 0.5 hours each.

FDA estimates that eight respondents will submit one Form FDA 1997 report annually, for a total of eight responses. FDA estimates the reporting burden to be 2.0 hours per response, for a total burden of 16 hours. FDA estimates that eight respondents will submit one Form FDA 1993 report annually, for a total of eight responses. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 4 hours. FDA estimates that eight respondents will submit one Form FDA 1815 report annually, for a total of eight responses. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 4 hours.

With regard to records maintenance, FDA estimates that approximately eight recordkeepers will spend 0.05 hours annually maintaining the additional pasteurization records required by § 1210.15, for a total of 0.40 hours annually.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by FDA (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: August 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–19627 Filed 8–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0466]

Over the Counter Cough and Cold Medications for Pediatric Use; Notice of Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to obtain input regarding over-the-counter (OTC) cough and cold drugs marketed for pediatric use. Many of these nonprescription cough and cold drug products are marketed under the OTC Drug Review, which established a monograph describing the conditions under which certain OTC ingredients are considered to be generally recognized as safe and effective. Recently, safety and efficacy concerns have been raised regarding the pediatric dosing and use of certain active ingredients in OTC cough and cold drug products. FDA is developing a proposed rule to revise the pediatric labeling contained in the Final Monograph for Cough, Cold, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use. At this public hearing, FDA is interested in obtaining public comment about certain scientific, regulatory, and product use issues as it proceeds with the rulemaking and reviews new drug applications (NDAs) for these ingredients.

Dates and Times: The public hearing will be held on October 2, 2008, from 8 a.m. to 5 p.m.

Location: The public hearing will be held at the Sheraton Washington North Hotel, 4095 Powder Mill Rd., Beltsville, MD 20705.

ADDRESSES: Submit written registration and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic registration to *http://www.regulations.gov*.

Submit electronic comments to *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document.

Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the hearing.

For Registration to Attend and/or Participate in the Hearing:
Seating at the hearing is limited. People interested in attending should submit written or electronic registration to the Division of Docket Management (see **ADDRESSES**) by close of business on September 15, 2008. Registration is free and will be on a first-come, first-served basis. Written or electronic comments will be accepted until December 2, 2008.

If you wish to make an oral presentation at the hearing, you must state your intention on your registration submission (see **ADDRESSES**). To speak, submit your name, title, business affiliation, address, telephone and fax numbers, and e-mail address. FDA has included questions for comment in section II of this document. You should also identify by number each question you wish to address in your presentation. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

If you need special accommodations because of a disability, please inform Faith Dugan, (see For Information on the Hearing Contact).

For Information on the Hearing Contact: Faith Dugan, Food and Drug Administration, 5600 Fishers Lane, rm. 14–101, Rockville, MD 20857, 301–796–3446, FAX: 301–847–4752, e-mail: *Faith.Dugan@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 1, 2007, FDA received a citizen petition submitted by a number of pediatric health care practitioners that raised concerns about the safety and efficacy of OTC cough and cold products in children less than 6 years old. The petition requested that FDA, among other actions, amend the OTC drug monograph for Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (CCABADP) in 21 CFR part 341 to revise the labeling for OTC antitussive, expectorant, nasal decongestant, antihistamine, and combination cough and cold products. The petition requested that revised labeling state that these products should not be used in children under 6 years of age for the treatment of cough and cold because the products have not been found to be safe or effective. In addition, the petition requested that the agency notify manufacturers of products whose labeling either uses such terms as ''infant'' or ''baby,'' or displays images of children under the age of 6, that such marketing is not supported by scientific evidence and that manufacturers will be subject to enforcement action at any time. The petition and additional information can be found at the following Web site: *http://www.fda.gov/ohrms/dockets/dockets/07p0074/07p0074.htm*.

Many of today's OTC cough and cold medicines are marketed under monographs established through the OTC Drug Review and published in the Code of Federal Regulations. FDA initiated the OTC Drug Review in 1972, after amendments to the Federal Food, Drug, and Cosmetic Act in 1962 required that drugs be shown to be effective as well as safe. Using expert advisory panels to review data, the OTC Drug Review examined drug ingredients marketed OTC in the United States to verify which of these ingredients can be generally recognized among qualified experts as safe and effective for their intended uses (GRAS/E). After review by the panel, FDA published advance notices of proposed rulemaking for active ingredients in various therapeutic categories to establish monographs describing the conditions under which the products could be considered GRAS/E and marketed under the monograph without an approved new drug application. Based on the recommendations in the panel reports and additional public comments and data, FDA published a proposed rule, also known as a tentative final monograph (TFM), which set forth the FDA's views on the conditions of use for the monograph. Finally, based on additional comments and information submitted in response to the TFM, FDA published final monographs. The final monographs, codified in the Code of Federal Regulations, specify the active ingredients that are GRAS/E for each indication, and for each such active ingredient, the permitted dosages, claims, and warnings. Products that comply with all specified monograph conditions may be marketed without prior FDA approval.

Through the OTC Drug Review, FDA has established numerous monographs for classes of OTC drug ingredients. Each completed OTC drug monograph considers a particular therapeutic class of drugs (e.g., antacids, topical antifungal drugs, nighttime sleep aids) and describes the active ingredients that have been determined to be GRAS/E through the OTC Drug Review process,

with specifications for the amount of drug per dose, labeling, and other general requirements. As long as a manufacturer uses ingredients (or combinations of ingredients) that are included in the monograph, and follows the monograph specifications in manufacturing and marketing, these ''OTC Monograph'' products may be sold over the counter without FDA pre-clearance. Drugs that are not covered under the OTC Drug Review may be marketed OTC under the terms of an approved NDA.

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking (ANPRM) to establish a monograph under § 330.10(a)(6) (21 CFR 330.10(a)(6)), for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. At the same time, FDA published the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel that evaluated these products.

The final CCABADP monograph includes GRAS/E active ingredients in five separate categories: Antihistamines (13 active ingredients), decongestants (13 active ingredients), antitussives (10 active ingredients), bronchodilator (7 active ingredients), and expectorants (1 active ingredient).[1]

Dosing for each active ingredient was largely based on the advisory panel recommendations, made in consultation with the Special Panel on Pediatric Dosage. The following statements appear in the ANPRM:

The dosage that will produce optimum therapeutic effects in a particular patient, adult or child, is dependent upon factors such as the drug itself, individual patient variables such as special sensitivity or tolerance to the specific agent, age, weight and metabolic, pathological, or psychological conditions. Children's dosage calculated by any method that does not take all of these variables into account, therefore, can only be considered general guides.

Definitive pediatric drug dosage should be derived from data obtained in clinical trials with children using protocols similar to those used in adult patients. The Panel recognizes the extreme difficulties attendant upon such trials but also recognizes the immediate need to make recommendations for pediatric dosage pending availability of such definitive data.

Traditionally, pediatric dosage calculations for infants and children have been based on body surface area, weight, or age of the child as a proportion of the ''usual adult dose.'' Dosage calculated on the basis of the age of the child, although convenient, may be the least reliable method because of the large variation in the weight of patients at a specific age. However, for OTC products that have a relatively wide margin of safety, the Panel has concluded that dosage recommendations based on age are the most reasonable since they would be most easily understood by the consumer * * *.

Unless indicated contrarily, the Panel recommends the following guidelines for determining safe and effective pediatric dosages for the individual [CCABADP] ingredients discussed in this document: For infants under 2 years of age, the pediatric dosage should be established by a physician. For children 2 to under 6 years of age, the pediatric dosage is 1/4 the adult dosage; for children 6 to under 12 years of age, the dosage is 1/2 the adult dosage * * *.

The differences between children under 2 years of age, and other age groups with respect to the anatomy and physiology disorders of their respiratory system, their responses to diseases affecting the respiratory system, and their responses to drugs make general labeling restrictions for this age group essential. For example, infants because of the smaller diameter of their respiratory airways are particularly prone to the complications of respiratory distress during an acute respiratory tract infection such as may occur in the ''common cold.'' Therefore, parents of children under 2 years of age should be advised to consult a physician for diagnosis and individualized therapeutic recommendations, even for symptoms and conditions that are considered appropriate for self-medication in older children and adults. Because of these considerations, the Panel recommends that the general labeling of [CCABADP] products for use in children under 2 years of age requires the advice and supervision of a physician * * *.
41 FR 38312; 38333 (September 9, 1976).

We estimate that there are approximately 10,000 products being marketed for cold, cough, or combined indications under the OTC Drug Review. (See 67 FR 78158 at 78166.) Depending on the dosage form and strength of these products, many of them are labeled for pediatric use, including some that are labeled for use in both adults and children. There are approximately 38 active ingredients in the final CCABADP monograph. Some combination cough and cold products contain as many as four of these active ingredients in a single dosage form, meaning that patients may be exposed to four different active ingredients when using a single product. From 2002 to 2006, there were approximately 36 billion units of combination cough and cold products sold each year in the United States. For liquid formulations used for the youngest children, there were approximately 190 million units sold each year in the combined cough and cold categories during this period.[2]

During the past decade, there have been several important new developments in the evaluation of safety and efficacy of drugs for pediatric use. First, the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) (Nov. 21, 1997) was enacted, and included a provision to create voluntary incentives to develop medications for use in the pediatric population. This program was reauthorized and expanded first in the Best Pharmaceuticals for Children Act of 2002 (Public Law 107–109) (January 4, 2002), and then again in Title V of the FDA Amendments Act of 2007 (FDAAA) (Public Law 110–85) (September 27, 2007). The Pediatric Research Equity Act (PREA) of 2003 required that drugs be studied in pediatric patients in certain circumstances. The PREA requirements were reauthorized and expanded by Title IV of FDAAA in 2007. Collectively, these laws recognize that differences in metabolism between adults and children, as well as differences between pediatric age groups, may require individualized dosing. They also recognize that there are often differences in effects of drugs and in adverse events observed in pediatric patients when compared to adult patients. Although these laws do not apply to products marketed under an OTC monograph, data from studies performed under these provisions suggest that children are not small adults, but rather may have a response to medication, both beneficial and adverse, that is different from adults.

Given the evolution in our thinking about the use of drugs in children, the passage of more than 30 years since the

[1] The FDA issued the tentative final monograph for single ingredient OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products in segments, over a 3-year period. The first segment, on anticholinergic drug product and expectorant drug products, was published in the **Federal Register** of July 9, 1982 (47 FR 30002). The second segment, on bronchodilator drug products, was published in the **Federal Register** of October 26, 1982 (47 FR 47520). The third segment, on antitussive drug products, was published in the **Federal Register** of October 19, 1983 (48 FR 48576). The fourth and fifth segments, on nasal decongestant drug products and antihistamine drug products, were published in the **Federal Register** of January 15, 1985 (50 FR 2200 and 50 FR 2220). The agency's tentative final monograph for OTC cough-cold combination drug products was published in the **Federal Register** of August 12, 1988 (53 FR 30522). Final monographs for these OTC drug products also were published in segments between 1985 and 1994: Anticholinergic (50 FR 46582, November 8, 1985); bronchodilator (51 FR 35326, October 2, 1986); antitussive (52 FR 30042, August 12, 1987); expectorant (54 FR 8494, February 28, 1989); antihistamine (57 FR 58356, December 9, 1992); nasal decongestant (59 FR 43386, August 23, 1994); and combination products (67 FR 78158, December 23, 2002).

[2] Transcript of joint meeting of the Nonprescription Drug Advisory Committee and the Pediatric Advisory Committee, October 18, 2007, p. 10.

recommendations from the advisory review panels were made, and the concerns about pediatric cough and cold products that have been presented to FDA, including those raised by the March 1, 2007, citizen petition, the agency has taken a new look at the assumptions that were used to create the pediatric conditions for cough and cold medicines contained in the CCABADP monograph. As part of this review, FDA convened a joint meeting of the Nonprescription Drugs Advisory Committee and the Pediatric Advisory Committee on October 18 and 19, 2007, to discuss the safety and efficacy of these OTC cough and cold products marketed for pediatric use. The discussion at the Advisory Committee meeting addressed a variety of issues including the extrapolation of efficacy data from adults to children of any age for cough and cold products; the safety profile of these products in children; the basis for dosing recommendations in the CCABADP monograph and the use of pharmacokinetic data to determine appropriate dosing in children; the basis of dosing recommendations for various age intervals of less than 2 years, 2 to 5 years of age, and 6 to 11 years of age; the use of the products in children less than 2 years of age; the potential for misuse, unintentional overdose, and excessive dosing; the ability of parents or caregivers to correctly dose and administer cough and cold products to their children; and the labeling changes recommended by the petitioner and the effects they would have on the use of these products in children and the recommendations of health care providers. The 22 person Advisory Committee was nearly unanimous in agreeing that new studies were necessary because extrapolation of efficacy data for the common cold indication from adults to children was not acceptable for children less than 2 years old or for children 2 years to less than 12 years. The vote was 22 to 0 and 21 to 1, respectively, for the two age groups. The committee understood that changing the OTC drug monographs required rulemaking that would take several years to complete. The Advisory Committee also voted 13 to 9 to recommend that pediatric cough and cold drugs should not be used for children under 6 years of age while rulemaking proceeded, and voted 15 to 7 to recommend that the products should continue, for the time being, to be sold for use in children ages 6 to under 12 while new studies are conducted.

On January 17, 2008, FDA issued a Public Health Advisory (PHA) available at: *http://www.fda.gov/cder/drug/advisory/cough_cold_2008.htm*. The PHA recommended that these drugs not be used to treat infants and children under 2 years of age because serious and potentially life-threatening side effects can occur. The PHA also indicated that FDA had not yet completed its review of the safety of these medicines in children 2 through 11, and the agency committed to completing the review as quickly as possible. Pending completion of this review, the PHA recommended a number of precautions for parents and caregivers using OTC cough and cold medicines in children 2 years of age and older, including carefully following the directions in the Drug Facts label; using appropriate measuring spoons or instruments made for measuring medicines; choosing products with safety caps; avoiding concurrent use of different OTC cough and cold medications to avoid unintentional overdose; not using these products to sedate children; and consulting a physician, pharmacist, or other health care professional with any questions about using these products in children.

In the PHA, we also announced strong support for the voluntary action taken by many pharmaceutical manufacturers to withdraw cough and cold medicines that were being sold for use in children under 2 years of age.

Since we issued the Public Health Advisory, we have continued our review of available data concerning the use of cough and cold medications in children, including information from the Advisory Committee meeting about the efficacy of the products, information from FDA's drug Adverse Event Reporting (AERS) database, and a published report in the medical literature from the Centers for Disease Control and Prevention (CDC) about children who ingested cough and cold medicines and had side effects that were serious enough to require an emergency room visit.[3] While many of the observed adverse events were due to overdoses associated with accidental ingestions or dosing errors, allergic and non-allergic adverse events occurred with the labeled dose in children. FDA reviewed the CDC study and underlying data, particularly looking at the type of events that occurred with the labeled dose of OTC cough and cold medications, and noted that children under 4 years of age are more likely to experience non-allergic adverse events than older children.

Cough and cold products are commonly used in children. A recent report suggested that 1 in 10 children uses one or more cough and cold products during a given week with exposure being highest among 2 to 5 year olds, and high in children under 2.[4] Based on the number of cases of serious adverse events reported to FDA and the number of serious adverse events in the CDC emergency room study, we believe that serious adverse events are relatively rare given the extensive use of the drug products.

Despite the fact that serious adverse events are relatively rare in children using cough and cold drugs, we have determined that the collection of additional data using modern standards is warranted to support the current dosing or to establish new dosing regimens for children, given the concerns that have been raised about the safety and efficacy of these products, particularly in younger age groups. Lack of safety and efficacy data for specific pediatric age groups also inhibits the conduct of a meaningful risk benefit analysis under 21 CFR 330.10(a)(4)(iii).

We recognize that many scientific issues must be addressed and resolved to support the development and review of data that, in the long term, will provide increased confidence in the safe and effective pediatric use of these OTC cough and cold products, either under the monograph or approved NDAs. FDA has decided to hold a Part 15 hearing to hear from the public, including parents, health care practitioners, manufacturers of cough and cold products, retailers, and other interested persons, about these issues. FDA will consider this public input in developing a proposed rule to amend the CCABADP monograph to reflect the new data and any appropriate changes to the conditions necessary to ensure that these medications can be considered GRAS/E.

II. Scope of Hearing

FDA is interested in obtaining public comment on the following issues relating to the use of pediatric cough and cold medicines:

1. What types of studies, if any, should be conducted to assess effectiveness and/or safety, and

[3] Schaefer MK, Shehab N, Cohen AL, Budnitz DS. Adverse Events From Cough and Cold Medications in Children. Pediatrics 2008;121;783–787; originally published online Jan 28, 2008.

[4] Boston University's Slone Epidemiology Center presention at the 2008 Pediatric Academic Societies' & Asian Society for Pediatric Research Joint Meeting in Honolulu, Hawaii. Vernacchio L, Kelly JP, Kaufman DW, Mitchell AA. *Cough and Cold Medication Use by US Children, 1999–2006: Results From the Slone Survey*, *Pediatrics* 2008; 122:e323-e329.

determine appropriate dosing of cough and cold ingredients in the pediatric population? How should these studies be designed and powered?

2. Should cough and cold products for the pediatric population continue to be available OTC, or should they be made available only by prescription?

3. If the pediatric indications and dosing for cough and cold products were no longer available OTC, would the public use the adult formulations of the OTC monograph products for children, and thus create a greater risk of misuse or overdose?

4. Do the answers to the previous questions depend on the age of the pediatric patients? If so, how should age be considered in making regulatory decisions for these products?

5. At the time the monograph was established, FDA routinely extrapolated safety and efficacy data from adults to children age 12 and over. Current PREA standards permit extrapolation of pediatric efficacy -- but not safety-- based upon sufficient adult data. Does it remain appropriate to recommend in the cough and cold monograph that children 12 and over should receive the same dose of medication as adults, without requiring any additional studies in children in this age group? What additional safety and/or efficacy studies should be required in this age group?

6. What is the most appropriate method for determining pediatric doses that could be used as an alternative to the quarter- and half-dose assumptions used in the monograph? Should products be dosed by age, by weight, or both?

7. There are monographs for topical and intranasal ingredients to treat the common cold. Should these monographs be considered in a similar fashion to the oral cough and cold products? Are the answers to the previous questions different for any subcategories of cough and cold medicines (e.g., topical or intranasal products)?

8. The CCABADP monograph allows for the combination of ingredients to treat colds and/or coughs. Should combination products be permitted for all pediatric age groups? Should data be provided to support each unique combination?

9. Can measurement errors in dosing be reduced using more standardized measuring devices or alternative dosage forms and, if so, what is the best way to effect this change?

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, accompanied by FDA senior management from the Office of the Commissioner and the Center for Drug Evaluation and Research.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10), subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this document acts as a waiver of those provisions as specified in 21 CFR 15.30(h).

IV. Comments

Regardless of attendance at the public hearing, interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. To ensure consideration, submit comments by (see **DATES**). Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see ADDRESSES). A transcript will also be available in either hard copy 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. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic notices of participation and comments for consideration.

Dated: August 20, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–19657 Filed 8–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service; HIV Knowledge/Attitudes/Practice Customer Survey

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–NEW, ''Indian Health Service HIV Knowledge/Attitudes/Practice Customer Survey.'' *Type of Information Collection Request:* This is a one time survey to deliver the mission of the IHS and Centers for Disease Control (CDC) national guidelines collection, 0917–NEW, ''Indian Health Service HIV Knowledge/Attitudes/Practice Customer Survey.'' *Form(s):* The Indian Health Service Customer Survey. *Need and Use of Information Collection:*

The IHS goal is to raise the health status of the American Indian and Alaska Native (AI/AN) people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission, the Division of Epidemiology and Disease Prevention (DEDP) and the Human Immunodeficiency Virus (HIV) Program collaborate to provide programmatic, technical, and financial assistance to

IHS Areas and Service Units for improving prevention, detection, and treatment of infectious and chronic disease, specifically in this case, HIV and Sexually Transmitted Disease (STD).

The ''HIV Knowledge/Attitudes/Practice Customer Survey'' (hereto referred to as Customer Survey), will provide the information needed to understand the most effective and appropriate methods to complete these goals. With the information collected from patients, we will be able to offer recommendations to Service Units on how to best scale up screening for sensitive topics such as HIV and STDs in AI/AN communities. Also, the information will give IHS the tools to assist our Service Units with implementation of current national recommendations by CDC. At the moment, we are encouraging uptake of current CDC national recommendations; however, without this information, we are unable to maximize effectiveness, dispel myths, and identify misinformation.

Voluntary customer surveys will be conducted through self-administered questionnaires, face-to-face interviews, and potentially electronic media. The information gathered will be used by DEDP and the HIV Program to identify how patients would prefer to be offered expanded testing in a way that is respectful, confidential, and effective. *Affected Public:* Individuals. *Type of Respondents:* IHS customers.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
Customer survey	1000	1	10/60	166
Total	1000			166

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Ms. Janet Ingersoll, Acting IHS Reports Clearance Officer, 801 Thompson Avenue, TMP 450, Rockville, MD 20852–1627; call non-toll free (301) 443–6177; send via facsimile to (301) 443–2316; or send your E-mail requests, comments, and return address to: *janet.ingersoll@ihs.gov*.

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: August 18, 2008.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E8–19479 Filed 8–22–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service; Health Promotion/Disease Prevention Grantee Survey

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–NEW, ''Indian Health Service Health Promotion/Disease Prevention Grantee Survey.'' *Type of Information Collection Request:* This is a one time survey to fulfill an OMB request for an independent external evaluation collection, 0917–NEW, ''Indian Health Service Health Promotion/Disease Prevention (HP/DP) Grantee Survey.'' *Form(s):* The Indian Health Service HP/DP Interview Survey. *Need and Use of Information Collection:* The IHS goal is to raise the health status of the American Indian and Alaska Native (AI/AN) people to the highest possible level by providing comprehensive health care and preventive health services. HP/DP is one of the three IHS Director's Initiatives to reduce health disparities among AI/AN populations through a coordinated and systematic approach to enhance health promotion and chronic disease prevention approaches at the local, regional, and national levels.

The HP/DP competitive grant was established in 2005 to encourage Tribal and urban Indian programs to fully engage their local schools, communities, health care providers, health centers, faith-based/spiritual communities, senior centers, youth programs, local governments, academia, non-profit organizations, and many other community sectors to work together to enhance and promote health and prevent chronic disease in their communities. Thirty-three Tribal/urban Indian organizations and programs were awarded competitive grants to expand and enhance health promotion and disease prevention to address health disparities among AI/AN populations.

To conduct a thorough evaluation of the grant program, 29 telephone and four face-to-face interviews will be conducted to collect information to complete a quantitative and qualitative evaluation of the HP/DP grant program. The teleconference interviews may include one staff member per site. Each of the Tribal/urban organization/

programs will determine the number of their staff members that will participate in the interview. The evaluation will include an assessment of whether HP/DP grantees achieve measurable health outcomes, synthesize the evaluation findings, and include a written report with recommendations to enhance program effectiveness. The information gathered will be used to prepare a final report for OMB. *Affected Public:* Individuals. *Type of Respondents:* Tribal/Urban organizations program staff.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
HP/DP Grantees Telephone and Face-to-Face Interview Survey	231	1	1	231
Total	231			231

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Ms. Janet Ingersoll, Acting IHS Reports Clearance Officer, 801 Thompson Avenue, TMP 450, Rockville, MD 20852–1627; call non-toll free (301) 443–6177; send via facsimile to (301) 443–2316; or send your e-mail requests, comments, and return address to: *janet.ingersoll@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: August 18, 2008.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E8–19480 Filed 8–22–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Privacy Act of 1974; Report of Modified or Altered System Medical, Health and Billing Records System

AGENCY: Indian Health Service (IHS), HHS.

ACTION: Notice of Proposed Modification or Alteration to a System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, IHS is proposing to modify or alter an SOR, ''Medical, Health and Billing Records,'' System No. 09–17–0001. IHS is proposing to amend routine use number 10 to be more consistent with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule language, 45 CFR 164.512(b) by changing the language to state ''which are authorized by applicable Federal, State, Tribal or local law * * *,'' which would give IHS the discretion of allowing additional disclosures. For example, this change will give IHS the discretion to disclose controlled substance prescription data to a centralized database administered by an authorized State public health entity, such as state prescription drug monitoring programs (PMP). IHS is also proposing to add routine use number 25 to meet the newly established requirement by the Office of Management and Budget (OMB) Memoranda (M) 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information and to Comply with HHS Incident Reporting and Handling Requirements.

Effective Dates: IHS filed an altered/modified system report with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, OMB on August 25, 2008. To ensure that all parties have adequate time in which to comment, the modified SOR will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless IHS invites comments on all portions of this notice.

ADDRESSES: The public should address comments to: Mr. William Tibbitts, IHS Privacy Act/HIPAA Privacy Officer, Office of Management Services, Division of Regulatory Affairs, Records Access and Policy Liaison, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–1116; send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *William.Tibbitts@ihs.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Gowan, IHS Lead Health Information Management (HIM) Consultant and Area HIM Consultant, Phoenix Area Office, Two Renaissance Square, 40 North Central Avenue, Phoenix, AZ 85004–4450, Telephone (602) 364–5172.

SUPPLEMENTARY INFORMATION: IHS initiated a national workgroup consisting of IHS Chief Medical Officers (CMOs) and the IHS National Pharmacy Council (NPC) to assist the IHS in systematically addressing the issue of prescription drug abuse. Currently, approximately 35 States have controlled substances prescription reporting systems that allow providers to monitor their patient's prescriptions and access to controlled substances.

Dated: August 18, 2008.

Robert G. McSwain,

Director, Indian Health Service.

09–17–0001

SYSTEM NAME:

Medical, Health, and Billing Records Systems, Health and Human Services/Indian Health Service/Office of Clinical and Preventive Services, (HHS/IHS/OCPS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

IHS hospitals, health centers, school health centers, health stations, field clinics, Service Units, IHS Area Offices (Appendix 1), and Federal Archives and Records Centers (Appendix 2). Automated, electronic and computerized records, including Patient Care Component (PCC) records, are stored at the Information Technology Support Center (ITSC), IHS, located in Albuquerque, New Mexico (Appendix 1). Records may also be located at contractor sites. A current list of contractor sites is available by writing to the appropriate System Manager (Area or Service Unit Director/Chief Executive Officer) at the address shown in Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including both IHS beneficiaries and non-beneficiaries, who are examined/treated on an inpatient and/or outpatient basis by IHS staff and/or contract health care providers (including Tribal contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: Records relating to claims by and against the HHS are maintained in the Administrative Claims System, 09–90–0062, HHS/Office of the Secretary/Office of the General Counsel (HHS/OS/OGC). Such claims include those arising under the Federal Torts Claims Act, Military Personnel and Civilian Employees Claims Act, Federal Claims Collection Act, Federal Medical Care Recovery Act, and Act for Waiver of Overpayment of Pay.

1. Health and medical records containing examination, diagnostic and treatment data, proof of IHS eligibility, social data (such as name, address, date of birth, Social Security Number (SSN), Tribe), laboratory test results, and dental, social service, domestic violence, sexual abuse and/or assault, mental health, and nursing information.

2. Follow-up registers of individuals with a specific health condition or a particular health status such as cancer, diabetes, communicable diseases, suspected and confirmed abuse and neglect, immunizations, suicidal behavior, or disabilities.

3. Logs of individuals provided health care by staff of specific hospital or clinic departments such as surgery, emergency, obstetric delivery, medical imaging, and laboratory.

4. Surgery and/or disease indices for individual facilities that list each relevant individual by the surgery or disease.

5. Monitoring strips and tapes such as fetal monitoring strips and Electroencephalogram (EEG) and Electrocardiogram (EKG) tapes.

6. Third-party reimbursement and billing records containing name, address, date of birth, dates of service, third-party insurer claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to process and validate third-party reimbursement claims.

7. Contract Health Service (CHS) records containing name, address, date of birth, dates of care, Medicare or Medicaid claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to determine CHS eligibility and to process CHS claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations (5 U.S.C. 301) ; Privacy Act of 1974 (5 U.S.C. 552a); Federal Records Act (44 U.S.C. 2901); Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248); Section 327A of the Public Health Service Act, as amended (42 U.S.C. 254a); Snyder Act (25 U.S.C. 13); Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*); and the Transfer Act of 1954 (42 U.S.C. 2001–2004).

PURPOSES:

The purposes of this system are:

1. To provide a description of an individual's diagnosis, treatment and outcome, and to plan for immediate and future care of the individual.

2. To collect and provide information to IHS officials and epidemiology centers established and funded under 25 U.S.C. 1621m in order to evaluate health care programs and to plan for future needs.

3. To serve as a means of communication among members of the health care team who contribute to the individual's care; *e.g.*, to integrate information from field visits with records of treatment in IHS facilities and with non-IHS health care providers.

4. To serve as the official documentation of an individual's health care.

5. To contribute to continuing education of IHS staff to improve the delivery of health care services.

6. For disease surveillance purposes. For example:

(a) The Centers for Disease Control and Prevention may use these records to monitor various communicable diseases;

(b) The National Institutes of Health may use these records to review the prevalence of particular diseases (e.g., malignant neoplasms, diabetes mellitus, arthritis, metabolism, and digestive diseases) for various ethnic groups of the United States; or

(c) Those public health authorities that are authorized by law and epidemiology centers established and funded under 25 U.S.C. 1621m may use these records to collect or receive such information for purposes of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death and the conduct of public health surveillance, investigations, and interventions.

7. To compile and provide aggregated program statistics. Upon request of other components of HHS, IHS will provide statistical information, from which individual/personal identifiers have been removed, such as:

(a) To the National Committee on Vital and Health Statistics for its dissemination of aggregated health statistics on various ethnic groups;

(b) To the Assistant Secretary for Planning and Evaluation, Health Policy to keep a record of the number of sterilizations provided by Federal funding;

(c) To the Centers for Medicare & Medicaid Services (CMS) to document IHS health care covered by the Medicare and Medicaid programs for third-party reimbursement; or

(d) To the Office of Clinical Standards and Quality, CMS to determine the prevalence of end-stage renal disease among the American Indian and Alaska Native (AI/AN) population and to coordinate individual care.

8. To process and collect third-party claims and facilitate fiscal intermediary functions and to process debt collection activities.

9. To improve the IHS national patient care database by means of obtaining and verifying an individual's SSN with the Social Security Administration (SSA).

10. To provide information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of organs to facilitate organ, eye, or tissue donation and transplant.

11. To provide information to individuals about treatment alternatives or other types of health-related benefits and services.

12. To provide information to the Food and Drug Administration (FDA) in connection with an FDA-regulated product or activity.

13. To provide information to correctional institutions as necessary for health and safety purposes.

14. To provide information to governmental authorities (e.g., social services or protective services agencies) on victims of abuse, neglect, sexual assault or domestic violence.

15. To provide information to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2901, *et seq.*

16. To provide relevant health care information to funeral directors or representatives of funeral homes to allow necessary arrangements prior to and in anticipation of an individual's impending death.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records contains individually identifiable health information. The HHS Privacy Act Regulations (45 CFR Part 5b) and the Privacy Rule (45 CFR Parts 160 and 164) issued pursuant to the HIPAA of 1996 apply to most health information maintained by IHS. Those regulations may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. An accounting of all disclosures of a record made pursuant to the following routine uses will be made and maintained by IHS for five years or for the life of the records, whichever is longer.

Note: Special requirements for alcohol and drug abuse patients: If an individual receives treatment or a referral for treatment for alcohol or drug abuse, then the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2 may apply. In general, under these regulations, the only disclosures of the alcohol or drug abuse record that may be made without patient consent are: (1) To meet medical emergencies (42 CFR 2.51), (2) For research, audit, evaluation and examination (42 CFR 2.52–2.53), (3) Pursuant to a court order (42 CFR 2.61–2.67), and

(4) Pursuant to a qualified service organization agreement, as defined in 42 CFR 2.11. In all other situations, written consent of the individual is usually required prior to disclosure of alcohol or drug abuse information under the routine uses listed below.

1. Records may be disclosed to Federal and non-Federal (public or private) health care providers that provide health care services to IHS individuals for purposes of planning for or providing such services, or reporting results of medical examination and treatment.

2. Records may be disclosed to Federal, State, local or other authorized organizations that provide third-party reimbursement or fiscal intermediary functions for the purposes of billing or collecting third-party reimbursements. Relevant records may be disclosed to debt collection agencies under a business associate agreement arrangement directly or through a third party.

3. Records may be disclosed to State agencies or other entities acting pursuant to a contract with CMS, for fraud and abuse control efforts, to the extent required by law or under an agreement between IHS and respective state Medicaid agency or other entities.

4. Records may be disclosed to school health care programs that serve AI/AN for the purpose of student health maintenance.

5. Records may be disclosed to the Bureau of Indian Affairs (BIA) or its contractors under an agreement between IHS and the BIA relating to disabled AI/AN children for the purposes of carrying out its functions under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, *et seq.*

6. Records may be disclosed to organizations deemed qualified by the secretary of HHS and under a business associate agreement to carry out quality assessment/improvement, medical audits, utilization review or to provide accreditation or certification of health care facilities or programs.

7. Records may be disclosed under a business associate agreement to individuals or authorized organizations sponsored by IHS, such as the National Indian Women's Resource Center, to conduct analytical and evaluation studies.

8. 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. An authorization, Form IHS–810, is required for the disclosure of sensitive PHI (*e.g.*, alcohol/drug abuse patient information, Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS), Sexually Transmitted Diseases (STDs), or mental health) that is maintained in the medical record.

9. Records may be disclosed for research purposes to the extent permitted by:

(a) Determining that the use(s) or disclosure(s) are met under 45 CFR 164.512(i), or

(b) Determining that the use(s) or disclosure(s) are met under 45 CFR 164.514 (a) through (c) for de-identified PHI, and 5 U.S.C. 552a(b) (5), or (c) Determining that the requirements of 45 CFP. 164.514(e) for limited data sets, and 5 U.S.C. 552a.(b)(5) are met.

10. Information from records, including but not limited to information concerning the commission of crimes, suspected cases of abuse (including child, elder and sexual abuse), the reporting of neglect, sexual assault or domestic violence, births, deaths, alcohol or drug abuse, immunization, cancer, or the occurrence of communicable diseases, may be disclosed to public health authorities, epidemiology centers established and funded under 25 U.S.C. 1621m, and other appropriate government authorities which are authorized by applicable Federal, State, Tribal or local law or regulations to receive such information.

Note: In Federally conducted or assisted alcohol or drug abuse programs, under 42 CFR Part 2, disclosure of patient information for purposes of criminal investigations must be authorized by court order issued under 42 CFR 2.65, except that reports of suspected child abuse may be made to the appropriate State or local authorities under State law.

11. Information may be disclosed from these records regarding suspected cases of child abuse to:

(a) Federal, State or Tribal agencies that need to know the information in the performance of their duties, and

(b) Members of community child protection teams for the purposes of investigating reports of suspected child abuse, establishing a diagnosis, formulating or monitoring a treatment plan, and making recommendations to the appropriate court. Community child protection teams are comprised of representatives of Tribes, the BIA, child protection service agencies, the judicial system, law enforcement agencies and IHS.

12. IHS may disclose information from these records in litigations and/or proceedings related to an administrative claim when:

(a) IHS has determined that the use of such records is relevant and necessary to the litigation and/or proceedings related to an administrative claim and would help in the effective representation of the affected party listed in subsections (i) through (iv) below, and that such disclosure is

compatible with the purpose for which the records were collected. Such disclosure may be made to the HHS/OGC and/or Department of Justice (DOJ), pursuant to an agreement between IHS and OGC, when any of the following is a party to litigation and/or proceedings related to an administrative claim or has an interest in the litigation and/or proceedings related to an administrative claim:

(i) HHS or any component thereof; or

(ii) Any HHS employee in his or her official capacity; or

(iii) Any HHS employee in his or her individual capacity where the DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(iv) The United States or any agency thereof (other than HHS) where HHS/OGC has determined that the litigation and/or proceedings related to an administrative claim is likely to affect HHS or any of its components.

(b) In the litigation and/or proceedings related to an administrative claim described in subsection (a) above, information from these records may be disclosed to a court or other tribunal, or to another party before such tribunal in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the information expressly authorized by such order.

13. Records may be disclosed under a business associate agreement to an IHS contractor for the purpose of computerized data entry, medical transcription, duplication services, or maintenance of records contained in this system.

14. Records may be disclosed under a personal services contract or other agreement to student volunteers, individuals working for IHS, and other individuals performing functions for IHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

15. Records regarding specific medical services provided to a unemancipated minor individual may be disclosed to the unemancipated minor's parent or legal guardian who previously consented to those specific medical services, to the extent permitted under 45 CFR 164.502(g).

16. Records may be disclosed to an individual having authority to act on behalf of an incompetent individual concerning health care decisions, to the extent permitted under 45 CFR 164.502(g).

17. Information may be used or disclosed from an IHS facility directory in response to an inquiry about a named individual from a member of the general public to establish the individual's presence (and location when needed for visitation purposes) or to report the individual's condition while hospitalized (*e.g.*, satisfactory or stable), unless the individual objects to disclosure of this information. IHS may provide the religious affiliation only to members of the clergy.

18. Information may be disclosed to a relative, a close personal friend, or any other person identified by the individual that is directly relevant to that person's involvement with the individual's care or payment for health care.

Information may also be used or disclosed in order to notify a family member, personal representative, or other person responsible for the individual's care, of the individual's location, general condition or death.

If the individual is present for, or otherwise available prior to, a use or disclosure, and is competent to make health care decisions;

(a) May use or disclose after the facility obtains the individual's consent,

(b) Provides the individual with the opportunity to object and the individual does not object, or

(c) It could reasonably infer, based on professional judgment, that the individual does not object.

If the individual is not present, or the opportunity to agree or object cannot practicably be provided due to incapacity or emergent circumstances, an IHS health care provider may determine, based on professional judgment, whether disclosure is in the individual's best interest, and if so, may disclose only what is directly relevant to the individual's health care.

19. Information concerning exposure to the HIV may be disclosed, to the extent authorized by Federal, State or Tribal law, to the sexual and/or needle-sharing partner(s) of a subject individual who is infected with HIV under the following circumstances:

(a) The information has been obtained in the course of clinical activities at IHS facilities;

(b) IHS has made reasonable efforts to counsel and encourage the subject individual to provide information to the individual's sexual or needle-sharing partner(s);

(c) IHS determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified;

(d) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices; and

(e) IHS has advised the partner(s) to whom information is disclosed that they shall not re-disclose or use such information for a purpose other than that for which the disclosure was made.

20. Records may be disclosed to Federal and non-Federal protection and advocacy organizations that serve AI/AN for the purpose of investigating incidents of abuse and neglect of individuals with developmental disabilities (including mental disabilities), as defined in 42 U.S.C. 10801–10805(a) (4) and 42 CFR 51.41–46, to the extent that such disclosure is authorized by law and the conditions of 45 CFR 1386.22(a)(2) are met.

21. Records of an individual may be disclosed to a correctional institution or a law enforcement official, during the period of time the individual is either an inmate or is otherwise in lawful custody, for the provision of health care to the individual or for health and safety purposes. Disclosure may be made upon the representation of either the institution or a law enforcement official that disclosure is necessary for the provision of health care to the individual, for the health and safety of the individual and others (*e.g.* , other inmates, employees of the correctional facility, transport officers), and for facility administration and operations. This routine use applies only for as long as the individual remains in lawful custody, and does not apply once the individual is released on parole or placed on either probation or on supervised release, or is otherwise no longer in lawful custody.

22. Records including patient name, date of birth, SSN, gender and other identifying information may be disclosed to the SSA as is reasonably necessary for the purpose of conducting an electronic validation of the SSN(s) maintained in the record to the extent required under an agreement between IHS and SSA.

23. Disclosure of relevant health care information may be made to funeral directors or representatives of funeral homes in order to allow them to make necessary arrangements prior to and in anticipation of an individual's impending death.

24. Records may be disclosed to a public or private covered entity that is authorized by law or charter to assist in disaster relief efforts (*e.g.*, the Red Cross and the Federal Emergency Management Administration), for purposes of coordinating information with other similar entities concerning an individual's health care, payment for health care, notification of the

individual's whereabouts and his or her health status or death.

25. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, ledgers, card files, microfiche, microfilm, computer tapes, disk packs, digital photo discs, and automated, computer-based or electronic files.

RETRIEVABILITY:

Indexed by name, record number, and SSN and cross-indexed.

SAFEGUARDS:

Safeguards apply to records stored on-site and off-site.

1. *Authorized Users:* Access is limited to authorized IHS personnel, volunteers, IHS contractors, subcontractors, and other business associates in the performance of their duties. Examples of authorized personnel include: Medical records personnel, business office personnel, contract health staff, health care providers, authorized researchers, medical audit personnel, health care team members, and legal and administrative personnel on a need to know basis.

2. *Physical Safeguards:* Records are kept in locked metal filing cabinets or in a secured room or in other monitored areas accessible to authorized users at all times when not actually in use during working hours and at all times during non-working hours. Magnetic tapes, disks, other computer equipment (*e.g.*, pc workstations) and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Telecommunication equipment (*e.g.*, computer terminal, servers, modems and disks) of the Resource and Patient Management System (RPMS) are maintained in locked rooms during non-working hours. Network (Internet or Intranet) access of authorized individual(s) to various automated and/or electronic programs or computers (*e.g.*, desktop, laptop, handheld or other computer types) containing protected personal identifiers or PHI is reviewed periodically and controlled for authorizations, accessibility levels, expirations or denials, including passwords, encryptions or other devices to gain access. Combinations and/or electronic passcards on door locks are changed periodically and whenever an IHS employee resigns, retires or is reassigned.

3. *Procedural Safeguards:* Within each facility a list of personnel or categories of personnel having a demonstrable need for the records in the performance of their duties has been developed and is maintained. Procedures have been developed and implemented to review one-time requests for disclosure to personnel who may not be on the authorized user list. Proper charge-out procedures are followed for the removal of all records from the area in which they are maintained. Records may not be removed from the facility except in certain circumstances, such as compliance with a valid court order or shipment to the Federal Records Center(s). Persons who have a need to know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records. These individuals are to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act and the HIPAA Privacy Rule as adopted, and to destroy all copies or to return such records when the need to know has expired. Procedural instructions include the statutory penalties for noncompliance.

The following automated information systems (AIS) security procedural safeguards are in place for automated health and medical records maintained in the RPMS. A profile of automated systems security is maintained. Security clearance procedures for screening individuals, both Government and contractor personnel, prior to their participation in the design, operation, use or maintenance of IHS AIS are implemented. The use of current passwords and log-on codes are required to protect sensitive automated data from unauthorized access. Such passwords and codes are changed periodically. An automated or electronic audit trail is maintained and reviewed periodically. Only authorized IHS Division of Information Resources staff may modify automated files in batch mode. Personnel at remote terminal sites may only retrieve automated or electronic data. Such retrievals are password protected. Privacy Act requirements, HIPAA Privacy and Security Rule requirements and specified AIS security provisions are specifically included in contracts and agreements and the system manager or his/her designee oversee compliance with these contract requirements.

4. *Implementing Guidelines:* HHS Chapter 45–10 and supplementary Chapter PHS.hf: 45–10 of the General Administration Manual; HHS, ''Automated Information Systems Security Program Handbook,'' as amended; HHS IRM Policy HHS–IRM–2000–0005, ''IRM Policy for IT Security for Remote Access''; OMB Circular A–130 ''Management of Federal Information Resources''; HIPAA Security Standards for the Protection of Electronic Protected Health Information, 45 CFR 164.302 through 164.318; and E-Government Act of 2002 (Pub. L. 107–347, 44 U.S.C. Ch 36).

RETENTION AND DISPOSAL:

Patient listings which may identify individuals are maintained in IHS Area and Program Offices permanently. Inactive records are held at the facility that provided health and billing services from three to seven years and then are transferred to the appropriate Federal Records Center (FRC). Monitoring strips and tapes (*e.g.*, fetal monitoring strips, EEG and EKG tapes) that are not stored in the individual's official medical record are stored at the health facility for one year and are then transferred to the appropriate FRC. (See Appendix 2 for FRC addresses). In accordance with the records disposition authority approved by the Archivist of the United States, paper records are maintained for 75 years after the last episode of individual care except for billing records. The retention and disposal methods for billing records will be in accordance with the approved IHS Records Schedule. The disposal methods of paper medical and health records will be in accordance with the approved IHS Records Schedule. The electronic data consisting of the individual personal identifiers and PHI maintained in the RPMS or any subsequent revised IHS database system should be inactivated once the paper record is forwarded to the appropriate FRC.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Coordinating Official: Director, OCPS, IHS, Reyes Building, 801 Thompson Avenue, Suite 300, Rockville, Maryland, 20852–1627. See Appendix 1. The IHS Area Office Directors, Service Unit Directors/Chief Executive Officers and Facility Directors listed in Appendix 1 are System Managers.

NOTIFICATION PROCEDURE:

General Procedure: Requests must be made to the appropriate System Manager (IHS Area, Program Office Director or Service Unit Director/Chief Executive Officer). A subject individual who requests a copy of, or access to, his or her medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents. Such a representative may be an IHS health professional. When a subject individual is seeking to obtain information about himself/herself that may be retrieved by a different name or identifier than his/her current name or identifier, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks. No verification of identity shall be required where the record is one that is required to be disclosed under the Freedom of Information Act. Where applicable, fees for copying records will be charged in accordance with the schedule set forth in 45 CFR Part 5b.

Requests in Person: Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to the designated agency employee, such employee shall make a written record verifying the subject individual's identity. If the subject individual has no identification papers, the responsible system manager or designated agency official shall require that the subject individual certify in writing that he/she is the individual whom he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. If an individual is unable to sign his/her name when required, he/she shall make his/her mark and have the mark verified in writing by two additional persons.

Requests by Mail: Written requests must contain the name and address of the requester, his/her date of birth and at least one other piece of information that is also contained in the subject record, and his/her signature for comparison purposes. If the written request does not contain sufficient information, the System Manager shall inform the requester in writing that additional, specified information is required to process the request.

Requests by Telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

Parents, Legal Guardians and Personal Representatives: Parents of minor children and legal guardians or personal representatives of legally incompetent individuals shall verify their own identification in the manner described above, as well as their relationship to the individual whose record is sought. A copy of the child's birth certificate or court order establishing legal guardianship may be required if there is any doubt regarding the relationship of the individual to the patient.

RECORD ACCESS PROCEDURES:

Same As Notification Procedures: Requesters may write, call or visit the last IHS facility where medical care was provided. Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their record, if any.

Contesting Record Procedures: Requesters may write, call or visit the appropriate IHS Area/Program Office Director or Service Unit Director/Chief Executive Officer at his/her address specified in Appendix 1, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual and/or family members, IHS health care personnel, contract health care providers, State and local health care provider organizations, Medicare and Medicaid funding agencies, and the SSA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records Are Maintained:

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.

Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, P.O. Box 1012, Eagle Butte, South Dakota 57625.

Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, P.O. Box 200, Ft. Thompson, South Dakota 57339.

Director, Fort Berthold Service Unit, Fort Berthold Indian Health Center, P.O. Box 400, New Town, North Dakota 58763.

Director, Carl T. Curtis Health Center, P.O. Box 250, Macy, Nebraska 68039.

Director, Fort Totten Service Unit, Fort Totten Indian Health Center, P.O. Box 200, Fort Totten, North Dakota 58335.

Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752.

Director, Lower Brule Indian Health Center, P.O. Box 191, Lower Brule, South Dakota 57548.

Director, McLaughlin Indian Health Center, P.O. Box 879, McLaughlin, South Dakota 57642.

Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071.

Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770.

Director, Rapid City Service Unit, Rapid City Indian Hospital, 3200 Canyon Lake Drive, Rapid City, South Dakota 57701.

Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570.

Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, P.O. Box 189, Sisseton, South Dakota 57262.

Director, Standing Rock Service Unit, Fort Yates Indian Hospital, P.O. Box J, Fort Yates, North Dakota 58538.

Director, Trenton-Williston Indian Health Center, P.O. Box 210, Trenton, North Dakota 58853.

Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, P.O. Box 160, Belcourt, North Dakota 58316.

Director, Wanblee Indian Health Center, 100 Clinic Drive, Wanblee, South Dakota 57577.

Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, 110 Washington Street, Wagner, South Dakota 57380.

Director, Youth Regional Treatment Center, P.O. Box 68, Mobridge, South Dakota 57601.

Director, Sac & Fox Health Center, 307 Meskwaki Road, Tama, Iowa 52339.

Director, Santee Health Center, 425 Frazier Avenue, N ST Street #2, Niobrara, Nebraska 68760.

Director, Alaska Area Native Indian Health Service, 4141 Ambassador Drive, Suite 300, Anchorage, Alaska 99508–5928.

Director, Albuquerque Area Indian Health Service, 5300 Homestead Road, NE, Albuquerque, New Mexico 87110.

Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049.

Director, To'Hajille Health Center, P.O. Box 3528, Canoncito, New Mexico 87026.

Director, New Sunrise Treatment Center, P.O. Box 219, San Fidel, New Mexico 87049.

Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE, Albuquerque, New Mexico 87049.

Director, Albuquerque Indian Dental Clinic, P.O. Box 67830, Albuquerque, New Mexico 87193.

Director, Alamo Navajo Health Center, P.O. Box 907, Magdalena, New Mexico 87825.

Director, Jemez PHS Health Center, P.O. Box 279, Jemez, New Mexico 87024

Director, Santa Ana PHS Health Center, P.O. Box 37, Bernalillo, New Mexico 87004.

Director, Sandia PHS Health Center, P.O. Box 6008, Bernalillo, New Mexico 87004.

Director, Zia PHS Health Center, 155 Capital Square, Zia, New Mexico 87053.

Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501.
Director, Santa Clara Health Center, RR5, P.O. Box 446, Espanola, New Mexico 87532.
Director, San Felipe Health Center, P.O. Box 4344, San Felipe, New Mexico 87001.
Director, Cochiti Health Center, P.O. Box 105, 255 Cochiti Street, Cochiti, New Mexico 87072.
Director, Santo Domingo Health Center, P.O. Box 340, Santo Domingo, New Mexico 87052.
Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137.
Director, Ignacio Indian Health Center, P.O. Box 889, Ignacio, Colorado 81137.
Director, Towaoc Ute Health Center, Towaoc, Colorado 81334.
Director, Jicarilla Indian Health Center, P.O. Box 187, Dulce, New Mexico 87528.
Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340.
Director, Taos/Picuris Indian Health Center, P.O. Box 1956, 1090 Goat Springs Road, Taos, New Mexico 87571.
Director, Zuni Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327.
Director, Pine Hill Health Center, P.O. Box 310, Pine Hill, New Mexico 87357.
Director, Bemidji Area Indian Health Service, 522 Minnesota Avenue, N.W., Bemidji, Minnesota 56601.
Director, Red Lake Service Unit, PHS Indian Hospital, Highway 1, Red Lake, Minnesota 56671.
Director, Leech Lake Service Unit, PHS Indian Hospital, 425 7th Street, NW, Cass Lake, Minnesota 56633.
Director, White Earth Service Unit, PHS Indian Hospital, P.O. Box 358, White Earth, Minnesota 56591.
Director, Billings Area Indian Health Service, P.O. Box 36600, 2900 4th Avenue North, Billings, Montana 59101.
Director, Blackfeet Service Unit, Browning Indian Hospital, P.O. Box 760, Browning, Montana 59417.
Director, Heart Butte PHS Indian Health Clinic, Heart Butte, Montana 59448.
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022.
Director, Lodge Grass PHS Indian Health Center, Lodge Grass, Montana 59090.
Director, Pryor PHS Indian Health Clinic, P.O. Box 9, Pryor, Montana 59066.
Director, Fort Peck Service Unit, Poplar Indian Hospital, Poplar, Montana 59255.
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526.
Director, Hays PHS Indian Health Clinic, Hays, Montana 59526.
Director, Northern Cheyenne Service Unit, Lame Deer Indian Health Center, Lame Deer, Montana 59043.
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514.
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510.
Director, Chief Redstone Indian Health Center, Wolf Point, Montana 59201.
Director, California Area Indian Health Service, John E. Moss Federal Building, 650 Capitol Mall, Suite 7–100, Sacramento, California 95814.
Director, Nashville Area Indian Health Service, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214–2634.
Director, Catawba PHS Indian Nation of South Carolina, P.O. Box 188, Catawba, South Carolina 29704.
Director, Unity Regional Youth Treatment Center, P.O. Box C–201, Cherokee, North Carolina 28719.
Director, Navajo Area Indian Health Service, P.O. Box 9020, Highway 264, Window Rock, Arizona 86515–9020.
Director, Chinle Service Unit, Chinle Comprehensive Health Care Facility, P.O. Drawer PH, Chinle, Arizona 86503.
Director, Tsaile Health Center, P.O. Box 467, Navajo Routes 64 and 12, Tsaile, Arizona 86556.
Director, Rock Point Field Clinic, do Tsaile Health Center, P.O. Box 647, Tsaile, Arizona 86557.
Director, Pinon Health Station, Pinon, Arizona 86510.
Director, Crownpoint Service Unit, Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Pueblo Pintado Health Station, c/o Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, P.O. Box 649, Intersection of Navajo Routes N12 and N7, Fort Defiance, Arizona 86515.
Director, Nahata Dziil Health Center, P.O. Box 125, Sanders, Arizona 86512.
Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Nizhoni Boulevard, Gallup, New Mexico 87305.
Director, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325.
Director, Ft. Wingate Health Station, do Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87305.
Director, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Director, Inscription House Health Center, P.O. Box 7397, Shonto, Arizona 86054.
Director, Dennehotso Clinic, do Kayenta Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Director, Shiprock Service Unit, Northern Navajo Medical Center, P.O. Box 160, U.S. Hwy 491 North, Shiprock, New Mexico 87420.
Director, Dzilth-Na-O-Dith—Hle Indian Health Center, 6 Road 7586, Bloomfield, New Mexico 87413.
Director, Teecnospos Health Center, P.O. Box 103, N5114 BIA School Road, Teecnospos, Arizona 86514.
Director, Sanostee Health Station, do Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Toadlena Health Station, do Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Teen Life Center, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 NW Street, Oklahoma City, Oklahoma 73112.
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard and Moore, Claremore, Oklahoma 74017.
Director, Clinton Service Unit, Clinton Indian Hospital, Route 1, P.O. Box 3060, Clinton, Oklahoma 73601–9303.
Director, El Reno PHS Indian Health Clinic, 1631A E. Highway 66, El Reno, Oklahoma 73036.
Director, Watonga Indian Health Center, Route 1, Box 34–A, Watonga, Oklahoma 73772.
Director, Haskell Service Unit, PHS Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044.
Director, Lawton Service Unit, Lawton Indian Hospital, 1515 Lawrie Tatum Road, Lawton, Oklahoma 73501.
Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005.
Director, Carnegie Indian Health Center, P.O. Box 1120, Carnegie, Oklahoma 73150.
Director, Holton Service Unit, PHS Indian Health Center, 100 West 6th Street, Holton, Kansas 66436.
Director, Pawnee Service Unit, Pawnee Indian Service Center, RR2, Box 1, Pawnee, Oklahoma 74058–9247.
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056.
Director, Tahlequah Service Unit, W. W. Hastings Indian Hospital, 100 S5. Bliss, Tahlequah, Oklahoma 74464.
Director, Wewoka Indian Health Center, P.O. Box 1475, Wewoka, Oklahoma 74884.
Director, Phoenix Area Indian Health Service, Two Renaissance Square, 40 North Central Avenue, Phoenix, Arizona 85004.
Director, Colorado River Service Unit, Chemehuevi Indian Health Clinic, P.O. Box 1858, Havasu Landing, California 92363.
Director, Colorado River Service Unit, Havasupai Indian Health Station, P.O. Box 129, Supal, Arizona 86435.
Director, Colorado River Service Unit, Parker Indian Health Center, 12033 Agency Road, Parker, Arizona 85344.
Director, Colorado River Service Unit, Peach Springs Indian Health Center, P.O. Box 190, Peach Springs, Arizona 86434.
Director, Colorado River Service Unit, Sherman Indian High School, 9010 Magnolia Avenue, Riverside, California 92503.
Director, Elko Service Unit, Newe Medical Clinic, 400 ''A'' Newe View, Ely, Nevada 89301.
Director, Elko Service Unit, Southern Bands Health Center, 515 Shoshone Circle, Elko, Nevada 89801.
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85366.
Director, Keams Canyon Service Unit, Hopi Health Care Center, P.O. Box 4000, Polacca, Arizona 86042.
Director, Schurz Service Unit, Schurz Service Unit Administration, Drawer A, Schurz, Nevada 89427.
Director, Fort McDermitt Clinic, P.O. Box 315, McDermitt, Nevada 89421.
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.

Director, Phoenix Service Unit, Salt River Health Center, 10005 East Osborn Road, Scottsdale, Arizona 85256.
Director, San Carlos Service Unit, Bylas Indian Health Center, P.O. Box 208, Bylas, Arizona 85550.
Director, San Carlos Service Unit, San Carlos Indian Hospital, P.O. Box 208, San Carlos, Arizona 85550.
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Ft. Duchesne, Utah 84026.
Director, Whiteriver Service Unit, Cibecue Health Center, P.O. Box 37, Cibecue, Arizona 85941.
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, P.O. Box 860, Whiteriver, Arizona 85941.
Director, Desert Vision Youth Wellness Center/RTC, P.O. Box 458, Sacaton, AZ 85247.
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2829.
Director, Colville Service Unit, Colville Indian Health Center, P.O. Box 71–Agency Campus, Nespelem, Washington 99155.
Director, Fort Hall Service Unit, Not-Tsoo Gah-Nee Health Center, P.O. Box 717, Fort Hall, Idaho 83203.
Director, Neah Bay Service Unit, Sophie Trettevick Indian Health Center, P.O. Box 410, Neah Bay, Washington 98357.
Director, Warm Springs Service Unit, Warm Springs Indian Health Center, P.O. Box 1209, Warm Springs, Oregon 97761.
Director, Weilpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Weilpinit, Washington 99040.
Director, Western Oregon Service Unit, Chemawa Indian Health Center, 3750 Chemawa Road, NE, Salem, Oregon 97305–1198.
Director, Yakama Service Unit, Yakama Indian Health Center, 401 Buster Road, Toppenish, Washington 98948.
Director, Tucson Area Indian Health Service, 7900 South ''J'' Stock Road, Tucson, Arizona 85746–9352.
Director, Pascua Yaqui Service Unit, Division of Public Health, 7900 South ''J'' Stock Road, Tucson, Arizona 85746.
Director, San Xavier Indian Health Center, 7900 South ''J'' Stock Road, Tucson, Arizona 85746.
Director, Sells Service Unit, Santa Rosa Indian Health Center, HCO1, P.O. Box 8700, Sells, Arizona 85634.
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634.
Director, Sells Service Unit, West Side Health Station, P.O. Box 548, Sells, Arizona 85634.

Appendix 2—Federal Archives and Records Centers

District of Columbia, Maryland Except U.S. Court Records for Maryland, Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20746–8001.
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, Federal Archives and Records Center, Frederick C. Murphy Federal Center, 380 Trapelo Road, Waltham, Massachusetts 02452–6399.
Northeast Region, Federal Archives and Records Center, 10 Conte Drive, Pittsfield, Massachusetts 01201–8230.
Mid-Atlantic Region and Pennsylvania, Federal Archives and Records Center, 14700 Townsend Road, Philadelphia, Pennsylvania 19154–1096.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, Georgia 30344–2593.
Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin and U.S. Court Records for the mentioned States, Federal Archives and Records Center, 7358 South Pulaski Road, Chicago, Illinois 60629–5898.
Michigan, Except U.S. Court Records, Federal Records Center, 3150 Springboro Road, Dayton, Ohio 45439–1883.
Kansas, Iowa, Missouri and Nebraska, and U.S. Court Records for the mentioned States, Federal Archives and Records Center, 2312 East Bannister Road, Kansas City, Missouri 64131–3011.
New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands, and U.S. Court Records for the mentioned States and territories, 200 Space Center Drive, Lee's Summit, Missouri 64064–1182.
Arkansas, Louisiana, Oklahoma and Texas, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, P.O. Box 6216, Ft. Worth, Texas 76115–0216.
Colorado, Wyoming, Utah, Montana, New Mexico, North Dakota, and South Dakota, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, P.O. Box 25307, Denver, Colorado 80225–0307.
Northern California Except Southern California, Hawaii, and Nevada Except Clark County, the Pacific Trust Territories, and American Samoa, and U.S. Courts Records for the mentioned States and territories, Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, California 94066–2350.
Arizona, Southern California, and Clark County, Nevada, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, 23123 Cajalco Road, Perris, California 93570–7298.
Washington, Oregon, Idaho and Alaska, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, 6125 Sand Point Way NE, Seattle, Washington 98115–7999.

[FR Doc. E8–19481 Filed 8–22–08; 8:45 am]
BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; National Institutes of Health Construction Grants

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 16, 2008, pages 34026–34027, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, information that has been extended, revised or implemented on or after October 1, 2008, unless it displays a currently valid OMB control number.

Proposed Collection: Title: National Institutes of Health Construction Grants—42 CFR Part 52b (Final Rule). *Type of Information Collection Request:* Extension of No. 0925–0424, expiration date 8/31/2008. *Need and Use of the Information Collection:* This request is for OMB review and approval of an extension for the information collection and recordkeeping requirements contained in the regulation codified at 42 CFR Part 52b. The purpose of the regulation is to govern the awarding and administration of grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the buildings (or applicable part of the buildings) suitable for the purpose for which it was constructed. In terms of reporting requirements: Section 52b.9(b) of the regulation requires the transferor of a facility which is sold or transferred, or owner of a facility, the use of which has changed, to provide written notice of the sale, transfer or change within 30 days. Section 52b.10(f) requires a grantee to submit an approved copy of the construction schedule prior to the start of construction. Section 52b.10(g) requires a grantee to provide daily construction logs and monthly status reports upon request at the job site. Section 52b.11(b) requires applicants for a project involving the acquisition of existing facilities to provide the estimated cost of the project, cost of the acquisition of existing facilities, and cost of remodeling, renovating, or altering facilities to serve the purposes for which they are acquired.In terms of recordkeeping requirements: Section 52b.10(g) requires grantees to maintain daily construction logs and monthly status reports at the job site. *Frequency*

of Response: On occasion. *Affected Public:* Non-profit organizations and Federal agencies. *Type of respondents:* Grantees. The estimated respondent burden is as follows:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Reporting:				
Section 52b.9(b)	1	1	.50	.50
Section 2b.10(f)	60	1	1.0	60
Section 2b.10(g)	60	12	1.0	720
Section 2b.11(b)	100	1	1.0	100
Recordkeeping:				
Section 2b.10(g)	60	260	1.0	15,600
Totals	281			16,480.5

The annualized cost to the public, based on an average of 60 active grants in the construction phase, is estimated at: $576,818. There are no Capital Costs to report. There are no operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information and recordkeeping are necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information and recordkeeping, including the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected and the recordkeeping information to be maintained; and (4) 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 and recordkeeping techniques of other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Jerry Moore, NIH Regulations Officer, Office of Management Assessment, Division of Management Support, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, Maryland 20852; call 301–496–4607 (this is not a toll free number) or e-mail your request to *jm40z@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received *within 30 days* of the date of this publication.

Dated: August 19, 2008.

Jerry Moore,

Regulations Officer, National Institutes of Health.

[FR Doc. E8–19585 Filed 8–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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: Center for Scientific Review Special Emphasis Panel Virology.

Date: September 8, 2008.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Biology Member Conflicts.

Date: September 12, 2008.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Auditory and Vestibular Neuroscience.

Date: September 16–17, 2008.

Time: 6 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Taste/Pain.

Date: September 16–17, 2008.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Multiscale Models of the Physiome.

Date: September 17, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics in Bioengineering Sciences and Technologies.

Date: September 18, 2008.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csrnih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, LIRR and RIBT Member Conflicts.

Date: September 23–24, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group Surgery, Anesthesiology and Trauma Study Section.

Date: October 1–2, 2008.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review, Group Host Interactions with Bacterial Pathogens Study Section.

Date: October 2, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Avenue Hotel, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Marian Wachtel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering, Integrated Review Group Bioengineering, Technology and Surgical Sciences Study Section.

Date: October 6–7, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering, Integrated Review Group Medical Imaging Study Section.

Date: October 6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202, (Virtual Meeting).

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Tumor Microenvironment Study Section.

Date: October 6–7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences, Integrated Review Group Neurotechnology Study Section.

Date: October 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience, Integrated Review Group Somatosensory and Chemosensory Systems Study Section.

Date: October 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group Nuclear Dynamics and Transport.

Date: October 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Neurobiology of Motivated Behavior Study Section.

Date: October 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics, Integrated Review Group Macromolecular Structure and Function D Study Section.

Date: October 7–8, 2008.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, Washington, DC 20036.

Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Microscopic Imaging Study Section.

Date: October 7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza, Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Ross D. Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Clinical Molecular Imaging.
Date: October 7, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Eileen W. Bradley, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Neuroendocrinology, Neuroimmunology, and Behavior Study Section.
Date: October 7–8, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Frances Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Gene and Drug Delivery Systems Study Section.
Date: October 8–9, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.
Contact Person: Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics, Integrated Review Group Synthetic and Biological Chemistry B Study Section.
Date: October 8–9, 2008.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19438 Filed 8–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, September 8, 2008, 8 a.m. to 5:15 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on August 13, 2008, 73 FR 47195.

This notice is amended to change the times of the open session on September 8, 2008 to 8 a.m. to 3:45 p.m. and the closed session to 3:45 p.m. to 5:15 p.m.

Dated: August 18, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19586 Filed 8–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.
Date: September 16, 2008.
Closed: 8 a.m. to 9:30 a.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Rockville Hilton Hotel, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.
Open: 9:30 a.m. to 1:30 p.m.
Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NCMHD Health Disparities update, Scientific Programs Highlight, and other business of the Council.
Place: Rockville Hilton Hotel, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–435–2135, *brooksd@ncmhd.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Dated: August 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19445 Filed 8–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

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: AIDS Research Advisory Committee, NIAID; AIDS Vaccine Research Subcommittee.

Date: September 16–17, 2008.

Time: September 16, 2008, 8:30 a.m. to 5 p.m.

Agenda: To discuss the implication of recent vaccine trial results for future HIV vaccine development.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Time: September 17, 2008, 8:30 a.m. to Adjourned

Agenda: To discuss the implication of recent vaccine trail results for future HIV vaccine development.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: James A. Bradac, PhD, Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(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: August 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–19440 Filed 8–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0885]

Public Meeting on Amendments to the International Mobile Satellite Organization (IMSO) Convention

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Coast Guard (USCG) will hold a public meeting on issues related to proposed amendments to the Convention of the International Mobile Satellite Organization (IMSO). Background documentation may be found on the Department of State's Web site: *http://www.state.gov/e/eeb/cip/imso/.*

DATES: The meeting will be held on Thursday, September 4, 2008 from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Room 6103.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Jason Smith at (202) 372–1376 or by e-mail to *jason.e.smith2@uscg.mil* or fax to (202) 372–1925.

SUPPLEMENTARY INFORMATION: This public meeting will discuss proposed Amendments to the International Mobile Satellite Organization (IMSO) Convention to Improve Governance and Transparency of IMSO, to provide IMSO with the necessary legal authority to perform its role in the Congressionally-mandated Long Range Identification and Tracking of Ships (LRIT) system and to provisionally apply those amendments in advance of their formal entry into force.

The amendments are intended to improve the governance and transparency of IMSO oversight and responsibilities that may affect U.S. and non-U.S. mobile satellite services providers. The IMSO is convening its biennial Assembly of Parties meeting September 29–October 3, 2008, in Malta, during which the 92 member governments (Parties) will have the opportunity to consider and act on U.S. proposals (1) to amend the intergovernmental IMSO Convention to improve the governance and transparency of (i) IMSO's performance of its role in oversight of providers for the Global Maritime Distress and Safety System (GMDSS) and (ii) IMSO's performance of its role as Coordinator of Long Range Identification and Tracking of ships (LRIT) for the International Maritime Organization's Maritime Safety Committee (IMO MSC); and (2) to consider whether to provisionally apply those amendments upon their adoption by the IMSO Assembly, pending their formal entry into force.

Currently, the IMSO's authority for oversight of GMDSS services applies exclusively to Inmarsat PLC. In September 2006, the IMSO Assembly adopted amendments to the IMSO Convention that were intended to extend IMSO's GMDSS oversight to include all mobile satellite service providers, not just Inmarsat PLC. Additionally, in the context of work that has been ongoing in the IMO, the IMSO Assembly of Parties at the same meeting adopted an amendment to the IMSO Convention that purports to authorize IMSO to perform certain review and auditing functions for a new vessel ''LRIT'' system being developed for maritime security. The United States, along with other Parties, objected to these amendments because they did not contain sufficient elements of transparency for IMSO's governance and do not provide an adequate legal foundation for IMSO to undertake functions as LRIT Coordinator. Further, at an extraordinary Assembly of Parties meeting in March 2007, a majority of Parties attending the Assembly decided to provisionally apply them, again over the United States' objection. In the meantime, the Congress has mandated that the Department of Homeland Security develop and implement, consistent with international treaties, conventions, and agreements to which the United States is a party, an LRIT system for all vessels equipped with GMDSS or equivalent technology. See 46 U.S.C. 70115. In a related development, over United States' objection, the IMO's Maritime Safety Committee (MSC) decided to recommend, and the IMO Assembly adopted, a resolution mandating that new satellite providers admitted to the GMDSS by the MSC must be overseen by IMSO. See IMO Res. A.1001(25), which revoked and replaced IMO Res. A.888(21). Because of these latter developments, particularly the adoption by the IMO of Res. A.1001, and in order to put the IMSO on a sound legal foundation that will provide sufficient governance and transparency principles for IMSO's operations in these two new functions, the United States is planning to propose and negotiate a draft set of amendments to the IMSO Convention at the upcoming Assembly of Parties that will accomplish these purposes. The public meeting is intended to solicit public comment on that approach.

Public comment will also be solicited on provisional application of those amendments. If provisional application is approved, the Parties would apply those amendments in advance of their formal entry into force under the terms of the IMSO Convention. Formal entry into force under the IMSO Convention requires deposit of an instrument of acceptance with the depositary by 2/3 of the IMSO Parties at the time of adoption. As such, it is not likely to occur for a lengthy period of time. The public meeting will also address other issues that are likely to come before the IMSO Assembly of Parties meeting, including, inter alia, a draft reference Public Services Agreement that guides the terms and conditions of the contractual agreement that satellite service providers would be required to sign before being allowed to provide services for the GMDSS. The Public Services Agreement would require the payment of new fees to the IMSO. Public views and advice are being sought well in advance of the IMSO Assembly.

The proposed amendments and other background information relating to this meeting are available at the following Department of State Web site: *http://www.state.gov/e/eeb/cip/imso/.*

Persons planning to attend this meeting should send their name and nationality by e-mail to *jason.e.smith2@uscg.mil* or fax to (202) 372–1925 not later than 72 hours before the meeting. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited.

Members of the public are encouraged to participate and join in discussions, subject to the discretion of the moderator. Persons wishing to make formal presentations should provide advance notice to Lieutenant Commander Jason Smith.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Lieutenant Commander Jason Smith at (202) 372–1376 or by e-mail at *jason.e.smith2@uscg.mil* as soon as possible.

Dated: August 21, 2008.

William D. Baumgartner,

Rear Admiral, U.S. Coast Guard, Judge Advocate General.

[FR Doc. E8–19711 Filed 8–21–08; 11:15 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments New Collection, FEMA Form 142–1–1.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Collection of Information

Title: Integrated Public Alert and Warning System (IPAWS) Inventory and Evaluation Survey.

OMB Number: 1660–NW40.

Abstract: FEMA will be conducting an inventory, evaluation and assessment of the capabilities of Federal, State, local, and tribal government alert and warning systems. The IPAWS Inventory and Evaluation Survey will collect data that will facilitate the integration of public alert and warning systems. It will also reduce Federal planning costs by leveraging existing State systems.

Affected Public: State, local or tribal government.

Number of Respondents: 1,932.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 9,660.

Frequency of Response: Once annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Drop Box Room 301, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: August 15, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management and Budget, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–19606 Filed 8–22–08; 8:45 am]

BILLING CODE 9110–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held September 30, 2008 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management Royal Gorge Field Office, 3028 E. Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: John Dow, (719) 269–8559

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues including; presentations and

discussions on the Over the River project, oil and gas, and renewable energy development.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: August 14, 2008.

Linda McGlothlen,

Acting Royal Gorge Field Manager.

[FR Doc. E8–19613 Filed 8–22–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–230–5874–EU–025D; DB–G06–1007; IDI–35904]

Notice of Realty Action; Proposed Sale of Public Land, Idaho and Termination of a Multiple Use Classification on a Portion of These Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Several parcels of public land totaling 262.21 acres in Minidoka County, Idaho, are being considered for direct sale under the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), at no less than the appraised fair market value. This notice also terminates the Multiple Use Classification on a portion of these lands as this classification is no longer needed.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by October 9, 2008.

ADDRESSES: Address all comments concerning this Notice to Tara Hagen, Realty Specialist, Bureau of Land Management (BLM), Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Tara Hagen, Realty Specialist, at the above address or phone at (208) 732–7205.

SUPPLEMENTARY INFORMATION: This notice terminates the Multiple Use Management Classification, dated February 11, 1969, on the following described public lands in Minidoka County, Idaho. This classification is no longer needed and these lands will be considered for sale as discussed below.

T. 7 S., R. 24 E.,
Sec. 4, Lots 3–4.

The area described contains 42.48 acres in Minidoka County.

The following described public land in Minidoka County, Idaho, are being considered for sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750, 43 U.S.C. 1713):

Boise Meridian

T. 6 S., R. 24 E.,
Sec. 30, SWSE; Sec. 31, SESE, Lots 1, 4–6
T. 7 S., R. 24 E.,
Sec. 4, Lots 3–4.

The area described contains 262.21 acres in Minidoka County.

The 1985 BLM Monument Resource Management Plan identified these parcels of public land as suitable for disposal. The Amendments to Shoshone Field Office Land Use Plans for Land Tenure Adjustment and Areas of Critical Environmental Concern (2003) identified these parcels of land to be within the adjustment areas of Zones 2 and 4. Public lands within ½-mile of either side of the Zone 2 boundary will be considered potentially suitable for disposal primarily by exchange and secondarily by sale or R&PP patent. Public lands in Zone 4 are potentially suitable for disposal primarily by exchange; however, if land exchanges are not feasible, then land tenure adjustment via sale or R&PP patent will be considered. These parcels qualify for disposal under the Federal Land Transaction Facilitation Act (FLTFA). Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of the FLPMA will be analyzed during processing of the proposed sale.

On August 25, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or August 25, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments: For a period until October 9, 2008, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Shoshone Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Shoshone Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Authority: 43 CFR 2711.1–2.

Dated: August 14, 2008.

Lori A. Armstrong,

Shoshone Field Manager.

[FR Doc. E8–19489 Filed 8–22–08; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–230–5874–EU–028D; DB–G06–1007; IDI–35790]

Notice of Realty Action; Proposed Sale of Public Land, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: A parcel of public land totaling 40 acres in Lincoln County, Idaho, is being considered for direct sale, under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by October 9, 2008.

ADDRESSES: Address all comments concerning this Notice to Tara Hagen, Realty Specialist, Bureau of Land Management (BLM), Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Tara Hagen, Realty Specialist, at the above address or phone at (208) 732–7205.

SUPPLEMENTARY INFORMATION: The following described public land in Lincoln County, Idaho, is being considered for sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750 43 U.S.C. 1713):

Boise Meridian

T. 6 S., R. 22 E.,
Sec. 29, SWSW.

The area described contains 40 acres in Lincoln County.

The 1985 BLM Monument Resource Management Plan identified this parcel of public land as suitable for disposal. The Amendments to Shoshone Field Office Land Use Plans for Land Tenure Adjustment and Areas of Critical Environmental Concern (2003) identified this parcel of land to be within the adjustment area of Zone 4. Public lands in Zone 4 are potentially suitable for disposal primarily by exchange; however, if land exchanges are not feasible, then land tenure adjustment via sale or R&PP patent will be considered. This parcel qualifies for disposal under the Federal Land Transaction Facilitation Act (FLTFA). Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including, but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to section 209 of the FLPMA will be analyzed during processing of the proposed direct sale. On August 25, 2008 the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or August 25, 2010 unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments: For a period until October 9, 2008, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Shoshone Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Shoshone Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Authority: 43 CFR 2711.1–2.

Dated: August 14, 2008.

Lori A. Armstrong,

Shoshone Field Manager.

[FR Doc. E8–19495 Filed 8–22–08; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the September 18, 2008, meeting of the Royalty Policy Committee (RPC). Agenda items for the meeting of the RPC will include remarks from the Director, MMS, and the Associate Director, Minerals Revenue Management (MRM); a status report on the Department of Interior's implementation of recommendations from the RPC Subcommittee on Royalty Management; and a presentation on the Royalty in Kind (RIK) Fiscal Year 2007 Annual Report. The agenda also includes a briefing on a recent Office of Inspector General Evaluation of the RIK oil sales process; an update on the MRM Compliance Program; status reports on the rulemakings for Indian Oil Valuation and Advanced Royalty for Coal; and updates from the Oil and Gas Valuation, Oil and Gas Royalty Reporting, and RIK Subcommittees. The RPC membership includes representation from states, Indian Tribes, various mineral interests, the public-at-large (with knowledge and interest in royalty issues), and other Federal departments.

DATES: Thursday, September 18, 2008, from 8:30 a.m. to 4:30 p.m., Mountain Standard Time.

ADDRESSES: The meeting will be held at the Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, Colorado,

telephone number 303–987–2000 or 1–800–325–3535.

FOR FURTHER INFORMATION CONTACT: Gina Dan, Minerals Revenue Management, Minerals Management Service; PO Box 25165, MS 300B2, Denver, Colorado 80225–0165; telephone number (303) 231–3392, fax number (303) 231–3780; e-mail *gina.dan@mms.gov*.

SUPPLEMENTARY INFORMATION: The RPC provides advice to the Secretary and top Department officials on minerals policy, operational issues, and the performance of discretionary functions under the laws governing the Department's management of Federal and Indian mineral leases and revenues. The RPC reviews and comments on revenue management and other mineral-related policies and provides a forum to convey views representative of mineral lessees, operators, revenue payors, revenue recipients, governmental agencies, and the interested public. The location and dates of future meetings will be published in the **Federal Register** and posted on our Internet site at *http://www.mms.gov/mmab/RoyaltyPolicyCommittee/rpc_homepage.htm*.

Meetings are open to the public without advanced registration on a space-available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the RPC for its consideration. Please submit copies of these written statements to Ms. Dan by September 9, 2008. Transcripts of this meeting will be available for public inspection and copying at our offices in Building 85 on the Denver Federal Center in Lakewood, Colorado. The MMS will post the minutes on our Internet site.

These meetings are conducted under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 1) and the Office of Management and Budget (Circular No. A–63, revised).

Dated: August 20, 2008.

Richard J. Adamski,

Acting Associate Director, Minerals Revenue Management.

[FR Doc. E8–19649 Filed 8–22–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plans, Final Environmental Impact Statement, Record of Decision Amendment-Sylvan Pass Management, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision Amendment—Sylvan Pass Management on the Final Environmental Impact Statement for the Winter Use Plans, Final Environmental Impact Statement, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision Amendment—Sylvan Pass Management for the Winter Use Plans, Final Environmental Impact Statement, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway, Wyoming. On July 16, 2008, the Director, Intermountain Region, approved the Record of Decision Amendment—Sylvan Pass Management for the project.

On November 20, 2007, a Record of Decision was signed on the Winter Use Plans/Final Environmental Impact Statement for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway. The November 20, 2007, Record of Decision (on page 6) addressed management of Sylvan Pass in Yellowstone National Park, stating:

''This decision addresses Sylvan Pass in Yellowstone. For the winter season of 2007–2008 the pass will be managed continuing the combined program outlined in the 2004 Temporary Plan. After the winter of 2007–2008, in order to maximize risk reduction, the pass would be open and managed using full avalanche forecasting (as defined in the Sylvan Pass Operational Risk Management Assessment). When full forecasting indicates the pass is safe, the pass would be open to oversnow travel (both motorized and non-motorized access).

''The National Park Service will, in good faith, work cooperatively with the State of Wyoming, Park County, Wyoming and the town of Cody to determine how to provide continued snowmobile and snowcoach motorized oversnow access to Yellowstone National Park through the East Gate via Sylvan Pass in the winter use seasons beyond 2007–2008.

''The National Park Service will meet with representatives of the State of Wyoming, Park County, Wyoming and the town of Cody to further explore reasonable avalanche and access mitigation safety measures and costs. In order to provide adequate time to amend this Record of Decision reflecting a potential consensus of the parties and to promulgate a new regulation reflecting the amended decision for the 2008–2009 winter use season and beyond, consensus should be reached by June 1, 2008.''

Since the Record of Decision, the NPS has met with representatives of the City of Cody, Wyoming, Park County, Wyoming, the State of Wyoming, and Wyoming state elected officials (collectively known as the Sylvan Pass Study Group) and explored reasonable avalanche and access mitigation safety measures and costs.

The outcome of the meetings was that the Sylvan Pass Study Group recommended to the Intermountain Regional Director of the National Park Service that the November 2007 Record of Decision on Winter Use in Yellowstone National Park be amended to keep Sylvan Pass open in future winter use seasons to motorized and non-motorized oversnow travel for a limited core season, between December 22 and March 1. The group recommended continued use of a combination of avalanche mitigation techniques, including forecasting and helicopter and howitzer dispensed explosives.

This recommendation was taken into account in preparing the Record of Decision Amendment—Sylvan Pass Management (Amendment). The Amendment only addresses Sylvan Pass in Yellowstone National Park. Unless specifically modified by the Amendment, all other elements of the November 20, 2007, Record of Decision remain in place.

The Amendment is primarily based upon alternative 5 in the Final Environmental Impact Statement (alternative 5 calls for the same overall number of snowmobiles in Yellowstone as the November 20, 2007, decision, and for Sylvan Pass to be kept open).

The amended decision is that Sylvan Pass will be open for oversnow travel (both motorized and non-motorized) for a limited core season, from December 22 through March 1 each winter, subject to weather-related constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities. A combination of avalanche mitigation techniques may be used, including forecasting and helicopter and howitzer dispensed explosives. The results of previous safety evaluations of Sylvan Pass by the Occupational Safety and Health Administration and an Operational Risk Management

Assessment will be reviewed and updated, and the NPS will evaluate additional avalanche mitigation techniques and risk assessment tools in order to further improve safety and visitor access.

From March 2 to March 15, the NPS will maintain the road segment from the East Entrance to a point approximately four miles west of the entrance station to provide for opportunities for cross-country skiing and snowshoeing. Limited snowmobile and snowcoach use will be allowed in order to provide drop-offs for such purposes.

This course of action and seven alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures were identified.

The Amendment includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferred alternative, a finding on impairment of park resources and values, and an overview of the public and agency involvement in reaching this Record of Decision Amendment.

On December 13, 2007, a final regulation was published in the **Federal Register** (72 FR 70781), which implemented certain provisions of the November 20, 2007 Record of Decision. The National Park Service has reviewed the regulation (36 CFR 7.13) and determined that promulgating a new regulation to implement this Amendment is not necessary.

FOR FURTHER INFORMATION CONTACT: John Sacklin, P.O. Box 168, Yellowstone National Park, WY 82190, (307) 344–2019, *yell_winter_use@nps.gov* .

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision Amendment-Sylvan Pass Management may be obtained from the contact listed above or online at *http://parkplanning.nps.gov/yell.*

Dated: July 21, 2008.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E8–19620 Filed 8–22–08; 8:45 am]

BILLING CODE 4312–CT–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 August 9, 2008. 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 September 9, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALASKA

Kenai Peninsula Borough-Census Area

Soldotna Post Office, Corner of E. Corral St. and Kenai Spur Hwy, Soldotna, 08000904

GEORGIA

De Kalb County

Bond Family House, 1226 Rock Chapel Rd., Lithonia, 08000909

IDAHO

Ada County

Mountain States Telephone and Telegraph Company Building, 815 N. Main St., Meridian, 08000905

INDIANA

Adams County

Adams County Courthouse, 112 S. Second St., Decatur, 08000914

Daviess County

Daviess County Courthouse, 200 E. Walnut St., Washington, 08000916

Delaware County

Mount Zion Methodist Episcopal Church, 1701 West Eaton-Wheeling Pike, Eaton, 08000915

Greene County

Greene County Courthouse, Main and Washington Sts., Bloomfield, 08000912

Hamilton County

Wilson, Robert L., House, 273 S. 8th St., Noblesville, 08000918

Howard County

Lake Erie and Western Depot Historic District, Generally bounded by W. Jefferson St. on the N., N. Main St. on the E., W. Jackson St. on the S., N. Washington on W., Kokomo, 08000917

Pike County

Pike County Courthouse, 801 Main St., Petersburg, 08000913

MASSACHUSETTS

Essex County

Joseph Fenno House—Woman's Friend Society, 12–14 Hawthorne Blvd., Salem, 08000906

NEW YORK

Clinton County

Strand Theater, 25 Brinkerhoff St., Plattsburgh, 08000922

Columbia County

Hudson Almshouse, 400 State St., at the head of 4th St., Hudson, 08000921

Lewis County

Lowville Masonic Temple, 7552 S. State St., Lowville, 08000919

Wayne County

Roe Cobblestone Schoolhouse, (Cobblestone Architecture of New York State MPS) 12397 Van Vleck Rd., Butler, 08000920

NORTH DAKOTA

Hettinger County

Stern, John and Fredricka (Roth), Homestead, 2 mi. E. of Mott on ND 21, Mott, 08000902

Pembina County

Gunlogson Farmstead Historic Site, Icelandic State Park, 13571 Hwy 5, Cavalier, 08000900

OHIO

Lucas County

S.S. COL. JAMES M. SCHOONMAKER (bulk freighter), International Park, 26 Main St., Toledo, 08000908

OKLAHOMA

Jackson County

Jackson County Courthouse and Jail (Boundary Increase), (County Courthouses of Oklahoma TR) 101 N. Main, Altus, 08000901

RHODE ISLAND

Bristol County

Jackson, Benjamin Aborn, House, 115 Nayatt Rd., Barrington, 08000903

VIRGINIA

Arlington County

Glencarlyn Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Bounded by S. Carlin Springs Rd., Arlington Blvd., 5th Rd. S., Glencarlyn Park, Arlington, 08000910

Culpeper County

Clifton, 7091 Monumental Mills Rd., Rixeyville, 08000911

Fauquier County

Cromwell's Run Rural Historic District, Along Atoka Rd., roughly bounded on the W. by Goose Creek, on the N. by U.S. Rt. 50, on the E. by Cromwell's Run, Rectortown, 08000907

Request for REMOVAL has been made for the following resources:

SOUTH DAKOTA

Lyman County

1st St. and Lichtenstien Ave., Oacoma, 80003728

[FR Doc. E8–19601 Filed 8–22–08; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Southern Delivery System Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for additional public commenting opportunity on the water quality analysis portion of the Draft Environmental Impact Statement (Draft EIS).

SUMMARY: The Bureau of Reclamation (Reclamation), under the National Environmental Policy Act of 1969, is announcing the opportunity to provide additional comments on the water quality analysis portion of the Draft EIS. The original 60-day comment period for the Draft EIS was scheduled to end on April 26, 2008 but was extended to June 13, 2008. Comments received during this period expressed a concern about the section addressing water quality analysis. In order to address these comments, an additional water quality analysis is being prepared for the Draft EIS. This analysis will augment and reinforce the existing analysis for the Draft EIS. Reclamation will continue to receive comments on the existing water quality portion of the Draft EIS while the additional analysis is performed.

DATES: Comments on the existing water quality analysis featured in the DEIS will be received until provided by future notice. When completed the additional analysis will be made available for public review and comment during a 45-day period. The availability of the additional analysis and the corresponding 45-day comment period will be announced in the **Federal Register** on a future date in 2008.

ADDRESSES: Send comments on the Draft EIS to Southern Delivery System EIS, Bureau of Reclamation, Eastern Colorado Area Office, 11056W. County Road 18E, Loveland, CO 80537.

FOR FURTHER INFORMATION CONTACT: Kara Lamb, telephone: (970) 962–4326 or FAX (970) 962–3212. You may submit e-mail to *klamb@gp.usbr.gov* by September 22, 2008.

SUPPLEMENTARY INFORMATION: Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 18, 2008.

Michael J. Ryan,

Regional Director, Great Plains Region.

[FR Doc. E8–19612 Filed 8–22–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance for Sustainable Air Transportation, Inc.

Notice documents E8–8623 appearing on page 22974 in the issue of Monday, April 28, 2008, and E8–16442 appearing on page 42366 in the issue of Monday, July 21, 2008, are hereby withdrawn and replaced by the following:

Notice is hereby given that, on July 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Alliance for Sustainable Air Transportation, Inc. (''ASAT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: DayJet, Boca Raton, FL; ACS International LLC, Overland Park, KS; Selex Sistemi Integrati, Inc., Overland Park, KS; University of Central Florida, Orlando, FL; Embry Riddle Aeronautical University, Daytona Beach, FL; JetSuite, Long Beach, CA; New Mexico State University, Las Cruces, NM; Unisys, Reston, VA; Mineta Transportation Institute/SJSU, San Jose, CA; SERCO, Reston, VA; Harris Corporation, Melbourne, FL; Destiny, Florida—The Pugliese Company, Delray Beach, FL; South Carolina Department of Commerce, West Columbia, SC; State of Florida, Tallahassee, FL; and City of Long Beach—Long Beach Airport, Long Beach, CA.

The general area of ASAT's planned activity is: (a) To enable and promote a rapid transition in the United States to the ''Next Generation Air Transportation System'' (as envisioned by the Federal Aviation Administration's ''NextGen'' initiative); (b) to support and facilitate the development and implementation of initial NextGen prototype systems (''Prototypes''), to foster, collaborate with and leverage the efforts of other NextGen initiatives; (c) to support and facilitate the development of NextGen open, accessible standards, specifications, analytical tools, metrics, guidelines and solutions (collectively ''Specifications''); (d) to promote the adoption and use of said Prototypes and Specifications; (e) to support and facilitate the creation of testing and conformity assessment of implementations to ensure and facilitate compliance with Specifications; (f) to operate a branding program based upon distinctive trademarks to create high customers awareness of, demand for, and confidence in products, services, programs and other deliverables of ASAT; and (g) to undertake such other activities as may from time-to-time be appropriate to further the purposes discussed above.

Membership in ASAT remains open and ASAT intends to file additional written notifications disclosing all changes in membership.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–19617 Filed 8–22–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0023]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review Import/Export Declaration for List I and List II Chemicals—DEA Form 486

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will

be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 24, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *Title of the form/collection:* Import/Export Declaration for List I and List II Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* *Form number:* DEA Form 486. *Component:* Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none *Abstract:* Persons importing, exporting, and conducting international transactions with List I and List II chemicals must notify DEA of those transactions in advance of their occurrence, including information regarding the person(s) to whom the chemical will be transferred and the quantity to be transferred. For importations, persons must also provide return declarations, confirming the date of the importation and transfer, and the amounts of the chemical transferred. This information is used to prevent shipments not intended for legitimate purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* A respondent may submit multiple responses. The below table presents information regarding the number of respondents, responses, and associated burden hours:

	Number of respondents	Number of responses	Average time per response	Total
Form 486 (export)	193	10,327	0.2 hour (12 minutes).	2,065.4 hours
Form 486 (Export Return Declaration)	193	10,327	0.08 hour (5 minutes).	860.6 hours
Form 486 (import)	120	1,618	0.25 hour (15 minutes).	404.5 hours
Form 486 (import return declaration)*	120	1,780	0.08 hour (5 minutes).	148.3 hours
Form 486 (international transaction)	14	14	0.2 hour (12 minutes).	2.8 hours
Form 486 (international transaction return declaration)	14	14	0.08 hour (5 minutes).	1.2 hours
Quarterly reports for imports of acetone, 2-butanone, and toluene	110	440	0.5 hour (30 minutes).	220 hours
Total	193			3,702.8

*DEA assumes 10% of all imports will not be transferred in the first thirty days and will necessitate submission of a subsequent return declaration.

6) *An estimate of the total public burden (in hours) associated with the collection:* 3,703 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 19, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–19594 Filed 8–22–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Office of Trade and Labor Affairs; Request for Comments on Labor Capacity-Building Efforts Under the Dominican Republic—Central America—United States Free Trade Agreement

AGENCIES: Office of the Secretary, Labor, and Office of the United States Trade Representative.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor and the United States Trade Representative in preparing a report on labor capacity-building efforts under Chapter 16 (''the Labor Chapter'') and Annex 16.5 of the Dominican Republic—Central America-United States Free Trade Agreement (''the CAFTA–DR''), as well as efforts made by the CAFTA–DR countries to implement the recommendations contained in the report entitled ''The Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity'' (''the White Paper''). This report is required under the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act \(''the CAFTA–DR Implementation Act''). The reporting function and the responsibility for soliciting public comments required under this Act were assigned to the Secretary of Labor, in consultation with the United States Trade Representative.

DATES: Written comments are due no later than 5 p.m. September 22, 2008.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTACAFTA@dol.gov.* Submissions by facsimile may be sent to: Gregory K. Schoepfle, Director, Office of Trade and Labor Affairs, U.S. Department of Labor at (202) 693–4851 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Gregory K. Schoepfle, Director, Office of Trade and Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5303, Washington, DC 20210. Telephone (202) 693–4900 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

During the legislative approval process for the CAFTA–DR, the Administration and the Congress reached an understanding on the need to support labor capacity-building efforts linked to recommendations identified in the White Paper of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic. A total of $130 million was appropriated in support of labor and environment capacity-building in FY 2005 through FY 2008, with an additional $40 million anticipated for FY 2009.

Areas of focus were identified through a cooperative process and dialogue between the United States and its CAFTA–DR partners (Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) as envisaged by the Labor Chapter and Annex 16.5 of the CAFTA–DR. The multi-year assistance effort focuses on building the capacity of the ministries of labor to more effectively enforce labor laws, training labor inspectors, developing and distributing public awareness materials, assessing the information technology needs of the ministries of labor, and providing technical assistance to the labor justice system in Central America and the Dominican Republic.

For more information on these initiatives, see the full text of the CAFTA–DR and the White Paper as well as other relevant fact sheets and reports posted on the respective Web sites of the Office of the United States Trade Representative, *http://www.ustr.gov/Trade_Agreements/Regional/CAFTA/Section_Index.html*, and the ILO Subregional Office for Central America, Haiti, Panama and the Dominican Republic, *http://web.oit.or.cr/* (follow the link to: Sector IV, Dialogo Social, and then link to: Verification of the White Paper, Central America and the Dominican Republic).

Under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), the President must report biennially to the Congress on the progress made by the CAFTA–DR countries in implementing the labor obligations and the labor capacity-building provisions found in the Labor Chapter and Annex 16.5 and implementing the recommendations contained in the White Paper. Section 403(a)(4) requires the President to establish a mechanism to solicit public comments on the matters described in section 403(a)(3)(D) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a)(4).

By Proclamation, the President delegated the reporting function and the responsibility for soliciting public comments under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), to the Secretary of Labor, in consultation with the United States Trade Representative. Proclamation No. 8272, 73 FR 38,297 (June 30, 2008). This notice serves to request public comments as required by this section.

2. Information Sought

The Department of Labor is seeking comments on the following topics as required under Section 404(a)(3)(D) of the CAFTA–DR Implementation Act:

1. Capacity-building efforts by the United States government envisaged by Article 16.5 of the CAFTA–DR Labor Chapter and Annex 16.5;
2. Efforts by the United States government to facilitate full implementation of the White Paper recommendations; and
3. Efforts made by the CAFTA–DR countries to comply with Article 16.5 of the Labor Chapter and Annex 16.5 and to fully implement the White Paper recommendations, including progress made by the CAFTA–DR countries in affording to workers internationally-recognized worker rights through improved capacity.

3. Requirements for Comments

This notice requests comments in response to a general solicitation to the public. Written comments may be submitted by 5 p.m. September 22, 2008. To ensure prompt and full consideration of comments, it is strongly recommended that comments be submitted by electronic mail to the following e-mail address: *FRFTACAFTA@dol.gov.* Persons making comments by e-mail should use the following subject line: Comments on CAFTA–DR Labor Capacity Building Efforts. Documents should be submitted

in MSWord format. Supporting documentation submitted as spreadsheets is acceptable in Excel format. Persons who make comments by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the comments themselves. Similarly, to the extent possible, any attachments to the comments should be included in the same file as the comments themselves, not as separate files. In the event that e-mail comments are not possible, comments should be sent by facsimile to (202) 693–4851 (this is not a toll-free number). Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5303, 200 Constitution Avenue, NW., Washington, DC 20210. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 693–4900 (this is not a toll-free number).

Signed at Washington, DC on this 19th day of August 2008.

Lawrence W. Casey,

Associate Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs.

[FR Doc. E8–19608 Filed 8–22–08; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,624]

Fairchild Semiconductor International, Including On-Site Leased Workers From Manpower, Inc., Mountain Top, PA; Amended Revised Determination on Remand

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor (Department) issued a Notice of Revised Determination on Remand on July 22, 2008. The Department's Notice of determination will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the Revised Determination on Remand for workers of the subject firm. The Department determined that, while the July 22, 2008 certification set the impact date at January 11, 2005, one year prior to the date on the petition, the previous certification covering workers of the Mountain Top, Pennsylvania location of the subject firm, TA–W–53,335, did not expire until almost 11 months later, on December 2, 2005. To avoid an overlap in worker group coverage for the Mountain Top, Pennsylvania location, the Revised Determination on Remand is being amended to change the impact date from January 11, 2005 to December 3, 2005.

As a result of this amendment, Fairchild Semiconductor International, Mountain Top, Pennsylvania workers separated between January 11, 2005 and December 2, 2005, will continue to be covered under the certification issued in TA–W–53,335, and will not be covered under the certification issued in TA–W–58,624.

New information also provided by the State agency shows that leased workers of Manpower, Inc. were employed on-site at the Mountain Top, Pennsylvania location of Fairchild Semiconductor International. The Department has determined that these workers were engaged in various support activities and were sufficiently under the control of the subject firm to be considered leased workers during the relevant period.

Accordingly, the Department is amending the Revised Determination on Remand to reflect the amended certification period and to include all on-site workers under the control of Fairchild Semiconductor International who were adversely affected.

The amended notice applicable to TA–W–58,624 is hereby issued as follows:

''All workers of Fairchild Semiconductor International, Mountain Top, Pennsylvania, who became totally or partially separated from employment on or after December 3, 2005, through July 22, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974''; and

''All leased workers of Manpower, Inc. working on-site at Fairchild Semiconductor International, Mountain Top, Pennsylvania, who became totally or partially separated from employment on or after January 11, 2005, through July 22, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 6th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–19604 Filed 8–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0029]

Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Groups; Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Announcement of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Groups.

SUMMARY: ACCSH Work Groups will meet September 9–10, 2008, and ACCSH will meet September 11–12, 2008, in Washington, DC.

DATES: *ACCSH Work Groups:* ACCSH Work Groups will meet September 9–10, 2008 from 8:30 a.m. to 4:15 p.m. (See the Work Group Schedule information in the **SUPPLEMENTARY INFORMATION** section of this notice.).

ACCSH: ACCSH will meet Thursday, September 11, 2008, from 8:30 a.m. to 5 p.m. and Friday, September 12, 2008, from 8:30 a.m. to 12 p.m.

Submission of comments, requests to speak to ACCSH and requests for special accommodation: Comments, requests to speak and requests for special accommodation must be submitted (postmarked, sent, received) by September 2, 2008.

ADDRESSES: *ACCSH and ACCSH Work Group Meetings:* ACCSH and ACCSH Work Group Meetings will be held in Room N–3437A–D at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments, requests to speak at the ACCSH or ACCSH Work Group meetings: Interested parties may submit comments and requests to speak:

Electronically: You may submit materials, including attachments, electronically at *www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (FAX): If your submission, including attachments is not longer than 10 pages, you may fax it to the OSHA Docket Office at: (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; FAX (202) 693–1648. Deliveries (hand, express mail, messenger, and courier service) are

accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t. For assistance submitting materials to the OSHA's Docket Office please call, telephone (202) 693–2350 or TTY (877) 889–5627).

Requests for Special Accommodations: Submit requests for special accommodations by telephone or e-mail to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

Requests during meeting to address ACCSH:

Instructions: All submissions, requests to speak and requests for special accommodations must include the Agency name and the docket number for this meeting (Docket No. OSHA–2008–0029). Because of security-related procedures, submissions by regular mail may experience significant delays.

All submissions, including personal information, are placed in the public docket without change and may be available online. Therefore, OSHA cautions against submitting personal information such as social security numbers and birthdates. For further information on submitting comments, requests to speak and requests for public accommodation, see the Public Participation information in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Jennifer Ashley, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *ashley.jennifer@dol.gov.*

For general information about ACCSH and ACCSH meetings: Mr. Michael Buchet, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202)-693–2020; e-mail *buchet.michael@dol.gov.*

For information about submitting comments or requests to speak to ACCSH, and for special accommodations for the meetings: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

ACCSH will meet September 11–12, 2008, in Washington, DC. The meeting is open to the public.

ACCSH is authorized to advise the Assistant Secretary of Labor for Occupational Safety and Health in the formulation of standards affecting the construction industry and on policy matters arising in the administration of the safety and health provisions of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701, 3704) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*). (See also, 29 CFR 1911.10 and 1912.3).

The agenda for this meeting includes:

- Comments from the Office of the Assistant Secretary;
- ACCSH's consideration of and recommendations on the following proposed rule:
  - Globally Harmonized System—Revision of OSHA's Hazard Communication Standard to adopt the Globally Harmonized System of Classification and Labeling of Chemicals (GHS);
- Construction Standards Update—OSHA, Directorate of Construction (DOC);
- Occupational Injury, Illness, Fatality and related OSHA data, overview—Bureau of Labor Statistics (BLS) and OSHA, Directorate of Evaluation and Analysis (DEA);
- Mast Climbing Scaffold Update, The Center for Construction Research and Training (CPWR);
- Cooperative Programs Update—OSHA Challenge, Voluntary Protection Program Mobile Work Force Demonstration (VPP-C)—OSHA, Directorate of Cooperative and State Programs (DCSP);
- Work Group Reports, Work Group and Committee Administration;
- Public Comment Period.

All ACCSH meetings, as well as those of its Work Groups, are open to the public. Individuals needing special accommodations for the ACCSH meeting or ACCSH Work Group meetings should contact Ms. Chatmon by September 2, 2008 (see the **ADDRESSES** section of this notice).

ACCSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts and minutes are included in the official record of ACCSH meetings. Work Group reports are included in the ACCSH meeting record.

ACCSH Work Group Meetings

In conjunction with the ACCSH meeting, the following ACCSH Work Groups will meet:

- Multilingual—8:30 to 10 a.m., September 9, 2008;
- Silica—8:30 to 10 a.m., September 9, 2008;
- Diversity-Women in Construction—10:30 a.m. to 12 p.m., September 9, 2008;
- Residential Fall Protection—1:45 to 4:15 p.m., September 9, 2008;
- Focused Inspection Initiative—8:30 to 10 a.m., September 10, 2008;
- Trenching—8:30 to 10 a.m., September 10, 2008;
- ROPS (Rollover Protective Systems)—10:30 a.m. to 12 p.m., September 10, 2008;
- OTI (OSHA Training Institute)—1:45 to 4:15 p.m., September 10, 2008.

For additional information on ACCSH Work Group meetings or participating in them, please contact Mr. Michael Buchet at the address above or look on the ACCSH page on OSHA's Web page at *http://www.osha.gov.*

Public Participation

ACCSH Meetings and ACCSH Work Group Meetings Security Measures: ACCSH and ACCSH Work Group meetings are open to the public. Admission to the Department of Labor Building and the meetings requires valid government issued photo identification and a brief security check-in procedure at the Department of Labor's Visitor's entrance, 3rd and ''C'' Streets, NW., Washington, DC 20210. Meeting attendees should allow an extra 15 minutes to check in and reach the meeting rooms.

Submission of written comments and requests to address ACCSH. Interested parties may request to make oral presentations to ACCSH by notifying Ms. Veneta Chatmon at the address above by September 2, 2008. The request must state the amount of time desired, the interest the presenter represents (*e.g.*, businesses, organizations, themselves, affiliations, etc.), if any, and a brief outline of the presentation. Alternately, at the Committee meeting, attendees may request to address ACCSH by signing the public comment request sheet and listing the interests they represent (*e.g.*, businesses, organizations, themselves, affiliations, etc., if any) and the topics to be addressed. All requests to present to or address the committee may be granted at the ACCSH Chair's discretion and as time and circumstances permit.

Attendees may submit written data, views, or comments, preferably with 20 copies, to Ms. Chatmon for distribution to ACCSH. Submissions, including personal information provided, will be included without change in the meeting record and posted at

www.regulations.gov. Therefore, OSHA cautions interested parties about submitting certain personal information such as birth dates and social security numbers.

Access to the official record of ACCSH meetings, including Work Group reports: To read or download submissions or the official record of this ACCSH meeting, go to Docket No. OSHA–2008–0029 at *www.regulations.gov.* The official meeting record and all submissions for this meeting will be listed in the www.regulations.gov index. Although listed in the index, some documents (*e.g.*, copyrighted materials) are not publicly available through *www.regulations.gov.* The official record and all submissions, including materials not available through *www.regulations.gov*, will be available for inspection and copying in the OSHA Docket Office at the address above.

Authority and Signature: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*), 29 CFR 1911 and 1912, and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–19560 Filed 8–22–08; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Request for Comments—LSC Budget Request for FY 2010

AGENCY: Legal Services Corporation.

ACTION: Request for Comments—LSC Budget Request for FY 2010.

SUMMARY: The Legal Services Corporation is beginning the process of developing its FY 2010 budget request to Congress and is soliciting suggestions as to what the request should be.

DATES: Written comments must be received on or before September 15, 2008.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K St., NW., Washington, DC, 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K St., NW., Washington, DC, 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov.*

SUPPLEMENTARY INFORMATION:

The Legal Services Corporation's (LSC) mission is to promote equal access to justice in our Nation and to provide for high-quality civil legal assistance to low income persons. LSC submits an annual budget request directly to Congress and receives an annual direct appropriation to carry out its mission. For the current fiscal year (FY 2008), LSC received an appropriation of $350,490.000 of which $332,390,000 was for basic field programs and required independent audits; $3,000,000 was for the Office of Inspector General; $12,500,000 was for management and administration; $2,100,00 was for technology initiative grants; and $500,000 was for loan repayment assistance. Pub. L. 110–161, 121 Stat. 1844 (2007).

As part of its annual budget and appropriation process, the Finance Committee of the LSC Board of Directors will meet on October 14, 2008, to make a recommendation to the full Board. Accordingly, LSC is currently in the process of formulating its FY 2010 budget request.

LSC invites public comment on what its FY 2010 budget request should be. Interested parties may submit comments to LSC by September 15, 2008. More information about LSC can be found at LSC's Web site: *http://www.lsc.gov.*

Dated: August 19, 2008.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E8–19602 Filed 8–22–08; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: September 8, 2008 from 10 a.m. to 11 a.m.

ADDRESSES: The U.S. Capitol Building, Room S–211, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard H. Hunt, Director; Center for Legislative Archives; (202) 357–5350.

SUPPLEMENTARY INFORMATION:

Agenda

(1) Chair's opening remarks—Secretary of the Senate.

(2) Recognition of Co-chair—Clerk of the House.

(3) Recognition of the Archivist of the United States.

(4) Approval of the minutes of the last meeting.

(5) Discussion of on-going projects and activities.

(6) Annual Report of the Center for Legislative Archives.

(7) Other current issues and new business.

The meeting is open to the public.

Dated: August 20, 2008.

Patrice Little Murray,

Alternate Committee Management Officer.

[FR Doc. E8–19746 Filed 8–22–08; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Steering Committee on Multimedia Environmental Modeling

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to discuss new operational initiatives for FY 2009 among the participating agencies. The meeting is open to the public and all interested parties may attend.

DATES: September 3, 2008, from 9 a.m. to 12:30 p.m.

ADDRESSES: Nuclear Regulatory Commission, Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be faxed or e-mailed to: Ken Rojas, ISCMEM Chair, Information Technology Center, U.S. Department of Agriculture, 2150 Centre Ave., Bldg D, Suite 200, Fort Collins, CO, 80526–8121, Tel 970–492–7326, Fax 970–492–7315, e-mail: *Ken.Rojas@ftc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background:

Eight Federal agencies have been cooperating under a new Memorandum of Understanding (MOU) on the research and development of multimedia environmental models for the past year. The new MOU continues a previous 5 year effort that began in 2001 and establishes a framework facilitating cooperation and coordination among the following agencies (the specific research organization within the agency is in parentheses): U.S. Army Corps of Engineers (Engineer Research and Development Center); U.S. Department of Agriculture (Natural Resources Conservation Service); U.S. Department of Energy (Office of Biological and Environmental Research); U.S. Environmental Protection Agency; U.S. Geological Survey; U.S. National Oceanographic and Atmosphere Administration; U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research); and U.S. Bureau of Reclamation. These agencies are cooperating and coordinating in the research and development of multimedia environmental models, software and related databases, including development, enhancements, applications and assessments of site specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Multimedia model development and simulation supports interagency interests in risk assessment, uncertainty analyses, water supply issues and contaminant transport.

Purpose of the Public Meeting: The annual public meeting provides an opportunity for the scientific community, other Federal and State agencies, and the public to be briefed on ISCMEM activities and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling.

Proposed Agenda: The ISCMEM Chair will open the meeting with a brief overview of the goals of the MOU and an update on current activities of ISCMEM. This introduction will be followed by a series of invited presentations throughout the morning focusing on topics of mutual interest to ISCMEM participants. A detailed agenda with presentation titles and speakers will be posted on the MOU public Web site: *http://iscmem.sc.egov.usda.gov/*.

Meeting Access: The auditorium of the U.S. Nuclear Regulatory Commission Headquarters building at 11545 Rockville Pike, Rockville, MD is across the street from the White Flint Metro stop. The most convenient transportation to the meeting venue is via Metro since there is extremely limited on-street parking. Please take Metro to the White Flint Metro stop on the Red Line. Please allow time to register with building security and to check with the entry guard station for signs for the ISCMEM public meeting room as you enter the building.

Dated at Rockville, Maryland, this 19th day of August 2008.

For the Nuclear Regulatory Commission.

William R. Ott,

Chief, Environmental Transport Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. E8–19614 Filed 8–22–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Florida Power Corporation (FPC, the licensee) to withdraw its July 31, 2007, application for proposed amendment to Facility Operating License No. DPR–72 for the Crystal River Unit 3 Nuclear Generating Plant (CR–3) located in Citrus County, Florida.

The proposed amendment would have revised the technical specifications to impose more restrictive voltage and frequency limits during surveillance testing of the emergency diesel generators.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 29, 2008 (73 FR 5222). Subsequently, by letter dated June 19, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081770040), the licensee withdrew the amendment request, and stated that FPC will continue to maintain administrative control of the emergency diesel generator voltage and frequency limits as described in the referenced license amendment request (LAR) submittal. In addition, the licensee plans to resubmit this LAR under a new identification number after additional evaluations have been completed.

Further on July 24, 2008, in response to the NRC staff request for additional information, FPC: (1) Explained the basis for withdrawal of the amendment request, (2) committed to resubmit the amendment by November 7, 2008, and (3) provided assurance that the short term administrative controls, taken as corrective action in accordance with the guidance contained in NRC Administrative Letter 98–10, are effective and will remain in place until the LAR implementation.

For further details with respect to this action, see the application for amendment dated July 31, 2007, and the licensee's letters dated June 19 and July 24, 2008, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29 day of July, 2008.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–19611 Filed 8–22–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58367; File No. SR–NYSE–2008–75]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 303A.02(b) of the Listed Company Manual with respect to Two of Its Director Independence Tests

August 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 12, 2008, the New York Stock Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make amendments to two of the tests with respect to the independence of directors set forth in Section 303A.02(b) of the Exchange's Listed Company Manual (the ''Manual''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make amendments to two of the tests with respect to the independence of directors set forth in Section 303A.02(b) of the Manual.

Direct Compensation Test

Section 303A.02(b)(ii) of the Manual provides that a director may not be deemed independent for purposes of Section 303A if such director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than $100,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service). NYSE proposes to increase the dollar threshold in this test from $100,000 to $120,000. This change reflects the SEC's August 2006 amendment to the dollar threshold applicable to related party transactions that must be disclosed under Item 404 of Regulation S–K.[3] Prior to the SEC's amendment to Item 404, the applicable threshold for disclosures was $60,000. The NYSE believes that the monetary threshold in its independence definition should be consistent with the amount in Regulation S-K Item 404. Using a consistent standard would enhance the NYSE's ability to assess compliance with the independent director requirements because companies are required to disclose compensation in excess of $120,000, but are not necessarily required to disclose compensation between $100,000 and $120,000.

Auditor Test

Additionally, NYSE is proposing to amend the bright line test set out in Section 303A.02(b)(iii) relating to a listed company's internal or external auditor. The test currently precludes a director from being deemed independent if:

- The director or an immediate family member is a current partner of a firm that is the company's internal or external auditor;
- The director is a current employee of such a firm;
- The director has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or
- The director or an immediate family member was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the listed company's audit within that time.

NYSE's experience to date has demonstrated that the current standard with respect to immediate family members has had the effect of precluding a director from being deemed independent in cases even where an immediate family member had no relationship to the listed company's audit. For example, NYSE's current test has required a listed company's board to conclude that a director may no longer be deemed independent when the director's child took an entry-level job in the audit practice of the listed company's external auditor upon graduation from college, notwithstanding the fact that the child was a low-level employee in a different region and had no involvement with the listed company's audit.

In addition, NYSE's proposed change will bring its standards more in line with the auditor tests utilized by Nasdaq and the American Stock Exchange.[4]

NYSE proposes to modify its current test with respect to a director's immediate family member to cover only an immediate family member who:

- Is a current partner of the company's internal or external auditor;
- Is a current employee of such a firm and personally works on the listed company's audit; or
- Was within the last three years a partner or employee of such a firm and personally worked on the listed company's audit within that time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment to Section 303A.02(b)(iii) will help to perfect the mechanism of a free and open market in that it will conform the Exchange's approach to that of Nasdaq and Amex.

The Exchange believes that this amendment is consistent with the protection of investors and the public interest because the amended test will continue to bar a finding of independence where a director has any material relationship with the listed company. The proposed amendment to Section 303A.02(b)(ii) furthers the protection of investors and the public interest in that it adopts the Commission's own materiality threshold for related party transactions and will therefore provide a standard that is clear, straightforward, and easy for issuers to understand and apply.

[3] *See* Securities Act Release No. 8732A (August 29, 2006).

[4] *See* NASDAQ Marketplace Rule 4200(a)(15)(F) and Amex Company Guide Section 803(A)(2)(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–75 and should be submitted on or before September 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19591 Filed 8–22–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC)

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Audit and Financial Management Advisory (AFMAC). The meeting will be open to the public.

DATES: The meeting will be held on September 17, 2008 from 9 a.m. to approximately 12 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 3rd Street, SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the AFMAC. The AFMAC is tasked with providing recommendation and advice regarding the Agency's financial management, including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

The purpose of the meeting is to discuss the SBA's FY 2008 Financial Statements, Credit Subsidy Modeling, Audit Findings, FY 2008 Financial Report, FY 2008 Agency Performance Report, Lender Monitoring, FMFIA Assurance and A–123 Internal Control Program Results.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public, however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the AFMAC must contact Jennifer Main, by fax or e-mail, in order to be placed on the agenda. Jennifer Main, Chief Financial Officer, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, phone: (202) 205–6449, fax: (202) 205–6969, e-mail: *Jennifer.Main@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Jeff Brown at (202) 205–6117, e-mail: *Jeffrey.Brown@sba.gov*, SBA, Office of Chief Financial Officer, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at *http://www.sba.gov/aboutsba/sbaprograms/cfo/index.html.*

Dated: August 19, 2008.

Cherylyn Lebon,

SBA Committee Management Officer.

[FR Doc. E8–19588 Filed 8–22–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Greater Beardstown Airport, Beardstown, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the exchange of the property for land needed to protect the transitional surface of Runway 18/36. The proposal consists of a 2.1-acre portion of Parcel 1 in exchange for 9.6 acres of Parcel 3. Presently the 2.1 acres of Parcel 1 is located outside of the fenced in portion of airport property and any protected zone (runway protection zone, object free area, object free zone, etc.) This land is currently being used as residential and has a mobile home located on it. Parcel 1 was acquired in 1986 with Federal participation. It is the intent of the City of Beardstown, as owner and operator of the Greater Beardstown Airport (K06) to exchange the subject portion of Parcel 1 (2.1 Acres) to Ms. Hardwick, Beardstown, IL in exchange for 9.6 acres of land (portion of Parcel 3), which is in the side transition area of Runway 18/36. This notice announces that the FAA is considering the proposal to authorize the exchange of the subject airport property at the Greater Beardstown Airport, Beardstown, IL with a portion of Parcel 3 (9.6 acres). Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Benjamin Mello, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847–294–7195/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the Illinois Department of Transportation, Division of Aeronautics, 1 Langhorne Bond Drive, Abraham Lincoln Capital Airport, Springfield, IL 62707.

SUPPLEMENTARY INFORMATION: Following is a legal description of the properties being exchanged located in Beardstown, Cass County, Illinois, and described as follows:

Portion of Parcel 1

Part of the Southwest Quarter (SW¼) of Section Twenty-five (25), Township Eighteen (18) North, Range Twelve (12) West of the Third Principal Meridian, Cass County, Illinois, being more particularly described as follows: Commencing at the Southwest corner of the Southwest Quarter (SW¼) of said Section Twenty-five (25); thence South 89°56′00″ East (basis of bearing is Illinois State Plane Coordinate System. NAID 83, Illinois West Zone) along the South line of said Quarter Section a distanced 1658.91 feet to the Point of Beginning; thence continuing South 89°56′00″ East along the South line of said Quarter Section a distance of 330.00 feet; thence North 00°01′41″ West a distance of 280.00 feet; thence North 89°56′00″ West a distance of 330.00 feet; thence South 00°01′41″ East a distance of 280.00 feet to the Point of Beginning.

Said parcel contains 2.12 acres more or less.

In Exchange for a Portion of Parcel 9

Part of the West Half (W½) of the Northwest Quarter (NW ¼), and part of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼), all in Section Thirty-six (36), Township Eighteen (18) North, Range Twelve (12) West of the Third Principal Meridian, Cass County, Illinois, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter (NW ¼) of said Section Thirty-six (36); thence South 89°56′00″ East (basis of bearing is Illinois State Plane Coordinate System, NAD 83, Illinois West Zone) along the North line of said Quarter Section a distance of 1119.00 feet; thence South 00°02′04″ East a distance of 600.00 feet to a found concrete marker, said marker being a corner on the East line of a tract of land conveyed to the City of Beardstown, Illinois by a Deed of Conveyance, recorded October 1, 1993 as Document No. 108036 in the Office of the Recorder of Cass County, Illinois, and said marker also being the True Point of Beginning; thence continuing South 00°02′04″ East along the East line of said tract a distance of 3350.05 feet to a point on the South line of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section Thirty-six (36); thence South 89°53′25″ East along the South line of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section Thirty-six (36) a distance of 120.00 feet; thence North 00°02′04″ West a distance of 2835.14 feet; thence South 89°56′00″ East a distance of 30.00 feet; thence North 00°02′04″ West a distance of 515.00 feet; thence North 89°56′00″ West a distance of 150.00 feet to the True Point of Beginning.

Said parcel contains 9.58 acres, more or less.

Issued in Des Plaines, Illinois, on August 13, 2008.

Jack Delaney,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–19566 Filed 8–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Mansfield Lahm International Airport; Mansfield, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of vacant, much of which is farmed and owned by the City of Mansfield. The Hummel Parcel #35A is approximately 89.86 acres. There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land for release is vacant, not required for future development, safety, or compatible land use. The intended land use is infrastructure development, including roads, utilities, and industrial development. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie Swann, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734)–229–2945/FAX Number: (734)–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Mansfield Lahm International Airport, Mansfield, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Madison Township, County of Richland, State of Ohio, and described as follows: (Legal Description of Property).

Being a part of the northeast Quarter of Section 5, Township 21, Range 18 of Madison Township, and more fully described as follows:

Beginning at the intersection of the east line of the Northeast Quarter of Section 5 and the centerline of Nail Road (which is the south line of the Northeast Quarter of Section 5); thence west along and with the centerline of Nail Road a distance of 1724 ft. to a point in the centerline of Bowman Street Road (CH 215); thence north 28 degrees 30 minutes west along and with the centerline of Bowman Street Road a distance of 1254.5 ft.; thence south 80 degrees 00 minutes east a distance of 389 ft.; thence north 2 degrees 30 minutes east a distance of 1884 ft. to a point in the centerline of Crall Road (CH237); thence south 89 degrees 48 minutes east along and with the centerline of Crall Road a distance of 1854 ft.; thence south 0 degrees 8 minutes east a distance of 2900 ft. to the place of beginning and contains 129.80 acres more or less and subject to all legal highways.

Also the following described premises:

Being a part of the northwest Quarter of Section 4, Township 21, Range 18 of Madison Township, and more particularly described as follows:

Beginning at the intersection of the west line of the Northwest Quarter of Section 4 and the centerline of Nail Road (which is the south line of the northwest Quarter of Section 4); thence east along and with the centerline of Nail Road a distance of 720 feet; thence north 1 degree 16 minutes east a distance of 2344 feet; thence north 88 degrees 44 minutes west a distance of 391 feet; thence south 2 degrees 43 minutes west a distance of 383 feet; thence south 89 degrees 40 minutes west a distance of 372.7 feet; thence south 0 degrees 8 minutes east a distance of 1974 feet to the place of beginning and contains 37.31 acres more or less and subject to all legal highways. Now located in the City of Mansfield.

Issued in Romulus, Michigan on July 28, 2008.

Matthew J. Thys,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–19565 Filed 8–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for stainless steel clad reinforcing bars used in certain Federal-aid construction projects in Virginia.

DATES: The effective date of the waiver is August 26, 2008.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, *gerald.yakowenko@dot.gov.* For legal questions, please contact Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, *michael.harkins@dot.gov.* Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register** 's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.* .

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for stainless steel clad reinforcing bars used for certain Federal-aid projects administered by the Virginia Department of Transportation.

In accordance with the Division K, section 130 of the ''Consolidated Appropriations Act, 2008'' (Pub. L. 110–161), the FHWA published a notice of intent to issue a waiver on its Web site for stainless steel clad reinforcing bars for selected Federal-aid projects in Virginia (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=13*) on June 22, 2008. The FHWA evaluated several comments that were received in response to the notice. Several commenters suggested that solid stainless rebar should be used and that stainless clad rebar may be more expensive than solid stainless rebar. Other commenters disagreed with this position. The Virginia Department of Transportation's waiver request is to evaluate the stainless clad reinforcing bars along with two other types of corrosion resistant reinforcing steels (ASTM1035 and solid stainless) under an experimental project. The FHWA agrees with the Virginia Department of Transportation that it is in the public interest to waive the Buy America requirements for this experimental project; therefore, the FHWA concludes that a Buy America waiver is appropriate as provided by 23 CFR 635.410(c)(1).

In accordance with the provisions of section 117 of the ''SAFETEA—LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link to the Virginia waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: August 14, 2008.

James D. Ray,

Acting Federal Highway Administrator.

[FR Doc. E8–19638 Filed 8–22–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–25290]

Commercial Driver's License Standards: Application for Exemption; Isuzu Motors America, Inc. (Isuzu)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Isuzu Motors America (Isuzu) has applied for an exemption from the Federal requirement for a driver of a commercial motor vehicle (CMV) to hold a commercial driver's license (CDL). Isuzu requests that the exemption cover 27 of its commercial motor vehicle (CMV) drivers who will test-drive CMVs for Isuzu in the United States. Each of these 27 Isuzu employees holds a valid Japanese CDL but lacks the U.S. residency necessary to obtain a CDL from one of the States of the U.S. Isuzu believes the knowledge and skills tests and training program that drivers undergo to obtain a Japanese CDL ensures that these drivers will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the exemption.

DATES: Comments must be received on or before September 24, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number [FMCSA–2003–25290] by any of the following methods:

- *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W–12–140, 1200 New Jersey Avenue, SE., 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of the our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *www.regulations.gov.*

Public Participation: The *www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Schultz, Jr., FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses. The Agency must also provide an opportunity for public comment on the application.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Isuzu has applied for an exemption from the commercial driver's license (CDL) rules, specifically 49 CFR 383.23 that prescribes licensing requirements for drivers operating commercial motor vehicles (CMVs) in interstate or intrastate commerce. Isuzu requests the exemption because its driver-employees are citizens and residents of Japan, and because they cannot apply for a CDL in any of the United States. A copy of the application is in Docket No. FMCSA–2003–25290. The exemption would allow 27 drivers to operate CMVs in interstate commerce as a team, testing and evaluating production and prototype commercial motor vehicles in the United States in order to assist in the design of safe vehicles for sale in the United States.

The drivers are: Yasushi Akazawa, Kenji Takashima, Kunihisa Nagata, Hidenori Seki, Toshihiko Morikawa, Koichi Uneo, Atsushi Fujiwara, Katsushi Suzuki, Mitsugu Yamamoto, Takashi Nakaya, Takahisa Chiba, Shigeru Kitano, Daisuke Mori, Takahiro Kakizaki, Takamasa Ono, Koichi Sekine, Shinichi Takahashi, Shinya Ogawa, Masamitsu Oohata, Tamotsu Watanabe,Masahito Suzuki, Kazuya Suwa, Hiroshi Yokobori, Tatsuji Kitamura, Shinichi Ishiguro, Takashi Hiromatsu, and Jun Mizushima.

Each driver holds a valid Japanese CDL, and as explained by Isuzu in previous exemption requests, drivers applying for a Japanese-issued CDL must undergo a training program and pass knowledge and skills tests. Isuzu also stated in prior exemption requests that the knowledge and skills tests and training program that Japanese drivers undergo to obtain a Japanese CDL ensure the exemption provides a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL.

FMCSA has previously determined the process for obtaining a Japanese CDL is comparable to, or as effective as, the Federal CDL knowledge and skills requirements of 49 CFR part 383 as enforced by the States, and adequately assesses the driver's ability to operate CMVs in the U.S. The initial notice of a similar nature was published by FMCSA on October 16, 2003, granting this exemption to Isuzu for 31 Japanese CDL drivers (68 FR 59677).

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Isuzu's application for an exemption from the

CDL requirements of49 CFR 383.23. The Agency will consider all comments received by close of business on September 24, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on August 18, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–19639 Filed 8–22–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Motor Carrier Safety Advisory Committee Meeting.

SUMMARY: FMCSA announces that the Motor Carrier Safety Advisory Committee (MCSAC) will hold a committee meeting. The meeting is open to the public.

DATES: The meeting will be held on September 9, 2008, from 12 pm to 4 pm Eastern Daylight Time.

ADDRESSES: The meeting will take place at the L'Enfant Plaza Hotel, Quorum Room, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Miller, Chief, Strategic Planning and Program Evaluation Division, Office of Policy Plans and Regulation, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–1258, *mcsac@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109–59) required the Secretary of the U.S. Department of Transportation to establish in FMCSA, a Motor Carrier Safety Advisory Committee. The advisory committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and motor carrier safety regulations. The advisory committee operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2). The FMCSA Administrator appointed 15 members to serve on the advisory committee on March 5, 2007.

II. Meeting Participation

The meeting is open to the public and FMCSA invites participation by all interested parties, including motor carriers, drivers, and representatives of motor carrier associations. For information on facilities or services for individuals with disabilities or to request special assistance, please e-mail your request to *mcsac@dot.gov* by September 5, 2008. As a general matter, the committee will make one hour available for public comments at the meeting from 3 pm to 4 pm. Individuals wishing to address the committee should send an e-mail to *mcsac@dot.gov* by close of business on September 5, 2008. The time available will be reasonably divided among those who have signed up to address the committee; however, no one will have more than 15 minutes. Individuals wanting to present written materials to the committee should submit written comments identified by Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

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

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–19742 Filed 8–22–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Harsco Track Technologies (Waiver Petition Docket Number FRA–2008–0070)

Harsco Track Technologies (HTT) is seeking a waiver of compliance from 49 CFR Part § 214.505(a), pertaining to enclosed cabs on on-track roadway maintenance machines (RMM). Specifically, HTT would like relief from the requirement of an enclosed cab, operable heating and air conditioning system, and positive pressurized ventilation system on a remotely controlled RMM.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.* , Waiver Petition Docket Number FRA–2008–0070) and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written

communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 20, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–19637 Filed 8–22–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Amendment of a Savings Association's Bylaws

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before September 24, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Amendment of a Savings Association's Bylaws.

OMB Number: 1550–0017.

Form Number: N/A.

Description: All federally chartered savings associations are required to file bylaw amendment applications or notices with OTS. OTS Regional Office staff review the applications and notices to determine whether the bylaw amendments comply with the regulations and OTS policy. If an application or notice raises a significant issue of policy or law, or if it involves non-routine anti-takeover provisions or non-standard indemnification provisions, the Washington, DC office will also review the application or notice.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 57.

Estimated Number of Responses: 57.

Estimated Burden Hours per Response: 8 hours.

Estimated Frequency of Response: Other; As needed.

Estimated Total Burden: 456 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 19, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–19589 Filed 8–22–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Monday, September 29, 2008, in room GL–20 at the Greenhoot Cohen Building, 1722 Eye Street, NW., Washington, DC. The meeting will convene at 8:30 a.m. and end at 3:00 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The September 29 meeting agenda will include a review of the VA research portfolio and a summary of current budget allocations. The Council will also provide feedback on the direction/focus of VA's research initiatives.

Any member of the public wishing to attend the meeting or wishing further information should contact Jay A. Freedman, PhD, Designated Federal Officer, at (202) 461–1699. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *jay.freedman@va.gov* or mailed to Dr. Freedman at Department of Veterans Affairs, Office of Research and Development (12), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 19, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–19618 Filed 8–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on September 15–16, 2008, in room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The sessions will start at 8 a.m. each day. The sessions will end at 5 p.m. on September 15 and at 2 p.m. on September 16. The meeting will be open to the public

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Additionally, there will be presentations and discussion of background information on the Gulf War and Gulf War veterans' illnesses, mechanisms potentially underlying chronic symptoms affecting Gulf War veterans, neurologic illnesses affecting Gulf War veterans, and discussion of Committee business and activities. The Committee will also present its 2008 report and recommendations.

The meeting will include time reserved for public comments. A sign-up sheet for five-minute comments will be available at the meeting. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White, Chair, Department of Environmental Health, Boston University School of Public Health, 715 Albany St., T2E, Boston, MA 02118.

Any member of the public seeking additional information should contact Dr. William Goldberg, Designated Federal Officer, at (202) 461–1667, or Dr. White, Scientific Director, at (617) 638–4620.

Dated: August 19, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–19616 Filed 8–22–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
August 25, 2008

Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program for Commercial and Industrial Equipment; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EE–2006–STD–0126]

RIN 1904–AB59

Energy Conservation Program for Commercial and Industrial Equipment: Energy Conservation Standards for Commercial Ice-Cream Freezers; Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers Without Doors; and Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers

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

ACTION: Notice of proposed rulemaking and notice of public meeting.

SUMMARY: The Energy Policy and Conservation Act prescribes energy conservation standards for certain commercial and industrial equipment, and requires the Department of Energy (DOE) to administer an energy conservation program for this equipment. In this notice, DOE is proposing new energy conservation standards for commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers. DOE is also announcing a public meeting on its proposed standards.

DATES: DOE will hold a public meeting on Tuesday, September 23, 2008, from 9 a.m. to 5 p.m. in Washington, DC. DOE must receive requests to speak at the public meeting no later than 4 p.m., Tuesday, September 9, 2008 DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m., Tuesday, September 16, 2008.

DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than October 24, 2008. See Section VII, ''Public Participation,'' of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Any comments submitted must identify the NOPR for commercial refrigeration equipment, and provide docket number EE–2006–STD–0126 and/or RIN number 1904–AB59. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: commercialrefrigeration.rulemaking@ee.doe.gov.* Include docket number EE–2006–STD–0126 and/or RIN 1904–AB59 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see Section VII, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

Please Note: DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192, *Charles.Llenza@ee.doe.gov.*

Ms. Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507, *Francine.Pinto@hq.doe.gov.*

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I. Summary of the Proposed Rule

The Energy Policy and Conservation Act, as amended (EPCA), specifies that any new or amended energy conservation standard the U.S. Department of Energy (DOE) prescribes for the equipment covered by this notice shall be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) Furthermore, the new or amended standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(e)(1)) In accordance with these and other statutory criteria discussed in this notice, DOE proposes to adopt new energy conservation standards for commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers.[1] The proposed standards, shown in Table I–1, would apply to all commercial refrigeration equipment manufactured on or after January 1, 2012, and offered for sale in the United States. 42 U.S.C. 6313(c)(4)(A).

TABLE I–1—PROPOSED STANDARD LEVELS

Equipment class[2]	Proposed standard level* **	Equipment class	Proposed standard level
VOP.RC.M	0.82 × TDA + 4.07	VCT.RC.I	0.71 × TDA + 3.05
SVO.RC.M	0.83 × TDA + 3.18	HCT.RC.M	0.16 × TDA + 0.13
HZO.RC.M	0.35 × TDA + 2.88	HCT.RC.L	0.34 × TDA + 0.26
VOP.RC.L	2.28 × TDA + 6.85	HCT.RC.I	0.4 × TDA + 0.31
HZO.RC.L	0.57 × TDA + 6.88	VCS.RC.M	0.11 × V + 0.26
VCT.RC.M	0.25 × TDA + 1.95	VCS.RC.L	0.23 × V + 0.54
VCT.RC.L	0.6 × TDA + 2.61	VCS.RC.I	0.27 × V + 0.63
SOC.RC.M	0.51 × TDA + 0.11	HCS.RC.M	0.11 × V + 0.26
VOP.SC.M	1.74 × TDA + 4.71	HCS.RC.L	0.23 × V + 0.54
SVO.SC.M	1.73 × TDA + 4.59	HCS.RC.I	0.27 × V + 0.63
HZO.SC.M	0.77 × TDA + 5.55	SOC.RC.L	1.08 × TDA + 0.22
HZO.SC.L	1.92 × TDA + 7.08	SOC.RC.I	1.26 × TDA + 0.26
VCT.SC.I	0.73 × TDA + 3.29	VOP.SC.L	4.37 × TDA + 11.82
VCS.SC.I	0.38 × V + 0.88	VOP.SC.I	5.55 × TDA + 15.02
HCT.SC.I	0.56 × TDA + 0.43	SVO.SC.L	4.34 × TDA + 11.51
SVO.RC.L	2.28 × TDA + 6.85	SVO.SC.I	5.52 × TDA + 14.63
VOP.RC.I	2.9 × TDA + 8.7	HZO.SC.I	2.44 × TDA + 9
SVO.RC.I	2.9 × TDA + 8.7	SOC.SC.I	1.76 × TDA + 0.36
HZO.RC.I	0.72 × TDA + 8.74	HCS.SC.I	0.38 × V + 0.88

* ''TDA'' is the total display area of the case, as measured in the Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, Appendix D.
** ''V'' is the volume of the case, as measured in ARI Standard 1200–2006, Appendix C.

[1] These types of equipment are referred to collectively hereafter as ''commercial refrigeration equipment.''

[2] For this rulemaking, equipment class designations consist of a combination (in sequential order separated by periods) of: (1) an equipment family code (VOP = vertical open, SVO = semivertical open, HZO = horizontal open, VCT = vertical transparent doors, VCS = vertical solid doors, HCT = horizontal transparent doors, HCS = horizontal solid doors, or SOC = service over counter); (2) an operating mode code (RC = remote condensing or SC = self-contained); and (3) a rating temperature code (M = medium temperature (38 °F), L = low temperature (0 °F), or I = ice-cream temperature (−15 °F)). For example, ''VOP.RC.M'' refers to the ''vertical open, remote condensing, medium temperature'' equipment class. See discussion below and chapter 3 of the TSD, market and technology assessment, for a more detailed explanation of the equipment class terminology.

DOE's analyses indicate that the proposed energy conservation standards, trial standard level (TSL) 4 (see Section V.A for a detailed description of TSLs), would save a significant amount of energy—an estimated 0.83 quadrillion British thermal units (Btu), or quads, of cumulative energy over 30 years (2012–2042). The economic impacts on commercial consumers (i.e., the average life-cycle cost (LCC) savings) are positive for all equipment classes.

The cumulative national net present value (NPV) of the proposed standards at TSL 4 from 2012 to 2042 ranges from $1.1 billion (at a seven percent discount rate) to $3.24 billion (at a three percent discount rate), in 2007$. This is the estimated total value of future operating cost savings minus the estimated increased equipment costs, discounted to 2007$. The benefits and costs of the standard can also be expressed in terms of annualized 2007$ values over the forecast period 2012 through 2062. Using a 7 percent discount rate for the annualized cost analysis, the cost of the standard is estimated to be $109 million per year in increased equipment and installation costs while the annualized benefits are expected to be $214 million per year in reduced equipment operating costs. Using a 3 percent discount rate, the annualized cost of the standard is expected to be $92 million per year while the annualized benefits of today's standard are expected to be $234 million per year. See Section V.B.3 for additional details. If DOE adopts the proposed standards, it expects manufacturers will lose 8 to 35 percent of the industry net present value (INPV), which is approximately $40 to $180 million.

DOE estimates that the proposed standards will have environmental benefits leading to reductions in greenhouse gas emissions (i.e., cumulative (undiscounted) emission reductions) of 44 million tons (Mt) of carbon dioxide (CO_2) from 2012 to 2042.[3] Most of the energy saved is electricity. In addition, DOE expects the energy savings from the proposed standards to eliminate the need for approximately 640 megawatts (MW) of generating capacity by 2042. These results reflect DOE's use of energy price projections from the U.S. Energy Information Administration (EIA)'s Annual Energy Outlook 2007 (AEO 2007).[4]

DOE proposes that TSL 4 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. DOE proposes that the benefits to the Nation of TSL 4 (energy savings, commercial consumer average LCC savings, national NPV increase, and emission reductions) outweigh the costs (loss of manufacturer INPV) and is therefore proposing TSL 4 as the energy conservation standards for commercial refrigeration equipment in this NOPR. TSL 4 is technologically feasible because the technologies required to achieve these levels already exist.

In this NOPR, DOE proposes that TSL 5 is not economically justified because, under the current circumstances, DOE believes that the benefits to the Nation of TSL 5 (energy savings, commercial consumer average LCC savings, and emission reductions) do not outweigh the costs (national NPV decrease and loss of manufacturer INPV). DOE's analyses indicate that TSL 5 would save a greater amount of energy than TSL 4—an estimated 1.21 quadrillion quads of cumulative energy over 30 years (2012–2042). At TSL 5, while the economic impacts on commercial consumers (i.e., LCC savings and NPV) are still positive for the majority of equipment classes, the impacts on commercial customers for five classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M) are negative. The life-cycle cost savings are negative for three classes and NPV results for each of these five classes are negative.

The cumulative NPV at TSL 5, from 2012 to 2042, ranges from −$200 million (at a seven percent discount rate) to $1.16 billion (at a three percent discount rate), in 2007$. Using a 7 percent discount rate, the annualized cost of the standard is estimated to be $285 million per year in increased equipment and installation costs while the annualized benefits are expected to be $266 million per year in reduced equipment operating costs. Using a 3 percent discount rate, the annualized cost of the standard is expected to be $241 million per year while the annualized benefits are expected to be $292 million per year. See Section V.B.3 for additional details. At TSL 5, DOE expects manufacturers will lose 3 to 56 percent of the industry net present value INPV, which is approximately $18 to $285 million.

DOE based its estimates of the economic impacts referenced above on current costs for energy improving technologies used in commercial refrigeration equipment. A key technology for energy savings benefits in most commercial refrigeration equipment is the use of solid state lighting (i.e., light emitting diodes or LEDs). At current LED prices, the life-cycle cost savings at TSL 5 are substantially lower than TSL 3 and TSL 4 for several equipment classes. For example, the average per unit LCC savings for the VOP.RC.M equipment class is $1,551 at TSL 3, but this number falls by $1,785 to −$234 when moving to TSL 5. When accounting for the projected volume of sales for these equipment classes in 2012, the net effect of moving from TSL 3 to TSL 5 is a decrease in LCC savings of $130 million per year. To achieve the same or greater LCC savings at TSL 5 as other efficiency levels (e.g., TSL 3 or 4), for all equipment classes, average LED costs would need to decrease by almost 45 percent.

While considerable information is available that suggests LED costs are likely to decline more than assumed in DOE's analysis, DOE believes it must have a higher degree of confidence of further cost reductions than assumed in today's proposed rule. In this NOPR, DOE projected future LED costs based on DOE's Multi-Year Program Plan,[5] which are consistent with historical LED price reductions between 2000 and 2007. The Multi-Year Program Plan projects that LED chip costs will continue to decrease at a compound annual growth rate (CAGR) of approximately −27 percent between 2007 and 2012, which represents a price reduction of 80 percent over that time period. Since LED chips are only a portion of the total LED system (other components include power supply and the LED fixture), the 80 percent reduction in chip costs contributes to an estimated decrease in total LED system cost of approximately 50 percent by 2012, assuming the costs of the power supply and LED fixtures do not change significantly. Such a decrease in cost

[3] Additionally, the standards would result in 17 thousand tons (kt) of nitrogen oxides (NO_X) emissions reductions or generate a similar amount of NO_X emissions allowance credits in areas where such emissions are subject to regulatory or voluntary emissions caps.

[4] DOE intends to use EIA's AEO 2008 to generate the results for the final rule. The AEO2008 Early Release contains reference case energy price forecasts which show higher commercial electricity prices at the national level compared with the AEO 2007 on a real (inflation adjusted) basis. If these early release energy prices remain unchanged in the final release, then incorporation of the AEO 2008 forecasts would likely result in reduced payback periods and greater life-cycle cost savings and greater national net present value for the proposed standards.

[5] U.S. Department of Energy, Solid-State Lighting Research and Development, Multi-Year Program Plan FY'09–FY'14. This document was prepared under the direction of a Technical Committee from the Next Generation Lighting Initiative Alliance (NGLIA). Information about the NGLIA and its members is available at *http://www.nglia.org*.

would be sufficient for TSL 5 to achieve LCC savings equal to or greater than other TSLs.

DOE examined whether the projected LED costs presented in the Multi-Year Program Plan and used in this NOPR are consistent with publicly available empirical historical cost data. DOE reviewed available price data for the LED market and found that between 2000 and 2007, white-light LEDs had a CAGR ranging from approximately −18 to −31 percent. DOE's LED cost projection (i.e., −27 percent CAGR) falls within the range of CAGRs observed. DOE expanded its examination by comparing this projected trend to the red-light LED market, which is a related technology, with cost information spanning approximately three decades (i.e., 1973 to 2005). DOE found that the CAGR of red-light LED costs was −22 percent over this longer time span. The trend in red-light LED costs derived from empirical data over this longer time period is of a similar magnitude to DOE's projected costs for white-light LEDs. Due to the technological similarities between red-light LEDs and white-light LEDs, DOE believes that the historical cost reductions for red-light LEDs are indicative of future cost reductions for white-light LEDs. Furthermore, the white-light LED market is undergoing a massive expansion and growth phase, with significant investment, new products and innovative applications for LED technology, including illumination of commercial refrigeration equipment. See Section V.C of this NOPR and Appendix B of the technical support document (TSD) for more detail on the cost projection and DOE's validation of those estimates. DOE seeks comment on the extent to which these price trends are indicative of what can be expected for commercial refrigeration equipment LED lighting from 2007 to 2012 and the extent to which the cost reduction observed for red-light LEDs is relevant to DOE's cost projections for white-light LEDs. DOE also seeks comment on the extent to which stakeholders expect projected LED cost reductions would occur, the timing of the projected LED cost reductions, and the certainty of the projected LED cost reductions. Finally, considering the rapid development of LED technology and the steady reductions in cost, DOE seeks comment on the extent to which manufacturers would adopt LED technology into the design of commercial refrigeration equipment in the absence of standards.

DOE also performed sensitivity analyses of the effect of projected cost reductions in LED lighting systems on LCC and NPV. Incorporation of DOE LED lighting system cost projections of a 50 percent decline by 2012 shift the calculated NPV, for 2012–2042, from −$200 million to a positive $1.62 billion at a seven percent discount rate, for TSL 5. See Section V.C of this NOPR or Chapter 8 of the TSD for additional details.

TSL 5 is estimated to have environmental benefits leading to reductions in greenhouse gas emissions of 63 Mt of CO_2 from 2012 to 2042. Additionally, TSL 5 would result in 23 kt of NO_X emissions reductions or generate a similar amount of NO_X emissions allowance credits in areas where such emissions are subject to emissions caps. Most of the energy saved is electricity. In addition, DOE expects the energy savings from the proposed standards to eliminate the need for approximately 930 MW of generating capacity by 2042.

Although DOE has tentatively rejected TSL 5 because, under the current circumstances, it tentatively found that the benefits to the Nation do not outweigh the costs, and therefore does not consider TSL 5 economically justified, DOE expects that LED costs will decline substantially over the next 4–5 years and could have a dramatic effect on the economic impacts described above. Therefore, DOE requests data or information that could provide a greater level of confidence that the projected LED cost reductions will occur and DOE will assess that data in determining whether to further consider TSL 5 in its final rule analysis.

II. Introduction

A. Overview

DOE proposes to set energy conservation standards for commercial refrigeration equipment at the levels shown in Table I–1. The proposed standards would apply to equipment manufactured on or after January 1, 2012, and offered for sale in the United States. DOE has tentatively found that the standards would save a significant amount of energy (see Section III.C.2) and result in a cleaner environment. In the 30-year period after the new standard becomes effective, the Nation would tentatively save 0.83 quads of primary energy. These energy savings also would tentatively result in significantly reduced emissions of air pollutants and greenhouse gases associated with electricity production, by avoiding the emission of 44 Mt of CO_2 and 17 kt of NO_X. In addition, DOE expects the standard to prevent the construction of the new power plants that would be necessary to produce approximately 640 MW by 2042. In total, DOE tentatively estimates the net present value to the Nation of this standard to be $1.1 billion from 2012 to 2042 in 2007$.

Commercial customers would see benefits from the proposed standards. Although DOE expects the price of the higher efficiency commercial refrigeration equipment to be approximately 11 percent higher than the average price of this equipment today, weighted by shipments across equipment classes, the energy efficiency gains would result in lower energy costs, saving customers about 26 percent per year on their energy bills. Based on DOE's LCC analysis, DOE tentatively estimates that the mean payback period for the higher efficiency commercial refrigeration equipment would be between a low of 1.4 to a high of 6.1 years. In addition, when the net results of these price increases and energy cost savings are summed over the lifetime of the higher efficiency equipment, customers could save approximately $690 to $3800, depending on equipment class, compared to their expenditures on today's baseline commercial refrigeration equipment.

B. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. Part A–1 of Title III (42 U.S.C. 6311–6317) establishes a similar program for certain types of commercial and industrial equipment.[6] The Energy Policy Act of 2005 (EPACT 2005), Pub. L. 109–58, included an amendment to Part A–1 requiring that DOE prescribe energy conservation standards for the commercial refrigeration equipment that is the subject of this rulemaking. (EPACT 2005, Section 136(c); 42 U.S.C. 6313(c)(4)(A)) Hence, DOE publishes today's notice of proposed rulemaking (NOPR) pursuant to Part A–1, which provides definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. The test procedures for commercial refrigeration equipment appear at Title 10 Code of Federal Regulations (CFR) Sections 431.63 and 431.64.

EPCA provides criteria for prescribing new or amended standards for covered equipment. As indicated above, any

[6] This part was originally titled Part C, however, it was renamed Part A–1 after Part B of Title III was repealed by EPACT 2005.

new or amended standard for commercial refrigeration equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified.[7] (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) But EPCA precludes DOE from adopting any standard that would not result in significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(e)(1)) Moreover, DOE may not prescribe a standard for certain equipment if no test procedure has been established for that equipment, or if DOE determines by rule that the standard is not technologically feasible or economically justified, and that such standard will not result in significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(e)(1)) EPCA also provides that, in deciding whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens after receiving comments on the proposed standard. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1)) To the greatest extent practicable, DOE must consider the following seven factors:

(I) The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

(II) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the equipment that are likely to result from the imposition of the standard;

(III) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) Any lessening of the utility or the performance of the covered equipment likely to result from the imposition of the standard;

(V) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) The need for national energy conservation; and

(VII) Other factors the Secretary considers relevant.

Id.

Furthermore, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295 (o)(4) and 6316(e)(1)) In addition, there is a rebuttable presumption that a standard level is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *.'' (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(e)(1)) The rebuttable presumption test is an alternative path to establishing economic justification.

Section 325(q)(1) of EPCA addresses the situation where DOE sets a standard for a type or class of covered equipment that has two or more groups of covered equipment. DOE must specify a different standard level than that which applies generally to such equipment ''for any group of covered equipment which have the same function or intended use, if * * * equipment within such group—(A) consume a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) have a capacity or other performance-related feature which other equipment within such type (or class) do not have and such feature justifies a higher or lower standard'' than applies or will apply to the other equipment. (42 U.S.C. 6295(q)(1) and 6316(e)(1)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must ''consider such factors as the utility to the consumer of such a feature'' and other factors DOE deems appropriate. Any rule prescribing such a standard must include an explanation of the basis on which a higher or lower level was established. (42 U.S.C. 6295(q)(2) and 6316(e)(1))

Finally, Federal energy conservation requirements for commercial equipment generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards for such equipment. (42 U.S.C. 6316(a)–(b)) For the commercial refrigeration equipment covered by this rulemaking, Federal energy conservation requirements will supersede all such State laws or regulations beginning on the date of publication of the Federal standards, except that any state or local standard issued before that time will be superseded only when the Federal standards take effect. (42 U.S.C. 6316(e)(3)) Furthermore, DOE can grant waivers of preemption to any State laws or regulations that are superseded in accordance with the procedures and other provisions of Section 327(d) of the Act. (42 U.S.C. 6297(d) and 6316(e)(3))

C. Background

1. Current Standards

There are no national energy conservation standards for the commercial refrigeration equipment covered by this rulemaking. EPACT 2005 did amend EPCA to establish energy conservation standards that will apply to certain other types of commercial refrigerators, freezers, and refrigerator-freezers when manufactured on or after January 1, 2010. (42 U.S.C. 6313(c)(2)–(3)) Those standards are not at issue in this rulemaking.

2. History of Standards Rulemaking for Commercial Refrigeration Equipment

On August 8, 2005, Section 136(c) of EPACT 2005 amended EPCA, in part to direct DOE to issue energy conservation standards for the equipment covered by this rulemaking, which standards would apply to equipment manufactured on or after January 1, 2012. (42 U.S.C. 6313(c)(4)(A)) Section 136(a)(3) of EPACT 2005 also amended EPCA, by adding definitions for terms relevant to this equipment. (42 U.S.C. 6311(9)) In defining the term ''commercial refrigerator, freezer, and refrigerator-freezer,'' EPCA states that this refrigeration equipment is connected to either a self-contained condensing unit or to a remote condensing unit. 42 U.S.C. 6311(9)(A)(vii). Subsequently, EPCA defines the terms ''remote condensing unit'' and ''self-contained condensing unit.'' 42 U.S.C. 6311(9)(E)–(F). These are the two condenser configurations of equipment covered by this rulemaking.

On December 19, 2006, the Energy Independence and Security Act of 2007 (EISA 2007) was signed into law by the President. This legislation affected some of the products for which DOE had rulemakings underway. However, it did not create any additional requirements for commercial refrigeration equipment.

As an initial step to comply with EPCA's mandate to issue standards for commercial refrigeration equipment, and to commence this rulemaking, on April 25, 2006, DOE published notice of a public meeting and of the availability

[7] This notice concerns types of ''covered equipment'' as that term is defined in EPCA, (42 U.S.C. 6311(1)(E)) in Part A–1, Certain Industrial Equipment. Therefore, when DOE quotes from, paraphrases or describes general provisions in Part A, for instance, 42 U.S.C. 6295(o), it substitutes the term ''equipment'' for ''product'' when the latter term appears in those provisions. (See 42 U.S.C. 6316 (a)(3))

of its Framework Document for this rulemaking. 71 FR 23876. The Framework Document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for commercial refrigeration equipment, and identified various issues to be resolved in conducting the rulemaking. DOE held a public meeting on May 16, 2006 to present the contents of the Framework Document, describe the analyses it planned to conduct during the rulemaking, obtain public comment on these subjects, and inform and facilitate interested persons' involvement in the rulemaking. DOE also gave interested persons an opportunity, after the public meeting, to submit written statements in response to the Framework Document. DOE received five statements.

On July 26, 2007, DOE published an advance notice of proposed rulemaking (ANOPR) concerning energy conservation standards for commercial refrigeration equipment. 72 FR 41161. In the ANOPR, DOE described and sought comment on its proposed equipment classes for this rulemaking, and on the analytical framework, models, and tools (e.g., LCC and national energy savings (NES) spreadsheets) that DOE used to analyze the impacts of energy conservation standards for commercial refrigeration equipment. In conjunction with the ANOPR, DOE also published on its Web site the complete ANOPR TSD. The TSD included the results of DOE's preliminary (1) engineering analysis, (2) markups analysis to determine equipment price, (3) energy use characterization, (4) LCC and payback period (PBP) analyses, (5) NES and national impact analyses (NIA), and (6) manufacturer impact analysis (MIA). In the ANOPR, DOE requested comment on these results, and on a range of other issues. These issues included equipment classes, definitions for air-curtain angle and door angle, case lighting operating hours, operation and maintenance practices, equipment lifetime, LCC baseline levels, NIA base case, base case and standards case forecasts, differential impact of new standards on future shipments, selection of standard levels for post-ANOPR analysis, the equation that expresses the energy conservation standards, and the nature of standards for commercial refrigerator-freezers.

DOE held a public meeting in Washington, DC on August 23, 2007, to present the methodology and results of the ANOPR analyses, and to solicit both oral and written comments from the interested persons who attended. Public comment focused on DOE's assumptions, approach, and equipment class breakdown, and are addressed in detail in this NOPR.

III. General Discussion

A. Test Procedures

On December 8, 2006, DOE published a final rule in which it adopted American National Standards Institute (ANSI)/Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, *Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,* as the DOE test procedure for this equipment. 71 FR 71340, 71369–70; 10 CFR 431.63–431.64. ANSI/ARI Standard 1200–2006 contains rating temperature specifications of 38 °F (±2 °F) for commercial refrigerators and refrigerator compartments, 0 °F (±2 °F) for commercial freezers and freezer compartments, and −5 °F (±2 °F) for commercial ice-cream freezers. The standard also requires performance tests to be conducted according to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 72–2005, *Method of Testing Commercial Refrigerators and Freezers.* In this final rule, DOE also adopted a −15 °F (±2 °F) rating temperature for commercial ice-cream freezers. 71 FR 71370. In addition, DOE adopted ANSI/Association of Home Appliance Manufacturers (AHAM) Standard HRF–1–2004, *Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,* for determining compartment volumes for this equipment. 71 FR 71369–70.

B. Technological Feasibility

1. General

DOE considers design options technologically feasible if industry already uses these options or if research has progressed to the development of a working prototype. ''Technologies incorporated in commercially available equipment or in working prototypes will be considered technologically feasible.'' 10 CFR Part 430, Subpart C, Appendix A, Section 4(a)(4)(i).

In each standards rulemaking, DOE conducts a screening analysis, which it bases on information it has gathered regarding all current technology options and prototype designs. In consultation with interested parties, DOE develops a list of design options for consideration in the rulemaking. All technologically feasible design options are candidates in this initial assessment. Early in the process, DOE eliminates from consideration any design option (a) that is not practicable to manufacture, install, or service; (b) that will have adverse impacts on equipment utility or availability; or (c) for which there are health or safety concerns that cannot be resolved. Chapter 4 of the TSD accompanying this notice contains a description of the screening analysis for this rulemaking.

In the ANOPR, DOE eliminated five of the technologies considered in the market and technology assessment: (1) Air-curtain design, (2) thermoacoustic refrigeration, (3) magnetic refrigeration, (4) electro-hydrodynamic heat exchangers, and (5) copper rotor motors. Because all five of these technologies are in the research stage, DOE believes that they would not be practicable to manufacture, install and service on the scale necessary to serve the relevant market at the time of the effective date of the standard. In addition, because these technologies are in the research stage, DOE cannot assess whether they would have any adverse impacts on utility to significant subgroups of consumers, result in the unavailability of any types of equipment, or present any significant adverse impacts on health or safety. Therefore, DOE did not consider these technologies as design options for improving the energy efficiency of commercial refrigeration equipment. DOE believes that all the efficiency levels discussed in today's notice are technologically feasible because there is equipment either in the market or in working prototypes at all of the efficiency levels analyzed. See Chapter 4 of the TSD for further discussion of the screening analysis.

2. Maximum Technologically Feasible Levels

In deciding whether to adopt a new standard for a type or class of commercial refrigeration equipment, DOE must ''determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible'' for such equipment. (42 U.S.C. 6295(p)(1) and 6316(e)(1)) If such standard is not designed to achieve such efficiency or use, the Secretary shall state the reasons such is the case in the proposed rule. Id. For this rulemaking, DOE determined that the values in Table III–1 represent the energy use levels that would achieve the maximum reductions in energy use that are technologically feasible at this time for commercial refrigeration equipment. DOE identified these ''max-tech'' levels for the equipment classes analyzed as part of the engineering analysis (Chapter 5 of the TSD). For each equipment class, DOE applied the most efficient design options available

for energy-consuming components.
These levels are set forth in TSL 5.

TABLE III–1—"MAX-TECH" ENERGY USE LEVELS

Equipment class	"Max-Tech" level kilowatt hours per day (kWh/day)	Equipment class	"Max-Tech" level kilowatt hours per day (kWh/day)
VOP.RC.M	0.68 × TDA + 4.07	VCT.RC.I	0.71 × TDA + 3.05
SVO.RC.M	0.69 × TDA + 3.18	HCT.RC.M	0.16 × TDA + 0.13
HZO.RC.M	0.35 × TDA + 2.88	HCT.RC.L	0.34 × TDA + 0.26
VOP.RC.L	2.28 × TDA + 6.85	HCT.RC.I	0.4 × TDA + 0.31
HZO.RC.L	0.57 × TDA + 6.88	VCS.RC.M	0.11 × V + 0.26
VCT.RC.M	0.25 × TDA + 1.95	VCS.RC.L	0.23 × V + 0.54
VCT.RC.L	0.6 × TDA + 2.61	VCS.RC.I	0.27 × V + 0.63
SOC.RC.M	0.39 × TDA + 0.11	HCS.RC.M	0.11 × V + 0.26
VOP.SC.M	1.57 × TDA + 4.71	HCS.RC.L	0.23 × V + 0.54
SVO.SC.M	1.58 × TDA + 4.59	HCS.RC.I	0.27 × V + 0.63
HZO.SC.M	0.77 × TDA + 5.55	SOC.RC.L	0.83 × TDA + 0.22
HZO.SC.L	1.92 × TDA + 7.08	SOC.RC.I	0.97 × TDA + 0.26
VCT.SC.I	0.73 × TDA + 3.29	VOP.SC.L	3.95 × TDA + 11.82
VCS.SC.I	0.38 × V + 0.88	VOP.SC.I	5.02 × TDA + 15.02
HCT.SC.I	0.56 × TDA + 0.43	SVO.SC.L	3.98 × TDA + 11.51
SVO.RC.L	2.28 × TDA + 6.85	SVO.SC.I	5.06 × TDA + 14.63
VOP.RC.I	2.9 × TDA + 8.7	HZO.SC.I	2.44 × TDA + 9
SVO.RC.I	2.9 × TDA + 8.7	SOC.SC.I	1.35 × TDA + 0.36
HZO.RC.I	0.72 × TDA + 8.74	HCS.SC.I	0.38 × V + 0.88

C. Energy Savings

1. Determination of Savings

DOE used the NES spreadsheet to estimate energy savings. The spreadsheet forecasts energy savings over the period of analysis for TSLs relative to the base case. DOE quantified the energy savings attributable to an energy conservation standard as the difference in energy consumption between the trial standards case and the base case. The base case represents the forecast of energy consumption in the absence of new mandatory efficiency standards. The NES spreadsheet model is described in Section IV.G of this notice and in Chapter 11 of the TSD accompanying this notice.

The NES spreadsheet model calculates the energy savings in site energy or kilowatt hours (kWh). Site energy is the energy directly consumed at building sites by commercial refrigeration equipment. DOE expresses national energy savings in terms of the source energy savings, which are the energy savings used to generate and transmit the energy consumed at the site. Chapter 11 of the TSD contains a table of factors used to convert kWh to Btu. DOE derives these conversion factors, which change with time, from DOE's EIA's AEO2007.

2. Significance of Savings

For commercial refrigeration equipment, EPCA prohibits DOE from adopting a standard that would not result in significant additional energy savings. (42 U.S.C. 6295(o)(3)(B) and 6316(e)(1)) While the term "significant" is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended significant energy savings in this context to be savings that were not "genuinely trivial." The estimated energy savings for all of the trial standard levels considered in this rulemaking are nontrivial, and therefore DOE considers them significant within the meaning of Section 325 of the Act.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to be evaluated in determining whether an energy conservation standard is economically justified. The following sections discuss how DOE has addressed each factor thus far in this rulemaking. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1))

a. Economic Impact on Manufacturers and Commercial Customers

DOE uses an annual cash-flow approach in determining the quantitative impacts of a new or amended standard on manufacturers. This includes both a short-term assessment based on the cost and capital requirements between the announcement of a regulation and when the regulation comes into effect, and a long-term assessment. Impacts analyzed include INPV, cash flows by year, and changes in revenue and income. Next, DOE analyzes and reports the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. DOE then considers the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures, and loss of capital investment. Finally, DOE takes into account the cumulative impact of regulations on manufacturers.

For commercial consumers, measures of economic impact are generally the changes in installed cost and annual operating costs, i.e., the LCC. Chapter 6 of the TSD presents the LCC of the equipment at each TSL. The LCC is one of the seven factors to be considered in determining the economic justification for a new or amended standard. (42 U.S.C. 6295(o)(2)(B)(i)(II) and 6316(e)(1)) It is discussed in the paragraphs that follow.

b. Life-Cycle Costs

The LCC is the sum of the purchase price, including the installation and operating expense (i.e., operating energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. To determine the purchase price including installation, DOE estimated the markups that distributors and contractors add to the manufacturer selling price (MSP); DOE also estimated installation costs from an analysis of commercial refrigeration equipment installation costs for each equipment class. DOE determined that preventative maintenance costs do not depend on efficiency but that repair costs increase

with efficiency and that the cost of replacement lighting fixtures (''lighting maintenance'') increased with higher efficiency. See Sections IV.E.8 and IV.E.9 for more detail. In estimating operating energy costs, DOE used average effective commercial electricity prices at the State level from the EIA publication, *State Energy Consumption, Price, and Expenditure Estimates*. DOE modified the 2006 average commercial electricity prices to reflect the average electricity prices for each of the four types of businesses examined in this analysis. The LCC analysis compares the LCCs of equipment designed to meet possible energy conservation standards with the LCCs of equipment likely to be installed in the absence of standards. The LCC analysis also identifies a range of energy price forecasts for the electricity prices used in the economic analyses and provides results showing the sensitivity of the LCC results to these price forecasts.

Recognizing that each commercial building that uses commercial refrigeration equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations for two prototype commercial buildings (i.e., stores) and four types of businesses (two types of businesses for each prototype store). The first store prototype is a large grocery store, which encompasses supermarkets and wholesaler/retailer multi-line stores such as big-box stores, warehouse stores, and supercenters. The second prototype is a small store, which encompasses convenience stores and small specialty stores such as meat markets; wine, beer, and liquor stores; and convenience stores associated with gasoline stations. Various types of commercial refrigeration equipment can serve a given type of store's refrigeration needs. DOE gives the LCC savings as a distribution, with a mean value and a range. DOE developed average discount rates for each of four business types analyzed, ranging from 5.1 to 8.4 percent for the calculations, and assumed that the customer purchases the equipment in 2012. Chapter 8 of the TSD contains the details of the LCC calculations.

c. Energy Savings

While significant energy conservation is a separate statutory requirement for imposing an energy conservation standard, EPCA requires DOE, in determining the economic justification of such a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III) and 6316(e)(1)) DOE used the NES spreadsheet results in its consideration of total projected savings. Section IV.G.1 of this notice discusses the savings figures.

d. Lessening of Utility or Performance of Equipment

In establishing equipment classes, evaluating design options, and assessing the impact of potential standard levels, DOE tried to avoid having new standards for commercial refrigeration equipment lessen the utility or performance of the equipment under consideration in this rulemaking. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6316(e)(1)) None of the proposed trial standard levels considered in this rulemaking involve changes in equipment design or unusual installation requirements that would reduce the utility or performance of the equipment. See Chapter 4 and Chapter 16 of the TSD for more detail.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition likely to result from standards. It directs the Attorney General to determine in writing the impact, if any, of any lessening of competition likely to result from imposition of a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (ii); and 6316(e)(1)) DOE has transmitted a written request to the Attorney General soliciting a written determination on this issue.

f. Need of the Nation to Conserve Energy

The non-monetary benefits of the proposed standard are likely to be reflected in improvements to the security and reliability of the Nation's energy system. Reductions in the overall demand for energy will reduce the Nation's reliance on foreign sources of energy and increase reliability of the Nation's electricity system. DOE conducts a utility impact analysis to show the reduction in installed generation capacity. Reduced power demand (including peak power demand) generally improves the security and reliability of the energy system.

The proposed standard also is likely to result in improvements to the environment. In quantifying these improvements, DOE has defined a range of primary energy conversion factors and associated emission reductions based on the generation that energy conservation standards displaced. DOE reports the environmental effects from each trial standard level for this equipment in the environmental assessment in the TSD. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(e)(1))

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(e)(1)) Under this provision, DOE considered LCC impacts on identifiable groups of customers, such as customers of different business types, who may be disproportionately affected by any national energy conservation standard level. In particular, DOE examined the LCC impact on independent small grocery/convenience store businesses where both higher discount rates and lack of access to national account equipment purchases might disproportionately affect those business types when compared to the overall commercial refrigeration equipment market.

2. Rebuttable Presumption

Another criterion for determining whether a standard level is economically justified is the following rebuttable presumption test:

> If the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(e)(1))

If the initial price of equipment increases due to a conservation standard, and the consumer would recover the increase in energy savings in less than three years through reduced energy costs resulting from the standard, then DOE presumes that such standard is economically justified. This presumption of economic justification can be rebutted upon a proper showing. The rebuttable presumption payback calculation is discussed in Sections III.D.2 and V.B.1.b of this NOPR.

IV. Methodology and Discussion of Comments

DOE used two spreadsheet tools to determine the impact of energy conservation standards on the Nation. The first spreadsheet calculates LCCs and payback periods of potential new energy conservation standards. The second provides shipments forecasts

and then calculates national energy savings and net present value impacts of potential new energy conservation standards. DOE also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts of energy conservation standards for commercial refrigeration equipment on utilities and the environment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy economy of the United States and has been developed over several years by the EIA primarily for the purpose of preparing the Annual Energy Outlook (AEO). The NEMS produces a widely known baseline forecast for the Nation through 2025 that is available on the DOE Web site. The version of NEMS used for efficiency standards analysis is called NEMS–BT,[8] and is based on the AEO2007 version with minor modifications. The NEMS offers a sophisticated picture of the effect of standards, since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking (Chapter 3 of the TSD) include equipment classes, manufacturers, quantities, and types of equipment sold and offered for sale, retail market trends, and regulatory and non-regulatory programs.

1. Definitions Related to Commercial Refrigeration Equipment

a. Air Curtain Angle Definition

For equipment without doors, an air curtain divides the refrigerated compartment from the ambient space. DOE stated in the ANOPR that the orientation of the air curtain affects the energy consumption of both remote condensing and self-contained equipment, and that equipment without doors can be broadly categorized by the angle of the air curtain. DOE considered defining the air-curtain angle as ''the angle between a vertical line and the line formed by the points at the center of the discharge air grille and the center of the return air grille, when viewed in cross-section.'' DOE presented this definition in the ANOPR, 72 FR 41173, and for discussion at the ANOPR public meeting, and requested feedback.

ARI and Edison Electric Institute (EEI) recommended that DOE slightly modify its definition of air-curtain angle to ''the angle formed between a vertical line and the line formed by the points at the *inside edge* of the discharge air opening and the *inside edge* of the return air opening, when viewed in cross-section.'' For equipment without doors and without a discharge air grille or discharge air honeycomb, the air curtain should be defined as ''the angle between a vertical line extended down from the highest point on the manufacturer's recommended load limit line and the same load limit line.'' (ARI, No. 18 at p. 2 and EEI, No. 15 at p. 2) DOE recognizes that these proposed definitions are consistent with industry-approved standards and is therefore including the suggested modifications to the definition for air-curtain angle in today's proposed rule.

b. Door Angle Definition

For equipment with doors, DOE stated in the ANOPR that the orientation of the doors affects the energy consumption, and that equipment with doors can be broadly categorized by the angle of the door. DOE considered defining door angle as ''the angle between a vertical line and the line formed by the plane of the door, when viewed in cross-section.'' 72 FR 41174. DOE also presented this definition for discussion at the ANOPR public meeting and requested feedback.

While stakeholders agreed with DOE's proposed definition of door angle flat doors, it was not clear how DOE would define the door angle for curved doors such as those found on service over-the-counter cases. True stated that curved door angle should be defined by forming a plane between ''the end plane and the end peak in-section.'' (Public Meeting Transcript, No. 13.5 at p. 59) Southern California Edison (SCE) suggested defining door angle for curved doors in the way air-curtain angle is defined, by the angle formed between the vertical and a line drawn between the top and bottom edges. (Public Meeting Transcript, No. 13.5 at p. 59) DOE is proposing its original definition of door angle for cases with flat doors. For cases with curved doors, DOE is not clear what True's intent was in defining door angle, and no clarification was made in True's written comments. DOE believes the approach suggested by SCE is appropriate because it accounts for the complex geometry of curved doors while still remaining consistent with the existing definition for air-curtain angle. Therefore, DOE is proposing to define door angle as ''the angle formed between a vertical line and the straight line drawn by connecting the top and bottom points where the display area glass joins the cabinet, when the equipment is viewed in cross-section.''

2. Equipment Classes

When establishing energy conservation standards, DOE generally divides covered equipment into equipment classes by the type of energy used, capacity, or other performance-related features that affect efficiency. Different energy conservation standards may apply to different equipment classes. (42 U.S.C. 6295(q) and 6316(e)(1))

Commercial refrigerators, commercial freezers, and commercial refrigerator-freezers can be divided into various equipment classes categorized largely by physical characteristics that affect energy efficiency. Some of these characteristics delineate the categories of equipment covered by this rulemaking.[9] Most affect the merchandise that the equipment can be used to display, and how the customer can access that merchandise. Key physical characteristics that affect energy efficiency are the operating temperature, the presence or absence of doors (i.e., closed cases or open cases), the type of doors used (i.e., transparent

[8] The EIA approves use of the name NEMS to describe only an AEO version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from AEO assumptions, the name NEMS–BT refers to the model used here. For more information on NEMS, refer to The National Energy Modeling System: An Overview 1998. DOE/EIA–0581 (98), February, 1998. BT is DOE's Building Technologies Program. NEMS–BT was formerly called NEMS–BRS.

[9] ''Commercial refrigerators, commercial freezers, and commercial refrigerator-freezers'' is a type of covered commercial equipment. For purposes of discussion only in this proceeding, DOE uses the term ''categories'' to designate groupings of ''commercial refrigeration equipment.'' The categories of equipment are: Self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers; and commercial ice-cream freezers. DOE will analyze specific equipment classes that fall within these general categories and set appropriate standards.

or solid), the angle of the door or air-curtain (i.e., horizontal, semivertical, or vertical) and the type of condensing unit (i.e., remote or self-contained). As discussed in the ANOPR, 72 FR 41173–77, and below, DOE has developed equipment classes in this rulemaking by (1) dividing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers into equipment families, (2) subdividing these families based on condensing unit configurations and rating temperature designations, and (3) identifying the resulting classes that are within each of the three equipment categories covered by this rulemaking.

DOE divided covered equipment into eight equipment families, which are shown in Table IV–1. Following the ANOPR, DOE did not receive any comments that it believes warranted changes to the eight equipment families proposed in the ANOPR and therefore, the eight families are unchanged. The two issues related to equipment family designations are discussed below.

TABLE IV–1—EQUIPMENT FAMILY DESIGNATIONS

Equipment family	Description
Vertical Open (VOP)	Equipment without doors and an air-curtain ≥ 0° and < 10° from the vertical.
Semivertical Open (SVO)	Equipment without doors and an air-curtain angle ≥ 10° and < 80° from the vertical.
Horizontal Open (HZO)	Equipment without doors and an air-curtain angle ≥ 80° from the vertical.
Vertical Closed Transparent (VCT)	Equipment with hinged or sliding transparent doors and a door angle < 45°.
Horizontal Closed Transparent (HCT)	Equipment with hinged or sliding transparent doors and a door angle ≥ 45°.
Vertical Closed Solid (VCS)	Equipment with hinged or sliding solid (opaque) doors and a door angle < 45°.
Horizontal Closed Solid (HCS)	Equipment with hinged or sliding solid (opaque) doors and a door angle ≥ 45°.
Service Over Counter (SOC)	Equipment with sliding or hinged doors intended for use by sales personnel and fixed or hinged glass for displaying merchandise.

Within each of the eight equipment families is equipment that has one of the two condensing unit configurations, which are shown in Table IV–2. Because these are the only two condensing unit configurations used in commercial refrigeration equipment, and since DOE did not receive any comments on these configurations following the ANOPR, DOE did not make any changes.

TABLE IV–2—CONDENSING UNIT CONFIGURATION

Condensing unit configuration	Description
Remote Condensing (RC)	Condensing unit is remotely located from the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory-supplied accessories.
Self-Contained (SC)	Condensing unit is an integral part of the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory-supplied accessories.

DOE is also organizing equipment classes based on the three operating temperature ranges shown in Table IV–3. Based on the temperature at which the equipment is designed to operate, it will fall into one of these operating temperature ranges. This is identified as Issue 3 under ''Issues on Which DOE Seeks Comment'' in Section VII.E of this NOPR.

Each temperature range coincides with a rating temperature used in the test procedure final rule for the different equipment types. 10 CFR 431.64. Following the ANOPR, DOE did not receive any comments regarding the rating temperature designations proposed in the ANOPR, and therefore DOE did not make any changes to the rating temperature designations.

TABLE IV–3—RATING TEMPERATURE DESIGNATIONS

Operating temperature (°F)	Rating temperature (°F)	Description
≥ 32 (M)	38	Medium temperature (refrigerators).
< 32 and > −5 (L)	0	Low temperature (freezers).
≤ −5 (I)	−15	Ice-cream temperature (ice-cream freezers).

In the ANOPR, DOE responded to several comments and presented a discussion (Section II.A.2) of the air-curtain angle ranges used to delineate vertical, semivertical, and horizontal equipment families without doors (VOP, SVO, and HZO). 72 FR 41173–74. In comments received following the Framework document publication, some stakeholders felt that the air-curtain angle ranges used in the data provided by ARI might encourage manufacturers to redesign equipment to take advantage of less stringent standards. Specifically, the stakeholders were concerned that manufacturers of VOP.RC.M equipment (a high-volume equipment class) would make slight alterations in their designs that would shift the equipment to the SVO.RC.M equipment class. If this shift occurred for a large number of models, and if standards for SVO.RC.M equipment were significantly less stringent than standards for VOP.RC.M equipment, a significant amount of energy savings would be avoided. In other words, energy savings will be less than if that equipment was not modified and remained under the vertical classification. DOE responded to these

comments in the ANOPR, concurring with stakeholders' concerns, and requesting any relevant data or feedback regarding the ranges of air-curtain angle proposed in the ANOPR. No further comments were received on this issue following the ANOPR. DOE is proposing standards for the SVO.RC.M equipment class that are virtually equivalent to standards for the VOP.RC.M equipment class (see the proposed rule language of this NOPR). As a result, DOE believes that the proposed standards eliminate motivation for market shifts between these equipment classes. However, to assure that no changes to the air-curtain ranges for the VOP, SVO, and HZO equipment families are warranted, DOE seeks comment on the possibility of market shifts between equipment classes based on the proposed standards.

As discussed in the ANOPR, 72 FR 41174 and during the ANOPR public meeting, DOE stated that it was considering defining two equipment families each for equipment with solid and transparent doors, based on door angles of 0° to 45° (vertical) and 45° to 90° (horizontal). EEI stated that DOE should consider revising its definition of door angle, because it is unclear whether a door angle of 45° to be vertical or horizontal. (Public Meeting Transcript, No. 13.5 at p. 58) DOE agrees with EEI that its previous designation did not specify what equipment family a unit with a 45° door angle would fall under. Therefore, DOE has tentatively decided that it will designate vertical equipment with transparent or solid doors as ''equipment with hinged or sliding doors and a door angle less than 45°,'' and horizontal equipment with transparent or solid doors as ''equipment with hinged or sliding doors and a door angle greater than or equal to 45°.''

DOE is considering 38 of the 48 equipment classes shown in Table IV–4.[10] The equipment classes are organized by equipment family, compressor operating mode, and rating temperature. The right-hand column in Table IV–4 with the heading ''Equipment Class Designation'' identifies each of the 48 equipment classes with a particular set of letters. The first three letters for each class represent its equipment family. The next two letters represent the condensing unit configuration. The last letter represents the rating temperature. Table IV–1 through Table IV–3 set forth the meaning of the equipment class lettering designations.

TABLE IV–4—COMMERCIAL REFRIGERATION EQUIPMENT CLASSES

Equipment family	Condensing unit configuration	Operating temperature (°F)	Equipment class designation
Vertical Open	Remote	≥ 32	VOP.RC.M
		< 32 and > −5	VOP.RC.L
		≤ −5	VOP.RC.I
	Self-Contained	≥ 32	VOP.SC.M
		< 32 and > −5	VOP.SC.L
		≤ −5	VOP.SC.I
Semivertical Open	Remote	≥ 32	SVO.RC.M
		< 32 and > −5	SVO.RC.L
		≤ −5	SVO.RC.I
	Self-Contained	≥ 32	SVO.SC.M
		< 32 and > −5	SVO.SC.L
		≤ −5	SVO.SC.I
Horizontal Open	Remote	≥ 32	HZO.RC.M
		< 32 and > −5	HZO.RC.L
		≤ −5	HZO.RC.I
	Self-Contained	≥ 32	HZO.SC.M
		< 32 and > −5	HZO.SC.L
		≤ −5	HZO.SC.I
Vertical Closed Transparent	Remote	≥ 32	VCT.RC.M
		< 32 and > −5	VCT.RC.L
		≤ −5	VCT.RC.I
	Self-Contained	≥ 32	VCT.SC.M*
		< 32 and > −5	VCT.SC.L*
		≤ −5	VCT.SC.I
Horizontal Closed Transparent	Remote	≥ 32	HCT.RC.M
		< 32 and > −5	HCT.RC.L
		≤ −5	HCT.RC.I
	Self-Contained	≥ 32	HCT.SC.M*
		< 32 and > −5	HCT.SC.L*
		≤ −5	HCT.SC.I
Vertical Closed Solid	Remote	≥ 32	VCS.RC.M
		< 32 and > −5	VCS.RC.L
		≤ −5	VCS.RC.I
	Self-Contained	≥ 32	VCS.SC.M*
		< 32 and > −5	VCS.SC.L*
		≤ −5	VCS.SC.I
Horizontal Closed Solid	Remote	≥ 32	HCS.RC.M
		< 32 and > −5	HCS.RC.L
		≤ −5	HCS.RC.I
	Self-Contained	≥ 32	HCS.SC.M*
		< 32 and > −5	HCS.SC.L*
		≤ −5	HCS.SC.I

[10] Table IV–4 identifies 48 classes of commercial refrigerators, commercial freezers, and commercial refrigerator-freezers. Of the 48 classes, 10 classes are identified by asterisks. EPCA has already established energy conservation standards for these 10 classes, (42 U.S.C. 6313(c)(2)–(3)) which are not covered under this rulemaking.

TABLE IV–4—COMMERCIAL REFRIGERATION EQUIPMENT CLASSES—Continued

Equipment family	Condensing unit configuration	Operating temperature (°F)	Equipment class designation
Service Over Counter	Remote	≥ 32	SOC.RC.M
		< 32 and > −5	SOC.RC.L
		≤ −5	SOC.RC.I
	Self-Contained	≥ 32	SOC.SC.M*
		< 32 and > −5	SOC.SC.L*
		≤ −5	SOC.SC.I

* These equipment classes are covered by standards established in EPCA and are not covered under this rulemaking. (42 U.S.C. 6313(c)(2)–(3))

EPCA contains standards for self-contained commercial refrigerators, commercial freezers and commercial refrigerator-freezers with doors (42 U.S.C. 6313(c)(2)–(3)); this equipment is not included in this rulemaking. Equipment classes already covered by EPCA, and therefore not included in this rulemaking, are indicated with asterisks in Table IV–4. DOE has based the designations of these possible equipment classes on the classification methodology presented in Table IV–1 through Table IV–3.

Table IV–5 presents the equipment classes covered under this rulemaking, organized by the three equipment categories.

TABLE IV–5—COMMERCIAL REFRIGERATION EQUIPMENT CLASSES BY CATEGORY

Equipment category	Condensing unit configuration	Equipment family	Operating temperature (°F)	Equipment class designation
Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers.	Remote	Vertical Open	≥ 32	VOP.RC.M
			< 32 and > −5	VOP.RC.L
		Semivertical Open	≥ 32	SVO.RC.M
			< 32 and > −5	SVO.RC.L
		Horizontal Open	≥ 32	HZO.RC.M
			< 32 and > −5	HZO.RC.L
		Vertical Closed Transparent	≥ 32	VCT.RC.M
			< 32 and > −5	VCT.RC.L
		Horizontal Closed Transparent	≥ 32	HCT.RC.M
			< 32 and > −5	HCT.RC.L
		Vertical Closed Solid	≥ 32	VCS.RC.M
			< 32 and > −5	VCS.RC.L
		Horizontal Closed Solid	≥ 32	HCS.RC.M
			< 32 and > −5	HCS.RC.L
		Service Over Counter	≥ 32	SOC.RC.M
			< 32 and > −5	SOC.RC.L
Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers without Doors.	Self-Contained	Vertical Open	≥ 32	VOP.SC.M
			< 32 and > −5	VOP.SC.L
		Semivertical Open	≥ 32	SVO.SC.M
			< 32 and > −5	SVO.SC.L
		Horizontal Open	≥ 32	HZO.SC.M
			< 32 and > −5	HZO.SC.L
Commercial Ice-Cream Freezers	Remote	Vertical Open	≤ −5	VOP.RC.I
		Semivertical Open		SVO.RC.I
		Horizontal Open		HZO.RC.I
		Vertical Closed Transparent		VCT.RC.I
		Horizontal Closed Transparent		HCT.RC.I
		Vertical Closed Solid		VCS.RC.I
		Horizontal Closed Solid		HCS.RC.I
		Service Over Counter		SOC.RC.I
	Self-Contained	Vertical Open		VOP.SC.I
		Semivertical Open		SVO.SC.I
		Horizontal Open		HZO.SC.I
		Vertical Closed Transparent		VCT.SC.I
		Horizontal Closed Transparent		HCT.SC.I
		Vertical Closed Solid		VCS.SC.I
		Horizontal Closed Solid		HCS.SC.I
		Service Over Counter		SOC.SC.I

B. Engineering Analysis

The engineering analysis develops cost-efficiency relationships to show the manufacturing costs of achieving increased efficiency. DOE has identified the following three methodologies to generate the manufacturing costs needed for the engineering analysis: (1) The design option approach, which

provides the incremental costs of adding design options to a baseline model that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency based on detailed cost data for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Approach

In the ANOPR engineering analysis, the primary methodology was an efficiency-level approach, supplemented by a design option approach. DOE analyzed only the 15 equipment classes with shipment volumes greater than 100 per year. The basis of the approach was four industry-supplied cost-efficiency curves for the four equipment classes shipped most frequently (i.e., VCT.RC.L, VOP.RC.M, SVO.RC.M, and HZO.RC.L). See Section 0 for shipment data. DOE developed these classes using an efficiency-level approach. DOE supplemented these industry-supplied curves with 15 curves it developed using a design option approach. Four of DOE's curves were intended only for comparison with the industry-supplied curves, as verification of the industry data. The other 11 curves formed the basis of analysis for the other 11 analyzed equipment classes. The ANOPR provides more details on this approach. 72 FR 41180.

During the ANOPR public meeting and subsequent comment period, stakeholders raised concerns over using industry-supplied data as the basis of the engineering analysis. ARI stated that the intent was to use the industry curves only to validate DOE's design option analysis, not to use them directly in the analysis. (Public Meeting Transcript, No. 13.5 at p. 91) The American Council for an Energy Efficient Economy (ACEEE) stated that rulemakings have always used industry curves when they were available. (Public Meeting Transcript, No. 13.5 at p. 91) ARI stated that the industry data represents an average and covers the range of available equipment, but not all manufacturers' equipment would span the whole range. ARI also stated that as few as three manufacturers submitted data for some of the cost-efficiency curves, while in the best cases there were up to seven. ARI explained that three manufacturers might not represent the entire industry. (Public Meeting Transcript, No. 13.5 at pp. 94–95) Hussmann stated that it doesn't know, for example, how many shelf lights other manufacturers included in the data they submitted to ARI, and therein lies some of the danger of using an industry average. (Public Meeting Transcript, No. 13.5 at p. 95) Regarding the HZO.RC.L equipment class, EEI stated that DOE's data does not appear to have the same range as ARI's data. (Public Meeting Transcript, No. 13.5 at p. 93) Copeland also questioned whether the cost-efficiency curves from industry made sense [because they did not appear to be ordered in terms of increasing payback]. (Public Meeting Transcript, No. 13.5 at p. 149) ACEEE noted that the analytically derived price points for several equipment classes are significantly higher than the industry-supplied data at high efficiency, and suggested that DOE reexamine this data. (ACEEE, No. 16 at p. 2) ARI stated that DOE's design option approach appears to be technically sound, and that the ARI cost-efficiency curves are only available for a limited number of equipment classes. For consistency, ARI recommended that DOE base its analysis solely on DOE's analytically derived curves. (ARI, No. 18 at p. 6)

As mentioned above, DOE used the four cost-efficiency curves [11] provided by ARI as the basis for its ANOPR engineering analysis. DOE was not aware of ARI's intent that they be used only to validate DOE's own analysis, or of ARI's concerns that the data may have been insufficient for some classes. DOE agrees with stakeholders that using the analytically derived curves (a design option approach) for all equipment classes would be more consistent and provide more transparency. Although the efficiency-level and design option approaches have been used together in other rulemakings, DOE recognizes the challenges in using the industry-supplied data as the primary engineering analysis approach in this rulemaking. The ARI data cannot be disaggregated for public review, since doing so would disclose sensitive manufacturer information. This prevents a rigorous investigation of any discrepancies or irregularities in data submitted by the manufacturers. At the ANOPR public meeting, Hussmann mentioned lighting levels as one example of a design feature that could cause discrepancies among data from different manufacturers. In the design option approach, data on design features that affect performance (such as lighting) are available for interested persons to review and comment on, along with other assumptions and calculations. The aggregation of industry data seems to have resulted in cost-efficiency curves that lack the marked cost increases at higher levels of efficiency that are typical of the cost-efficiency relationship. The industry-supplied curves tended to be ''flatter'' than those developed by DOE, and in some cases appear to have efficiency levels that were not in order of increasing payback, as noted by Copeland. DOE believes the flatness of the industry curves may account for some of the discrepancies in pricing between the industry-supplied and analytically derived data, as noted by ACEEE.

The extent of the industry-supplied data was also cause for concern. ARI's statement that not all manufacturers' equipment would span the whole range of efficiency levels is consistent with EEI's concern that the data derived using DOE's design option approach did not span the same range as the industry data. Because of overlapping ranges of efficiency of manufacturers' data, the overall cost-efficiency data reported by ARI spans a range that in some cases is greater than the range covered by DOE's design option data. DOE realizes this could raise a concern that its analysis is incomplete, for example by neglecting design options that could account for additional increases in efficiency, and thus an increase in the span of efficiencies covered. However, based on the comments received, DOE believes the extra range in the ARI data is instead largely due to inconsistencies in the manufacturer data submitted to ARI, such as lighting levels. A smaller portion of the extra range may also be attributable to subtle aspects of design and manufacturing (e.g., airflow and air-curtain design) that have an insignificant impact on performance and that cannot be modeled accurately in the design option approach. DOE appreciates the feedback from ARI that the design option approach appears sound, and believes that the design option data is more accurate in depicting the cost-efficiency relationship for commercial refrigeration equipment.

For the NOPR engineering analysis, DOE analyzed the same 15 equipment classes as in the ANOPR analysis, but used only a design option approach. That approach is identical to the one used in the ANOPR, involving consultation with outside experts,

[11] These four curves applied to the following four equipment classes: VCT.RC.L, VOP.RC.M, SVO.RC.M, and HZO.RC.L. These represent the equipment classes with the highest shipment volumes.

review of publicly available cost and performance information, and modeling of equipment cost and energy consumption, but DOE applied it to all 15 equipment classes analyzed. The industry-supplied data developed using an efficiency-level approach is used only as a check on DOE's data. DOE believes this approach is more reliable, and affords the public full transparency of assumptions and results and the ability to perform independent analyses for verification. See Chapter 5 of the TSD for more detail.

2. Equipment Classes Analyzed

For the NOPR, DOE did not make any changes to the equipment classes directly analyzed in the ANOPR engineering analysis. Because of the large number of equipment classes in this rulemaking, DOE did not directly analyze all equipment classes using the design option approach. DOE maintained the same equipment class prioritization used in the ANOPR. Equipment classes with more than 100 units shipped per year (''primary'' classes), as well as the VOP.RC.L [12] equipment class, were directly analyzed. Table IV–6 lists these equipment classes, which represent approximately 98 percent of the shipments of commercial refrigeration equipment reported by ARI.

TABLE IV–6—EQUIPMENT CLASSES DIRECTLY ANALYZED IN THE ENGINEERING ANALYSIS

Equipment class	Description
VOP.RC.M	Vertical Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
VOP.RC.L	Vertical Freezer without Doors with a Remote Condensing Unit, Low Temperature.
SVO.RC.M	Semi-Vertical Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
HZO.RC.M	Horizontal Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
HZO.RC.L	Horizontal Freezer without Doors with a Remote Condensing Unit, Low Temperature.
VCT.RC.M	Vertical Refrigerator with Transparent Doors with a Remote Condensing Unit, Medium Temperature.
VCT.RC.L	Vertical Freezer with Transparent Doors with a Remote Condensing Unit, Low Temperature.
SOC.RC.M	Service Over Counter Refrigerator with a Remote Condensing Unit, Medium Temperature.
VOP.SC.M	Vertical Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
SVO.SC.M	Semi-Vertical Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
HZO.SC.M	Horizontal Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
HZO.SC.L	Horizontal Freezer without Doors with a Self-Contained Condensing Unit, Low Temperature.
VCT.SC.I	Vertical Ice-Cream Freezer with Transparent Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.
VCS.SC.I	Vertical Ice-Cream Freezer with Solid Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.
HCT.SC.I	Horizontal Ice-Cream Freezer with Transparent Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.

3. Analytical Models

In the design option approach, DOE used models to develop estimates of cost and energy consumption for each equipment class at each efficiency level. DOE used a cost model to estimate the manufacturer production cost (MPC) in dollars, and an energy consumption model to estimate the daily energy consumption in kWh for each of the 15 primary equipment classes analyzed.

a. Cost Model

Development of the cost model involved the disassembly of a self-contained refrigerator with transparent doors, an analysis of the materials and manufacturing processes, and the development of a parametric spreadsheet model flexible enough to cover all equipment classes. The manufacturing cost model estimated MPC and reported it in aggregated form to maintain confidentiality of sensitive cost data. DOE obtained input from stakeholders on the MPC estimates and assumptions to confirm accuracy. The cost model was used for 7 of the 15 examined equipment classes and the results were extended to 6 of the remaining examined equipment classes. The cost of the remaining two equipment classes was estimated using available manufacturer list price (MLP) information discounted to MPC. Details of the cost model are provided in chapter 5 of the TSD.

Following the ANOPR, no comments were received regarding DOE's cost model, and therefore no significant changes were made to the methodology used in the NOPR analysis. One change was made to the manufacturer markup assumption, which is discussed below.

One key element of DOE's cost model concerned features and structural elements common in commercial refrigeration equipment, but that would not affect the energy use of the equipment. Development of this part of the cost model involved disassembling a self-contained refrigerator with transparent doors, analyzing the materials and manufacturing processes, and developing a parametric spreadsheet model flexible enough to cover all equipment classes. The other key part of the cost model estimated the costs of particular features or design options that would affect the energy use of the equipment. DOE obtained input from stakeholders on the MPC estimates and assumptions to confirm their accuracy. DOE used the cost model for 7 of the 15 examined equipment classes and extended the results to 6 of the remaining examined equipment classes. DOE estimated the cost of the remaining two equipment classes using available manufacturer list price (MLP) information reduced to MPC. Chapter 5 of the TSD provides details of the cost model.

A manufacturer markup is applied to the MPC estimates to arrive at the MSP. This is the price of equipment sold at which the manufacturer can recover both production and non-production costs and can earn a profit. DOE calculated the manufacturer markup as the market share weighted average value for the industry. For the ANOPR, DOE developed this manufacturer markup by examining several major commercial refrigeration equipment manufacturers' gross margin information from annual reports and the Securities and Exchange Commission (SEC) 10–K reports. The manufacturers DOE analyzed account for approximately 80 percent of the market, and each company is a subsidiary of a more diversified parent company that manufactures equipment other than commercial refrigeration equipment. Because the 10–K reports do

[12] The VOP.RC.L equipment class was reported as having zero shipments in the ARI shipment data, but was included in the analysis based on recommendations from manufacturers. During interviews conducted for the NOPR, manufacturers reported to DOE their individual shipment numbers for the VOP.RC.L class. Regardless of the actual shipment volume, DOE believes there are significantly more than 100 annual shipments of the VOP.RC.L equipment class.

not provide gross margin information at the subsidiary level, the estimated markups represent the average markups that the parent company applies over its entire range of equipment offerings and does not necessarily represent the manufacturer markup of the subsidiary.

The ANOPR analysis indicated that the average manufacturer markup is 1.39. However, DOE adjusted the markups to be more representative of the industry following discussions with manufacturers during the MIA interviews (Chapter 13). An aggregation of the MIA interview responses gives a market share weighted average manufacturer markup value of 1.32. For the NOPR, DOE used this revised manufacturer markup with the MPC values from the engineering analysis to arrive at the MSP values used in the GRIM.

As explained in the ANOPR, DOE received industry-supplied curves from ARI in the form of daily energy consumption versus MLP, both normalized by total display area (TDA). Since DOE developed its analytically derived curves in the form of calculated daily energy consumption (CDEC) versus MSP, it was necessary for DOE to estimate an industry list price markup so that it could make comparisons between the two sets of curves. The industry list price markup is a markup to the selling price that provides the list price. To make comparisons between the analytically derived and industry-supplied cost-efficiency curves, DOE discounted the industry data with the list price markup and normalized the analytically derived curves by TDA.

Manufacturers typically offer a discount from the MLP, which depends on factors such as the relationship with the customer and the volume and type of equipment being purchased. For the estimate of list price markup, DOE relied on information gathered on self-contained commercial refrigeration equipment, since list price information is readily available and typically published by manufacturers of this equipment. A review of the data shows that the list price markup is typically 2.0 (i.e., manufacturers will typically sell their equipment for 50 percent off the published list price). DOE further verified the estimate by obtaining list price quotes from several remote condensing equipment manufacturers. During manufacturer interviews, some commercial refrigeration equipment manufacturers agreed with the 2.0 markup estimate, while others stated the estimate was somewhat high. Although the list price markup can vary significantly by manufacturer and by customer, DOE believes the estimated list price markup of 2.0 is representative of the industry. DOE applied this markup to all equipment classes.

DOE did not receive any additional comments or information indicating that revision of the cost model used in the ANOPR analysis is warranted. Therefore DOE has adhered to that model in the NOPR analysis.

b. Energy Consumption Model

The energy consumption model estimates the daily energy consumption of commercial refrigeration equipment at various performance levels using a design options approach. The model is specific to the categories of equipment covered under this rulemaking, but is sufficiently generalized to model the energy consumption of all covered equipment classes. For a given equipment class, the model estimates the daily energy consumption for the baseline and the energy consumption of several levels of performance above the baseline. The model is used to calculate each performance level separately.

In developing the energy consumption model, DOE made general assumptions about the analysis methodology and specific numerical assumptions regarding load components and design options. DOE based its energy consumption estimates on new equipment tested in a controlled-environment chamber in accordance with ANSI/ARI Standard 1200–2006, the DOE test procedure for commercial refrigeration equipment, which references the ANSI/ASHRAE Standard 72–2005 test method.[13] Once Federal standards for this equipment become operative, manufacturers will be required to test units with this test method, which specifies a certain ambient temperature, humidity, light level, and other requirements. This test method, however, contains no specification as to the operating hours of the display case lighting, and DOE's energy consumption model considers the operating hours to be 24 hours per day (i.e., that lights are on continuously). This assumption is consistent with the lighting operating time assumption used in the energy use characterization (see Section IV.D). Chapter 5 of the TSD discusses further the assumptions used in the energy consumption model.

The energy consumption model calculates CDEC as having two major components: Compressor energy consumption and component energy consumption (expressed as kWh/day). Component energy consumption is the sum of the direct electrical energy consumption of fan motors, lighting, defrost and drain heaters, anti-sweat heaters, and pan heaters. Compressor energy consumption is calculated from the total refrigeration load (expressed in Btu/h) and one of two compressor models: One version for remote condensing equipment and one for self-contained equipment. The total refrigeration load is a sum of the component load and the non-electric load. The component load is the sum of the heat emitted by evaporator fan motors, lighting, defrost and drain heaters, and anti-sweat heaters inside and adjacent to the refrigerated space (condenser fan motors and pan heaters are outside of the refrigerated space and do not contribute to the component heat load). The non-electric load is the sum of the heat contributed by radiation through glass and openings, heat conducted through walls and doors, and sensible and latent loads from warm, moist air infiltration through openings. Chapter 5 of the TSD discusses component energy consumption, compressor energy consumption, and load models.

DOE made one change to the methodology of calculating the radiation load for cases without doors (VOP, SVO, and HZO equipment families). In the ANOPR analysis, the view factor[14] from the interior of the case to the walls of the test chamber was estimated as 0.025. This value was kept as a constant for all cases and sizes in the ANOPR analysis, but it is clear this value should change somewhat as the geometry and the overall size of the case changes. For the NOPR, DOE calculated the view factor separately for each equipment class depending on the geometry specific to the baseline design specifications of that class. The view factor from the case to the room is calculated as the ratio of TDA (i.e., the area of the plane separating the case from the room) to the test chamber wall surface area.

Stakeholders raised questions regarding DOE's method of calculating the infiltration load[15] for commercial refrigeration equipment. Carrier asserted that DOE's method of using defrost water to model infiltration has limitations. Carrier pointed out that as the case is run at higher suction temperatures, the coil has a tendency to run as a wet coil and does not retain much of the moisture on its exterior. Typically on manufacturer specification sheets, defrost meltwater is only the

[13] The test procedures are found at 10 CFR 431.64.

[14] A view factor is the proportion of all radiation that leaves one surface and strikes another.

[15] The mass of warm ambient store air that displaces the cold air inside of the case.

water that comes out during a defrost period, and Carrier noted that there may be additional water that would come off the coil between defrost periods. Carrier believes DOE may be underestimating the infiltration load using information from the specification sheets, and estimated that the infiltration load is typically around 75 percent of total cooling water. Carrier questioned whether or not DOE compared its estimates with the calculated infiltration loads. (Public Meeting Transcript, No. 13.5 at p. 83) Hussmann stated that when it publishes data for defrost meltwater, it does so for the sole purpose of sizing sewer lines and not for estimating the infiltration load. (Public Meeting Transcript, No. 13.5 at p. 85)

In the ANOPR analysis, DOE calculated infiltration load using empirical defrost meltwater data obtained from manufacturers' detailed specification sheets. DOE assumed that defrost meltwater could be correlated with infiltration load, given certain known parameters such as ambient relative humidity. This methodology was calibrated with detailed refrigeration load data obtained from Southern California Edison for several large-volume equipment classes. DOE agrees with the assessment made by stakeholders and has altered its methodology accordingly. In the NOPR engineering design specifications, defrost meltwater (in pounds per hour, lbs/hr) is replaced with infiltrated air (also in lbs/hr) for all equipment classes. DOE estimated infiltrated air by using manufacturers' detailed specification sheets, recognizing that infiltration load is the only load component that cannot be directly calculated. Using physical parameters about each case, the other load components (internal load, conduction load, radiation load) are calculated. DOE subtracted these load components from the listed total refrigeration load, and it is assumed that the remaining load is due to infiltration. Chapter 5 of the TSD provides more details of the change to this methodology.

At the public meeting, stakeholders expressed concern over the refrigerants DOE used in the analysis. EEI asked if hydrofluorocarbon (HFC) refrigerants were already assumed to be in use in the baseline. (Public Meeting Transcript, No. 13.5 at p. 97) ARI stated that most of the data it provided to DOE was based on such refrigerants and no changes are expected in that regard. (Public Meeting Transcript, No. 13.5 at p. 97) In its analysis, DOE assumed that HFC refrigerants are already fully in use for commercial refrigeration equipment. For all remote condensing equipment, in accordance with the DOE test procedure in ANSI/ARI Standard 1200–2006, DOE assumes the use of a compressor using an HFC refrigerant (i.e., R–404A). Likewise, all of the compressors DOE used in modeling self-contained equipment use either R–404A or R–134A, another HFC refrigerant.

c. Design Options

In the market and technology assessment for the ANOPR, DOE defined an initial list of technologies that have the potential to reduce the energy consumption of commercial refrigeration equipment. In the screening analysis for the ANOPR, DOE screened out some of these technologies based on four screening criteria: Technological feasibility; practicability to manufacture, install and service; impacts on equipment utility or availability; and impacts on health or safety. 72 FR 41179–80. The remaining technologies became inputs to the ANOPR engineering analysis as design options. However, for reasons described in the ANOPR, DOE did not incorporate all of these technologies as design options in the energy consumption model. 72 FR 41182–83. Stakeholders commented that some of these technologies should be included in the NOPR engineering analysis, and recommended additional design options DOE should consider. Comments pertaining to each suggested technology and DOE's response are provided below. As a general comment about design options, ACEEE stated that some design options that were screened out should be considered for further analysis and that prevalence in the marketplace is not necessarily a good reason to screen out a design option. (Public Meeting Transcript, No. 13.5 at p. 62) DOE screened out five technologies in the ANOPR screening analysis. These are air-curtain design, thermoacoustic refrigeration, magnetic refrigeration, electro-hydrodynamic heat exchangers, and copper rotor motors. All five of these design options were screened out because they are in the research stage and would not be practical to manufacture, install, and service. Since the publication of the ANOPR, DOE is not aware of any significant changes to the status of these technologies, and has not included them in the NOPR analysis.

ACEEE recommended that variable-speed compressors be included in the analysis. (ACEEE, No. 16 at p. 2) EEI also suggested that DOE consider the use of variable-speed drives for compressors. (EEI, No. 15 at p. 2) Variable-speed compressors could potentially improve the efficiency of commercial refrigeration equipment classes that are self-contained units without doors and self-contained ice-cream freezers. Variable-speed compressors can reduce energy consumption under real-world conditions by matching cooling capacity to the refrigeration load, which can change due to variations in ambient conditions and product loading. This load matching allows for a more constant temperature inside the case, eliminating the large fluctuations in temperature that are typical of single-speed compressors. The stability in temperature allows manufacturers to design equipment with higher evaporator temperatures, improving compressor efficiency. However, the energy-saving benefit of variable-speed compressors is not clear under ANSI/ASHRAE Standard 72–2005, because it is a steady-state test for commercial refrigeration equipment. Further, DOE is not aware of any test data showing the energy savings benefit of variable speed compressors in the types of equipment covered in this rule. Certain test data does exist for walk-ins and residential refrigerators, but DOE does not believe that this data can be used to predict the performance of variable-speed compressors in commercial refrigeration equipment. Therefore, DOE did not include variable-speed compressors as a design option in its engineering analysis.

ACEEE recommended that variable-speed evaporator fans be included in the analysis. (ACEEE, No. 16 at p. 2) San Diego Gas & Electric Company (SDGE) also recommended that DOE include in its analysis the energy savings, cost-effectiveness, and feasibility of such fans for enclosed refrigeration equipment served by remote refrigeration compressors. (SDGE, No. 22 at p. 2) SCE recommended that DOE consider the cost-effectiveness of variable-speed evaporator fans for this equipment. SCE asserted that variable-speed fan control was a very effective and cost-effective means of increasing refrigerated warehouse efficiency and should be applicable to commercial refrigeration equipment as well. SCE stated that this reduces the energy consumption of the fan and the amount of load that the refrigerant must reject. SCE also noted that its work in support of California building and appliance standards showed variable-speed controls on evaporator fans had approximately one-year simple paybacks in both refrigerated warehouses and small walk-in coolers. (Public Meeting Transcript, No. 13.5 at p. 69 and SCE, No. 19 at p. 3) EEI also

suggested that DOE consider the use of variable-speed drives for evaporator fans and compressors. (EEI, No. 15 at p. 2)

Variable-speed evaporator fans can operate at speeds that match changing conditions in the case. DOE recognizes that the use of these fans provides some opportunity for energy savings, because the buildup and removal of frost creates differing pressure drops across the evaporator coil. Theoretically, less fan power is required when the coil is free of frost. Additionally, when an evaporator fan operates at variable speeds, the coil would operate at a more stable temperature during the period of frost build-up. However, the effectiveness of the air curtain in equipment without doors is very sensitive to changes in airflow, so fan motor controllers would likely disrupt air curtains. DOE believes the likely disturbance to the air curtain, which would lead to higher infiltration loads and higher overall energy consumption, would negate the use of evaporator fan motor controllers in equipment without doors, even if there were some reduction in fan energy use. In addition, the ANSI/ASHRAE Standard 72–2005 test method is a steady-state test for commercial refrigeration equipment, so similar to variable-speed compressors, the energy-saving benefit of variable-speed fans is not clear. Therefore, DOE did not include variable-speed fans as a design option in its engineering analysis.

ACEEE recommended that remote ballast location be included in the analysis. (ACEEE, No. 16 at p. 2) Fluorescent lamp ballasts generate heat, and their relocation outside the refrigerated space can reduce energy consumption by lessening the refrigeration load on the compressor. However, for the majority of commercial refrigeration equipment currently manufactured, ballasts are already located in electrical trays outside of the refrigerated space, in either the base or top of the equipment. The notable exceptions are the equipment classes in the VCT equipment family, where ballasts are most often located on the interior of each door mullion. Most commercial refrigeration equipment manufacturers purchase doors for VCT units that are preassembled with the entire lighting system in place rather than configured for separate ballasts. DOE believes that most commercial refrigeration equipment manufacturers choose these kinds of doors because it would be labor intensive and time consuming to relocate these ballasts at the factory, and because of the additional cost and labor of wiring separate ballasts. Manufacturers have indicated that the potential energy savings are also small, since modern electronic ballasts are very efficient and typically contribute only a few watts (W) each to the refrigeration load. Because (1) lamp ballasts are already located externally on most equipment; (2) most units that have internally located lamp ballasts use preassembled lighting systems; and (3) potential energy savings are small, DOE did not consider remote relocation of ballasts as a design option in its engineering analysis.

ACEEE recommended that improved insulation be included in the analysis. (ACEEE, No. 15 at p. 2) Potential improvements to insulation material used in commercial refrigeration equipment cabinets include better polyurethane foams and vacuum panels. In consultation with insulation material manufacturers, DOE determined that there are no significant differences in ''grades'' of insulation material, so equipment manufacturers are already using the best commercially available foam materials in their equipment. Vacuum panels are an alternative form of insulation; however, they may degrade in performance in time as small leaks develop. Based on knowledge of typical manufacturing practices, DOE also believes it would be impractical to use vacuum panels to construct commercial refrigeration equipment, because they cannot be penetrated by fasteners, and do not provide the rigidity of ''foamed-in-place'' polyurethane insulation panels. Thicker insulation is another possible option, but could be problematic because it would likely result in either a reduced volume for the refrigerated space or an increase in the overall size of the equipment cabinet. Reducing the volume of the refrigerated space could affect the utility of the equipment, and because the outer dimensions of commercial refrigeration equipment are often limited (e.g., by interior dimensions of shipping containers), it is often not practical to increase the overall size of the cabinet. For all these reasons, DOE did not consider insulation thickness increases or improvements as a design option in its ANOPR engineering analysis.

However, DOE did add increases in insulation thickness as a design option in the NOPR engineering analysis, because it now believes this is a cost-effective option in several equipment types, most notably self-contained ice-cream freezers with doors. DOE understands that in equipment classes where conduction makes up a significant portion of the total refrigeration load, a modest increase in insulation thickness can lead to small, but significant energy savings. In relatively large units, which make up the largest portion of the shipments of commercial refrigeration equipment, even if such added insulation results in reduction of the refrigerated volume, any such reduction would not be substantial. DOE does not foresee any impact on the availability of this type of equipment from the use of increased insulation that would trigger EPCA's prohibition at 42 U.S.C. 6295(o)(4) and 6316(e)(1). As to smaller units, DOE assumes that their outer dimensions are less constrained than the dimensions of larger units, and that therefore manufacturers could accommodate a small increase in insulation thickness, and maintain the amount of refrigerated volume, by making a small increase in the overall size of the cabinet. Therefore, in the NOPR, DOE modeled a ½-inch increase in insulation thickness for all equipment classes. When implemented as a design option, this increase in thickness was added to the baseline value of insulation thickness and DOE recalculated the conduction load. DOE based the cost of increasing the insulation thickness on a sunk cost per unit, considering foam fixture engineering and tooling costs, production line lifetime, and number of fixtures and units produced. Chapter 5 of the TSD provides details of the assumptions DOE used to calculate the additional cost of insulation thickness increases.

ACEEE recommended that DOE include defrost cycle control in the analysis. (ACEEE, No. 16 at p. 2) Defrost cycle control can reduce energy consumption by reducing the frequency and duration of defrost periods. The majority of equipment currently manufactured already uses partial defrost cycle control in the form of cycle termination control. However, defrost cycle initiation is still scheduled at regular intervals. Full defrost cycle control would involve detecting frost buildup and initiating defrost. As described in the market and technology assessment (Chapter 3 of the TSD), this could be accomplished through an optical sensor or by sensing the temperature differential across the evaporator coil. However, both methods are unreliable due to problems with fouling of the coil from dust and other surface contaminants. This becomes more of an issue as the display case ages. Because of these issues, DOE did not consider defrost cycle control as a design option in its engineering analysis.

SCE asserted that doors should be considered a design option for open

units, and that open units without doors should be held to energy consumption standards at levels warranted for units with doors. (Public Meeting Transcript, No. 13.5 at p. 44) SCE advocates, in essence, that manufacture of new, open commercial refrigeration equipment be discontinued and replaced by manufacture of equipment with doors. It stated that this would be a cost-effective way of saving substantial amounts of energy. (SCE, No. 19 at p. 2) Although SCE did not state it explicitly, DOE understands that its main argument for advocating that doors be considered for open cases is that doors should be regarded as a design option and not a feature, such that there are not separate equipment classes for equipment with and without doors.

DOE acknowledges SCE's position. Substantial, cost-effective energy savings might well result from standards that would, in effect, require the manufacture of commercial refrigeration equipment with doors instead of without. DOE has not considered such standards in this proceeding, however, nor has it studied their potential energy savings or economic justification (including the extent of their impact on product utility), because it believes EPCA precludes their adoption. First, DOE believes that, for commercial refrigeration equipment, the existence or lack of doors (i.e., whether the case is open or closed) does affect the utility of the equipment to its owner and user, and therefore is a ''feature'' as that term is used in 42 U.S.C. 6295(o)(4) and 6316(e)(1). Because a standard based on combining open and closed equipment classes would result in the unavailability of open cases, as described above, such a standard would violate EPCA's prohibition against any standard that would ''result in the unavailability'' of equipment with ''features * * * that are substantially the same'' as those currently available in the United States. (42 U.S.C. 6295(o)(4) and 6316(e)(1)) Second, EPCA prescribes energy conservation standards for self-contained equipment with doors, and mandates that DOE issue standard levels for ''self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors.'' (42 U.S.C. 6313(c)(2)–(4)) The latter equipment is one of the subjects of this rulemaking. Hence, the plain language of EPCA covers standards for commercial refrigeration equipment with and without doors. DOE must follow this legislative mandate. For these reasons, DOE did not consider doors as a design option for open equipment in its engineering analysis.

The design options DOE considered in the NOPR engineering analysis are:

- Higher efficiency lighting and ballasts for the VOP, SVO, HZO, and SOC equipment families (horizontal fixtures);
- Higher efficiency lighting and ballasts for the VCT equipment family (vertical fixtures);
- Higher efficiency evaporator fan motors;
- Increased evaporator surface area;
- Increased insulation thickness;
- Improved doors for the VCT equipment family, low temperature;
- Improved doors for the VCT equipment family, medium temperature;
- Improved doors for the HCT equipment family, ice-cream temperature;
- Improved doors for the SOC equipment family, medium temperature;
- Higher efficiency condenser fan motors (for self-contained equipment only);
- Increased condenser surface area (for self-contained equipment only); and
- Higher efficiency compressors (for self-contained equipment only).[16]

At the public meeting and during the comment period, stakeholders raised concerns about some of the design option data DOE used in its analysis and about DOE's depiction of some of the design options. Several stakeholders were concerned with the lighting design option data. Zero Zone stated that DOE's estimate of the incremental increase in cost for light emitting diode (LED) lighting was too low. (Public Meeting Transcript, No. 13.5 at p. 89) ARI seemed to agree with Zero Zone's assessment, stating that DOE appears to have significantly underestimated the incremental cost for LED lighting by about 50 percent.

DOE revised its cost assumption for LED lighting used in the VOP, SVO, HZO, and SOC equipment families (horizontal four-foot fixtures) and the VCT equipment family (vertical 5-foot fixtures). For the ANOPR, DOE based LED lighting costs on an LED retrofit case study, but DOE revised some of its assumptions for the NOPR based on conversations with manufacturers of LED chips and LED fixtures. Specifically, DOE revised its assumptions on the relative weight of the costs of LED chips, power supplies, and the balance of fixtures (which includes labor). These changes cause the original equipment manufacturer (OEM) cost (i.e., the cost to commercial refrigeration equipment manufacturers) of LED fixtures to increase for both horizontal and vertical fixtures. DOE believes the cost estimates for LED fixtures are now more accurate and are consistent with the costs commercial refrigeration equipment manufacturers would experience in today's market at mass-production volumes. Further discussion of the assumptions used to calculate LED fixture costs are provided in Chapter 5 of the TSD.

Although DOE found that current LED costs are higher than originally estimated in the ANOPR analysis, through a closer examination of cost data for currently available LEDs, DOE recognizes that LED technology has historically exceeded DOE's efficiency and cost targets. In this NOPR, DOE conducted a sensitivity study that analyzed future LED costs based on DOE's Multi-Year Program Plan,[17] which are consistent with historical LED price reductions between 2000 and 2007 (see Appendix B of the TSD). The Multi-Year Program Plan projects that LED chip costs will continue to decrease at a compound annual growth rate (CAGR) of approximately −27 percent between 2007 and 2012, which represents a price reduction of 80 percent over that time period. Also in agreement, EIA's NEMS uses a technology characterization for LED light sources, which show that LED chip costs are expected to decline by approximately 71 percent for the same time period. Since LED chips are only a portion of the total LED system (other components include power supply and the LED fixture), the 80 percent reduction in chip costs contributes to an estimated decrease in total LED system cost of approximately 50 percent by 2012, assuming the costs of the power supply and LED fixtures do not change significantly.

DOE examined whether the projected LED costs presented in the Multi-Year Program Plan and used in this NOPR are consistent with publicly available empirical historical cost data. DOE reviewed available price data for the LED market and found that between 2000 and 2007, white-light LEDs had a CAGR ranging from approximately −18 to −31 percent. DOE's LED cost projection (i.e., −27 percent CAGR) falls within the range of CAGRs observed.

[16] Improvements to the condensing unit are not considered for remote condensing equipment, since the test procedure and standard apply only to the cabinet and not the condensing unit.

[17] U.S. Department of Energy, Solid-State Lighting Research and Development, Multi-Year Program Plan FY'09–FY'14. This document was prepared under the direction of a Technical Committee from the Next Generation Lighting Initiative Alliance (NGLIA). Information about the NGLIA and its members is available at *http://www.nglia.org*.

DOE expanded its examination by comparing this projected trend to the red-light LED market, which is a related technology, with price information spanning approximately three decades (i.e., 1973 to 2005). DOE found that the CAGR of red-light LED costs was −22 percent over this longer time span. The trend in red-light LED costs derived from empirical data over this longer time period is of a similar magnitude to DOE's projected costs for white-light LEDs. Due to the technological similarities between red-light LEDs and white-light LEDs, DOE believes that the historical cost reductions for red-light LEDs are indicative of future cost reductions for white-light LEDs. Furthermore, the white-light LED market is undergoing a massive expansion and growth phase, with significant investment, new products and innovative applications for LED technology, including illumination of commercial refrigeration equipment. See Section V.C of this NOPR and Appendix B of the TSD for more detail on the cost projection and DOE's validation of those estimates. DOE seeks comment on the extent to which these price trends are indicative of what can be expected for commercial refrigeration equipment LED lighting from 2007 to 2012 and the extent to which the cost reduction observed for red-light LEDs is relevant to DOE's cost projections for white-light LEDs. Also, in order to consider that LED costs are to decline more than assumed in this analysis, DOE will need more information than currently available on the extent, timing, and certainty of such further price reductions. Finally, DOE seeks comment on the extent to which manufacturers would adopt LED technology into the design of commercial refrigeration equipment in the absence of standards considering the rapid development of LED technology and the steady reductions in cost. See Section VII.E.1 for details.

The design option data for doors on VCT equipment were another area of concern for stakeholders. Zero Zone stated that the incremental increase in cost for high-efficiency doors (particularly cooler doors) seemed too high. (Public Meeting Transcript, No. 13.5 at p. 89) ACEEE also indicated that DOE's costs for high-efficiency doors are too high. (ACEEE, No. 16 at p. 2) ARI stated that it does not believe that the door used in DOE's analysis (one that uses no energy) is available in the market today. According to ARI, high-efficiency door models currently in the market have no heat in the door, but the frame installed in the case uses at least 40 W per door. ARI also stated that this option is not available to manufacturers in all applications because it is not intended for stores that operate outside a condition of 75 °F dry bulb and 55 percent relative humidity, which requires higher wattage anti-condensate heaters in the doors/frames. (ARI, No. 18 at p. 6) Zero Zone made similar comments, stating that building humidity could be an issue in the use and functionality of higher efficiency doors without heaters. Zero Zone also recommended that DOE revise its analysis and use 40 W per door for the high-efficiency medium temperature frame, and that high-efficiency doors should be dropped from the analysis because they can result in condensate and water on the floor, such that they are not safe to use in a number of stores. (Public Meeting Transcript, No. 13.5 at p. 119 and Zero Zone, No. 17 at p. 2)

DOE did not revise its costs for doors on VCT equipment. After reviewing the information collected for the ANOPR analysis, DOE concluded that its preliminary cost estimates were reasonable. Notwithstanding the stakeholder observations just set forth, none of them provided any specific additional data that would warrant revision of DOE's cost assessments, and DOE is not aware of such data. However, DOE revised the values for the anti-sweat heater power for glass doors for VCT.RC.L and VCT.RC.I equipment in the NOPR engineering analysis. Based on discussion with manufacturers and data from manufacturer specification sheets, the anti-sweat heater power for both the baseline and high-efficiency doors was increased (from 160 W to 200 W for baseline doors and from 60 W to 110 W for high-efficiency doors). DOE also revised the anti-sweat heater power for glass doors for VCT.RC.M equipment in the NOPR engineering analysis based on comments and data received from manufacturer specification sheets. DOE increased the anti-sweat heater power for both the baseline doors (from 60 W to 100 W) and high-efficiency doors (from 0 W to 50 W). See Chapter 5 of the TSD for more detail.

Regarding the compressor design options, Emerson noted that possible efficiency improvements for compressors in self-contained units may be too optimistic. True believes that because the test procedure is not steady-state (due to door openings), variable-speed compressors may be an effective design option. (Public Meeting Transcript, No. 13.5 at p. 75) However, True also noted that few variable-speed compressors are available in the appropriate power range, but that their development is continuing. (Public Meeting Transcript, No. 13.5 at p. 76) Emerson also believes that high-efficiency compressors may not be readily available and that it may be particularly hard to find compressors capable of this level of increased efficiency for low temperature equipment. (Public Meeting Transcript, No. 13.5 at p. 65) For the NOPR, DOE revised the assumptions it used to estimate the changes in cost and efficiency for high-efficiency, single-speed compressors. Based on discussions with manufacturers and other experts, DOE concluded that the assumptions used in the ANOPR analysis (a 10 percent increase in cost results in a 20 percent reduction in energy use) overstated the actual efficiency gains that are possible for today's compressors. Therefore, DOE now assumes that a five percent increase in cost would result in a 10 percent reduction in compressor energy use. Per-dollar efficiency gains are equivalent with these new assumptions, but the overall magnitude of power reduction and the cost premium are reduced. This change affects only the self-contained equipment classes analyzed in the engineering analysis.

Additionally, in the NOPR analysis, DOE revised the capacity values used to select self-contained compressors in the energy consumption model. DOE's energy consumption model selects the most appropriate compressor by comparing each compressor's capacity to the total refrigeration load in the case multiplied by the compressor oversize factor. Because compressor capacity is dependent on the conditions the compressor is tested at (compressor manufacturers provide capacity data over a range of conditions), it is important to select the compressor capacity based on the same conditions used to calculate total refrigeration load. For the ANOPR analysis, DOE listed capacity at standard ASHRAE rating conditions. However, the standard rating conditions used in the ASHRAE 540–2004 standard differ from the operating conditions used in the model, and each set of conditions results in different capacity values.[18] Because the standard conditions and modeled

[18] ASHRAE Standard 540–2004 lists standard rating conditions for hermetic refrigeration compressors. For medium-temperature equipment, compressors are rated at 20 °F suction dewpoint, 120 °F discharge dewpoint, 40 °F return gas, and 0 °F subcooling. For low-temperature equipment, compressors are rated at −10 °F suction dewpoint, 120 °F discharge dewpoint, 40 °F return gas, and 0 °F subcooling. For ice-cream-temperature equipment, compressors are rated at −25 °F suction dewpoint, 105 °F discharge dewpoint, 40 °F return gas, and 0 °F subcooling.

conditions differed, the model typically overestimated the capacity of the selected compressors. To compensate, DOE adjusted the compressor oversize factor to an unrealistic level (typically 1) in order for the ANOPR model to select the correct compressor. For the NOPR, DOE used capacities based on the same conditions used to calculate total refrigeration load and revised the oversize factor (typically 1.4 in the NOPR model) for all self-contained equipment classes to maintain the selection of the correct compressor size. See Chapter 5 of the TSD for more detail.

In the analysis for the ANOPR, the calculation of LED energy use assumed that the LED lighting fixtures at the ends of VCT cases were identical to those between doors. With fluorescent fixtures, manufacturers install the same lamp regardless of whether it is at the end of the case (attached to an end mullion) or between doors (attached to an interior mullion). This causes excess light at the ends of the case. The light output of a single lamp between two doors is directed in both directions (i.e., behind two doors), whereas lamps at the ends direct light only on the contents behind the end door. LED fixtures are inherently scalable, so manufacturers can install an LED fixture in the end mullion that uses fewer LEDs than fixtures in interior mullions. In the NOPR analysis, the calculation assumes single-row LED fixtures are used in the end mullions and that these fixtures use roughly 75 percent of the energy of double-row fixtures in interior mullions. See Chapter 5 of the TSD for more detail.

4. Baseline Models

As mentioned above, the engineering analysis estimates the incremental costs for equipment with efficiency levels above the baseline in each equipment class. DOE was not able to identify a voluntary or industry standard that provided a minimum baseline efficiency requirement for commercial refrigeration equipment. Therefore, it was necessary for DOE to determine baseline specifications for each equipment class to define the energy consumption and cost of the typical, baseline equipment. These specifications include dimensions, number of components, temperatures, nominal power ratings, and other case features that affect energy consumption, as well as a basic case cost (the cost of a piece of equipment not including the major efficiency-related components such as lights, fan motors, and evaporator coils).

DOE established baseline specifications for each equipment class modeled in the engineering analysis by reviewing available manufacturer data, selecting several representative units from available manufacturer data, and then aggregating the physical characteristics of the selected units. This process created a unit representative of commercial refrigeration equipment currently being offered for sale in each equipment class, with average characteristics for physical parameters (e.g., volume, TDA), and minimum performance of energy-consuming components (e.g., fans, lighting). DOE used the cost model to develop the basic case cost for each equipment class. See Appendix B of the TSD for these specifications.

Zero Zone expressed concern over DOE's method for calculating the internal case volume. Zero Zone suggested that DOE update its analysis to use ARI Standard 1200 for calculating the internal volume of a case. This standard calculates internal volume using the internal height and depth of the case from the inside of the door to the rear wall or rear duct. This is typically how the industry calculates internal volume. (Zero Zone, No. 17 at p. 1)

In its engineering analysis, DOE followed the methodology in ANSI/ARI Standard 1200–2006 when calculating the refrigerated volume parameter used in the baseline design specifications. DOE used the internal height and depth of the case from inside of the door to the rear wall. No subtractions were made for shelving or other protrusions within the case interior envelope.

At the public meeting, Zero Zone expressed concern over the lighting technology for the baseline models in each equipment class. Zero Zone stated that T12 lighting is no longer used in closed cases, and that T8 lighting is now the baseline for those cases. (Public Meeting Transcript, No. 13.5 at p. 88) Further, Zero Zone reiterated in writing that the baseline lighting for cases with a vertical transparent door should be T8. (Zero Zone, No. 17 at p. 3) DOE has changed the baseline specifications and is now using T8 lighting in the analysis of baseline models.

Stakeholders raised concerns over the accuracy of some of the data used for the baseline models. Zero Zone stated that the TDA for VCT.RC.L and VCT.RC.M cases may be incorrect, and that the sum of the TDA for each door did not equal the TDA of the entire case for these two equipment classes. (Zero Zone, No. 17 at p. 3)

In the NOPR analysis, DOE made several revisions to the baseline specifications. Appendix B of the TSD shows changes to baseline design specifications relative to the ANOPR analysis. DOE revised the TDA for VCT.RC.L and VCT.RC.M equipment so that the sum of the display area of the doors matches the TDA of the case. The baseline models used in the NOPR analysis are more representative of actual equipment than those DOE used in the ANOPR analysis, but in some situations, the changes to baseline characteristics affected the baseline energy consumption significantly compared to the ANOPR. Four equipment classes (HZO.RC.M, HZO.SC.M, HZO.SC.L, and VCS.SC.I) had changes that resulted in a significant increase in the baseline energy consumption, and one equipment class (SOC.RC.M) had changes that resulted in a decrease in the baseline energy consumption. See Appendix B of the TSD for more detail.

For the ANOPR analysis, DOE calculated a baseline energy usage of 0.16 kWh/ft^2 for the HZO.RC.M equipment class. During manufacturer interviews, some manufacturers stated that this seemed unreasonably low. DOE reviewed the data it presented in the ANOPR TSD, as to the energy consumption of equipment on the market and realized that its figure for baseline energy usage for HZO.RC.M cases was well below the amounts indicated by the market data. DOE identified problems with the ANOPR design specifications for the HZO.RC.M equipment class, namely a lack of electric defrost and a mismatch between the size of the case (TDA) and the amount of infiltration load. For the NOPR analysis, DOE revised its baseline design specifications for this equipment to include electric defrost based on discussions with manufacturers during the MIA interviews and a review of market data. Although electric defrost is not always required on HZO.RC.M cases, about two-thirds of such equipment on the market use electric defrost. Based on manufacturer interviews, DOE understands there are lower infiltration loads (on a per-TDA basis) in horizontal open cases because of the natural ''well'' of cold air that tends to sit inside the case. In contrast, for a vertical or semivertical open case, the cold air tends to spill out of the opening under the influence of gravity. With a lower infiltration load for a given TDA, there is less heat available to melt frost from the evaporator coil using off-cycle defrost. Thus, most HZO.RC.M case designs necessitate the use of electric resistance heating for defrost. DOE also revised the specifications for

the HZO.RC.M equipment class to include a higher infiltration load (in accordance with the updated infiltration methodology), and updated dimensions. In the ANOPR analysis, DOE used defrost meltwater to estimate the infiltration load. In accordance with the updated infiltration methodology, DOE used refrigeration load data to calculate the baseline infiltration load, which was higher than the load estimated using meltwater data in the ANOPR analysis (Chapter 5 for details). DOE also revised the dimensions of the HZO.RC.M class to reflect a somewhat smaller case size that was more representative of cases currently on the market. This change involved reducing the TDA, volume, wall area, and case interior surface area, all of which DOE matched to the infiltration load and other case components. See Appendix B of the TSD for more detail.

For the HZO.SC.M and HZO.SC.L equipment classes, DOE made changes similar to those described in the preceding paragraph. These two equipment classes are in the same equipment family as the HZO.RC.M equipment class, so they share similarities to that class (e.g., having the same cabinet). Because of a lack of detailed data for the HZO.SC.M and HZO.SC.L equipment classes, DOE based its baseline specifications on the HZO.RC.M equipment class, making reasonable adjustments for design features specific to self-contained equipment. In particular, self-contained equipment has a lower compressor energy efficiency ratio (EER), and an added drain pan heater to evaporate defrost meltwater. Similar to the HZO.RC.M class, the change in infiltration load calculation led to a higher infiltration load for the HZO.SC.M class. DOE also added electric defrost to the HZO.SC.M class and increased the anti-sweat heater load. For the HZO.SC.L class, electric defrost was already included, since it is necessary for low-temperature equipment. However, DOE revised the infiltration load in accordance with the change in methodology and increased the anti-sweat heater load. See Appendix B of the TSD for more detail.

Discussions during the manufacturer interviews revealed that in the ANOPR analysis, the baseline energy usage for the VCS.SC.I equipment class was unrealistically low. Therefore, in the NOPR analysis, DOE made revisions that increased energy usage in the baseline equipment for this class. DOE was unable to verify the accuracy of the baseline specifications in the ANOPR analysis, because of a lack of publicly available performance data for this class. For the NOPR, DOE revised its baseline assumptions to reflect a two-door case instead of the three-door model analyzed in the ANOPR. DOE believes this change more accurately reflects the current market for VCS.SC.I cases and is more in line with the electric defrost power level. DOE increased infiltration load somewhat relative to the ANOPR specifications and added anti-sweat power. See Appendix B of the TSD for more detail.

5. Engineering Analysis Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of CDEC (in kWh) versus MSP (in dollars), both normalized by TDA (or volume for the VCS.SC.I equipment class). DOE created 15 cost-efficiency curves in the engineering analysis.

Table IV–7 presents data for these curves. See Chapter 5 of the TSD for additional detail on the engineering analysis and comparisons of DOE's analytically derived curves to industry-supplied curves. See Appendix B of the TSD for complete cost-efficiency results.

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Table IV-7 Engineering Analysis Cost-Efficiency Results

		Efficiency Level										
		Baseline	1	2	3	4	5	6	7	8	9	10
VCT.RC.L	MSP/TDA [$/ft^2]	$113.17	$113.61	$114.67	$134.42	$135.24	$147.83	$149.55	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	1.07	1.04	1.01	0.72	0.71	0.65	0.64	-	-	-	-
VOP.RC.M	MSP/TDA [$/ft^2]	$79.12	$79.76	$81.30	$82.90	$87.59	$88.58	$129.36	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	1.09	1.04	0.98	0.95	0.89	0.89	0.76	-	-	-	-
SVO.RC.M	MSP/TDA [$/ft^2]	$95.10	$95.67	$97.04	$98.56	$102.91	$141.73	$143.06	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	1.09	1.04	0.99	0.96	0.91	0.78	0.77	-	-	-	-
HZO.RC.L	MSP/TDA [$/ft^2]	$93.63	$94.12	$95.31	$97.40	$98.56	-	-	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	0.83	0.80	0.77	0.73	0.72	-	-	-	-	-	-
HZO.RC.M	MSP/TDA [$/ft^2]	$129.23	$129.92	$131.58	$133.95	$135.56	-	-	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	0.59	0.54	0.48	0.45	0.44	-	-	-	-	-	-
VCT.RC.M	MSP/TDA [$/ft^2]	$103.23	$103.67	$104.72	$120.28	$121.10	$133.69	$134.71	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	0.51	0.49	0.46	0.35	0.34	0.29	0.28	-	-	-	-
VOP.RC.L	MSP/TDA [$/ft^2]	$143.54	$145.32	$149.62	$156.20	$157.02	$158.21	$179.07	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	2.99	2.84	2.65	2.54	2.52	2.51	2.44	-	-	-	-
SOC.RC.M	MSP/TDA [$/ft^2]	$146.36	$146.81	$147.88	$149.08	$150.33	$180.77	$181.81	$187.79	-	-	-
	CDEC/TDA [kWh/day/ft^2]	0.62	0.59	0.55	0.53	0.51	0.41	0.41	0.40	-	-	-
VOP.SC.M	MSP/TDA [$/ft^2]	$145.66	$146.49	$147.25	$148.39	$150.23	$155.87	$157.96	$160.71	$179.11	$226.80	$230.37
	CDEC/TDA [kWh/day/ft^2]	2.65	2.54	2.50	2.46	2.41	2.30	2.27	2.24	2.06	1.89	1.89
SVO.SC.M	MSP/TDA [$/ft^2]	$138.92	$139.82	$140.27	$140.71	$141.78	$146.81	$147.88	$149.57	$165.98	$205.92	$210.08
	CDEC/TDA [kWh/day/ft^2]	2.59	2.47	2.44	2.43	2.40	2.30	2.28	2.26	2.09	1.95	1.94
HZO.SC.L	MSP/TDA [$/ft^2]	$154.04	$155.38	$155.85	$156.99	$161.97	$162.44	$178.69	$179.83	$184.26	-	-
	CDEC/TDA [kWh/day/ft^2]	3.22	3.03	3.00	2.96	2.80	2.79	2.54	2.53	2.51	-	-
HZO.SC.M	MSP/TDA [$/ft^2]	$132.19	$132.87	$133.34	$134.48	$134.96	$137.83	$147.19	$148.33	$152.76	-	-
	CDEC/TDA [kWh/day/ft^2]	1.60	1.52	1.49	1.45	1.44	1.38	1.26	1.24	1.23	-	-
HCT.SC.I	MSP/TDA [$/ft^2]	$202.29	$203.93	$205.04	$225.93	$228.61	$239.00	-	-	-	-	-
	CDEC/TDA [kWh/day/ft^2]	1.42	1.29	1.24	0.72	0.69	0.65	-		-	-	-
VCT.SC.I	MSP/TDA [$/ft^2]	$134.76	$135.45	$135.88	$136.94	$138.95	$145.51	$165.26	$165.70	$181.45	$182.50	$184.55
	CDEC/TDA [kWh/day/ft^2]	1.75	1.66	1.61	1.55	1.45	1.32	0.97	0.97	0.87	0.87	0.86
VCS.SC.I	MSP/V_r [$/ft^3]	$43.38	$43.61	$43.91	$44.48	$45.03	$46.82	$47.06	$48.17	$48.74	-	-
	CDEC/V_r [kWh/day/ft^3]	0.57	0.54	0.51	0.47	0.45	0.41	0.41	0.40	0.40	-	-

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C. Markups to Determine Equipment Price

This section explains how DOE developed the distribution channel markups it used (Chapter 6 of the TSD). DOE used these markups, along with sales taxes, installation costs, and the MSPs developed in the engineering analysis, to arrive at the final installed equipment prices for baseline and higher efficiency commercial refrigeration equipment. As explained in the ANOPR, 72 FR 41184, and as shown in Table IV–8, DOE defined three distribution channels for commercial refrigeration equipment to describe how the equipment passes from the manufacturer to the customer.

TABLE IV–8—DISTRIBUTION CHANNEL MARKET SHARES FOR COMMERCIAL REFRIGERATION EQUIPMENT

[In percent]

	Channel 1	Channel 2	Channel 3
	Manufacturer	Manufacturer, wholesaler	Manufacturer, wholesaler, contractor
	Customer	Customer	Customer
Remote Condensing Equipment	70	15	15
Self-Contained Equipment	30	35	35

For the ANOPR analysis, DOE estimated shares of 86 percent, 7 percent, and 7 percent for the manufacturer, manufacturer/wholesaler, and manufacturer/wholesaler/contractor channels, respectively, for all commercial refrigeration equipment, based on market estimates from consultants. At the ANOPR public meeting, ARI and Carrier commented that the breakdown should be changed to 70 percent, 15 percent, and 15 percent among the three channels, respectively, for remote condensing equipment and 30 percent, 35 percent, and 35 percent, respectively, for self-contained equipment. (Public Meeting Transcript, No. 13.5 at p. 122; ARI, No. 18 at p. 7) No other alternative estimates were provided of shipments through these distribution channels. Therefore, in the NOPR, DOE decided to modify the breakdown and it recalculated the overall markups using the same procedure described in the ANOPR (72 FR 41184), but based upon the industry comments from ARI and Carrier. The new overall baseline and incremental markups for sales to supermarkets within each distribution channel are shown in Table IV–9, Table IV–10, Table IV–11, and Table IV–12, respectively. Chapter 6 of the TSD provides additional details on markups.

TABLE IV–9—BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR SELF-CONTAINED EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.436	2.182	1.218	1.631
Sales Tax	1.068	1.068	1.068	1.068
Overall Markup	1.533	2.330	1.300	1.742

TABLE IV–10—BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR REMOTE CONDENSING EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.436	2.182	1.218	1.395
Sales Tax	1.068	1.068	1.068	1.068
Overall Markup	1.533	2.330	1.300	1.490

TABLE IV–11—INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR SELF-CONTAINED EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.107	1.362	1.054	1.180
Sales Tax	1.068	1.068	1.068	1.068
Overall Markup	1.182	1.454	1.125	1.260

TABLE IV–12—INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR REMOTE CONDENSING EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.107	1.362	1.054	1.108
Sales Tax	1.068	1.068	1.068	1.068
Overall Markup	1.182	1.454	1.125	1.183

D. Energy Use Characterization

The energy use characterization estimates the annual energy consumption of commercial refrigeration equipment systems (including the remote condensing units). This estimate is used in the subsequent LCC and PBP analyses (Chapter 8 of the TSD) and NIA (Chapter 11 of the TSD). DOE estimated the energy consumption of the 15 equipment classes analyzed in the engineering analysis (Chapter 5 of the TSD) using the relevant test procedure. DOE then validated these energy consumption estimates with annual whole-building simulation modeling of selected equipment classes and efficiency levels. One of the key assumptions in both the engineering analysis and the whole-building simulation in the ANOPR analysis was that the display case lighting operated 24 hours per day. DOE conducted a limited sensitivity analysis to explore how variation in display case lighting operating hours affected the energy savings. The sensitivity analysis showed that energy savings fell as lighting operating hours were reduced for all equipment classes that used display case lighting. The magnitude of this effect depended on the equipment class.

At the ANOPR public meeting, SCE stated that it was studying display case lighting and will gladly share results of the study with DOE as soon as the study is done. (Public Meeting Transcript, No. 13.5 at p. 117) Hussman stated that with today's low-temperature cabinets, store owners won't turn those lights off because they may not come back on when they are so cold. (Public Meeting Transcript, No. 13.5 at p. 118) Hill Phoenix stated that turning off fluorescent lights at night can lead to maintenance issues because of moisture infiltration, so it is typical to leave the lights on all night. LEDs don't have that problem. They agreed that 24-hour lighting is not a bad assumption. (Public Meeting Transcript, No. 13.5 at p. 118) Another manufacturer, Zero Zone, also agreed that 24 hours is a valid assumption for case lighting operating hours. (Zero Zone, No. 17 at p. 4) ARI recommended that the DOE analysis be based on 24 hours-per-day operation as this represents the worst-case scenario and many stores are open for 24 hours. (ARI, No. 18 at p. 4) Based on these comments, DOE decided to leave the assumption of display case lighting operating hours of 24 hours per day unchanged for the NOPR analysis. Additional detail on the energy use characterization can be found in Chapter 7 of the TSD.

DOE also requested comments on other operational factors that might be encountered in the field that would differ from that found in the relevant test procedure, the relative frequency of these factors, and how it could account for them in its energy analysis. DOE received a comment from the Chinese delegation to the World Trade Organization stating that it should consider all kinds of on-site factors in operation and maintenance practices of the commercial refrigerating equipment when evaluating the optional standard class of the equipment. (China, No. 20 at pp. 3–4) No specifics on what these factors might be or how to take them into account were provided, however. Chapter 7 of the TSD provides additional detail on the energy use characterization.

E. Life-Cycle Cost and Payback Period Analyses

In response to the requirements of Section 325(o)(2)(B)(i) of EPCA, DOE conducted LCC and PBP analyses to evaluate the economic impacts of possible new commercial refrigeration equipment standards on individual customers. This section describes the LCC and PBP analyses and the spreadsheet model DOE used for analyzing the economic impacts of possible standards on individual commercial customers. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are in TSD Chapter 8. DOE conducted the LCC and PBP analyses using a spreadsheet model developed in Microsoft Excel for Windows 2003.

The LCC is the total cost for a unit of commercial refrigeration equipment, over the life of the equipment, including purchase and installation expense and operating costs (energy expenditures and maintenance). To compute the LCC, DOE summed the installed price of the equipment and its lifetime operating costs discounted to the time of purchase. The PBP is the change in purchase expense due to a given energy conservation standard divided by the change in first-year operating cost that results from the standard. DOE expresses PBP in years. Otherwise stated, the payback period is the number of years it would take for the customer to recover the increased costs of a higher-efficiency product through energy savings. DOE measures the changes in LCC and in PBP associated with a given energy use standard level relative to a base case forecast of equipment energy use. The base case forecast reflects the market in the absence of mandatory energy conservation standards.

The data inputs to the PBP calculation are the purchase expense (otherwise known as the total installed customer cost or first cost) and the annual operating costs for each selected design. The inputs to the equipment purchase expense were the equipment price and the installation cost, with appropriate markups. The inputs to the operating costs were the annual energy consumption, the electricity price, and the repair and maintenance costs. The PBP calculation uses the same inputs as the LCC analysis but, since it is a simple payback, the operating cost is for the year the standard takes effect, assumed to be 2012. For each efficiency level analyzed, the LCC analysis required input data for the total installed cost of the equipment, the operating cost, and the discount rate.

Table IV–13 summarizes the inputs and key assumptions used to calculate the customer economic impacts of various energy consumption levels. Equipment price, installation cost, and baseline and standard design selection affect the installed cost of the equipment. Annual energy use, electricity costs, electricity price trends, and repair and maintenance costs affect

the operating cost. The effective date of the standard, the discount rate, and the lifetime of equipment affect the calculation of the present value of annual operating cost savings from a proposed standard. Table IV–13 also shows how DOE modified these inputs and key assumptions for the NOPR, relative to the ANOPR.

TABLE IV–13—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Input	Description	Changes for NOPR
Baseline Manufacturer Selling Price.	Price charged by manufacturer to either a wholesaler or large customer for baseline equipment.	Data reflects updated engineering analysis.
Standard-Level Manufacturer Selling Price Increases.	Incremental change in manufacturer selling price for equipment at each of the higher efficiency standard levels.	Data reflects updated engineering analysis.
Markups and Sales Tax	Associated with converting the manufacturer selling price to a customer price (Chapter 6 of TSD).	Markups updated based on revised distribution channel shipment estimates.
Installation Price	Cost to the customer of installing the equipment. This includes labor, overhead, and any miscellaneous materials and parts. The total installed cost equals the customer equipment price plus the installation price.	Installation prices for remote condensing and self-contained equipment revised based on ANOPR comments.
Equipment Energy Consumption.	Site energy use associated with the use of commercial refrigeration equipment, which includes only the use of electricity by the equipment itself.	Data reflects updated engineering analysis for each efficiency level.
Electricity Prices	Average commercial electricity price ($/kWh) in each State and for four classes of commercial customers, as determined from EIA data for 2003$ converted to 2006$.	Electricity prices updated to 2007$ using Electricity EIA Monthly Electricity Database for base commercial electricity prices; and AEO2007 to convert 2006 prices to 2007 prices.
Electricity Price Trends	Used the AEO2006 reference case to forecast future electricity prices.	Used the AEO2007 reference case to forecast future electricity prices.
Maintenance Costs	Labor and material costs associated with maintaining the commercial refrigeration equipment (e.g., cleaning heat exchanger coils, checking refrigerant charge levels, lamp replacement).	No change in methodology. Lamp replacement costs reflect updated engineering analysis costs and are in 2007$.
Repair Costs	Labor and material costs associated with repairing or replacing components that have failed. Based on a fixed percentage of baseline equipment costs.	Repair costs in NOPR reflect estimates of individual component life and cost to replace. Repair costs increase with increasing component costs.
Equipment Lifetime	Age at which the commercial refrigeration equipment is retired from service (estimated to be 10 years).	Average equipment life for small grocery and convenience stores adjusted to 15 years.
Discount Rate	Rate at which future costs are discounted to establish their present value to commercial refrigeration equipment users.	Updated to 2007 version of the Damodaran website with very little change to discount rates.
Rebound Effect	A rebound effect was not taken into account in the LCC analysis.	No change.

The following sections contain brief discussions of the methods underlying each input and key assumption in the LCC analysis. Where appropriate, DOE also summarizes comments on these inputs and assumptions and explains how it took these comments into consideration.

1. Manufacturer Selling Price

The baseline MSP is the price charged by manufacturers to either a wholesaler/distributor or very large customer for equipment meeting existing energy use (or baseline) levels. The MSP includes a markup that converts the MPC to MSP. DOE obtained the baseline MSPs through industry-supplied efficiency-level data supplemented with a design option analysis. Refer to Chapter 5 of the TSD for details.

DOE developed MSPs for equipment classes consisting of eight possible equipment families, two possible condensing unit configurations (remote condensing and self-contained), and three possible operating temperature ranges. Not all covered equipment classes have significant actual shipments (Chapter 3 of the TSD). DOE carried out the LCC and PBP analyses on the 15 primary equipment classes identified earlier. DOE estimated the MSP for each primary equipment class between the baseline efficiency level and for four to seven additional more-efficient levels. Refer to Chapter 5 of the TSD for details.

DOE was not able to identify data on relative shipments for equipment classes by efficiency level, and DOE did not find equivalent data in the literature or studies. DOE designated the equipment with the highest energy use as Level 1, and selected this as the baseline equipment.

In the ANOPR analysis, DOE requested feedback on whether the Level 1 baseline is valid for the LCC analysis, and if not, what changes should be made to provide a more realistic baseline level. DOE also asked whether a distribution of efficiencies should be used to establish the baseline for the LCC analysis. 72 FR 41193, 41208. DOE received comments on the engineering analysis and the use of the analytically derived curves versus the industry-supplied curves. DOE modified the engineering analysis, which resulted in a modified Level 1 baseline. See Section IV.B for details.

ARI stated that it would try to provide energy efficiency distribution data to DOE, but was unable to provide that data in time for the NOPR. (Public Meeting Transcript, No. 13.5 at p. 143) EEI stated that Electric Power Research Institute (EPRI) end use studies might provide some data that could be used to establish distributions. (Public Meeting Transcript, No. 13.5 at p. 141) ACEEE suggested that DOE check with the Northwest Energy Efficiency Alliance for possible energy efficiency distribution data. (Public Meeting Transcript, No. 13.5 at p. 142) However, ARI agreed with DOE's approach to use the Level 1 data established in the engineering analysis as the appropriate baseline for DOE's LCC analysis. DOE was able to explore some of the data available with the Northwest Energy Efficiency Alliance; however, the

available data generally provides only frequency of use of specific design features and not energy use. Based on this, DOE chose to continue to use the Level 1 energy efficiency level as the baseline efficiency level for the LCC analysis. See Chapter 8 of the TSD.

2. Increase in Selling Price

The standard level MSP increase is the change in MSP associated with producing equipment at lower energy consumption levels associated with higher standards. DOE developed MSP increases associated with decreasing equipment energy consumption (or higher efficiency) levels through a combination of energy consumption level and design-option analyses. See Chapter 5 of the TSD for details. DOE developed MSP increases as a function of equipment energy consumption for each of the 15 equipment classes. Although the engineering analysis produced up to 11 energy consumption levels, depending on equipment class, the LCC and PBP analyses used only up to eight selected energy consumption levels.

3. Markups

As discussed earlier, overall markups are based on one of three distribution channels and the calculation of baseline and incremental markups. The distribution channels defined in the ANOPR were also used for the NOPR analysis, but DOE modified the relative fractions of shipments through each distribution channel based on stakeholder input. See Section IV.C, Markups to Determine Equipment Price, for details.

4. Installation Costs

In the ANOPR, DOE derived installation costs for commercial refrigeration equipment from data provided in RS Means Mechanical Cost Data.[19] RS Means provides estimates on the person-hours required to install commercial refrigeration equipment and the labor rates associated with the type of crew required to install the equipment. DOE developed separate installation costs for self-contained and remote condensing equipment. DOE considered the installation costs to be fixed, independent of the cost or efficiency of the equipment. Although the LCC spreadsheet allows for alternative scenarios, DOE did not find a basis for changing its basic premise for the ANOPR analysis.

DOE received comments on the RS Means installation costs. Zero Zone commented that the installation costs seem low, and that it tracks installation costs and would provide installation cost data to DOE. (Public Meeting Transcript, No. 13.5 at p. 133) Separately, Zero Zone provided installation costs of $2,000 and $750, respectively, for remote condensing and self-contained equipment. DOE has decided to use these cost data in the NOPR analysis. Zero Zone also stated that a high-efficiency case installation isn't going to cost significantly more than a standard case unless there are more controls to tune and adjust. SCE stated that if the installation cost doesn't change with the equipment efficiency, then it doesn't affect the relative life-cycle cost. (Public Meeting Transcript, No. 13.5 at p. 117)

The total installed cost is the sum of the equipment price and the installation cost. DOE derived the customer equipment price for any given standard level by multiplying the baseline MSP by the baseline markup and adding to it the product of the incremental MSP and the incremental markup. Because MSPs, markups, and the sales tax can take on a variety of values depending on location, the resulting total installed cost for a particular standard level will not be a single-point value, but a distribution of values. See Chapter 8 of the TSD.

5. Energy Consumption

The electricity consumed by the commercial refrigeration equipment was based on the engineering analysis estimates as described previously in Section IV.B. No change was made to the ANOPR methodology.

6. Electricity Prices

Electricity prices are necessary to convert the electric energy savings into energy cost savings. Because of the wide variation in electricity consumption patterns, wholesale costs, and retail rates across the country, it is important to consider regional differences in electricity prices. DOE used average commercial electricity prices at the State level from the EIA Monthly Electricity Database.[20] The 2006 prices were then converted to 2007$ using AEO2007.

Different kinds of businesses typically use electricity in different amounts at different times of the day, week, and year, and therefore face different effective prices. To make this adjustment, DOE used the 2003 *Commercial Building Energy Consumption Survey* (CBECS) data to identify the average prices the four kinds of businesses in this analysis paid compared with the average prices all commercial customers paid. The ratios of prices paid by the four types of businesses to the national average commercial prices seen in the 2003 CBECS were used as multiplying factors to increase or decrease the average commercial 2006 price data previously developed. Once the electricity prices for the four types of businesses were adjusted, the resulting prices were used in the analysis.

To obtain a weighted-average national electricity price, the prices paid by each business in each State was weighted by the estimated sales of frozen and refrigerated food products, which also serves as the distribution of commercial refrigeration equipment units in each State, to each prototype building. The State/business type weights are the probabilities that a given commercial refrigeration equipment unit shipped will be operated with a given electricity price. For evaluation purposes, the prices and weights can be depicted as a cumulative probability distribution. The effective electricity prices range from approximately 5 cents per kWh to approximately 22 cents per kWh.

During the ANOPR public meeting, EEI concurred with the DOE analysis that shows grocery stores and food markets having lower electric prices than typical commercial facilities. (EEI, No. 15 at p. 3) DOE continued to use the same approach to develop electric prices for the NOPR analysis; however, DOE updated electric costs to 2007$. The section below describes the development and use of State-average electricity prices by building type; Chapter 8 of the TSD provides more detail.

7. Electricity Price Trends

The electricity price trend provides the relative change in electricity prices for future years to 2030. Estimating future electricity prices is difficult, especially considering that many States are attempting to restructure the electricity supply industry. DOE applied the AEO2007 reference case as the default scenario and extrapolated the trend in values from 2020 to 2030 of the forecast to establish prices in 2030 to 2042. This method of extrapolation is in line with methods the EIA uses to forecast fuel prices for the Federal Energy Management Program (FEMP). DOE provided a sensitivity analysis of the life-cycle cost savings and PBP results to future electricity price scenarios using both the AEO2007 high-growth and low-growth forecasts in

[19] RS Means Company, Inc. 2005. Mechanical Cost Data 28th Annual Edition. Kingston, Massachusetts.

[20] EIA form 826. Annual 1991 through 2006, Jan-Feb 2007. *http://www.eia.doe.gov/cneaf/electricity/page/data.html.* Accessed May 29, 2007.

Chapter 8 of the TSD. ACEEE suggested that the NOPR economic analysis be recalculated using AEO2008 price forecasts. (ACEEE, No. 16 at p. 2) However, the AEO2008 was not available when DOE was completing the NOPR analysis. DOE used the most recent AEO forecast available (AEO2007) when it performed the LCC analysis for the NOPR.

8. Repair Costs

The equipment repair cost is the cost to the customer of replacing or repairing components in commercial refrigeration equipment that have failed. For the ANOPR analysis, DOE calculated the annualized repair cost for baseline efficiency equipment using the following expression:

$$RC = k \times EQP/LIFE$$

Where

RC = repair cost in dollars

k = fraction of equipment price (estimated to be 0.5)

EQP = baseline equipment price in dollars, and

LIFE = average lifetime of the equipment in years (estimated to be 10 years for large grocery and multi-line retail chains and 15 years for small grocery and convenience stores)

DOE placed replacement of lighting components (lamps and ballasts) under maintenance expenses since the typical lamp life is known and commonly considered a maintenance item by customers of commercial refrigeration equipment.

Because data were not available for how repair costs vary with equipment efficiency, DOE held repair costs constant as the default scenario for the ANOPR LCC and PBP analyses. DOE received several comments on the use of constant repair costs for higher efficiency equipment. Carrier stated that while it had no data to support this, higher efficiency design options—like adding controls—could cost more to repair, and it encouraged DOE to find more accurate repair costs that would correlate with more sophisticated controls. (Public Meeting Transcript, No. 13.5 at p. 135) Carrier felt that making repair costs proportional was better than making them flat. ARI stated that the assumption that repair costs are constant and do not vary with equipment efficiency is incorrect. (ARI, No. 18 at p. 7) Industry experience indicates that higher efficiency equipment is more expensive to repair because it uses more sophisticated and more expensive components. If actual cost data are not available, ARI recommended that DOE assume the repair cost to increase as a function of equipment cost. True stated that many routine maintenance items are affected by higher efficiency fan motors and lighting systems. (Public Meeting Transcript, No. 13.5 at p. 136) Hill Phoenix stated that higher maintenance costs would be incurred with almost any new technology. (Public Meeting Transcript, No. 13.5 at p. 136) However, True Manufacturing also stated that no data exists as to whether components such as energy efficient motors would have the same lifetime or costs as existing components. (Public Meeting Transcript, No. 13.5 at p. 138) ACEEE stated that it would caution against a straight ratio of repair cost to initial purchase cost; for controls this might be appropriate, but it shouldn't affect repair costs for heat exchangers. (Public Meeting Transcript, No. 13.5 at p. 137) ACEEE suggested that any measures requiring increased repair costs be treated on a measure-by-measure basis. (ACEEE, No. 16 at p. 3)

To address comments on repair costs, DOE contacted users and manufacturers of commercial refrigeration equipment to determine typical repair frequency for components used in commercial refrigeration equipment. Based on this review, DOE estimated replacement frequencies for five key components that appear to represent the most common repairs, and for which higher efficiency and more costly components were used in the engineering analysis for higher efficiency commercial refrigeration equipment. DOE then annualized the expected costs for these components at each efficiency level and added these component costs to the baseline repair cost estimates. This resulted in repair costs that increase with higher efficiency equipment. Refer to Chapter 8 of the TSD for details.

9. Maintenance Costs

DOE estimated the annualized maintenance costs for commercial refrigeration equipment from data in RS Means Facilities Maintenance & Repair Cost Data.[21] RS Means provides estimates on the person-hours, labor rates, and materials required to maintain commercial refrigeration equipment on a semi-annual basis. DOE used a single figure of $160/year (2007$) for preventive maintenance for all classes of commercial refrigeration equipment based on data from RS Means. Because data were not available to indicate whether, and if so, how, maintenance costs vary with equipment efficiency, DOE held preventive maintenance costs constant even as equipment efficiency increased. Lamp replacement and other lighting maintenance activities are required maintenance for commercial refrigeration equipment, which DOE considered to be separate from preventive maintenance, and were not itemized in the preventive maintenance activities described by RS Means. Different commercial refrigeration equipment classes have different numbers of lamps (and ballasts), and many of the efficiency options DOE considered in the engineering analysis involved changes to the lighting configuration (lamp, ballast, or use of LED lighting systems). Because the lighting configurations can vary by energy consumption level, DOE estimated the relative maintenance costs for lighting for each case type for which a design-option analysis was performed. DOE estimated the frequency of failure and replacement of individual lighting components, estimated the cost of replacement in the field, and developed an annualized maintenance cost based on the sum of the total lighting maintenance costs (in 2007$) over the estimated life of the equipment divided by the estimated life of the equipment.

DOE based costs for fluorescent lamp and ballast replacements on a review of the OEM costs used in the engineering analysis, RS Means estimates, cost data from Grainger, Inc., and previous studies. DOE estimated the costs of field replacement using labor cost hours from RS Means Electrical Cost Data[22] for typical lamp or ballast replacement for other lighting fixtures using a 150-percent multiplier on OEM costs for lamps and ballasts (provided in the engineering analysis spreadsheets) to reflect retail pricing. See Chapter 8 of the TSD for details.

Fluorescent lamp and ballast technology is mature, so DOE made no change in inflation-adjusted costs for these components. However, because of rapid technological improvement, costs for LED lamps are declining. DOE estimated the cost for field replacement of LED lighting fixtures (believed to occur approximately 6 years after the effective date of the standard, or 2018) at 140 percent of the OEM cost of LED lighting fixtures (2007 MPC cost in 2007$), plus installation. This estimate includes installation labor and all retail markups for replacement fixtures. This estimate of replacement LED costs was based on 2007 OEM prices for LED fixtures, but with additional contractor markups for replacement fixtures similar to that used for fluorescent light ballasts and lamps (150 percent of OEM

[21] RS Means Company, Inc. 2006. Means Costworks 2006: Facility Maintenance & Repair Cost Data. Kingston, Massachusetts.

[22] RS Means Company, Inc. 2005. 2005 RS Means Electrical Cost Data. Kingston, Massachusetts.

costs). In addition, because of the rapid development of LED technology and the projected OEM cost reductions for LED systems, DOE performed an LCC sensitivity analysis that examined the impact of reducing the cost of the LED replacement fixtures in 2018 by 50 percent of the cost used in the base analysis.[23] DOE recognizes that both life and cost estimates for LED replacement are projections and seeks comment on how it can best estimate the price for replacement LED fixture costs in the LCC analysis. This is identified as Issue 1 under ''Issues on Which DOE Seeks Comment'' in Section VII.E of this NOPR. Chapter 8 of the TSD provides details on the development of maintenance costs.

10. Lifetime

DOE defines lifetime as the age when a commercial refrigeration equipment unit is retired from service. In its ANOPR analysis, DOE based equipment lifetime on discussions with industry experts and other stakeholders, as well as a review of estimates in the subject literature. DOE concluded that a typical lifetime of 10 years is appropriate for commercial refrigeration equipment. In commenting on the ANOPR analysis, ARI stated that, on average, equipment lifetime is approximately 10 years. ARI noted, however, that properly installed and maintained equipment typically has a useful life longer than end-use customers retain it due to retail store customer business models and competitive demands to upgrade and remodel stores. (ARI, No. 18 at p. 5) Zero Zone stated that door cases may be changed in store remodels every 10 years at larger chains, but small independent chains will use cases for 20 years. (Zero Zone, No. 17 at p. 4) True stated that most self-contained equipment has a life expectancy of 7 to 12 years, although it regularly services equipment that is 25 years old. (Public Meeting Transcript, No. 13.5 at p. 98) For the NOPR analysis, DOE used an average life of 10 years for large grocery and multi-line retailers, but modified the lifetime in the LCC analysis to use a longer average 15-year life for the small grocery and convenience store business types, consistent with stakeholder comments and equipment life estimates from industry experts regarding smaller stores and independent grocers and chains. See Chapter 3 of the TSD for more detail.

Commercial refrigeration equipment units are typically replaced when stores are renovated, which is before the units would have physically worn out. Therefore, there is a used equipment market for commercial refrigeration equipment. Due to the difficulty of incorporating used equipment into grocery store display case line-ups, the salvage value to the original purchaser is very low. Therefore, the ANOPR LCC analysis did not take the used equipment market into account. This methodology was also maintained in the NOPR LCC analysis.

11. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE derived the discount rates for the LCC analysis by estimating the cost of capital for companies that purchase commercial refrigeration equipment. The cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the company of equity and debt financing.

DOE estimated the cost of equity financing by using the Capital Asset Pricing Model (CAPM). The CAPM, among the most widely used models to estimate the cost of equity financing, considers the cost of equity to be proportional to the amount of systematic risk associated with a company. The cost of equity financing tends to be high when a company faces a large degree of systematic risk, and it tends to be low when the company faces a small degree of systematic risk.

To estimate the weighted average cost of capital (WACC) (including the weighted average cost of debt and equity financing) of commercial refrigeration equipment purchasers, DOE used a sample of companies involved in grocery and multi-line retailing drawn from a database of 7,319 U.S. companies on the Damodaran Online website. The WACC approach taken to determine discount rates takes into account the current tax status of the individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs (and thus depreciation due to higher cost equipment on the overall tax status).

DOE used a sample of 17 companies to represent the purchasers of commercial refrigeration equipment. For each company in the sample, DOE derived the cost of debt, percent debt financing, and systematic company risk from information provided by Damodaran Online. DOE estimated the cost of debt financing from the long-term Government bond rate (4.39 percent) and the standard deviation of the stock price. The cost of capital for small, independent grocers; convenience store franchisees; gasoline station owner-operators; and others with more limited access to capital is more difficult to determine. Individual credit-worthiness varies considerably, and some franchisees have access to the financial resources of the franchising corporation. However, personal contacts with a sample of commercial bankers yielded an estimate for the small operator weighted cost of capital of about 200 to 300 basis points (2 percent to 3 percent) above the rates for large grocery chains. A central value equal to the weighted average of large grocery chains, plus 250 basis points (2.5 percent), was used for small operators. Deducting expected inflation from the cost of capital provides the estimates of the real discount rate by ownership category. The average after-tax discount rate, weighted by the percentage shares of total purchases of commercial refrigeration equipment, is 5.87 percent for large grocery stores, 5.11 percent for multi-line retailers, and 8.37 percent for convenience stores and convenience stores associated with gasoline stations. DOE received no comments on the discount rates developed in the ANOPR but took advantage of the availability of 2007 financial data to update the discount rate assumptions in the NOPR. See Chapter 8 of the TSD.

12. Payback Period

The PBP is the amount of time it takes the customer to recover the incrementally higher purchase cost of more energy efficient equipment as a result of lower operating costs. Numerically, the PBP is the ratio of the increase in purchase cost (i.e., from a less efficient design to a more efficient design) to the decrease in annual operating expenditures. This type of calculation is known as a ''simple'' PBP, because it does not take into account changes in operating cost over time or the time value of money, that is, the calculation is done at an effective discount rate of zero percent.

The equation for PBP is:

$$PBP = \Delta IC / \Delta OC$$

Where

PBP = payback period in years,

ΔIC = difference in the total installed cost between the more efficient standard level equipment (energy consumption levels 2, 3, etc.) and the baseline (energy consumption level 1) equipment, and

ΔOC = difference in annual operating costs.

[23] DOE anticipates a reduction in installed cost of LED systems over time. The projected reduction in price for LED systems is provided and discussed in Sections V.C and IV.B.3.c of this NOPR and Appendix B of the TSD.

The data inputs to the PBP analysis are the total installed cost of the equipment to the customer for each energy consumption level and the annual (first-year) operating costs for each energy consumption level. The inputs to the total installed cost are the equipment price and the installation cost. The inputs to the operating costs are the annual energy cost, the annual repair cost, and the annual maintenance cost. The PBP uses the same inputs as the LCC analysis, except that electricity price trends and discount rates are not required. Since the PBP is a ''simple'' (undiscounted) payback, the required electricity cost is only for the year in which a new energy conservation standard is to take effect—in this case, 2012. The electricity price used in the PBP calculation of electricity cost was the price projected for 2012, expressed in 2007$, but not discounted to 2007. Discount rates are not used in the PBP calculation.

PBP is one of the economic indicators that DOE uses when assessing economic impact to a customer. PBP does not take into account the time value of money explicitly (*e.g.*, through a discount factor), the life of the efficiency measure, or changing fuel costs over time. In addition, because PBP takes into account the cumulative energy and first-cost impact of a set of efficiency measures, it can be sensitive to the baseline level assumed. In addition, what is deemed an acceptable payback period can vary. By contrast, when examining LCC savings by efficiency levels, there is generally a maximum LCC savings point (minimum LCC efficiency level) indicative of maximum economic benefit to the customer. The selection of the baseline efficiency level does not affect the identification of the minimum LCC efficiency level, although a baseline efficiency is used when calculating net LCC savings or costs. DOE considers both LCC and PBP as related to the seven factors discussed in Section II.B to determine whether a standard is economically justified and whether the benefits of an energy conservation standard will exceed its burdens to the greatest extent practicable. However, because LCC uses an explicit discount rate, takes into account changing energy prices, and does not require selection of a baseline efficiency level, it is considered by DOE to be a better indicator of the likely economic impacts on consumers.

F. Shipments Analysis

One of the more important components of any estimate of the future impact of a standard is equipment shipments. DOE developed forecasts of shipments for the base case and standards cases and includes those forecasts in the NES spreadsheet. The shipments portion of the spreadsheet forecasts shipments of commercial refrigeration equipment from 2012 to 2042. DOE developed shipments forecasts for the 15 primary equipment classes by accounting for the shipments to replace the existing stock of commercial refrigeration equipment, commercial refrigeration shipments into new commercial floor spaces, and old equipment removed through demolitions. Chapter 10 of the TSD provides additional details on the shipments forecasts.

The results of the shipments analysis are driven primarily by historical shipments data for the 15 equipment classes of commercial refrigeration equipment, DOE estimates of average equipment life, relative shipment estimates to each of the four business types, the existing total floor space in food sales buildings, and the anticipated growth in food sales floor space estimated in EIA's NEMS. The model estimates that, in each year, the existing stock of commercial refrigeration equipment either ages by one year or is worn out and replaced. In addition, new equipment can be shipped into new commercial floor space, and old equipment can be removed through demolitions. DOE chose to preserve the capability to analyze all efficiency levels analyzed in the LCC in the NIA.

The shipments analysis is a description of commercial refrigeration equipment stock flows as a function of year and age. While there are 15 equipment classes, the shipment analysis treats each category of equipment independently such that future shipments in any one class are unaffected by shipments in any other equipment classes and the relative fraction of shipments in each product class compared to all commercial refrigeration equipment shipments is assumed to be constant over time. DOE recognizes that a retailer of refrigerated or frozen food can choose to use different classes of commercial refrigeration equipment to sell the same food product as long as the equipment is in the required temperature range (i.e. refrigerator, freezer, or ice-cream temperature range). The decision to adopt one equipment class over another within the same temperature range will depend on first costs, operating costs, and the perceived ability to merchandise product. In addition, relative sales refrigerated versus frozen foods could change in the future. However, DOE had no information with which to develop and calibrate a shipments model incorporating these factors.

DOE formulated the equations used in the analysis as updates of the distribution of stock in any given year, as a function of age, to the following year using the following steps:

1. DOE first converted the equipment units to linear feet of display space cooled by those units by taking the national statistics on sales of equipment and calculating equipment capacity per linear foot of retail grocery building display space.
2. DOE used this calculation of existing stock, and the average age of the equipment, as a basis for calculating replacement sales.
3. DOE subtracted replacement sales from historical total sales statistics to calculate new sales of commercial refrigeration equipment.
4. DOE forecasted new sales as a function of new construction of retail food sales space.
5. DOE recorded sales of new and replacement equipment by the year sold, and depreciated each annual vintage over the estimated life of the equipment.
6. DOE allocated sales in each year to the 15 equipment classes in proportion to their relative historical sales.

In response to DOE's presentation of the ANOPR shipment analysis, the public made two primary comments. True stated that while food sales buildings are probably representative of remote condensing equipment, as much as 25 percent of the self-contained market goes into unusual conditions, but that the majority does end up in some sort of food-sales type application. (Public Meeting Transcript, No. 13.5 at p. 165) However, in a follow-up conversation, True agreed that for self-contained equipment without doors, which is the majority of the self-contained equipment covered in this rulemaking, the amount of equipment not shipped to food sales buildings represents a very small fraction of the total market. DOE concluded that it was therefore unnecessary to include other business types or building categories for the analysis of self-contained equipment to be valid and representative.

Other stakeholders commented on the assumption of zero shipments in the ANOPR for the VOP.RC.L equipment class based on the submitted ARI shipment data. (Public Meeting Transcript, No. 13.5 at p. 164) ARI, in turn, stated that zero values in its data submittal to DOE may represent an equipment class where only one or two manufacturers have shipments. These data were excluded to maintain confidentiality. (Public Meeting

Transcript, No. 13.5 at p. 52) To address these issues, DOE estimated the shipments for the VOP.RC.L equipment class at five percent of the similarly designed VOP.RC.M equipment class based on information provided in manufacturer interviews.

Finally, DOE received comments on the impact of the used equipment market on shipments in the presence of new equipment standards. True stated that DOE should consider how long existing low-efficiency equipment will be in service. (Public Meeting Transcript, No. 13.5 at p. 98) As you drive the cost higher, the life expectancy of existing equipment increases. ACEEE countered, however, that the issue of used equipment has come up in other rulemakings. Customers may use existing equipment longer, but the average was only one or two years more, which has a small impact on the energy savings projected through 2042. It may be more of a factor in the manufacturer impact analysis, because that could affect sales in at least the first year. (Public Meeting Transcript, No. 13.5 at p. 102)

True stated that the used equipment market is often ignored. As you drive costs of capital up, you drive the need for low-end users to buy used equipment and that the higher the cost per unit, the more the used equipment market thrives. True stated that this is very significant in the restaurant industry, where studies suggest that 90 percent of all new non-chain restaurants fail within the first year. Most of these businesses are buying used equipment. (Public Meeting Transcript, No. 13.5 at p. 202–207) EEI suggested that, if possible, DOE should investigate the use of used versus new equipment in restaurants, and make sure that new standards do not increase the purchase of older, less efficient equipment. (EEI, No. 15 at p. 2)

Follow-up conversations with True lead DOE to believe that it is unnecessary to take the restaurant business type into account since it is not a large market for the equipment covered under this rulemaking. DOE determined that it would not try to account for life extension in the NIA. While DOE recognizes that there may be some initial life extension for existing markets for some customers, no data are available to forecast the frequency and amount of life extension that might occur within the industry. DOE agrees with ACEEE that this would result in a relatively small impact on energy savings and, given that it would also reduce expenditures for new equipment, would have an even smaller impact on calculated NPV. For the NOPR analysis, DOE did not assume an initial decrease in sales and life extension for commercial refrigeration equipment covered in this rulemaking.

Table IV–14 shows the results of the shipments analysis for the 15 commercial refrigeration equipment classes for the base case (baseline efficiency level or Level 1). As equipment purchase price increases with higher efficiency levels, a drop in shipments can be expected relative to the base case. However, as annual energy consumption is reduced, there is potentially a countering effect of increased equipment sales due to more frequent installations and use of commercial refrigeration equipment by retailers (a potential rebound effect). Although there is a provision in the spreadsheet for a change in projected shipments in response to efficiency level increases (or energy consumption level decreases), DOE has no information with which to calibrate such a relationship. No such data was provided in comments on the ANOPR analysis. Therefore, for the NOPR analysis, DOE assumed that the overall shipments do not change in response to the changing TSLs. Additional details on the shipments analysis can be found in Chapter 10 of the TSD.

TABLE IV–14—FORECASTED SHIPMENTS FOR COMMERCIAL REFRIGERATION EQUIPMENT, 2012–2042, (BASE CASE)

Equipment class	Thousands of linear feet shipped by year and equipment class								
	2012	2015	2020	2025	2030	2035	2040	2042	Cumulative
VOP.RC.M	451	436	451	464	497	531	582	604	15,270
VOP.RC.L	23	22	23	23	25	27	29	30	763
VOP.SC.M	30	29	30	31	33	36	39	41	1,027
VCT.RC.M	32	31	32	33	35	38	42	43	1,091
VCT.RC.L	448	433	448	461	494	527	578	600	15,167
VCT.SC.I	11	11	11	11	12	13	14	15	374
VCS.SC.I	3	3	3	3	3	3	4	4	93
SVO.RC.M	344	332	344	354	379	405	444	460	11,647
SVO.SC.M	45	44	45	47	50	53	59	61	1,537
SOC.RC.M	87	84	87	89	96	102	112	116	2,936
HZO.RC.M	53	51	53	54	58	62	68	71	1,790
HZO.RC.L	166	161	166	171	183	196	214	222	5,627
HZO.SC.M	4	4	4	4	4	5	5	5	132
HZO.SC.L	8	8	8	8	9	10	10	11	274
HCT.SC.I	36	35	36	37	39	42	46	48	1,214

G. National Impact Analysis

The NIA assesses future NES and the national economic impacts of different efficiency levels. The analysis measures economic impacts using the NPV metric (i.e., future amounts discounted to the present) of total commercial customer costs and savings expected to result from new standards at specific efficiency levels.

To make the analysis more accessible and transparent to the public, DOE used an Excel spreadsheet model to calculate the energy savings and the national economic costs and savings from new standards. Excel is the most widely used spreadsheet calculation tool in the United States and there is general familiarity with its basic features. Thus, DOE's use of Excel as the basis for the spreadsheet models provides interested persons with access to the models within a familiar context. In addition, the TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested persons can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. DOE examined sensitivities by applying different scenarios. DOE used the NES spreadsheet to perform calculations of national energy savings and NPV using

the annual energy consumption and total installed cost data from the LCC analysis and estimates of national shipments for each of the 15 primary commercial refrigeration equipment classes. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV of benefits for all primary commercial refrigeration equipment classes from 2012 through 2062. The forecasts provided annual and cumulative values for all four output parameters.

DOE calculated the NES by subtracting energy use under a standards scenario from energy use in a base case (no new standards) scenario. Energy use is reduced when a unit of commercial refrigeration equipment in the base case efficiency distribution is replaced by a more efficient piece of equipment. Energy savings for each equipment class are the same national average values as calculated in the LCC and payback period spreadsheet. However, these results are normalized on a per-unit-length basis by equipment class and applied to the total annual estimated shipments in terms of line-up length of all equipment with the class. Table IV–15 shows key inputs to the NIA. Chapter 11 of the TSD provides additional information about the NES spreadsheet.

TABLE IV–15—SUMMARY OF NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUTS

Input data	Description	Changes for NOPR
Shipments	Annual shipments from shipments model (Chapter 10, Shipments Analysis).	Shipments model modified to use a distribution of equipment lifetimes based on a 10-year average life in large grocery and multi-line retail, and a 15-year average life in small grocery and convenience stores. Estimates for shipments for the VOP.RC.L equipment class were added and are provided.
Effective Date of Standard	2012	No change.
Base Case Efficiencies	Distribution of base case shipments by efficiency level	No change in methodology to derive base case shipments by efficiency level.
Standards Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards case annual market shares by efficiency level remain constant over time for the base case and each standards case.	No change in methodology to derive shipments by efficiency level in each standards case.
Annual Energy Consumption per Linear Foot.	Annual weighted-average values are a function of energy consumption level, which are established in the engineering analysis (Chapter 5 of the TSD). Converted to a per linear foot basis.	No change in methodology. Energy consumption estimates reflect updates to NOPR engineering analysis.
Total Installed Cost per Linear Foot.	Annual weighted-average values are a function of energy consumption level (Chapter 8 of the TSD). Converted to a per linear foot basis.	No change in methodology. Installed costs reflect updates to NOPR LCC.
Repair Cost per Linear Foot	Annual weighted-average values are constant with energy consumption level (Chapter 8 of the TSD). Converted to a per linear foot basis.	No change in methodology. Repair costs reflected updates to NOPR LCC.
Maintenance Cost per Linear Foot.	Annual weighted-average value equals $156 (Chapter 8 of the TSD), plus lighting maintenance cost. Converted to a per linear foot basis.	No change in methodology, but annual weighted-average value updated to $160 in 2007$.
Escalation of Electricity Prices.	EIA AEO2006 forecasts (to 2030) and extrapolation for beyond 2030 (Chapter 8 of the TSD).	EIA AEO2007 forecasts (to 2030) and extrapolation for beyond 2030 (Chapter 8 of the TSD).
Electricity Site-to-Source Conversion.	Conversion varies yearly and is generated by DOE/EIA's NEMS* program (a time series conversion factor; includes electric generation, transmission, and distribution losses).	Conversion factor varies yearly and is generated by EIA's NEMS model. Includes the impact of electric generation, transmission, and distribution losses.
Discount Rate	3 and 7 percent real	No change.
Present Year	Future costs are discounted to year 2007	Future costs are discounted to year 2008.
Rebound Effect	A rebound effect (due to changes in shipments resulting from standards) was not considered in the NIA.	No change.

1. Base Case and Standards Case Forecasted Efficiencies

A key component of DOE's estimates of NES and NPV are the energy efficiencies for shipped equipment that it forecasts over time for the base case (without new standards) and for each standards case. The forecasted efficiencies represent the distribution of energy efficiency of the equipment under consideration that is shipped over the forecast period (i.e., from the assumed effective date of a new standard to 30 years after the standard becomes effective).

The annual per-unit energy consumption is the site energy consumed by a commercial refrigeration equipment unit per year. The annual energy consumption is directly tied to the efficiency of the unit. Thus, knowing the efficiency of a commercial refrigeration equipment unit determines the corresponding annual energy consumption. DOE determined annual forecasted market shares by efficiency level that, in turn, enabled determination of shipment-weighted annual energy consumption values.

Because no data were available on market shares broken down by efficiency level, DOE determined market shares by efficiency level for commercial refrigeration based on its own analysis. DOE first converted 2005 shipment information by equipment class into market shares by equipment class, and then adapted a cost-based method similar to that used in the NEMS to estimate market shares for each equipment class by efficiency level. This cost-based method relied on cost data developed in the engineering and life-cycle cost analyses, as well as economic purchase criteria data taken directly from NEMS. From those market shares and projections of shipments by equipment class, DOE developed the future efficiency scenarios for a base

case (i.e., without new standards) and for various standards cases (i.e., with new standards). DOE did not have data to calibrate this approach to actual market shipments by efficiency level. DOE requested comment on this approach to generating market shares by efficiency level in the ANOPR.

Commenting on the distribution of market efficiency, ARI stated that experience with other equipment tells us that the majority of the shipments are usually at the lower end of the curve of the highest efficiency. ARI was surprised that DOE had only 25 percent or 30 percent of the shipments at that efficiency level. They also cautioned DOE that the industry-supplied curves are cost curves and do not mean that such equipment is on the market today. As Section IV.E, Life-Cycle Cost, discusses, ARI offered to try to provide data on the distribution of efficiencies in current equipment but was not able to do so. (Public Meeting Transcript, No. 13.5 at p. 143) Other stakeholders, such as EEI and ACEEE, suggested possible avenues that DOE could examine but did not have data DOE could use to establish a distribution of efficiencies. (Public Meeting Transcript, No. 13.5 at p. 141–142; p. 173) Because of the lack of data on market shipments by efficiency level, DOE chose to continue to use the ANOPR approach to estimate shipments by efficiency level.

DOE developed base case efficiency forecasts based on the estimated market shares by equipment class and efficiency level. Because there are no historical data to indicate how equipment efficiencies or relative equipment class preferences have changed over time, DOE predicted that forecasted market shares would remain frozen at the 2012 efficiency level until the end of the forecast period (30 years after the effective date, 2042). DOE requested comments on this assumption.

Copeland commented that since DOE plans to update the forecast in five years, no one can really figure out what that distribution of efficiency in the future looks like. (Public Meeting Transcript, No. 13.5 at p. 175) EEI suggested DOE make further contacts with national accounts that use commercial refrigeration equipment. No suggestions for improving this assumption were received. For the NOPR, DOE continued to use the assumption of flat market shares by efficiency level for the forecast period.

For its determination of standards case forecasted efficiencies, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for 2012, the year that standards become effective. Information available to DOE suggests that equipment shipments with efficiencies in the base case that did not meet the standard level under consideration would roll up to meet the new standard level, and that all equipment efficiencies in the base case that were above the standard level under consideration would not be affected. Emerson commented that a standard brings some compression in the distribution of efficiencies. (Public Meeting Transcript, No. 13.5 at p. 175) However, ARI stated the roll-up scenario best represents what is likely to happen when energy conservation standards take effect. (ARI, No. 18 at p. 5) DOE continued to use the roll-up scenario for the NOPR analysis.

Finally, DOE recognizes that baseline efficiency trends can change if equipment costs are different than those projected. For example, if LED prices drop more than assumed in the engineering analysis, consumer demand for equipment with LEDs could change. DOE seeks comment on whether shipments of equipment with LEDs would change if LED costs drop and if so, the extent and timing of such shipment changes. See Section VII.E.1.

2. Annual Energy Consumption, Total Installed Cost, Maintenance Cost, and Repair Costs

The difference in shipments by equipment efficiency level between the base and standards cases was the basis for determining the reduction in per-unit annual energy consumption that could result from new standards. The commercial refrigeration equipment stock in a given year is the total linear footage of commercial refrigeration equipment shipped from earlier years that survive in the given year. The NES spreadsheet model keeps track of the total linear footage of commercial refrigeration equipment units shipped each year and estimates the total commercial refrigeration equipment stock for each year. The annual energy consumption by efficiency level for each equipment category comes from the LCC analysis and is converted to a per-linear-foot basis by dividing by the length of the specific equipment analyzed in the engineering analysis. Similarly, the total installed cost, maintenance cost, and repair costs for each efficiency level for each equipment class analyzed in the LCC are converted to a per linear foot basis. Using the total estimated shipments and total estimated stock by equipment category and efficiency level, DOE calculates the annual energy consumption for the commercial refrigeration equipment stock in each year, the maintenance and repair costs associated with the equipment stock, and the total installed costs associated with new shipments in each year based on the standards scenario and associated distribution of shipments by efficiency level.

3. Escalation of Electricity Prices

DOE uses the most recent AEO reference case to forecast energy prices for standard rulemakings. For the ANOPR, DOE used the AEO2006 reference case forecasts to estimate future electricity prices. ACEEE commented that it would like DOE to use the AEO2008 forecasts for the NOPR analysis. (ACEEE, No. 16 at p. 2) However, this forecast was not available when DOE completed the NOPR analysis. DOE used the AEO2007 reference case forecasts for future electricity prices, extended out to the end of the analysis period. DOE extrapolated the trend in values from 2020 to 2030 of the forecast to establish prices for the remainder of the analysis period. DOE intends to update its analysis for the final rule to reflect the AEO 2008 electricity price forecasts when final versions of these price forecasts are available. An AEO Revised Early Release for the AEO 2008 reference case only has indicated that the reference case electricity prices are higher in real (inflation adjusted) terms and if this holds true in the final release it would generally result in more favorable economics for higher efficiency standard levels (i.e. shorter payback periods, greater life-cycle cost savings, and greater national net present value).

4. Electricity Site-to-Source Conversion

The site-to-source conversion factor is a multiplier used for converting site energy consumption, expressed in kWh, into primary or source energy consumption, expressed in quadrillion Btu (quads). The site-to-source conversion factor accounts for losses in electricity generation, transmission, and distribution. For the ANOPR, DOE used site-to-source conversion factors based on U.S. average values for the commercial sector, calculated from AEO2006, Table A5. The average conversion factors vary over time, due to projected changes in electricity generation sources (i.e., the power plant types projected to provide electricity to the country). For the NOPR, DOE developed marginal site-source conversion factors that relate the national electrical energy savings at the point of use to the fuel savings at the power plant. These factors use the NEMS model and the examination of the corresponding energy savings from

standards scenarios considered in DOE's utility analysis (Chapter 14 of the TSD). The conversion factors vary over time, due to projected changes in electricity generation sources (i.e., the power plant types projected to provide electricity to the country) and power plant dispatch scenarios. Average U.S. conversion factors were used in the ANOPR because the utility analysis which is used to determine marginal conversion factors appropriate to efficiency standards for commercial refrigeration equipment occurs in the NOPR stage of DOE's analysis.

To estimate NPV, DOE calculated the net impact each year as the difference between total operating cost savings (including electricity, repair, and maintenance cost savings) and increases in total installed costs (including MSP, sales taxes, distribution channel markups, and installation cost). DOE calculated the NPV of each TSL over the life of the equipment using three steps. First, DOE determined the difference between the equipment costs under the TSL and the base case to calculate the net equipment cost increase resulting from the TSL. Second, DOE determined the difference between the base case operating costs and the TSL operating costs to calculate the net operating cost savings from the TSL. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase to calculate the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) for commercial refrigeration equipment purchased on or after 2012 to 2008, and summed the discounted values to determine the NPV of a TSL. An NPV greater than zero shows net savings (i.e., the TSL would reduce overall customer expenditures relative to the base case in present value terms). An NPV less than zero indicates that the TSL would result in a net increase in customer expenditures in present value terms.

H. Life-Cycle Cost Sub-Group Analysis

In analyzing the potential impact of new or amended standards on commercial customers, DOE evaluates the impact on identifiable groups (i.e., sub-groups) of customers, such as different types of businesses that may be disproportionately affected by a National standard level. For this rulemaking, DOE identified independent small grocery and convenience stores as a commercial refrigeration equipment customer sub-group that could be disproportionately affected, and examined the impact of proposed standards on this group.

DOE determined the impact on this commercial refrigeration equipment customer sub-group using the LCC spreadsheet model. DOE conducted the LCC and PBP analyses for commercial refrigeration equipment customers. The standard LCC and PBP analyses (described in Section IV.E) includes various types of businesses that use commercial refrigeration equipment. The LCC spreadsheet model allows for the identification of one or more sub-groups of businesses, which can then be analyzed by sampling only each such sub-group. The results of DOE's LCC sub-group analysis are summarized in Section V.B.1.c and described in detail in Chapter 12 of the TSD.

I. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impact of energy conservation standards on manufacturers of commercial refrigeration equipment, and to assess the impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the GRIM, an industry-cash-flow model customized for this rulemaking. The GRIM inputs are information regarding the industry cost structure, shipments, and revenues. This includes information from many of the analyses described above, such as manufacturing costs and prices from the engineering analysis and shipments forecasts. The key GRIM output is the industry net present value (INPV). The model estimates the financial impact of energy conservation standards by comparing changes in INPV between the base case and the various trial standard levels. Different sets of assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as equipment characteristics, characteristics of particular firms, and market and equipment trends, and includes assessment of the impacts of standards on sub-groups of manufacturers. Chapter 13 of the TSD outlines the complete MIA.

DOE conducted the MIA for commercial refrigeration equipment in three phases. Phase 1, Industry Profile, consisted of preparing an industry characterization, including data on market share, sales volumes and trends, pricing, employment, and financial structure. Phase 2, Industry Cash Flow Analysis, focused on the industry as a whole. In this phase, DOE used the GRIM to prepare an industry cash-flow analysis. Using publicly available information developed in Phase 1, DOE adapted the GRIM's generic structure to perform an analysis of commercial refrigeration equipment energy conservation standards. In Phase 3, Sub-Group Impact Analysis, DOE conducted interviews with manufacturers representing the majority of domestic commercial refrigeration equipment sales. This group included large and small manufacturers, providing a representative cross-section of the industry. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company and obtained each manufacturer's view of the industry. The interviews provided valuable information DOE used to evaluate the impacts of an energy conservation standard on manufacturer cash flows, manufacturing capacities, and employment levels. For more detail on the manufacturer impact analysis, refer to Chapter 13 of the TSD.

a. Phase 1, Industry Profile

In Phase 1 of the MIA, DOE prepared a profile of the commercial refrigeration equipment industry based on the market and technology assessment prepared for this rulemaking. Before initiating the detailed impact studies, DOE collected information on the present and past structure and market characteristics of the commercial refrigeration equipment industry. The information DOE collected at that time included market share, equipment shipments, markups, and cost structure for various manufacturers. The industry profile includes further detail on equipment characteristics, estimated manufacturer market shares, the financial situation of manufacturers, trends in the number of firms, the market, and equipment characteristics of the commercial refrigeration equipment industry.

The industry profile included a top-down cost analysis of commercial refrigeration equipment manufacturers that DOE used to derive cost and preliminary financial inputs for the GRIM (e.g., revenues; material, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and research and development (R&D) expenses). DOE also used public sources of information to further calibrate its initial characterization of the industry, including U.S. Securities and Exchange Commission (SEC) 10–K reports, Standard & Poor's (S&P) stock reports, and corporate annual reports.

b. Phase 2, Industry Cash-Flow Analysis

Phase 2 of the MIA focused on the financial impacts of energy conservation

standards on the industry. Higher energy conservation standards can affect a manufacturer's cash flow in three distinct ways, resulting in: (1) A need for increased investment; (2) higher production costs per unit; and (3) altered revenue by virtue of higher per-unit prices and changes in sales values. To quantify these impacts in Phase 2 of the MIA, DOE used the GRIM to perform a cash-flow analysis of commercial refrigeration equipment manufacturers. In performing these analyses, DOE used the financial values derived during Phase 1 and the shipment scenarios used in the NES analyses.

c. Phase 3, Sub-Group Impact Analysis

Using average cost assumptions to develop an industry-cash-flow estimate is not adequate for assessing differential impacts among sub-groups of manufacturers. For example, small manufacturers, niche equipment manufacturers, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. DOE used the results of the industry characterization analysis (in Phase 1) to group manufacturers that exhibit similar characteristics.

During the interview process, DOE discussed the potential sub-groups and sub-group members it identified for the analysis. DOE encouraged the manufacturers to recommend sub-groups or characteristics that are appropriate for the sub-group analysis. DOE identified small commercial refrigeration equipment manufacturers as a potential manufacturing sub-group. DOE found that small business manufacturers generally have the same concerns as large manufacturers regarding energy conservation standards. In addition, DOE found no significant differences in the R&D emphasis or marketing strategies between small business manufacturers and large manufacturers. Therefore, for the equipment classes comprised primarily of small business manufacturers, DOE believes the GRIM analysis, which models each equipment class separately, is representative of the small business manufacturers affected by standards.

2. Government Regulatory Impact Model Analysis

As mentioned above, DOE uses the GRIM to quantify changes in cash flow that result in a higher or lower industry value. The GRIM analysis uses a standard annual cash-flow analysis that incorporates manufacturer prices, manufacturing costs, shipments, and industry financial information. The GRIM models changes in costs, distribution of shipments, investments, and associated margins that would result from new regulatory conditions (in this case, standard levels). The GRIM spreadsheet uses a number of inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2007, and continuing to 2042. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period.

DOE used the GRIM to calculate cash flows using standard accounting principles and compare changes in INPV between a base case and different TSLs (the standards cases). Essentially, the difference in INPV between the base case and a standards case represents the financial impact of the energy conservation standards on manufacturers. DOE collected this information from a number of sources, including publicly available data and interviews with manufacturers (Chapter 13 of the TSD).

3. Manufacturer Interviews

As part of the MIA, DOE discussed potential impacts of energy conservation standards with manufacturers responsible for a majority of commercial refrigeration equipment sales. The manufacturers interviewed manufacture close to 90 percent of the commercial refrigeration equipment on the market. These interviews were in addition to those DOE conducted as part of the engineering analysis. The interviews provided valuable information that DOE used to evaluate the impacts of energy conservation standards on manufacturers' cash flows, manufacturing capacities, and employment levels.

a. Key Issues

Manufacturers identified the following key issues for DOE to consider in developing energy conservation standards:

• *Meeting Standards.* Manufacturers expressed concern that they would have difficulty meeting certain efficiency levels for certain equipment classes. First, some manufacturers stated that they could not meet or would have extreme difficulty meeting any of the possible efficiency levels presented during interviews for self-contained equipment (e.g., horizontal open units). One manufacturer stated that due to the small number of parts in the self-contained equipment, efficiency improvements are constrained to these parts and are therefore limited. The same manufacturer stated that it already implements the most efficient options on the market that are available within its price range. For some manufacturers, self-contained equipment represents only a small portion of their business. These manufacturers make more remote condensing equipment and simply convert the design into self-contained units. Second, some manufacturers stated that they could not meet efficiency levels 3 and 4 for medium-temperature equipment (e.g., SOC.RC.M, VCT.RC.M, VOP.RC.M), and that they would need advances in technology to achieve these levels by 2012. One manufacturer stated that it does not manufacture any equipment in the VOP.RC.M equipment class that meets DOE's baseline level.

• *Customer Needs.* Manufacturers are concerned that increased equipment efficiency will come at the expense of equipment functionality, utility, and customizability. The commercial refrigeration equipment industry is focused on customers' need to sell products, and customers place a higher priority on marketing and displaying their goods than they do on energy efficiency. Customers demand high levels of customization to differentiate themselves from other retail stores. They do not want to lose any functionality or utility in their equipment, such as display area, that affects their ability to sell products. Often, the desire of customers for easy product access requires equipment that is less energy efficient. They also do not want to lose any flexibility in design choices, such as lighting options. For example, some customers specify certain lighting configurations (e.g., color rendering, color temperature, light distribution) to maximize the sale of products such as fresh meat, produce, or dairy. Manufacturers believe that setting standards at the maximum level will affect their customers' ability to merchandise products by limiting the flexibility to choose from among different designs, which they expect would commoditize the industry and lead to reduced profit margins. Having some allowance in the efficiency thresholds would allow tradeoffs in design selection that would ease the reconciliation of energy savings with the ability to sell products.

• *Customer Awareness.* Manufacturers expressed concern that their retail customers are not sufficiently aware of pending energy conservation standards and the impacts these standards may have on their purchasing decisions. The supermarket industry is a low-margin industry, which places much emphasis on low-first-cost equipment. Manufacturers believe that many customers may not be able to handle an increase in equipment

price effectively since they operate with a fixed budget, or a fixed amount of capital available for purchasing commercial refrigeration equipment. Manufacturers stated that customers with a fixed capital budget would tend to extend refurbishment periods and cut back on equipment growth to deal with the increase in price of higher efficiency equipment, which manufacturers say will reduce annual sales of commercial refrigeration equipment. Manufacturers expect that smaller stores and even small regional chains will feel significant financial pressure when faced with the increase in prices. Single family-owned stores and local stores in large cities may have no capital budget with which to replace existing cases with cases that are 30 percent to 50 percent higher in price. Manufacturers stated that a reduction in sales would lead to employee layoffs since labor is proportional to units sold, not equipment price. Manufacturers also stated that customers have usually been unwilling to adopt energy efficiency improvements unless there is a 12-month payback period or less.

• *Equipment Classes.* Manufacturers expressed concern regarding how equipment they manufacture would be categorized in DOE's equipment classes. Manufacturers stated that certain pieces of low-volume equipment they manufacture do not easily fit into DOE's equipment classes, and other pieces of equipment are excluded from coverage. For example, custom pieces of equipment, especially hybrid or combination units, do not easily fall within the DOE equipment classes since they could be classified in more than one category. A self-contained case with a service over counter upper portion and an open lower portion could be classified as a self-contained service over counter unit as well as a self-contained open unit. Another example is wedges—transition pieces placed at the corners of a case lineup. These do not have a reasonable TDA and therefore do not have meaningful energy consumption levels when normalized to TDA. Some manufacturers stated that low-volume equipment that cannot meet energy conservation standards may be discontinued because the cost to increase the efficiency will not be worth the benefit gained. Manufacturers also expressed concern regarding secondary coolant systems, which may provide a loophole. Manufacturers estimate that secondary coolant systems represent about 10 percent of the market currently and consume about five percent more energy than their direct expansion equivalent. Some manufacturers stated that customers might purchase these lower efficiency secondary coolant systems instead of the direct expansion equipment that are subject to standards. This concerns manufacturers since it would defeat the purpose of regulatory action.

• *Component Manufacturers.* Manufacturers expressed concern that they have little control over the options available and the price they pay for components used to manufacture commercial refrigeration equipment. Commercial refrigeration equipment manufacturers purchase many of the components needed to build the equipment and therefore rely heavily on component manufacturers to deliver parts, such as doors, motors, fans, and lights. However, commercial refrigeration equipment manufacturers state that higher efficiency components may not be readily available to meet standards. For example, the high-efficiency compressors needed for self-contained equipment to meet energy conservation standards may not be readily available. Manufacturers said that the compressors they purchase for commercial refrigeration are left over from the white goods (home appliances) industry since that industry has a much higher sales volume compared to commercial refrigeration equipment. Also, manufacturers stated that component suppliers set their own pricing, and manufacturers have no control over this. Manufacturers are concerned about what prices they would have to pay for higher efficiency components in the future.

4. Government Regulatory Impact Model Key Inputs and Scenarios

a. Base Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by efficiency level. Changes in the efficiency mix at each standard level are a key driver of manufacturer finances. For this analysis, the GRIM used the NES shipments forecasts from 2007 to 2042. Total shipments forecasted by the NES for the base case in 2012 are shown in Table IV–16 and further discussed in this section of today's Notice.

TABLE IV–16—TOTAL NES-FORECASTED SHIPMENTS IN 2012 (NUMBER OF UNITS)

Equipment class	Total industry shipments
VOP.RC.M	37,607
VOP.RC.L	1,880
VOP.SC.M	7,585
VCT.RC.M	2,533
VCT.RC.L	35,184
VCT.SC.I	2,571
VCS.SC.I	637
SVO.RC.M	28,685
SVO.SC.M	11,357
SOC.RC.M	7,231
HZO.RC.M	4,408
HZO.RC.L	13,859
HZO.SC.M	976
HZO.SC.L	2,024
HCT.SC.I	10,487

In the shipments analysis, DOE also estimated the distribution of efficiencies in the base case for commercial refrigeration equipment (Chapter 10 of the TSD). Table IV–17 shows one example of the distribution of efficiencies in the base case for the VOP.RC.M equipment class. The distribution of efficiencies in the base case for other equipment classes are shown in Chapter 10 of the TSD.

TABLE IV–17—GRIM DISTRIBUTION OF SHIPMENTS IN THE BASE CASE FOR VOP.RC.M

TSL (CDEC/TDA—kWh/day/ft^2)	Baseline 1.09	TSL 1 0.98	TSL 2 0.95	TSL 3 0.89	TSL 4 * 0.89	TSL 5 0.76
Distribution of Shipments (%)	17.6	36.3	16.6	14.0	14.0	15.6

* For VOP.RC.M, TSL 4 is set at the same efficiency level as TSL 3. Therefore, the shipment distribution is the same for both of these TSLs.

b. Standards Case Shipments Forecast

For each standards case, DOE assumed that shipments at efficiencies below the projected standard levels were most likely to roll up to those efficiency levels in response to an energy conservation standard. This scenario assumes that demand for high-efficiency equipment is a function of its

price without regard to the standard level. See Chapter 12 of the TSD for additional details.

c. Markup Scenarios

To understand how baseline and more efficient equipment are differentiated, DOE reviewed manufacturer catalogs and information gathered by manufacturers. To estimate the manufacturer price of the equipment sold, DOE applied markups to the production costs. For the analysis, DOE considered different markup scenarios, based on manufacturer input, for commercial refrigeration equipment. Scenarios were used to bound the range of expected equipment prices following new energy conservation standards. For each equipment class, DOE used the markup scenarios that best characterized the prevailing markup conditions and described the range of market responses manufacturers expect as a result of new energy conservation standards. DOE learned from interviews with manufacturers that the majority of manufacturers only offer one equipment line. A single equipment line means that there is no markup used to differentiate baseline equipment from premium equipment.

After discussions with manufacturers, DOE believes its adoption of standards for commercial refrigeration equipment would likely result in one of two distinct markup scenarios: Preservation-of-gross-margin-percentage or preservation-of-operating-profit. Under the preservation-of-gross-margin-percentage scenario, DOE applied a single uniform gross margin percentage markup across all efficiency levels. As production cost increases with efficiency, this scenario implies that the absolute dollar markup will increase. DOE assumed the non-production cost markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.32. Manufacturers believe it is optimistic to assume that as their production costs increase in response to an efficiency standard, they would be able to maintain the same gross margin percentage markup. Therefore, DOE assumes that this scenario represents a high bound to industry profitability under an energy conservation standard.

Gross margin is defined as revenues less cost of goods sold. The implicit assumption behind this markup scenario is that the industry can maintain its gross margin from the baseline (in absolute dollars) after the standard. The industry would do so by passing through its increased production costs to customers without passing through its increased R&D and selling, general, and administrative expenses so the gross profit per unit is the same in absolute dollars. DOE implemented this scenario in the GRIM by setting the production cost markups for each TSL to yield approximately the same gross margin in the standards cases in the year standard are effective (2012) as is yielded in the base case.

d. Equipment and Capital Conversion Costs

New efficiency standards typically cause manufacturers to incur one-time conversion costs to bring their production facilities and equipment designs into compliance with the new regulation. For the purpose of the MIA, DOE classified these one-time conversion costs into three major groups. Capital conversion expenditures are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new equipment designs can be fabricated and assembled under the new regulation. Equipment conversion expenditures are one-time investments in research, development, testing, and marketing focused on creating equipment designs that comply with the new efficiency standard. Stranded assets are equipment or tooling that become obsolete as a result of new regulation.

During the MIA interviews, DOE asked manufacturers for their estimates of the conversion costs they would incur due to new energy conservation standards. DOE then used the costs provided by each manufacturer and their respective market shares to develop estimates for the conversion costs of the entire industry at varying TSLs. Chapter 13 of the TSD summarizes these estimates.

J. Utility Impact Analysis

The utility impact analysis estimates the effects of reduced energy consumption due to improved equipment efficiency on the utility industry. This utility analysis consists of a comparison between forecast results for a case comparable to the AEO2007 reference case and forecasts for policy cases incorporating each of the commercial refrigeration equipment TSLs.

DOE analyzed the effects of proposed standards on electric utility industry generation capacity and fuel consumption using a variant of the EIA's NEMS. NEMS, which is available on the DOE website, is a large, multi-sector, partial-equilibrium model of the U.S. energy sector. EIA uses NEMS to produce its AEO, a widely recognized baseline energy forecast for the United States. DOE used a variant known as NEMS–BT. The NEMS–BT is run similarly to the AEO2007 NEMS, except that commercial refrigeration equipment energy usage is reduced by the amount of energy (by fuel type) saved due to the TSLs. DOE obtained the inputs of national energy savings from the NES spreadsheet model. For the final rule, DOE intends to report utility analysis results using a version of NEMS–BT based on the AEO2008 NEMS.

DOE conducted the utility analysis as policy deviations from the AEO2007, applying the same basic set of assumptions. In the utility analysis, DOE reported the changes in installed capacity and generation by fuel type that result for each TSL, as well as changes in end-use electricity sales. Chapter 14 of the TSD provides details of the utility analysis methods and results.

K. Employment Impact Analysis

Employment impact is one of the factors that DOE considers in selecting a standard. Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees for commercial refrigeration equipment manufacturers, their suppliers, and related service firms. Indirect impacts are those changes of employment in the larger economy that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient commercial refrigeration equipment. The MIA in this rulemaking addresses only the direct employment impacts on manufacturers of commercial refrigeration equipment. Chapter 15 of the TSD describes other, primarily indirect, employment impacts.

Indirect employment impacts from commercial refrigeration equipment standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, as a consequence of (1) reduced spending by end users on electricity (offset to some degree by the increased spending on maintenance and repair); (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new commercial refrigeration equipment; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor.

In developing this proposed rule, DOE estimated indirect national employment impacts using an input/output model of

the U.S. economy, called ImSET (Impact of Sector Energy Technologies), developed by DOE's Building Technologies Program. ImSET is a personal-computer-based, economic-analysis model that characterizes the interconnections among 188 sectors of the economy as national input/output structural matrices, using data from the U.S. Department of Commerce's 1997 Benchmark U.S. input-output table. The ImSET model estimates changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in various sectors of the economy. DOE estimated changes in expenditures using the NES spreadsheet. ImSET then estimated the net national indirect employment impacts of potential commercial refrigeration equipment efficiency standards on employment by sector. In comments on the ANOPR, Zero Zone asked if DOE was going to contact second tier suppliers (e.g., door suppliers, fluorescent lighting suppliers, shaded pole motor suppliers) regarding employment impacts. (Public Meeting Transcript, No. 13.5 at pp. 230–231) ARI noted that this had been done in the central air conditioning rulemaking. (Public Meeting Transcript, No. 13.5 at p. 231)

DOE stated that the ImSET tool would not be able to address this in detail, but that it has been done within the MIA for other equipment. In the public meeting, DOE commented that there would be impacts from standards, but the effective date is different from the issuance date partly to allow time for adjustments in manufacturing.

The ImSET input/output model suggests that the proposed commercial refrigeration equipment efficiency standards could increase the net demand for labor in the economy and the gains would most likely be very small relative to total national employment. DOE therefore concludes that the proposed commercial refrigeration equipment standards are only likely to produce employment benefits that are sufficient to fully offset any adverse impacts on employment in the commercial refrigeration equipment industry. For more details on the employment impact analysis, see Chapter 15 of the TSD.

L. Environmental Assessment

DOE has prepared a draft Environmental Assessment (EA) pursuant to the National Environmental Policy Act and the requirements of 42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(e)(1)(A), to determine the environmental impacts of the proposed standards. Specifically, DOE estimated the reduction in power plant emissions of CO_2, NO_X, and mercury (Hg) using the NEMS–BT computer model. However, the Environmental Assessment (Chapter 16 of the TSD) does not include the estimated reduction in power plant emissions of SO_2 because, DOE has determined that due to the presence of national caps on SO_2 emissions as addressed below, any such reduction resulting from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States.

The NEMS–BT is run similarly to the AEO2007 NEMS, except that commercial refrigeration equipment energy use is reduced by the amount of energy saved (by fuel type) due to the TSLs. DOE obtained the inputs of national energy savings from the NES spreadsheet model. For the environmental analysis, the output is the forecasted physical emissions. The net benefit of the standard is the difference between emissions estimated by NEMS–BT and the AEO2007 Reference Case. The NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects. For the final rule, DOE intends to revise the emissions analysis using the AEO2008 NEMS model using the process outlined above.

The Clean Air Act Amendments of 1990 set an emissions cap on SO_2 for all power generation. The attainment of this target, however, is flexible among generators and is enforced through the use of emissions allowances and tradable permits. As a result, accurate simulation of SO_2 trading tends to imply that the effect of energy conservation standards on physical emissions will be near zero because emissions will always be at, or near, the ceiling. Thus, it is unlikely that there will be an SO_2 environmental benefit from electricity savings as long as there is enforcement of the emissions ceilings.

Although there may not be an actual reduction in SO_2 emissions from electricity savings, there still may be an economic benefit from reduced demand for SO_2 emission allowances. Electricity savings decrease the generation of SO_2 emissions from power production, which can decrease the need to purchase or generate SO_2 emissions allowance credits, and decrease the costs of complying with regulatory caps on emissions.

Like SO_2, future emissions of NO_X and Hg would have been subject to emissions caps under the Clean Air Interstate Act and Clean Air Mercury Rule. As discussed later, these rules have been vacated by a Federal court. DOE calculated a forecast of reductions for these emissions under an uncapped scenario. DOE assumes that the uncapped emissions reduction estimate would have corresponded generally to the generation of emissions allowance credits under an emissions cap scenario.

V. Analytical Results

A. Trial Standard Levels

DOE selected between four and eight energy consumption levels for each commercial refrigeration equipment class in the LCC analysis. Based on the results of the LCC analysis, DOE selected five trial standard levels above the baseline level for each equipment class for the NOPR stage of the rulemaking. The range of TSLs selected includes the most energy efficient combination of design options with a positive NPV at the seven percent discount rate, and the combination of design options with the minimum LCC. Additionally, TSLs were selected that filled large gaps between the baseline and the level with the minimum LCC.

Because of the size variation within each equipment class and the use of daily energy consumption as the efficiency metric, DOE presented a methodology to express efficiency standards in terms of a normalizing metric. This allows for a single energy conservation standard to be used for a broad range of equipment sizes within a given equipment class. DOE proposed the use of TDA as the normalizing metric for equipment with display capability. For equipment classes without display capability (*e.g.*, equipment with solid doors), DOE proposed the use of internal volume as the normalizing metric. See Chapter 9 of the TSD for more detail.

True commented that all self-contained units (including any open units) should be tested using volume as a normalizing factor to provide a straight comparison between open and closed-door self-contained units. (Public Meeting Transcript, No. 13.5 at pp. 202–207) DOE understands the usefulness of comparing self-contained equipment with and without doors on the basis of volume. However, the self-contained equipment covered in this rulemaking is frequently installed in supermarkets and convenience stores, where its primary purpose is to display and merchandise food. The most common application of remote condensing equipment is also in supermarkets and convenience stores. Therefore, DOE believes that, with respect to the purpose of equipment, the self-contained equipment covered in this rulemaking is more similar to remote condensing equipment than

other self-contained equipment (i.e., equipment with doors). DOE discussed this issue with manufacturers, and determined that TDA is the most appropriate normalization metric for the self-contained equipment covered in this rulemaking, since that is the metric used for remote condensing equipment.

DOE expressed the ANOPR efficiency levels in terms of a normalized energy consumption using these normalization factors. DOE proposed equations for final standards that would have maximum energy consumption for equipment whose display area is directly proportional to TDA. DOE also suggested that for equipment normalized to volume, it might be necessary to develop equations that use offset factors to account for a potential non-linear variation of energy consumption with volume. At the ANOPR public meeting and during the comment period, stakeholders expressed concerns about the size of equipment DOE analyzed as the representative model for each equipment class. Zero Zone stated that its analysis indicates that using a two-door case as the baseline (for the VCT.RC.L class) is more reasonable because of the end effects in those cases. Zero Zone reported a 10 percent increase in energy consumption per door for a two-door case with the same design features as a five-door case. A two-door case consumes more energy per door than a five-door case because of the lighting and end effects. Zero Zone noted that if the standard is based on a five-door case, it will penalize any smaller cabinet, and could eliminate smaller cases from production due to their size. (Public Meeting Transcript, No. 13.5 at p. 87) At the public meeting, Zero Zone stated that it would give some thought to what should be used for a representative model—a two-door case, or some combination of two-door and five-door cases. Zero Zone also noted that not all manufacturers make all case sizes. (Public Meeting Transcript, No. 13.5 at p. 88) Later, in a written comment, Zero Zone recommended that DOE base its analysis on the smaller case models instead of the larger case models to avoid accidentally outlawing smaller cases. (Zero Zone, No. 17 at p. 3) ARI commented that it generally agrees with the approach proposed by DOE for characterizing energy conservation standards for commercial refrigeration equipment, and offered to work with DOE in developing appropriate offset factors. (ARI, No. 18 at p. 6)

For the NOPR, DOE developed offset factors as a way to adjust the energy efficiency requirements for smaller-sized equipment in each equipment class analyzed. These offset factors account for certain components of the refrigeration load (such as the conduction end effects) that remain constant even when equipment sizes vary. These constant loads affect smaller cases disproportionately. The offset factors are intended to approximate these constant loads and provide a fixed end point, corresponding to a zero TDA or zero volume case, in an equation that describes the relationship between energy consumption and the corresponding TDA or volume metric. See Chapter 5 of the TSD for further details on the development of these offset factors for each equipment class. This is identified as Issue 4 under ''Issues on Which DOE Seeks Comment'' in Section VII.E of this NOPR.

DOE preserved the general methodology and themes it used for the selection of efficiency levels in the ANOPR in establishing specific efficiency levels for equipment classes. These levels are based on the results of the updated LCC analysis and make up the TSLs used in the NOPR. Table V–1 shows the TSL levels DOE selected for energy use for the equipment classes analyzed. TSL 5 is the max-tech level for each equipment class. TSL 4 is the maximum efficiency level with a positive NPV at the seven percent discount rate, except for VOP.RC.M, where the minimal difference in energy efficiency between the minimum life-cycle cost level as determined by the LCC analysis and the maximum efficiency level with positive NPV prompted DOE to select the minimum life-cycle cost level in preference to the maximum level with positive NPV. TSL 4 is a combination of the efficiency levels selected for TSL 3 and TSL 5. For a given equipment class, the efficiency levels selected for TSL 4 are either equivalent to that of TSL 3 or that of TSL 5. TSL 3 is the efficiency level that provides the minimum life-cycle cost as determined by the LCC analysis. TSL 2 and TSL 1 represent lower efficiency levels that fill in the gap between the current baseline and the levels determined to have the minimum LCC.

Table V–2 shows the same TSL levels in terms of proposed equations that establish a maximum daily energy consumption (MEC) limit through a linear equation of the form:

$MEC = A \times TDA + B$ (*for equipment using TDA as a normalizing metric*) or

$MEC = A \times V + B$ (*for equipment using volume as a normalizing metric*)

Coefficients *A* and *B* are uniquely derived for each equipment class based on the calculated offset factor *B* (see Chapter 5 of the TSD for offset factors) and the equation slope A, which would be used to describe the efficiency requirements for equipment of different sizes within the same equipment class. Chapter 9 of the TSD explains the methodology DOE used for selecting trial standard levels and developing the coefficients shown in Table V–2.

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Table V-1 Trial Standard Levels for Analyzed Equipment Expressed in Terms of Daily Energy Consumption

Equipment Class	Test Metric	Trial Standard Level in Order of Efficiency						Trial Standard Levels for Equipment Analyzed Expressed in Terms of Energy Consumption (kWh/day)					
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	CDEC kWh/day	Level 1	Level 3	Level 4	Level 5	Level 5	Level 7	57.90	51.99	50.68	47.69	47.69	40.26
VOP.RC.L	CDEC kWh/day	Level 1	Level 3	Level 4	Level 6	Level 7	Level 7	133.60	118.44	113.28	112.00	108.77	108.77
VOP.SC.M	TDEC* kWh/day	Level 1	Level 3	Level 5	Level 6	Level 6	Level 8	39.60	35.95	33.38	30.70	30.70	28.17
VCT.RC.M	CDEC kWh/day	Level 1	Level 2	Level 3	Level 5	Level 7	Level 7	33.18	31.77	30.00	22.27	18.51	18.51
VCT.RC.L	CDEC kWh/day	Level 1	Level 3	Level 4	Level 5	Level 7	Level 7	69.31	65.73	46.90	46.36	41.85	41.85
VCT.SC.I	TDEC kWh/day	Level 1	Level 4	Level 5	Level 7	Level 8	Level 8	45.63	34.40	25.31	22.74	22.37	22.37
VCS.SC.I	TDEC kWh/day	Level 1	Level 3	Level 5	Level 8	Level 8	Level 8	16.95	14.53	12.24	10.19	10.19	10.19
SVO.RC.M	CDEC kWh/day	Level 1	Level 3	Level 4	Level 5	Level 5	Level 7	43.56	39.58	38.59	36.34	36.34	30.97
SVO.SC.M	TDEC kWh/day	Level 1	Level 3	Level 5	Level 6	Level 6	Level 8	33.11	30.66	28.87	26.74	26.74	24.87
SOC.RC.M	CDEC kWh/day	Level 1	Level 2	Level 3	Level 5	Level 5	Level 8	31.70	30.01	27.93	26.24	26.24	20.17
HZO.RC.M	CDEC kWh/day	Level 1	Level 2	Level 3	Level 4	Level 5	Level 5	19.63	17.89	15.73	14.69	14.54	14.54
HZO.RC.L	CDEC kWh/day	Level 1	Level 3	Level 4	Level 5	Level 5	Level 5	38.38	35.30	33.41	32.97	32.97	32.97
HZO.SC.M	TDEC kWh/day	Level 1	Level 3	Level 5	Level 7	Level 8	Level 8	19.23	17.85	16.51	14.93	14.81	14.81
HZO.SC.L	TDEC kWh/day	Level 1	Level 3	Level 5	Level 7	Level 8	Level 8	38.69	36.02	33.52	30.31	30.14	30.14
HCT.SC.I	TDEC kWh/day	Level 1	Level 3	Level 4	Level 5	Level 6	Level 6	7.25	6.37	3.70	3.53	3.32	3.32

* "TDEC" is total daily energy consumption of the case.

Table V-2 Trial Standard Levels Expressed in Terms of Equations and Coefficients for Each Primary Equipment Class

Equipment Class	Test Metric	Trial Standard Levels for Primary Equipment Classes Analyzed					
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	CDEC kWh/day	1.01 x TDA + 4.07	0.9 x TDA + 4.07	0.87 x TDA + 4.07	0.82 x TDA + 4.07	0.68 x TDA + 4.07	0.82 x TDA + 4.07
VOP.RC.L	CDEC kWh/day	2.84 x TDA + 6.85	2.5 x TDA + 6.85	2.38 x TDA + 6.85	2.35 x TDA + 6.85	2.28 x TDA + 6.85	2.28 x TDA + 6.85
VOP.SC.M	TDEC kWh/day	2.34 x TDA + 4.71	2.09 x TDA + 4.71	1.92 x TDA + 4.71	1.74 x TDA + 4.71	1.57 x TDA + 4.71	1.74 x TDA + 4.71
VCT.RC.M	CDEC kWh/day	0.48 x TDA + 1.95	0.46 x TDA + 1.95	0.43 x TDA + 1.95	0.31 x TDA + 1.95	0.25 x TDA + 1.95	0.25 x TDA + 1.95
VCT.RC.L	CDEC kWh/day	1.03 x TDA + 2.61	0.97 x TDA + 2.61	0.68 x TDA + 2.61	0.67 x TDA + 2.61	0.6 x TDA + 2.61	0.6 x TDA + 2.61
VCT.SC.I	TDEC kWh/day	1.63 x TDA + 3.29	1.2 x TDA + 3.29	0.85 x TDA + 3.29	0.75 x TDA + 3.29	0.73 x TDA + 3.29	0.73 x TDA + 3.29
VCS.SC.I	TDEC kWh/day	0.55 x V + 0.88	0.49 x V + 0.88	0.43 x V + 0.88	0.38 x V + 0.88	0.38 x V + 0.88	0.38 x V + 0.88
SVO.RC.M	CDEC kWh/day	1.01 x TDA + 3.18	0.91 x TDA + 3.18	0.89 x TDA + 3.18	0.83 x TDA + 3.18	0.69 x TDA + 3.18	0.83 x TDA + 3.18
SVO.SC.M	TDEC kWh/day	2.23 x TDA + 4.59	2.04 x TDA + 4.59	1.9 x TDA + 4.59	1.73 x TDA + 4.59	1.58 x TDA + 4.59	1.73 x TDA + 4.59
SOC.RC.M	CDEC kWh/day	0.62 x TDA + 0.11	0.59 x TDA + 0.11	0.55 x TDA + 0.11	0.51 x TDA + 0.11	0.39 x TDA + 0.11	0.51 x TDA + 0.11
HZO.RC.M	CDEC kWh/day	0.51 x TDA + 2.88	0.45 x TDA + 2.88	0.39 x TDA + 2.88	0.36 x TDA + 2.88	0.35 x TDA + 2.88	0.35 x TDA + 2.88
HZO.RC.L	CDEC kWh/day	0.68 x TDA + 6.88	0.62 x TDA + 6.88	0.58 x TDA + 6.88	0.57 x TDA + 6.88	0.57 x TDA + 6.88	0.57 x TDA + 6.88
HZO.SC.M	TDEC kWh/day	1.14 x TDA + 5.55	1.02 x TDA + 5.55	0.91 x TDA + 5.55	0.78 x TDA + 5.55	0.77 x TDA + 5.55	0.77 x TDA + 5.55
HZO.SC.L	TDEC kWh/day	2.63 x TDA + 7.08	2.41 x TDA + 7.08	2.2 x TDA + 7.08	1.94 x TDA + 7.08	1.92 x TDA + 7.08	1.92 x TDA + 7.08
HCT.SC.I	TDEC kWh/day	1.33 x TDA + 0.43	1.16 x TDA + 0.43	0.64 x TDA + 0.43	0.61 x TDA + 0.43	0.56 x TDA + 0.43	0.56 x TDA + 0.43

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In addition to the 15 primary equipment classes analyzed, DOE intends to establish standards for the remaining 23 secondary equipment classes of commercial refrigeration equipment covered in this rulemaking that were not directly analyzed in the engineering analysis due to low annual shipments (less than 100 units per year). DOE's approach involves extension multipliers developed using both the 15 primary equipment classes analyzed and a set of focused matched-pair analyses. In addition, DOE believes that standards for certain primary equipment classes can be directly applied to other similar secondary equipment classes.

Chapter 5 of the TSD discusses the development of the extension multipliers and the set of focused matched-pair analyses.

Using this approach, DOE developed an additional set of TSLs for these secondary equipment classes that corresponds to each of the equations shown in Table V–2 at each TSL. Table V–3 shows this additional set of corresponding TSL levels. The levels shown in Table V–3 do not necessarily reflect the minimum life-cycle cost or max-tech efficiency levels for these equipment classes, and do not reflect TSLs that DOE has analyzed in its impact analyses. The primary purpose of presenting these levels in this section is to provide interested persons with the range of efficiency standards that DOE is considering for these secondary equipment classes. This is identified as Issue 5 under ''Issues on Which DOE Seeks Comment'' in Section VII.E of this NOPR.

Table V-3 Trial Standard Levels Expressed in Terms of Equations and Coefficients for Each Secondary Equipment Class

Equipment Class	Test Metric	Trial Standard Levels for Secondary Equipment Classes Analyzed					
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
SVO.RC.L	CDEC kWh/day	2.84 x TDA + 6.85	2.5 x TDA + 6.85	2.38 x TDA + 6.85	2.35 x TDA + 6.85	2.28 x TDA + 6.85	2.28 x TDA + 6.85
VOP.RC.I	CDEC kWh/day	3.6 x TDA + 8.7	3.17 x TDA + 8.7	3.03 x TDA + 8.7	2.99 x TDA + 8.7	2.9 x TDA + 8.7	2.9 x TDA + 8.7
SVO.RC.I	CDEC kWh/day	3.6 x TDA + 8.7	3.17 x TDA + 8.7	3.03 x TDA + 8.7	2.99 x TDA + 8.7	2.9 x TDA + 8.7	2.9 x TDA + 8.7
HZO.RC.I	CDEC kWh/day	0.87 x TDA + 8.74	0.78 x TDA + 8.74	0.73 x TDA + 8.74	0.72 x TDA + 8.74	0.72 x TDA + 8.74	0.72 x TDA + 8.74
VCT.RC.I	CDEC kWh/day	1.2 x TDA + 3.05	1.14 x TDA + 3.05	0.8 x TDA + 3.05	0.79 x TDA + 3.05	0.71 x TDA + 3.05	0.71 x TDA + 3.05
HCT.RC.M	CDEC kWh/day	0.39 x TDA + 0.13	0.34 x TDA + 0.13	0.19 x TDA + 0.13	0.18 x TDA + 0.13	0.16 x TDA + 0.13	0.16 x TDA + 0.13
HCT.RC.L	CDEC kWh/day	0.81 x TDA + 0.26	0.71 x TDA + 0.26	0.39 x TDA + 0.26	0.37 x TDA + 0.26	0.34 x TDA + 0.26	0.34 x TDA + 0.26
HCT.RC.I	CDEC kWh/day	0.95 x TDA + 0.31	0.83 x TDA + 0.31	0.46 x TDA + 0.31	0.43 x TDA + 0.31	0.4 x TDA + 0.31	0.4 x TDA + 0.31
VCS.RC.M	CDEC kWh/day	0.16 x V + 0.26	0.14 x V + 0.26	0.13 x V + 0.26	0.11 x V + 0.26	0.11 x V + 0.26	0.11 x V + 0.26
VCS.RC.L	CDEC kWh/day	0.33 x V + 0.54	0.3 x V + 0.54	0.26 x V + 0.54	0.23 x V + 0.54	0.23 x V + 0.54	0.23 x V + 0.54
VCS.RC.I	CDEC kWh/day	0.39 x V + 0.63	0.35 x V + 0.63	0.31 x V + 0.63	0.27 x V + 0.63	0.27 x V + 0.63	0.27 x V + 0.63
HCS.RC.M	CDEC kWh/day	0.16 x V + 0.26	0.14 x V + 0.26	0.13 x V + 0.26	0.11 x V + 0.26	0.11 x V + 0.26	0.11 x V + 0.26
HCS.RC.L	CDEC kWh/day	0.33 x V + 0.54	0.3 x V + 0.54	0.26 x V + 0.54	0.23 x V + 0.54	0.23 x V + 0.54	0.23 x V + 0.54
HCS.RC.I	CDEC kWh/day	0.39 x V + 0.63	0.35 x V + 0.63	0.31 x V + 0.63	0.27 x V + 0.63	0.27 x V + 0.63	0.27 x V + 0.63
SOC.RC.L	CDEC kWh/day	1.3 x TDA + 0.22	1.23 x TDA + 0.22	1.15 x TDA + 0.22	1.08 x TDA + 0.22	0.83 x TDA + 0.22	1.08 x TDA + 0.22
SOC.RC.I	CDEC kWh/day	1.52 x TDA + 0.26	1.44 x TDA + 0.26	1.34 x TDA + 0.26	1.26 x TDA + 0.26	0.97 x TDA + 0.26	1.26 x TDA + 0.26
VOP.SC.L	TDEC kWh/day	5.87 x TDA + 11.82	5.25 x TDA + 11.82	4.82 x TDA + 11.82	4.37 x TDA + 11.82	3.95 x TDA + 11.82	4.37 x TDA + 11.82
VOP.SC.I	TDEC kWh/day	7.45 x TDA + 15.02	6.68 x TDA + 15.02	6.13 x TDA + 15.02	5.55 x TDA + 15.02	5.02 x TDA + 15.02	5.55 x TDA + 15.02
SVO.SC.L	TDEC kWh/day	5.59 x TDA + 11.51	5.11 x TDA + 11.51	4.76 x TDA + 11.51	4.34 x TDA + 11.51	3.98 x TDA + 11.51	4.34 x TDA + 11.51
SVO.SC.I	TDEC kWh/day	7.11 x TDA + 14.63	6.5 x TDA + 14.63	6.05 x TDA + 14.63	5.52 x TDA + 14.63	5.06 x TDA + 14.63	5.52 x TDA + 14.63
HZO.SC.I	TDEC kWh/day	3.34 x TDA + 9.	3.06 x TDA + 9.	2.8 x TDA + 9.	2.46 x TDA + 9.	2.44 x TDA + 9.	2.44 x TDA + 9.
SOC.SC.I	TDEC kWh/day	2.13 x TDA + 0.36	2.02 x TDA + 0.36	1.88 x TDA + 0.36	1.76 x TDA + 0.36	1.35 x TDA + 0.36	1.76 x TDA + 0.36
HCS.SC.I	TDEC kWh/day	0.55 x V + 0.88	0.49 x V + 0.88	0.43 x V + 0.88	0.38 x V + 0.88	0.38 x V + 0.88	0.38 x V + 0.88

1. Miscellaneous Equipment

In the ANOPR, DOE proposed as part of its commercial refrigeration equipment test procedure that all equipment be tested at one of three rating temperatures: 38 °F for refrigerators, 0 °F for freezers, and −15 °F for ice-cream freezers. Zero Zone, Hill Phoenix, Carrier/Tyler Refrigeration, and True expressed concern because they produce equipment that is not designed to operate at these designated rating temperatures. (Public Meeting Transcript, No. 13.5 at pp. 28–33) ARI stated that DOE should not require all equipment to be tested at these three rating temperatures alone. Doing so may require manufacturers to produce equipment that is less efficient solely for the purpose of meeting a specific rating condition, thus defeating the intent of the regulation. (ARI, No. 18 at p. 4) Hill Phoenix and True stated that the equipment they manufacture that is unable to meet these rating temperatures is only one percent to two percent of their shipments. Hill Phoenix added that, if possible, it would prefer to avoid the excessive paperwork of applying for waivers for equipment that cannot meet the three rating temperatures in the test procedure. (Public Meeting Transcript, No. 13.5 at p. 33)

Zero Zone recommended developing regulations that apply to the special circumstances of the rating temperature (Zero Zone, No. 17 at p. 2) and that DOE should consider developing additional rating temperatures. (Public Meeting Transcript, No. 13.5 at p. 28) ACEEE suggested that DOE develop a method to interpolate the standard based on the

standards at the three official rating temperatures. (ACEEE, No. 16 at p. 2) ARI recommended that any equipment specifically designed to hold temperatures higher than the rating temperature should be tested at its application temperature, but must still meet the energy standard for its respective equipment class. (ARI, No. 18 at p. 4)

The DOE test procedure for commercial refrigeration equipment specifies three rating temperatures, 38 °F, 0 °F, and −15 °F, that are required to be used in the testing of this equipment, each applied to designated equipment classes. 71 FR 71357. Since all of this equipment must be tested at one of these three rating temperatures, any manufacturer that is unable to test such equipment at its designated rating temperature, must request a test procedure waiver from DOE pursuant to the provisions described in 10 CFR 431.401. If the equipment is unable to meet the maximum daily energy consumption (MDEC) limit for its designated equipment class, a manufacturer can petition DOE's Office of Hearing and Appeals (OHA) for exception relief from the energy conservation standard pursuant to OHA's authority under section 504 of the DOE Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003. OHA grants such relief on a case-by-case basis if it determines that a manufacturer has demonstrated that meeting the standard would cause hardship, inequity, or unfair distributions of burdens. DOE believes that the majority of equipment covered by this rulemaking can be tested using the three specified rating temperatures (38 °F, 0 °F and −15 °F) provided in the test procedure.

Certain types of equipment meet the definition of ''commercial refrigeration equipment'' (Section 136(a)(3) of EPACT 2005), but do not fall directly into any of the 38 equipment classes defined in the market and technology assessment. One of these types is hybrid cases, where two or more compartments are in different equipment families and are contained in one cabinet. Another is refrigerator-freezers, which have two compartments in the same equipment family but with different operating temperatures. Hybrid refrigerator-freezers, where two or more compartments are in different equipment families and have different operating temperatures, may also exist. Another is wedge cases, which form miter transitions (a corner section between two refrigerated display merchandisers) between standard display case lineups. DOE is proposing language that will allow manufacturers to determine appropriate standard levels for these types of equipment.

An example of a pure hybrid case (one with two or more compartments in different equipment families and at the same temperature) is a unit with one open and one closed medium-temperature compartment, such as those seen in coffee shops that merchandise baked goods and beverages. These hybrid cases may be either self-contained or remote condensing, and may be cooled by one or more condensing units. They may also have one evaporator cooling both compartments or one evaporator feeding each compartment separately.

An example of a refrigerator-freezer is a unit with doors where one compartment operates at medium temperature and one compartment operates at low temperature. Remote condensing commercial refrigerator-freezers (with and without doors) and self-contained commercial refrigerator-freezers without doors may operate in one of two ways. First, they may operate as separate chilled and frozen compartments with evaporators fed by two sets of refrigerant lines or two compressors. Second, they may operate as separate chilled and frozen compartments fed by one set of low-temperature refrigerant lines (with evaporator pressure regulator (EPR) valves or similar devices used to raise the evaporator pressure) or one compressor.

An example of a hybrid refrigerator-freezer is a unit with one open compartment at medium temperature and one closed compartment at low temperature. As with pure hybrid cases, these cases may be either self-contained or remote condensing, and may be cooled by one or more condensing units. In the case of remote condensing equipment, they may operate as separate chilled and frozen compartments with evaporators fed by two sets of refrigerant lines or two compressors. Or they may operate as separate chilled and frozen compartments fed by one set of low-temperature refrigerant lines (with EPR valves or similar devices used to raise the evaporator pressure of one compartment) or one compressor.

During the ANOPR public meeting, stakeholders commented on how to handle these types of cases. True suggested that for self-contained refrigerator-freezer equipment, DOE should use a weighted average of the minimum standard requirements for the freezer and refrigerator. This is the present standard used in California and Canada, and [EPACT] 2005 for self-contained equipment with doors: 1.63 times freezer volume plus the refrigerated volume gives you a number [adjusted volume]. (Public Meeting Transcript, No. 13.5 at p. 215) Copeland followed up on the True comment on refrigerator-freezers, suggesting that a refrigerator-freezer standard for remote cases should be simple, and that they should be treated as if they have two separate compressors. (Public Meeting Transcript, No. 13.5 at p. 215) Zero Zone stated that a manufacturer could build equipment with one or two separate suction lines. If it is built with one, measure the suction pressure for that one and base the EER on that suction pressure, without concern for what is happening upstream of the case. (Public Meeting Transcript, No. 13.5 at p. 215)

DOE has reviewed the comments and is proposing the following language for requiring manufacturers to meet standards for hybrid cases, refrigerator-freezers, and hybrid refrigerator/freezers:

- For commercial refrigeration equipment with two or more compartments (hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator/freezers), the MDEC for each model shall be the sum of the MDEC values for all of its compartments. For each compartment, measure the TDA or volume of that compartment, and determine the appropriate equipment class based on that compartment's equipment family, condensing unit configuration, and designed operating temperature. The MDEC limit for each compartment shall be the calculated value obtained by entering that compartment's TDA or volume into the standard equation in subsection (d)(1) for that compartment's equipment class. Measure the calculated daily energy consumption (CDEC) or total daily energy consumption (TDEC) for the entire case as follows:
  - For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more independent condensing units each separately cool only one compartment, measure the total refrigeration load of each compartment separately according to the ANSI/ASHRAE Standard 72–2005 test procedure. Calculate compressor energy consumption (CEC) for each compartment using Table 1 in ANSI/ARI Standard 1200–2006 using the saturated evaporator temperature for that compartment. The calculated daily energy consumption (CDEC) for the entire case shall be the sum of the CEC for each compartment, fan energy

consumption (FEC), lighting energy consumption (LEC), anti-condensate energy consumption (AEC), defrost energy consumption (DEC), and condensate evaporator pan energy consumption (PEC) (as measured in ANSI/ARI Standard 1200–2006).

○ For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more compartments are cooled collectively by one condensing unit, measure the total refrigeration load of the entire case according to the ANSI/ASHRAE Standard 72–2005 test procedure. Calculate a weighted saturated evaporator temperature for the entire case by (i) multiplying the saturated evaporator temperature of each compartment by the volume of that compartment (as measured in ANSI/ARI Standard 1200–2006), (ii) summing the resulting values for all compartments, and (iii) dividing the resulting total by the total volume of all compartments. Calculate the CEC for the entire case using Table 1 in ANSI/ARI Standard 1200–2006, using the total refrigeration load and the weighted average saturated evaporator temperature. The CDEC for the entire case shall be the sum of the CEC, FEC, LEC, AEC, DEC, and PEC.

○ For self-contained commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, measure the total daily energy consumption (TDEC) for the entire case according to the ANSI/ASHRAE Standard 72–2005 test procedure.

• For remote-condensing and self-contained wedge cases, measure the CDEC or TDEC according to the ANSI/ASHRAE Standard 72–2005 test procedure. The MDEC for each model shall be the amount derived by incorporating into the standards equation in subsection (d)(1) for the appropriate equipment class a value for the TDA that is the product of (1) the vertical height of the air-curtain (or glass in a transparent door) and (2) the largest overall width of the case, when viewed from the front. This is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in Section VII.E of this NOPR.

B. Economic Justification and Energy Savings

1. Economic Impacts on Commercial Customers

a. Life-Cycle Cost and Payback Period

To evaluate the economic impact of the TSLs on customers, DOE conducted an LCC analysis for each level. More efficient commercial refrigeration equipment would affect customers in two ways: Annual operating expense would decrease and purchase price would increase. DOE analyzed the net effect by calculating the LCC. Inputs used for calculating the LCC include total installed costs (i.e., equipment price plus installation costs), annual energy savings, average electricity costs by customer, energy price trends, repair costs, maintenance costs, equipment lifetime, and discount rates.

DOE's LCC and PBP analyses provided five outputs for each TSL that are reported in Table V–4 through Table V–18. The first three outputs are the proportion of commercial refrigeration equipment purchases where the purchase of a standard-compliant piece of equipment would create a net LCC increase, no impact, or a net LCC savings for the customer. DOE used the estimated distribution of shipments by efficiency level for each equipment class to determine the affected customers. The fourth output is the average net LCC savings from standard-compliant equipment. The fifth output is the average PBP for the customer investment in standard-compliant equipment. The payback period is the number of years it would take for the customer to recover through energy savings the increased costs of higher efficiency equipment compared with the purchase of baseline efficiency equipment.

TABLE V–4—SUMMARY LCC AND PBP RESULTS FOR VOP.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	63
Equipment with No Change in LCC (%)	65	47	30	30	2
Equipment with Net LCC Savings (%)	35	53	70	70	34
Mean LCC Savings ($)	1,201	1,143	1,551	1,551	−234
Mean Payback Period (years)	0.9	1.5	2.2	2.2	9.7

TABLE V–5—SUMMARY LCC AND PBP RESULTS FOR VOP.RC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	68	52	22	8	8
Equipment with Net LCC Savings (%)	32	48	78	92	92
Mean LCC Savings ($)	3,132	4,005	4,089	3,364	3,364
Mean Payback Period (years)	0.8	1.2	1.3	3.0	3.0

TABLE V–6—SUMMARY LCC AND PBP RESULTS FOR VOP.SC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	19
Equipment with No Change in LCC (%)	65	32	17	17	3
Equipment with Net LCC Savings (%)	35	68	83	83	78
Mean LCC Savings ($)	758	1,065	1,342	1,342	703

TABLE V–6—SUMMARY LCC AND PBP RESULTS FOR VOP.SC.M EQUIPMENT CLASS—Continued

	Trial standard level				
	1	2	3	4	5
Mean Payback Period (years)	0.8	1.8	2.7	2.7	5.9

TABLE V–7—SUMMARY LCC AND PBP RESULTS FOR VCT.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	19	19
Equipment with No Change in LCC (%)	79	57	25	7	7
Equipment with Net LCC Savings (%)	21	43	75	74	74
Mean LCC Savings ($)	286	581	1,107	867	867
Mean Payback Period (years)	0.9	1.4	4.6	6.1	6.1

TABLE V–8—SUMMARY LCC AND PBP RESULTS FOR VCT.RC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	60	40	28	8	8
Equipment with Net LCC Savings (%)	40	60	72	92	92
Mean LCC Savings ($)	676	3,594	3,662	3,546	3,546
Mean Payback Period (years)	1.2	2.6	2.6	3.7	3.7

TABLE V–9—SUMMARY LCC AND PBP RESULTS FOR VCT.SC.I EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	52	37	15	7	7
Equipment with Net LCC Savings (%)	48	63	85	93	93
Mean LCC Savings ($)	2,305	3,806	3,841	3,818	3,818
Mean Payback Period (years)	1.1	1.7	2.4	2.5	2.5

TABLE V–10—SUMMARY LCC AND PBP RESULTS FOR VCS.SC.I EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	76	49	11	11	11
Equipment with Net LCC Savings (%)	24	51	89	89	89
Mean LCC Savings ($)	640	1,191	1,565	1,565	1,565
Mean Payback Period (years)	0.4	0.6	1.4	1.4	1.4

TABLE V–11—SUMMARY LCC AND PBP RESULTS FOR SVO.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	62
Equipment with No Change in LCC (%)	62	42	24	24	4
Equipment with Net LCC Savings (%)	38	58	76	76	34
Mean LCC Savings ($)	810	782	1,106	1,106	−170
Mean Payback Period (years)	0.8	1.5	2.1	2.1	9.7

TABLE V–12—SUMMARY LCC AND PBP RESULTS FOR SVO.SC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	17
Equipment with No Change in LCC (%)	67	34	19	19	4
Equipment with Net LCC Savings (%)	33	66	81	81	79
Mean LCC Savings ($)	527	756	988	988	516
Mean Payback Period (years)	0.7	1.6	2.6	2.6	5.9

TABLE V–13—SUMMARY LCC AND PBP RESULTS FOR SOC.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	71
Equipment with No Change in LCC (%)	83	66	32	32	5
Equipment with Net LCC Savings (%)	17	34	68	68	24
Mean LCC Savings ($)	363	759	819	819	−673
Mean Payback Period (years)	0.6	0.9	1.9	1.9	12.6

TABLE V–14—SUMMARY LCC AND PBP RESULTS FOR HZO.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	80	60	39	19	19
Equipment with Net LCC Savings (%)	20	40	61	81	81
Mean LCC Savings ($)	376	792	942	917	917
Mean Payback Period (years)	0.6	0.9	1.4	1.8	1.8

TABLE V–15—SUMMARY LCC AND PBP RESULTS FOR HZO.RC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	59	39	19	19	19
Equipment with Net LCC Savings (%)	41	61	81	81	81
Mean LCC Savings ($)	593	927	971	971	971
Mean Payback Period (years)	1.1	1.5	1.8	1.8	1.8

TABLE V–16—SUMMARY LCC AND PBP RESULTS FOR HZO.SC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	73	45	21	10	10
Equipment with Net LCC Savings (%)	27	55	79	90	90
Mean LCC Savings ($)	312	551	759	721	721
Mean Payback Period (years)	0.4	1.1	2.0	2.5	2.5

TABLE V–17—SUMMARY LCC AND PBP RESULTS FOR HZO.SC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	73	45	21	10	10
Equipment with Net LCC Savings (%)	27	55	79	90	90
Mean LCC Savings ($)	610	1,094	1,585	1,559	1,559
Mean Payback Period (years)	0.4	0.9	1.6	1.9	1.9

TABLE V–18—SUMMARY LCC AND PBP RESULTS FOR HCT.SC.I EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	64	46	30	14	14
Equipment with Net LCC Savings (%)	36	54	70	86	86
Mean LCC Savings ($)	192	692	710	693	693
Mean Payback Period (years)	0.7	1.5	1.6	2.1	2.1

For three equipment classes (VOP.RC.M, SVO.RC.M, and SOC.RC.M) TSL 5 resulted in a negative LCC savings compared with the purchase of baseline equipment. For all other equipment classes, TSL 5 showed positive LCC savings. DOE noted that for equipment classes with lighting, the inclusion of LED lighting at TSL 5 had a significant impact on the calculated LCC savings. For equipment classes without lighting (i.e., VCS.SC.I, HZO.RC.L, HZO.SC.M, HZO.SC.L, HCT.SC.I), the LCC savings at TSL 5 was either identical to that of TSL 3, or less (between $17 and $38 over the life of the equipment). However, for equipment classes with lighting the difference in the LCC calculated between TSL 3 and TSL 5 varied from $23 for VCT.SC.I to $1785 for VOP.RC.M. When compared to TSL 3, the estimated reduction in LCC savings for TSL 5 was most pronounced for the three medium temperature equipment classes identified above as having negative LCC compared to the baseline (VOP.RC.M, SOC.RC.M, and SVO.RC.M), varying between $1276 and $1785 dollars. For three additional equipment classes (VOP.RC.L, SVO.SC.M, and VOP.SC.M), when compared to TSL 3, the difference in LCC was greater than $500. DOE noted that these are all medium temperature cases with the exception of VOP.RC.L, which is a small sales volume unit, similar in design to a medium temperature VOP.RC.M case.

The inclusion of LED lighting systems result in an incremental increase in installed price. It also increases annualized lighting maintenance cost, since LED lights were assumed to be replaced after 50,000 hours or 5.7 years of steady operation. DOE performed two sensitivity analyses of the effect of projected cost reductions in LED lighting systems on LCC. These analyses involved five equipment classes: VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M. In the first sensitivity analysis, DOE determined the reduction in LED fixture cost, applied to the installed price in 2012, that would be necessary to reduce the average LCC for TSL 5 to a level equivalent to the LCC savings at TSL 3, the maximum LCC level. DOE determined that for these five equipment classes, a LED cost reduction ranging from 37 percent to 44 percent, depending on equipment class, would provide an LCC at TSL 5 equivalent to that at TSL 3.

In the second sensitivity analysis, DOE presumed that the cost for replacement LED fixtures in 2018 would be reduced by 50 percent of the cost assumed in the base LCC analysis, and then calculated the reduction in LED fixture cost necessary by 2012 to reduce the average LCC for TSL 5 to a level that provided equivalent LCC savings as TSL 3. DOE determined that for these five equipment classes an LED cost reduction ranging from 29 percent to 40 percent, depending on equipment class, would provide a LCC at TSL 5 equivalent to that at TSL 3.

Based on these analyses, DOE concluded that a reduction in LED fixture costs of approximately 45 percent would be sufficient to result in the maximum LCC savings for all five equipment classes at TSL 5. DOE estimated that this reduction in LED fixture costs would also increase LCC savings for all other equipment classes with installed lighting at TSL 5. DOE estimates that for all equipment classes to achieve their maximum LCC savings at TSL 5, LED fixture costs must decrease by at least 45 percent. DOE concluded that a reduction in LED costs of less than 45 percent could result in only certain commercial refrigeration equipment classes achieving their maximum LCC savings at TSL 5.

b. Rebuttable Presumption Payback

As discussed above, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for the equipment that meets the standard is less than three times the value of the first year energy savings resulting from the standard. DOE calculated a rebuttable presumption payback period for each TSL to determine if DOE could presume that a standard at that level is economically justified. Rather than using distributions for input values, DOE used discrete values and, as required by EPCA, based the calculation on the DOE commercial refrigeration equipment test procedure assumptions. As a result, DOE calculated a single rebuttable presumption payback value for each standard level, and not a distribution of payback periods.

To evaluate the rebuttable presumption, DOE estimated the additional customer price of a more efficient, standard-compliant unit using the average customer markup, and compared this cost to the value of the energy saved during the first year of operation of the equipment as determined by ANSI/ARI Standard 1200–2006. DOE interprets that the increased cost of purchasing a standard-compliant unit includes the cost of installing the equipment for use by the purchaser. DOE calculated the rebuttable presumption PBP, or the ratio of the value of the increased installed price above the baseline efficiency level to the first year's energy cost savings. When this PBP is less than three years, the rebuttable presumption is satisfied; when this PBP is equal to or more than three years, the rebuttable presumption is not satisfied.

Rebuttable presumption PBPs were calculated based on single-point national average values for installed costs and energy prices appropriate to commercial refrigeration equipment. Equipment prices are based on a shipment-weighted average distribution markup for remote condensing equipment or self-contained equipment, as applied to the MSP for each equipment class. The installed cost is based on the national average equipment price and the national average installation cost for remote condensing or self-contained equipment as appropriate. Average first-year energy costs were calculated as the product of the annual energy consumption used in the LCC and the shipment-weighted national-average electricity price, which was calculated using the shipment weights for the four business types

using commercial refrigeration equipment.

The equation for the rebuttable PBP is:

$$PBP = \Delta IC / \Delta EC$$

Where

PBP = payback period in years,
ΔIC = difference in the total installed cost between the more efficient standard level equipment (energy consumption levels 2, 3, etc.) and the baseline (energy consumption level 1) equipment, and
ΔEC = difference in annual energy costs.

PBPs are expressed in years. PBPs greater than the life of the equipment means that the increased total installed cost of the more efficient equipment is not recovered in reduced operating costs for the more efficient equipment. The rebuttable presumption PBPs differ from the other PBPs calculated in the LCC analysis (see Section IV.E.12 of this NOPR) because they do not include maintenance or repair costs and they are based on single point values instead of distributions for installation costs or energy costs. The baseline efficiency level for the rebuttable presumption calculation is the baseline established in the engineering analysis.

Table V–19 shows the nationally averaged rebuttable presumption paybacks calculated for all equipment classes and efficiency levels. The highest efficiency level with a rebuttable presumption payback of less than three years is also shown in Table V–19 for each equipment class. For eight equipment classes, the rebuttable presumption criteria were satisfied at all TSLs. At TSL 4, the rebuttable presumption criteria are satisfied for 13 equipment classes. At TSL 3, the rebuttable presumption criteria are satisfied for 14 equipment classes. At TSL 2, the rebuttable presumption criteria were satisfied for all equipment classes. However, while DOE has examined the rebuttable presumption PBPs, DOE has not determined economic justification for any of the standard levels analyzed based on the ANOPR rebuttable presumption analysis. The economic justification for each TSL for each equipment class will take into account the more detailed analysis of the economic impacts of increased efficiency pursuant to Section 325(o)(2)(B)(i) of EPCA. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1)).

TABLE V–19—REBUTTABLE PRESUMPTION PAYBACK PERIODS BY EFFICIENCY LEVEL AND EQUIPMENT CLASS

Equipment type	Rebuttable presumption payback period (years)					Highest TSL with PBP < 3 Years
	Level 1	Level 2	Level 3	Level 4	Level 5	
VOP.RC.M	0.8	1.1	1.7	1.7	5.9	4
VOP.RC.L	0.7	1.1	1.2	2.5	2.5	5
VOP.SC.M	0.8	1.5	2.3	2.3	4.5	4
VCT.RC.M	0.8	1.2	4.1	5.4	5.4	2
VCT.RC.L	1.0	2.4	2.4	3.3	3.3	3
VCT.SC.I	1.0	1.6	2.2	2.3	2.3	5
VCS.SC.I	0.4	0.6	1.3	1.3	1.3	5
SVO.RC.M	0.8	1.1	1.7	1.7	5.9	4
SVO.SC.M	0.6	1.3	2.2	2.2	4.5	4
SOC.RC.M	0.5	0.8	1.4	1.4	7.1	4
HZO.RC.M	0.5	0.8	1.2	1.6	1.6	5
HZO.RC.L	1.0	1.3	1.6	1.6	1.6	5
HZO.SC.M	0.4	1.0	1.9	2.3	2.3	5
HZO.SC.L	0.3	0.8	1.5	1.7	1.7	5
HCT.SC.I	0.7	1.4	1.5	2.0	2.0	5

c. Life-Cycle Cost Sub-Group Analysis

Using the LCC spreadsheet model, DOE estimated the impact of the TSLs on the following customer sub-group: small businesses. For the retail food sales business, the Small Business Association (SBA) defines as small businesses supermarkets and other grocery stores and convenience stores with less than $25 million in total annual sales. For specialty stores (e.g., meat markets, bakeries, fish and seafood markets), this limit is set at less than $6.5 million in annual sales. According to the Food Marketing Institute, the average supermarket had sales of approximately $15 million in 2006, so a small business could be represented by one to two average-size supermarkets or a chain of smaller grocery or convenience stores. The Food Marketing Institute defines independent stores as a retailer with one to ten stores, so most small supermarkets or grocery businesses as defined by SBA would be classified as independent grocery stores by the industry. A somewhat larger chain of convenience stores could still be classified as a small business.

DOE estimated the LCC and PBP for small food sales businesses defined by SBA by presuming that most small business customers could be represented by the analysis performed for small grocery and convenience store owners. DOE assumed, however, that the smaller, independent grocery and convenience store chains may not have access to national accounts, but would instead purchase equipment primarily through distributors and grocery wholesalers. DOE modified the distribution channels for remote condensing and self-contained equipment to these small businesses as follows:

- For remote condensing equipment, 15 percent of the sales were assumed to pass through a manufacturer-to-distributor-to-contractor-to-customer channel, and 85 percent were assumed to be purchased through a manufacturer-to-distributor-to-customer channel.
- For self-contained equipment, 35 percent of sales were assumed to pass through a manufacturer-to-distributor-to-contractor-to-customer channel, and 65 percent were assumed to be purchased through a manufacturer-to-distributor-to-customer channel.

In both cases, the distribution chain markups were calculated accordingly. Table V–20 shows the mean LCC savings from proposed energy conservation standards for the small business sub-group, and Table V–21 shows the mean payback period (in years) for this sub-group. More detailed discussion on the LCC sub-group analysis and results can be found in Chapter 12 of the TSD.

TABLE V–20—MEAN LIFE-CYCLE COST SAVINGS FOR COMMERCIAL REFRIGERATION EQUIPMENT PURCHASED BY LCC SUB-GROUP (SMALL BUSINESS) (2007$) *

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	1,536	1,524	2,096	2,096	564
VOP.RC.L	3,995	5,158	5,301	4,688	4,688
VOP.SC.M	968	1,413	1,840	1,840	1,308
VCT.RC.M	366	757	1,689	1,625	1,625
VCT.RC.L	876	4,842	4,941	5,042	5,042
VCT.SC.I	2,957	4,981	5,155	5,151	5,151
VCS.SC.I	805	1,511	2,031	2,031	2,031
SVO.RC.M	1,036	1,044	1,492	1,492	400
SVO.SC.M	669	994	1,346	1,346	953
SOC.RC.M	461	973	1,107	1,107	(175)
HZO.RC.M	476	1,013	1,221	1,202	1,202
HZO.RC.L	766	1,206	1,274	1,274	1,274
HZO.SC.M	393	708	1,005	974	974
HZO.SC.L	766	1,394	2,069	2,052	2,052
HCT.SC.I	244	898	925	919	919

* Numbers in parentheses indicate negative savings.

TABLE V–21—MEAN PAYBACK PERIOD FOR COMMERCIAL REFRIGERATION EQUIPMENT PURCHASED BY LCC SUB-GROUP (SMALL BUSINESS) (YEARS)

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	0.8	1.3	2.0	2.0	8.5
VOP.RC.L	0.7	1.1	1.2	2.7	2.7
VOP.SC.M	0.8	1.6	2.4	2.4	5.2
VCT.RC.M	0.8	1.3	4.2	5.6	5.6
VCT.RC.L	1.1	2.4	2.4	3.4	3.4
VCT.SC.I	1.0	1.6	2.1	2.2	2.2
VCS.SC.I	0.4	0.6	1.3	1.3	1.3
SVO.RC.M	0.8	1.3	1.9	1.9	8.5
SVO.SC.M	0.6	1.4	2.3	2.3	5.2
SOC.RC.M	0.5	0.8	1.7	1.7	10.8
HZO.RC.M	0.5	0.8	1.2	1.6	1.6
HZO.RC.L	1.0	1.4	1.7	1.7	1.7
HZO.SC.M	0.4	1.0	1.8	2.3	2.3
HZO.SC.L	0.3	0.8	1.5	1.7	1.7
HCT.SC.I	0.6	1.3	1.4	1.9	1.9

For commercial refrigeration equipment, the LCC and PBP impacts for small businesses are similar to those of all customers as a whole. While the discount rate for small grocery stores is higher than that for commercial refrigeration equipment customers as a whole and equipment prices are higher due to the higher markups, these small business customers appear to retain commercial refrigeration equipment over longer periods, and generally, smaller stores tend to pay higher electrical prices. The average LCC savings for the small business sub-group is slightly higher than that calculated for the average commercial refrigeration equipment customer, and the average PBP is slightly shorter than the national average. DOE tentatively concluded that the small food sales businesses as defined by SBA will not experience economic impacts significantly different or more negative than those impacts on food sales businesses as a whole.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on commercial refrigeration equipment manufacturers (Chapter 13 of the TSD).

a. Industry Cash-Flow Analysis Results

Table V–22 and Table V–23 show the MIA results for each TSL using both markup scenarios described above for commercial refrigeration equipment.[24]

TABLE V–22—MANUFACTURER IMPACT ANALYSIS FOR THE COMMERCIAL REFRIGERATION EQUIPMENT INDUSTRY UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

Preservation of gross margin percentage markup scenario with a rollup shipment scenario							
	Units	Base case	Efficiency level				
			1	2	3	4	5
INPV	2007$ Millions	510	510	517	493	471	493

[24] The MIA estimates the impacts on commercial refrigeration equipment manufacturers of equipment in the entire range of equipment classes (i.e., the MIA results in Table V–22 and Table V–23 take into consideration the impacts on manufacturers of equipment from all equipment classes).

TABLE V–22—MANUFACTURER IMPACT ANALYSIS FOR THE COMMERCIAL REFRIGERATION EQUIPMENT INDUSTRY UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO—Continued

Preservation of gross margin percentage markup scenario with a rollup shipment scenario							
	Units	Base case	Efficiency level				
			1	2	3	4	5
Change in INPV	2007$ Millions	.....	(0)	6	(17)	(40)	(18)
	(%)	.....	0.00%	1.22%	−3.30%	−7.76%	−3.49%
Energy Conservation Standards Equipment Conversion Expenses.	2007$ Millions	.....	0.5	2.8	20.6	40.4	51.6
Energy Conservation Standards Capital Investments.	2007$ Millions	.....	0.8	5.0	36.3	71.2	90.8
Total Investment Required.	2007$ Millions	.....	1.3	7.8	57.0	111.6	142.4

TABLE V–23—MANUFACTURER IMPACT ANALYSIS FOR THE COMMERCIAL REFRIGERATION EQUIPMENT INDUSTRY UNDER THE PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

Preservation of operating profit markup scenario with a rollup shipment scenario							
	Units	Base case	Efficiency level				
			1	2	3	4	5
INPV	2007$ Millions	510	447	423	382	330	226
Change in INPV	2007$ Millions	.....	(63)	(88)	(129)	(180)	(285)
	(%)	.....	−12.34%	−17.16%	−25.20%	−35.32%	−55.77%
Energy Conservation Standards Equipment Conversion Expenses.	2007$ Millions	.....	0.5	2.8	20.6	40.4	51.6
Energy Conservation Standards Capital Investments.	2007$ Millions	.....	0.8	5.0	36.3	71.2	90.8
Total Investment Required.	2007$ Millions	.....	1.3	7.8	57.0	111.6	142.4

At TSL 1, the impact on INPV and cash flow varies greatly depending on the manufacturers and their ability to pass on MPC increases to the customer. DOE estimated the impacts in INPV at TSL 1 to range from approximately no impact to −$63 million, which is a change in INPV of zero percent to −12.34 percent. At this level, the industry cash flow is $50.9 million, which is nearly the same as the base case value of $51.4 million in the year leading up to the standards. Since DOE estimates that more than 80 percent of the equipment being sold is already at or above this level, manufacturers that currently meet TSL 1 will not have to make additional modifications to their equipment lines to conform to the energy conservation standards. DOE expects the lower end of the impacts to be reached, because manufacturers will be able to fully recover the increase in manufacturer production cost from customers. Therefore, DOE expects that industry revenues and costs will not be significantly negatively affected at TSL 1.

At TSL 2, the impact on INPV and cash flow continues to vary depending on the manufacturers and their ability to pass on MPC increases to the customer. DOE estimated the impacts in INPV at TSL 2 to range from approximately $6 million to −$88 million, which is a change in INPV of 1.22 percent to −17.16 percent. At this level, the industry cash flow decreases by approximately 6 percent, to $48.2 million, compared to the base case value of $51.4 million in the year leading up to the standards. DOE estimates that roughly 45 percent of the equipment being sold is already at or above this level. The required higher level of efficiency will cause some manufactures to modify their equipment lines to conform to the energy conservation standards. DOE does not expect industry revenues and costs to be affected significantly as long as manufacturers fully recover the increase in manufacturer production cost from customers. The positive INPV value is

explained by the assumption that MSP increases due to higher costs of the equipment, so that manufacturers fully recover and even surpass the investments needed to achieve this level.

At TSL 3, DOE estimated the impacts in INPV to range from approximately −$17 million to −$129 million, which is a change in INPV of −3.3 percent to −25.2 percent. At this level, the industry cash flow decreases by approximately 45.5 percent, to $28 million, compared to the base case value of $51.4 million in the year leading up to the standards. Based on information submitted by industry, the majority of manufacturers would require a complete redesign of their equipment, and therefore DOE expects that commercial refrigeration equipment manufacturers will have some difficulty fully passing on larger MPC increases to customers. Manufacturers expect that the actual impacts will be closer to the higher end of the range of impacts (i.e., a drop of 25.2 percent in INPV).

At TSL 4, DOE estimated the impacts on INPV to range from −$40 million to −$180 million, which is a change in INPV of approximately −7.76 percent to −35.32 percent. At this level, the industry cash flow decreases by approximately 88.4 percent to $5.5 million, compared to the base case value of $51.4 million in the year leading up to the standards. TSL 4 was created as a combination of TSL 3 (minimum LCC) and TSL 5 (max-tech). Manufacturers were not directly asked about this combination TSL during interviews. However, DOE estimated the range of impacts at TSL 4 based on the expected impacts manufacturers reported for TSL 3 and TSL 5. Since manufacturers expect that the actual impacts will be closer to the higher range of impacts at TSL 3 and TSL 5, DOE expects that the actual impacts for TSL 4 will also be at the higher range (i.e., a drop of 35.32 percent in INPV).

At TSL 5 (max-tech), DOE estimated the impacts in INPV to range from −$18 million to −$285 million, which is a change in INPV of approximately −3.49 percent to −55.77 percent. At this level, the industry cash flow decreases by approximately 114 percent to −$7.2 million, compared to the base case value of $51.4 million in the year leading up to the standards. At higher TSLs, manufacturers have more difficulty fully passing on larger MPC increases to customers, and therefore manufacturers expect that the actual impacts will be closer to the higher end of the range of impacts (i.e., a drop of 55.77 percent in INPV). Currently, there is only one model being manufactured at these efficiency levels for most equipment classes, and some equipment classes have no equipment at these levels. At TSL 5, DOE recognizes that there is a risk of very large negative impacts if manufacturers' expectations are accurate about reduced profit margins. During the interviews, manufacturers expressed great concern at the possibility of requiring an entire equipment line to be manufactured at the max-tech levels.

b. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden.

In addition to the energy conservation regulations on commercial refrigeration equipment, several other Federal regulations and pending regulations apply to commercial refrigeration equipment and other equipment produced by the same manufacturers or parent companies. DOE recognizes that each regulation can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can quickly strain manufacturers' profits and possibly cause an exit from the market. An example of these additional regulations is the U.S. Environmental Protection Agency (EPA)-mandated phaseout of hydrochlorofluorocarbons (HCFCs) and the potential residential central air conditioners and heat pumps Federal energy conservation standard. Table V–24 provides the timetables for these mandatory or potential regulations. DOE believes that the cumulative burden of the HCFC phaseout is minimal because much of the commercial refrigeration equipment industry has already initiated the transition to HFC refrigerants. As shown in Section IV.B.3 above, ARI stated that the data it provided to DOE was based on HFC refrigerants, and DOE therefore used HFC refrigerants in its analysis. DOE is aware of the industry's transition to HFC refrigerants, but requests comment on any cumulative regulatory burdens from the combined effects of impending regulations that may affect manufacturers.

TABLE V–24—FEDERAL REGULATION TIMETABLES

Regulation	Key affected appliance	Effective date
Potential DOE energy conservation standards	Central air conditioners and heat pumps (residential)	06/2011.
Potential DOE energy conservation standards	Room air conditioners	06/2011
EPA phaseout of HCFC refrigerant on new equipment	Room and residential central air conditioners, and commercial air conditioners.	01/2010
EPA phaseout of HCFC blowing agents on new equipment	Commercial refrigeration equipment	01/2010.

Production of foam insulation uses a blowing agent. The EPA strategy for meeting U.S. obligations under the Montreal Protocol requires the United States to phase out the production and use of HCFC blowing agents. HCFC–22 and HCFC–142b will be phased out on January 1, 2010. This affects equipment manufacturing in the United States after this date and causes manufacturers to switch to other blowing agents with no ozone depletion potential.

DOE recognizes that some parent companies of commercial refrigeration equipment manufacturers could also be affected by the potential energy conservation standards for central air conditioners and heat pumps and for room air conditioners. Additional investments necessary to meet these potential standards could have significant impacts on manufacturers of commercial refrigeration equipment. DOE seeks comment on the magnitude of impacts for cumulative regulatory burden on manufacturers for potential energy conservation standards for central air conditioners and heat pumps and for room air conditioners.

c. Impacts on Employment

DOE used the GRIM to assess the impacts of energy conservation standards on commercial refrigeration equipment employment. DOE used statistical data from the U.S. Census Bureau's 2006 Annual Survey of Manufacturers, the results of the

engineering analysis, and interviews with manufacturers to estimate the inputs necessary to calculate industry-wide labor expenditures and employment levels.

Currently the vast majority of commercial refrigeration equipment is manufactured in the U.S. Based on the GRIM results and interviews with manufacturers, DOE expects that there would be positive direct employment impacts among domestic commercial refrigeration equipment manufacturers for TSL 1 through TSL 5. This conclusion ignores the possible relocation of domestic jobs to lower-labor-cost countries which may occur independently of new standards or may be influenced by the level of investments required by new standards. Because the labor impacts in the GRIM do not take relocation into account, the labor impacts would be different if manufacturers chose to relocate to lower cost countries. Manufactures stated that, although there are no current plans to relocate production facilities, at higher TSLs there would be increased pressure to cut costs, which could result in relocation. Chapter 13 of the TSD further discusses the employment impacts and exhibits the actual changes in employment levels by TSL.

The conclusions in this section are independent of any conclusions regarding employment impacts from the broader U.S. economy estimated in the Employment Impact Analysis. These impacts are documented in Chapter 15 of this TSD.

d. Impacts on Manufacturing Capacity

According to the majority of commercial refrigeration equipment manufacturers, new energy conservation standards will not significantly affect manufacturers' production capacity. Any necessary redesign of commercial refrigeration equipment will not change the fundamental assembly of the equipment. However, manufacturers anticipate some minor changes to tooling. Thus, DOE believes manufacturers will be able to maintain manufacturing capacity levels and continue to meet market demand under new energy conservation standards.

e. Impacts on Sub-Groups of Manufacturers

As discussed above, using average cost assumptions to develop an industry cash-flow estimate is not adequate for assessing differential impacts among sub-groups of manufacturers. Small manufacturers, niche equipment manufacturers, or manufacturers exhibiting a cost structure that differs largely from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics.

DOE evaluated the impact of new energy conservation standards on small businesses, as defined by the SBA for the commercial refrigeration equipment industry, as manufacturing enterprises with 750 or fewer employees. DOE shared the interview guides with small commercial refrigeration equipment manufacturers and tailored specific questions for them. During DOE's interviews, small manufacturers suggested that the impacts of standards on them would not differ from impacts on larger companies within the industry (Chapter 13 of the TSD).

3. National Impact Analysis

a. Amount and Significance of Energy Savings

To estimate the energy savings through 2042 due to new energy conservation standards, DOE compared the energy consumption of commercial refrigeration equipment under the base case to energy consumption of commercial refrigeration equipment under a new standard. The energy consumption calculated in the NIA is source energy, taking into account energy losses in the generation and transmission of electricity as discussed in Section IV.J.

DOE tentatively determined the amount of energy savings at each of the 5 TSLs being considered for the 15 primary equipment class analyzed and aggregated the results. Table V–25 shows the forecasted aggregate national energy savings for all 15 equipment classes at each TSL. The table also shows the magnitude of the estimated energy savings if the savings are discounted at seven percent and three percent. Each TSL considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards (Chapter 11 of the TSD).

TABLE V–25—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL REFRIGERATION EQUIPMENT (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042)

Trial standard level	Primary national energy savings (quads) (sum of all equipment classes)		
	Undiscounted	3% Discounted	7% Discounted
1	0.141	0.073	0.034
2	0.545	0.284	0.132
3	0.715	0.372	0.173
4	0.832	0.433	0.201
5	1.208	0.630	0.292

DOE reports both undiscounted and discounted values of energy savings. Each TSL analyzed results in additional energy savings, ranging from an estimated 0.141 quads to 1.208 quads for TSLs 1 through 5 (undiscounted).

b. Net Present Value

The net present value analysis is a measure of the cumulative benefit or cost of standards to the Nation. In accordance with the Office of Management and Budget (OMB)'s guidelines on regulatory analysis (OMB Circular A–4, Section E, September 17, 2003), DOE calculated an estimated NPV using both a seven percent and a three percent real discount rate. The seven percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy, and reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return to capital to be near this rate. In addition, DOE used the three percent rate to capture the potential effects of standards on private consumption (e.g., through higher prices for equipment and purchase of reduced amounts of energy).

This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term Government debt (e.g., the yield on Treasury notes minus the annual rate of change in the Consumer Price Index), which has averaged about three percent on a pre-tax basis for the last 30 years.

Table V–27 shows the estimated cumulative NPV for commercial refrigeration equipment resulting from the sum of the NPV calculated for each of the 15 primary equipment classes analyzed. Table V–27 assumes the AEO2007 reference case forecast for electricity prices. At a seven percent discount rate, TSL 1–4 show positive cumulative NPVs. The highest NPV is provided by TSL 3 at $1.20 billion. TSL 4 provided $1.10 billion, close to that of TSL 3. TSL 5 showed a negative NPV at −$200 million, the result of negative NPV observed in five equipment classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M). DOE determined through a sensitivity analysis that a 50 percent reduction in LED fixture costs, applied to equipment sold during the analysis period starting in 2012, would yield a NPV of $1.62 billion for TSL 5.[25]

At a three percent discount rate, all TSLs showed a positive NPV, with the highest NPV provided at TSL 3 (i.e., $3.25 billion). TSL 4 provided a near equivalent NPV at $3.24 billion. TSL 5 provided a NPV of $1.16 billion dollars. Three equipment classes (VOP.RC.M, SVO.RC.M, and SOC.RC.M) were estimated to have negative NPVs at a three percent discount rate at TSL 5. DOE determined through a sensitivity analysis that a 50 percent reduction in LED fixture costs, applied to all equipment sold during the analysis period starting in 2012, would result in the greatest NPV at TSL 5 with $4.76 billion.

DOE also determined that a six percent reduction in LED system costs by 2012 would be sufficient to provide a positive NPV at TSL 5 in aggregate across all equipment classes at a seven percent discount rate. DOE recognizes that the aggregate six percent reduction in LED system costs could be attained by 2012 because of the rapid development of LED technology. In addition, DOE expects that a 50 percent reduction in LED system costs is possible in 2012, given the projections discussed previously, and considers a 50 percent reduction likely to occur by 2018 as examined in the LCC LED replacement cost sensitivity analysis.

Table V–26 shows the estimated NPV results at TSL 5, for projected LED system cost reductions of six percent and 50 percent.

TABLE V–26—SUMMARY OF NET PRESENT VALUE RESULTS WITH LED SYSTEM COST SENSITIVITY*

	TSL 5	TSL 5 Including 6% LED system cost reduction	TSL 5 Including 50% LED system cost reduction
NPV (2007$ billion):			
7% Discount Rate	(0.20)	0.03	1.62
3% Discount Rate	1.16	1.62	4.76

* Parentheses indicate negative (−) values.

In addition to the reference case, DOE examined the NPV under the AEO2007 high-growth and low-growth electricity price forecasts. The results of this examination can be found in Chapter 11 of the TSD.

TABLE V–27—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR COMMERCIAL REFRIGERATION EQUIPMENT—AEO2007 REFERENCE CASE

Trial standard level	NPV* (billion 2007$)	
	7% discount rate	3% discount rate
1	0.33	0.82
2	0.98	2.59
3	1.20	3.25
4	1.10	3.24
5	(0.20)	1.16

* Numbers in parentheses indicate negative NPV, i.e., a net cost.

c. Impacts on Employment

DOE develops general estimates of the indirect employment impacts of proposed standards on the economy. As discussed above, DOE expects energy conservation standards for commercial refrigeration equipment to reduce energy bills for commercial customers, and the resulting net savings to be redirected to other forms of economic activity. DOE also realizes that these shifts in spending and economic activity could affect the demand for labor. To estimate these effects, DOE used an input/output model of the U.S. economy using Bureau of Labor Statistics (BLS) data (as described in Section IV.K; see Chapter 15 of the TSD for details).

This input/output model suggests the proposed commercial refrigeration equipment energy conservation standards are likely to slightly increase the net demand for labor in the economy. Neither the BLS data nor the input/output model used by DOE includes the quality or wage level of the jobs. As shown in Table V–28, DOE estimates that net indirect employment impacts from a proposed commercial refrigeration equipment standard are likely to be very small. The net increase in jobs is so small that it would be

[25] DOE anticipates a reduction in installed cost of LED systems over time. The projected reduction in price for LED systems is provided and discussed in Sections V.C and IV.B.3.c of this NOPR and Appendix B of the TSD.

imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment.

TABLE V–28—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT, JOBS IN 2042

Trial standard level	Net national change in jobs			
	2012	2022	2032	2042
1	0	324	448	505
2	−6	1,270	1,744	1,970
3	−15	1,680	2,312	2,606
4	−94	2,204	3,047	3,434
5	−315	3,317	4,607	5,187
Maximum Job Impact	−315	3,317	4,607	5,187

4. Impact on Utility or Performance of Equipment

In performing the engineering analysis, DOE considered design options that would not lessen the utility or performance of the individual classes of equipment. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6316(e)(1)) As presented in the screening analysis (Chapter 4 of the TSD), DOE did not consider design options that reduce the utility of the equipment. Because no design options were considered that reduce utility, DOE tentatively concluded that none of the efficiency levels proposed for commercial refrigeration equipment reduce the utility or performance of the equipment.

5. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It directs the Attorney General to determine in writing the impact, if any, of any lessening of competition likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and 6316(e)(1)) To assist the Attorney General in making such a determination, DOE has provided the Department of Justice (DOJ) with copies of this Notice and the TSD for review. During MIA interviews, domestic manufacturers indicated that foreign manufacturers have entered the commercial refrigeration equipment market over the past several years. Manufacturers also stated that while there has been significant consolidation with supermarket chains, little or no consolidation has occurred among commercial refrigeration manufacturers in recent years. DOE believes that these trends will continue to happen in this market regardless of the proposed standard level chosen.

6. Need of the Nation to Conserve Energy

An improvement in the energy efficiency of commercial refrigeration equipment is likely to improve the security of the Nation's energy system by reducing overall demand for energy, and thus reduce the Nation's reliance on foreign sources of energy. Reduced demand may also improve the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, DOE expects the proposed standards (TSL 4) to prevent the need for the construction of new power plants totaling approximately 643 MW of electricity generation capacity in 2042.

Enhanced energy efficiency also produces environmental benefits. The expected energy savings from higher commercial refrigeration equipment standards will reduce the emissions of air pollutants and greenhouse gases associated with energy production and fossil fuel usage. Table V–29 shows estimated cumulative CO_2, NO_X, and Hg emissions reductions for all the commercial refrigeration equipment classes over the forecast period. The expected energy savings from commercial refrigeration equipment standards will reduce the emissions of greenhouse gases associated with energy production, and it may reduce the cost of maintaining nationwide emissions standards and constraints.

TABLE V–29—SUMMARY OF EMISSIONS REDUCTIONS FOR COMMERCIAL REFRIGERATION EQUIPMENT

(cumulative reductions for equipment, 2012 to 2042)

	Trial Standard Levels				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Emissions Reductions.					
CO_2 (Mt)	7.37	28.47	37.37	43.50	63.17
NO_X (kt)	2.74	10.58	13.88	16.16	23.47
Hg (t)	0.09	0.36	0.47	0.54	0.80

Mt = million metric tons.
kt = thousand tons.
t = tons.

The estimated cumulative CO_2, NO_X, and Hg emission reductions for the proposed standard are 43.5 Mt, 16.16 kt, and 0.54 t, respectively, for all 15 equipment classes over the period from 2012 to 2042. However, TSL 5 provides the greatest reduction of emissions of all the TSLs considered. In the environmental assessment (Chapter 16 of the TSD), DOE reports estimated annual changes in CO_2, NO_X, and Hg emissions attributable to each TSL. As discussed in Section IV.L, DOE does not report SO_2 emissions reduction from power plants because reductions from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the emissions caps for SO_2.

The NEMS–BT modeling assumed that NO_X would be subject to the Clean Air Interstate Rule (CAIR) issued by the U.S. Environmental Protection Agency

on March 10, 2005.[26] 70 FR 25162 (May 12, 2005). On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *North Carolina* v. *Environmental Protection Agency*,[27] in which the court vacated the CAIR. If left in place, the CAIR would have permanently capped emissions of NO_X in 28 eastern States and the District of Columbia. As with the SO_2 emissions cap, a cap on NO_X emissions would have meant that equipment energy conservation standards are not likely to have a physical effect on NO_X emissions in States covered by the CAIR caps. While the caps would have meant that physical emissions reductions in those States would not have resulted from the energy conservation standards we are proposing today, the standards might have produced an environmental-related economic impact in the form of lower prices for emissions allowance credits, if large enough. DOE notes that the estimated total reduction in NO_X emissions, including projected emissions or corresponding allowance credits in States covered by the CAIR cap was between 0.004 and 0.034 percent of the nationwide NO_X emissions as a whole, percentages that DOE estimated were too small to affect allowance prices for NO_X under the CAIR.

Even though the D.C. Circuit vacated the CAIR, DOE notes that the D.C. Circuit left intact EPA's 1998 NO_X SIP Call rule, which capped seasonal (summer) NO_X emissions from electric generating units and other sources in 23 jurisdictions and gave those jurisdictions the option to participate in a cap and trade program for those emissions. See 63 Fed. Reg. 57356, 57359 (Oct. 27, 1998).[28] Accordingly, DOE is considering whether changes are needed to its plan for addressing the issue of NO_X reduction. DOE invites public comment on how the agency should address this issue, including how it might value NO_X emissions for States now that the CAIR has been vacated.[29]

With regard to mercury emissions, DOE is able to report an estimate of the physical quantity changes in mercury emissions associated with an energy conservation standard. Based on the NEMS–BT modeling, Hg emissions show a slight decrease in the period from 2012 to 2042. These changes in Hg emissions, as shown in Table V–29, are extremely small with a range of between 0.02 and 0.14 percent of national base case emissions depending on TSL.

The NEMS–BT model assumed that mercury emissions would be subject to EPA's Clean Air Mercury Rule[30] (CAMR), which would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010. Similar to SO_2 and NO_X, DOE assumed that under such a system, energy conservation standards would result in no physical effect on these emissions, but might result in an environmental-related economic benefit in the form of a lower price for emissions allowance credits, if large enough. DOE estimated that the change in Hg emissions from standards would not be large enough to influence allowance prices under CAMR.

On February 8, 2008, the D.C. Circuit issued its decision in *New Jersey* v. *Environmental Protection Agency*,[31] in which the Court, among other actions, vacated the CAMR referenced above. Accordingly, DOE is considering whether changes are needed to its plan for addressing the issue of mercury emissions in light of the D.C. Circuit's decision. DOE invites public comment on addressing mercury emissions in this rulemaking.

DOE is considering taking into account a monetary benefit of CO_2 emission reductions associated with this rulemaking. During the preparation of its most recent review of the state of climate science, the Intergovernmental Panel on Climate Change (IPCC) identified various estimates of the present value of reducing carbon-dioxide emissions by one ton over the life that these emissions would remain in the atmosphere. The estimates reviewed by the IPCC spanned a range of values. In the absence of a consensus on any single estimate of the monetary value of CO_2 emissions, DOE used an estimate identified by the study cited in Summary for Policymakers prepared by Working Group II of the IPCC's Fourth Assessment Report to estimate the potential monetary value of the CO_2 reductions likely to result from the standards under consideration in this rulemaking.

The estimated year-by-year reductions in CO_2 emissions were converted into monetary values ranging from the $0 and $14 per ton. These monetary estimates were based on an assumption of no benefit to an average benefit value reported by the IPCC and the values include a range of discount factors used in their development.[32] Based on DOE's consideration of the IPCC report, DOE escalated the average benefit value per ton in real 2007$ at 2.4 percent per year. The resulting estimates of the potential range of benefits associated with the reduction of CO_2 emissions are reflected in Table V–30.

[26] See *http://www.epa.gov/cleanairinterstaterule/*.

[27] Case No. 05–1244, 2008 WL 2698180 at *1 (D.C. Cir. July 11, 2008).

[28] In the NO_X SIP Call rule, EPA found that sources in the District of Columbia and 22 ''upwind'' states (States) were emitting NO_X (an ozone precursor) at levels that significantly contributed to ''downwind'' states not attaining the ozone NAAQS or at levels that interfered with states in attainment maintaining the ozone NAAQS. In an effort to ensure that ''downwind'' states attain or continue to attain the ozone NAAQS, EPA established a region-wide cap for NO_X emissions from certain large combustion sources and set a NO_X emissions budget for each State. Unlike the cap that CAIR would have established, the NO_X SIP Call Rule's cap only constrains seasonal (summer time) emissions. In order to comply with the NO_X SIP Call Rule, States could elect to participate in the NO_X Budget Trading Program. Under the NO_X Budget Trading Program, each emission source is required to have one allowance for each ton of NO_X emitted during the ozone season. States have flexibility in how they allocate allowances through their State Implementation Plans but States must remain within the EPA-established budget. Emission sources are allowed to buy, sell and bank NO_X allowances as appropriate. It should be noted that, on April 16, 2008, EPA determined that Georgia is no longer subject to the NO_X SIP Call rule.

[29] In anticipation of CAIR replacing the NO_X SIP Call Rule, many States adopted sunset provisions for their plans implementing the NO_X SIP Call Rule. The impact of the NO_X SIP Call Rule on NO_X emissions will depend, in part, on whether these implementation plans are reinstated.

[30] 70 FR 28606 (May 18, 2005).

[31] No. 05–1097, 2008 WL 341338, at *1 (D.C. Cir. Feb. 8, 2008).

[32] According to the IPCC, the mean social cost of carbon (SCC) reported in studies published in peer-reviewed journals was US$43 per ton of carbon. This translates into about $12 per ton of carbon dioxide. The social costs estimated represented the discounted present value of increasing (or decreasing) current emissions of carbon dioxide (or an equivalent greenhouse gas) by one ton. The literature review (Tol 2005) from which this mean was derived did not report the year in which these dollars are denominated. However, since the underlying studies spanned several years on either side of 2000, the estimate is often treated as year 2000 dollars. Updating that estimate to 2007 dollars yields a SCC of $14 per ton of carbon dioxide. Tol concluded that when only peer-reviewed studies published in recognized journals are considered, ''* * * climate change impacts may be very uncertain *but is unlikely that the marginal damage costs of carbon dioxide emissions exceed $50 per tonne carbon* [about $14 per metric ton of CO_2 or about $12.66 per short ton][emphasis added].'' He also concluded that the costs may be *substantially lower* than $50 per tonne of C. Tol's survey showed that 10 percent of the SCC estimates were actually negative, so that a lower bound of zero is not unreasonable.

TABLE V–30—PRELIMINARY ESTIMATES OF SAVINGS FROM CO_2 EMISSIONS REDUCTIONS UNDER CONSIDERED COMMERCIAL REFRIGERATION EQUIPMENT TRIAL STANDARD LEVELS

TSL	Estimated total CO_2 (Mt) emission reductions	Value of estimated CO_2 emission reductions based on IPCC range (million $) at 7% discount rate	Value of estimated CO_2 emission reductions based on IPCC range (million $) at 3% Discount Rate
1	7.37	0 to 43	0 to 93
2	28.47	0 to 166	0 to 361
3	37.37	0 to 218	0 to 473
4	43.50	0 to 253	0 to 551
5	63.17	0 to 368	0 to 800

DOE relied on the average of the IPCC reported estimate as an upper bound on the benefits resulting from reducing each metric ton of U.S. CO_2 emissions. It is important to note that estimate of the $14 per ton of CO_2 represents an average value of worldwide impacts from potential climate impacts caused by CO_2 emissions, and is not confined to impacts likely to occur within the U.S. In contrast, most of the other estimates of costs and benefits of increasing the efficiency of commercial refrigeration equipment discussed in this proposal include only the economic values of impacts that would be experienced in the U.S. Consequently, as DOE considers a monetary value for CO_2 emission reductions, the value might be restricted to a representation of those cost/benefits likely to be experienced in the United States. Currently, there are no estimated values for the U.S. benefits likely to result from CO_2 emission reductions. However, DOE expects that, if such values were developed, DOE would use those U.S. benefit values, and not world benefit values, in its analysis. DOE further expects that, if such values were developed, they would be lower than comparable global values. DOE invites public comment on the above discussion of CO_2.

DOE also investigated the potential monetary impact resulting from the impact of today's efficiency standards on SO_2, NO_X, and mercury (Hg) emissions. As previously stated, DOE's analysis assumed the presence of nationwide emission caps on SO_2 and caps on NO_X emissions in the 28 states covered by the CAIR caps. In the presence of emission caps, DOE concluded that no physical reductions in total sector emissions would occur, however DOE's estimates for reduction of these emissions could correspond to incremental changes in the prices of emissions allowances in cap-and-trade emissions markets rather than to physical emissions reductions. For SO_2, the changes in annual emissions from today's rule would be less than 0.03 percent of the annual SO_2 allowances, a change that DOE estimated is too small to influence allowance prices. Similarly, for NO_X, in the 28 CAIR states, the emissions savings from today's rule would be less than 0.018 percent of NO_X allowances, also a change that DOE also estimated is too small to influence allowance prices.

In DOE's analysis, for 22 non-CAIR states, emissions of NO_X from electricity generation were not controlled by a regulatory cap. By 2012, DOE projected that the NO_X emissions in the non-CAIR states would be about 25 percent of the national total.[33] Mercury emissions are also not controlled by a regulatory cap. For these two emissions, DOE estimated the national monetized benefits of emissions reductions from today's rule based on environmental damage estimates from the literature. Non-CAIR emissions would not be controlled by an emissions cap so those emissions would actually be reduced by the PTAC-PTHP energy savings. Available estimates suggest a very wide range of monetary values for NO_X emissions, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001 dollars[34] or a range of $432 per ton to $4,441 per ton in 2007 dollars. The basic science linking mercury emissions from power plants to impacts on humans is considered highly uncertain. However, DOE located two estimates of the environmental damages of mercury based on two estimates of the adverse impact of childhood exposure to methyl mercury on IQ for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high end estimate is based on an estimate of the current aggregate cost of the loss of IQ that results from exposure of American children of U.S. power plant origin of $1.3 billion per year in year 2000$, which works out to $32.6 million per ton emitted per year (2007$).[35] The low-end estimate was $664,000 per ton emitted in 2004$ or $729,000 per ton in 2007$), which DOE derived from a published evaluation of mercury control using different methods and assumptions from the first study, but also based on the present value of the lifetime earnings of children exposed.[36] The resulting estimates of the potential range of the present value benefits associated with the reduction of NO_X in the 22 non-CAIR states and national reductions in Hg emissions are reflected in Table V.31 and Table V.32

[33] U.S. NO_X emissions have been trending downward steadily since 1995, falling from 31.5 million tons in 1995 to 15.2 million in 2006 (EIA 2007). Although non-CAIR states' emissions have also fallen, the emissions in the CAIR states have fallen more rapidly; thus, the CAIR states' percentage of the total has also fallen from 87.4% in 1997 to 80.9% in 2006. For purposes of this analysis, DOE assumed that the CAIR states, percentage of emissions continues to decline until it reaches 75 percent in 2012. Seventy-five percent of emissions reductions are allocated to the CAIR states thereafter. Consequently non-CAIR state emissions would be about 25% of the total. [Reference: EIA (Energy Information Administration). 2007. Estimated Emissions for U.S. Electric Power Industry by State, 1990–2006. State Historical Tables for 2006. Released: October 26, 2007. Next Update: October 2008 *http://www.eia.doe.gov/cneaf/electricity/epa/emission_state.xls]*.

[34] 2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities. Office of Management and Budget Office of Information and Regulatory Affairs, Washington, DC.

[35] Trasande, L., *et al.*, ''Applying Cost Analyses to Drive Policy that Protects Children'' 1076 ANN. N.Y. ACAD. SCI. 911 (2006).

[36] Ted Gayer and Robert Hahn, Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions, Regulatory Analysis 05–01. AEI-Brookings Joint Center For Regulatory Studies, Washington, DC, 31 pp., 2004. A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study.

TABLE V.31—PRELIMINARY ESTIMATES OF MONETARY SAVINGS FROM REDUCTIONS OF HG (NATION) AND NO_X (NON-CAIR STATES) BY TRIAL STANDARD LEVEL AT A 7% DISCOUNT RATE

Standard size TSL	Estimated cumulative NO_X (kt) emission reductions *	Value of estimated NO_X emission reductions (million 2007$)	Estimated cumulative Hg (tons) emission reductions*	Value of estimated Hg emission reductions (million 2007$)
1	2.74	$0.1–$0.6	0.09	$0.0–$0.1
2	10.58	0.2–2.3	0.36	0.0–0.5
3	13.88	0.3–3.0	0.47	0.0–0.6
4	16.16	0.3–3.5	0.54	0.0–0.7
5	23.47	0.5–5.1	0.80	0.0–1.0

* Values in Table V.31 may not appear to sum to the cumulative values in Table V–29 due to rounding.

TABLE V.32—PRELIMINARY ESTIMATES OF MONETARY SAVINGS FROM REDUCTIONS OF HG (NATION) AND NO_X (NON-CAIR STATES) BY TRIAL STANDARD LEVEL AT A 3% DISCOUNT RATE

Standard size TSL	Estimated cumulative NO_X (kt) emission reductions *	Value of estimated NO_X emission reductions (million 2007$)	Estimated cumulative Hg (tons) emission reductions	Value of estimated Hg emission reductions (million 2007$)
1	2.74	$0.1–$1.5	0.09	$0.0–$1.0
2	10.58	0.5–5.6	0.36	0.1–3.9
3	13.88	0.7–7.4	0.47	0.1–5.1
4	16.16	0.8–8.6	0.54	0.1–5.9
5	23.47	1.2–12.5	0.80	0.2–8.6

* Values in Table V.32 may not appear to sum to the cumulative values in Table V–29 due to rounding.

As discussed above, with the D.C. Circuit vacating the CAIR, DOE is considering how it should address the issue of NO_X reduction and corresponding monetary valuation. DOE invites public comment on how the agency should address this issue, including how to value NO_X emissions for States in the absence of the CAIR.

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(e)(1)) Under this provision, DOE considered LCC impacts on identifiable groups of customers, such as customers of different business types, who may be disproportionately affected by any national energy conservation standard level. DOE also considered the reduction in generated capacity that could result from the imposition of any national energy conservation standard level.

C. Proposed Standard

EPCA specifies that any new or amended energy conservation standard for any type (or class) of covered equipment shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1)) The new or amended standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(e)(1))

DOE considered the impacts of standards at each of five trial standard levels, beginning with the most efficient level (TSL 5) and worked down to a level where DOE determined the benefits of potential standards outweighed the burdens of potential standards. To aid the reader as DOE discusses the benefits and/or burdens of each TSL, Table V–33 presents a summary of quantitative analysis results for each TSL based on the assumptions and methodology discussed above. This table presents the results or, in some cases, a range of results, for each TSL. The range of values reported in this table for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

TABLE V–33—SUMMARY OF RESULTS BASED UPON THE AEO2007 REFERENCE CASE ENERGY PRICE FORECAST*

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Primary Energy Saved (quads)	0.141	0.545	0.715	0.832	1.208
7% Discount Rate	0.034	0.132	0.173	0.201	0.292
3% Discount Rate	0.073	0.284	0.372	0.433	0.603
Generation Capacity Reduction (GW) **	0.109	0.421	0.552	0.643	0.934
NPV (2007$ billion):					
7% Discount Rate	0.33	0.98	1.20	1.10	(0.20)
3% Discount Rate	0.82	2.59	3.25	3.24	1.16
Industry Impacts:					
Industry NPV (2007$ million)	0–(63)	6–(88)	(17)–(129)	(40)–(180)	(18)–(285)
Industry NPV (% Change)	0–(12)	1–(17)	(3)–(25)	(8)–(35)	(3)–(56)
Cumulative Emissions Impacts: †					

TABLE V–33—SUMMARY OF RESULTS BASED UPON THE AEO2007 REFERENCE CASE ENERGY PRICE FORECAST*—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
CO_2 (Mt)	7.37	28.47	37.37	43.50	63.17
NO_X (kt)	2.74	10.58	13.88	16.16	23.47
Hg (t)	0.09	0.36	0.47	0.54	0.80
Life-Cycle Cost:					
Net Savings (%)	17–48	34–68	61–89	68–93	24–93
Net Increase (%)	0	0	0	0–19	0–71
No Change (%)	52–83	32–66	11–39	7–32	2–19
Mean LCC Savings (2007$)	192–3132	551–4005	710–4089	693–3818	(673)–3818
Mean PBP (yrs)	0.4–1.2	0.6–2.6	1.3–4.6	1.4–6.1	1.4–12.6

* Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Change in installed generation capacity by the year 2042 based on AEO2007 Reference Case.
† CO_2 emissions impacts include physical reductions at power plants. NO_X emissions impacts include physical reductions at power plants as well as production of emissions allowance credits where NO_X emissions are subject to emissions caps.

First, DOE considered TSL 5, the most efficient level for all equipment classes. TSL 5 would likely save an estimated 1.208 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.292 quads. For the Nation as a whole, DOE projects that TSL 5 would result in a net decrease of $200 million in NPV, using a discount rate of seven percent. Five equipment classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M) show negative NPV at TSL 5. The emissions reductions at TSL 5 are 63.17 Mt of CO_2 and up to 23.47 kt of NO_X. DOE also estimates that under TSL 5, total generating capacity in 2042 will decrease compared to the base case by 0.934 gigawatts (GW).

At TSL 5, DOE projects that the average commercial refrigeration equipment customer will experience a reduction in LCC compared to the baseline for 12 of the 15 equipment classes analyzed, while three equipment classes (VOP.RC.M, SVO.RC.M, SOC.RC.M) experienced an increase in LCC. These three equipment classes are among the five identified above that DOE showed had negative NPV. The two additional classes, SVO.SC.M and VOP.SC.M, had positive LCC savings at TSL 5, but at substantially reduced values compared to those shown at TSL 4 or TSL 3. LCC savings for all 15 equipment classes vary from negative (−$673) to positive $3,818. At TSL 5, DOE estimates the fraction of customers experiencing LCC increases will vary between 0 and 71 percent depending on equipment class. The mean payback period for the average commercial refrigeration equipment customer at TSL 5 compared to the baseline level is projected to be between 1.4 and 12.6 years, depending on equipment class.

At higher TSLs, manufacturers have a more difficult time fully passing on larger increases in MPC to customers, and therefore manufacturers expect the higher end of the range of impacts to be reached at TSL 5 (i.e., a drop of 55.77 percent in INPV). At TSL 5, there is the risk of very large negative impacts on the industry if manufacturers' profit margins are reduced. Manufacturers expressed great concern at the possibility of having to manufacture an entire equipment line at the max-tech levels, because customers put a much higher priority on marketing and displaying their goods than they do on energy efficiency. For this reason, manufacturers fear that they will be unable to recover the additional cost incurred from producing the most efficient equipment possible. See Section IV.I for additional manufacturer concerns.

After carefully considering the analysis and weighing the benefits and burdens of TSL 5, DOE tentatively concludes that the estimated benefits of energy savings and related benefits would not outweigh the potential $200 million net economic cost to the Nation (at the seven percent discount rate), as well as the economic burden on consumers and the potential negative impact on manufacturers through reduction in INPV.

As discussed above, DOE proposes to reject TSL 5 because DOE finds that the benefits to the Nation of TSL 5 (energy savings, commercial consumer average LCC savings, and emission reductions) do not outweigh the costs (national NPV decrease and loss of manufacturer INPV), and, therefore, DOE proposes that TSL 5 is not economically justified. This proposal reflects DOE's tentative conclusion that there remains too much uncertainty regarding the timing and extent of anticipated reductions in LED costs to justify standards at the TSL 5 level. While considerable information is available that suggests LED costs are likely to decline more than assumed in DOE's analysis (see discussion in sections IV.B.3.c, V.B.1.a, and V.B.3.b), DOE believes that it must have a higher degree of confidence that the timing and extent of such further cost reductions will warrant higher standards before it imposes such requirements. DOE is soliciting public comments on these and other issues, and will reconsider this tentative conclusion during the development of its final rule. (See Section VII.E.1.)

As mentioned above, if LED system costs achieve the 50 percent reduction projection by 2012, the estimated NPV at TSL 5 would be a positive $1.62 billion at a seven percent discount rate and $4.76 billion at the three percent discount rate, and is likely to result in a net benefit. DOE requests comment on whether the benefits of TSL 5 would outweigh the burdens of TSL 5, considering the potential impacts of future LED cost projections. This is identified as Issue 7 under ''Issues on Which DOE Seeks Comment'' in Section VII.E of this NOPR. DOE also seeks comment on the extent to which stakeholders expect projected LED cost reductions would occur, the timing of the projected LED cost reductions, and the certainty of the projected LED cost reductions. Also, considering the rapid development of LED technology and the steady reductions in cost, DOE seeks comment on the extent to which manufacturers would adopt LED technology into the design of commercial refrigeration equipment in the absence of standards.

DOE then considered TSL 4, which provides for all equipment classes the maximum efficiency levels that the analysis showed to have positive NPV to the Nation. TSL 4 would likely save an estimated 0.832 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.201 quads. For the

Nation as a whole, DOE projects that TSL 4 would result in a net increase of $1.10 billion in NPV, using a discount rate of seven percent. The estimated emissions reductions at TSL 4 are 43.50 Mt of CO_2 and up to 16.16 kt of NO_X. Total generating capacity in 2042 is estimated to decrease compared to the base case by 0.643 GW under TSL 4.

At TSL 4, DOE projects that the average commercial refrigeration equipment customer will experience a reduction in LCC compared to the baseline for all 15 equipment classes analyzed, ranging from $693 to $3,818 depending on equipment class. The mean payback period for the average commercial refrigeration equipment customer at TSL 4 is projected to be between 1.4 and 6.1 years compared to the purchase of baseline equipment.

As is the case with TSL 5, DOE believes the majority of manufacturers would need to completely redesign most equipment offered for sale, and therefore DOE expects that commercial refrigeration manufacturers will have some difficulty fully passing on larger MPC increases to customers. Similar to TSL 5, manufacturers expect the higher end of the range of impacts to be reached at TSL 4 (i.e., a drop of 35.3 percent in INPV). However, compared to the baseline, all 15 equipment classes showed significant positive life-cycle cost savings on a national average basis and few customers experienced an increase in LCC with a standard at TSL 4 compared with purchasing baseline equipment. The payback periods calculated for all equipment classes were lower than the life of the equipment.

After carefully considering the analysis and weighing the benefits and burdens of TSL 4, DOE proposes that TSL 4 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified and that the estimated benefits to the Nation outweigh the costs. DOE proposes that TSL 4 is technologically feasible because the technologies required to achieve these levels are already in existence. Therefore, DOE is proposing TSL 4 as the energy conservation standards for commercial refrigeration equipment in this NOPR.

However, for the reasons discussed above, DOE also requests comments on whether it should adopt TSL 5 for all or some of the equipment classes.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

DOE has determined that today's regulatory action is an ''economically significant'' action under Section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). The Executive Order requires that each agency identify in writing the specific market failure or other specific problem that it intends to address that warrants new agency action, as well as assess the significance of that problem to determine whether any new regulation is warranted. Executive Order 12866, § 1(b)(1).

In the ANOPR for this rulemaking, DOE requested feedback and data on a number of issues related to Executive Order 12866 and the existence of a market failure in the commercial refrigeration equipment industry. This request included (1) Data on, and suggestions for testing the existence and extent of, potential market failures to complete an assessment in the proposed rule of the significance of any failures; (2) data on the efficiency levels of existing commercial refrigeration equipment in use by store type; (3) comment on the Federal ENERGYSTAR program and its penetration into the commercial refrigeration equipment market as a resource on the availability and benefits of energy efficient refrigeration units; (4) data on owner-occupied buildings versus leased/non-owner occupied buildings for given store types and their associated use of high-efficiency equipment; and (5) comment on the weight that should be given to these factors in DOE's determination of the maximum efficiency level at which the total benefits are likely to exceed the total burdens resulting from a DOE standard. Following publication of the ANOPR and subsequent public comment period, DOE did not receive any feedback related to these requests.

Much of the industry segment that uses commercial refrigeration equipment tends to be large grocery stores, multi-line retailers, small grocery stores, or convenience stores. DOE believes that these owners may lack corporate direction on energy policy. The transaction costs for these owners to research, purchase, and install optimum efficiency equipment options are too high to make such action commonplace. DOE believes that there is a lack of information about energy efficiency opportunities in the commercial refrigeration equipment market available to these owners. Unlike residential heating and air conditioning equipment, commercial refrigeration equipment is not included in energy labeling programs such as the Federal Trade Commission's energy labeling program. Furthermore, the energy use of this equipment depends on usage. Information is not readily available for the owners to make a decision on whether improving the energy efficiency of commercial refrigeration equipment is cost-effective. DOE seeks data on the efficiency levels of existing commercial refrigeration equipment in use by owners, electricity price, and equipment class. Being part of the food merchandising industry, energy efficiency and energy cost savings are not the primary drivers of the business, as is selling food products to shoppers. This may incur transaction costs, thus preventing access to capital to finance energy efficiency investment.

Today's action also required a regulatory impact analysis (RIA) and, under the Executive Order, was subject to review by the Office of Information and Regulatory Affairs (OIRA) in the OMB. DOE presented to OIRA for review the draft proposed rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. They are available for public review in the Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The RIA is contained in the TSD prepared for the rulemaking. The RIA consists of (1) a statement of the problem addressed by this regulation and the mandate for Government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

The RIA calculates the effects of feasible policy alternatives to commercial refrigeration equipment standards and provides a quantitative comparison of the impacts of the alternatives. DOE evaluated the alternatives in terms of their ability to achieve significant energy savings at reasonable cost, and compared it to the effectiveness of the proposed rule. DOE analyzed these alternatives using a series of regulatory scenarios as input to the NES/shipments model for commercial refrigeration equipment, which DOE modified to provide inputs for these voluntary measures.

DOE identified the following major policy alternatives for achieving

increased commercial refrigeration equipment energy efficiency:

- No new regulatory action.
- Commercial customer rebates.
- Commercial customer tax credits.

DOE evaluated each alternative's ability to achieve significant energy savings at reasonable cost (Table VI–1), and compared it to the effectiveness of the proposed rule.

TABLE VI–1—NON-REGULATORY ALTERNATIVES TO STANDARDS

Policy alternatives	Energy savings* (quads)	Net present value** (billion 2007$)	
		7% discount rate	3% discount rate
No New Regulatory Action	0	0	0
Commercial Customer Rebates	0.099	0.139	0.315
Commercial Customer Tax Credits†	0.084	0.178	0.381
Today's Standards at TSL 4	0.832	1.10	3.24

* Energy savings are in source quads.
** Net present value is the value in the present of a time series of costs and savings. DOE determined the net present value from 2012 to 2062 in billions of 2007$.
† These are example values for TSL 3.

The net present value amounts shown in Table VI–1 refer to the NPV for commercial customers. The following paragraphs discuss each policy alternative listed in Table VI–1. (See Chapter 17 of the TSD, Regulatory Impact Analysis, for further details.)

No new regulatory action. The case in which no regulatory action is taken for commercial refrigeration equipment constitutes the base case (or No Action) scenario. By definition, no new regulatory action yields zero energy savings and a net present value of zero dollars.

Commercial Customer Rebates. DOE modeled the impact of the customer rebate policy by determining the increased customer participation rate due to the rebates (i.e., the percent increase in customers purchasing high-efficiency equipment). DOE modeled a national rebate program after existing utility rebate programs that provide incentives for incorporating high-efficiency technologies into commercial refrigeration equipment. The reduction in retail cost of the higher efficiency cases was calculated and the methodology developed for the NIA used to assess relative shipments by efficiency level was used to assess relative shipments by efficiency level under the rebate scenario. DOE applied the resulting increase in market share of efficient units to the NES spreadsheet model to estimate the resulting NES and NPV for the rebate scenario with respect to the base case.

Commercial Customer Tax Credits. DOE assumed a commercial or industrial customer Federal tax credit patterned after the tax credits created in EPACT 2005. EPACT 2005 provided tax credits to customers who purchase and install specific products such as energy efficient windows, insulation, doors, roofs, and heating and cooling equipment. DOE presumed the presence of a certification or other program that could be used to identify high-efficiency commercial refrigeration equipment by energy consumption, and assumed TSL 3 as a likely candidate level for a tax credit incentive, given that it was the minimum LCC level. DOE then reviewed the incremental customer price increase to reach TSL 3 from the baseline for all 15 equipment classes. For 12 of the equipment classes, the incremental cost was between 6.1 and 21.3 percent. For three equipment classes (SOC.RC.M, HZO.RC.M, HZO.RC.L), the incremental cost was less than five percent. In its tax credit analysis, DOE assumed a flat tax credit equal to five percent of the customer price for equipment sold at TSL 3 or higher for each primary equipment class, with the exception of SOC.RC.M, HZO.RC.M, and HZO.RC.L. DOE assumed a 100 percent application rate for the tax credit from commercial refrigeration equipment customers and reduced the retail equipment price by five percent for TSL 3, TSL 4, and TSL 5 for the 12 equipment classes. The reductions in retail cost of commercial refrigeration equipment at these levels was calculated and the methodology developed for the NIA used to assess relative shipments by efficiency level under the tax credit scenario. DOE applied the resulting increase in market share of efficient units to the NES spreadsheet model to estimate the resulting NES and NPV for the tax credit scenario with respect to the base case. To see results for tax credits for equipment meeting or exceeding TSL 5, see the Regulatory Impact Analysis of the TSD.

Performance Standards. Each of the non-regulatory alternatives must be gauged against the performance standards DOE is proposing in this proposed rule. DOE also considered, but did not analyze, the potential of bulk Government purchases and early replacement incentive programs as alternatives to the proposed standards. In the case of bulk Government purchases, commercial refrigeration equipment is a very small part of the total market and the volume of high-efficiency equipment purchases that the Federal Government might make would have very limited impact on improving the overall market efficiency of commercial refrigeration equipment. In the case of replacement incentives, several policy options exist to promote early replacement, including a direct national program of customer incentives, incentives paid to utilities to promote an early replacement program, market promotions through equipment manufacturers, and replacement of Federally owned equipment. Previous analysis by DOE of methods to promote early replacement for other covered equipment have suggested that the energy savings realized through a one-time early replacement of existing stock equipment has not resulted in energy savings commensurate to the cost to run and administer the program. As a consequence, DOE did not analyze this option in detail.

As Table VI–1 indicates, none of the alternatives DOE examined would save as much energy as today's proposed rule. Also, several of the alternatives would require new enabling legislation, since authority to carry out those alternatives does not exist. The tax credit scenario would also require the development of a database of commercial refrigeration equipment that would meet or exceed the TSL 3 efficiency level in order to determine compliance with the tax credit.

B. Review Under the Regulatory Flexibility Act/Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov*.

Small businesses, as defined by the Small Business Administration (SBA) for the commercial refrigeration equipment manufacturing industry, are manufacturing enterprises with 750 employees or fewer. DOE used the small business size standards published on January 31, 1996, as amended by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3286 and codified at 13 CFR Part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description. Commercial refrigeration equipment manufacturing is classified under NAICS 333415.

Prior to issuing this notice of proposed rulemaking, DOE interviewed two small businesses affected by the rulemaking. DOE also obtained information about small business impacts while interviewing manufacturers that exceed the small business size threshold of 750 employees.

DOE reviewed ARI's listing of its commercial refrigeration equipment manufacturer members and surveyed the industry to develop a list of all domestic manufacturers. DOE also asked stakeholders and ARI representatives within the industry if they were aware of any other small business manufacturers. DOE then examined publicly available data and contacted manufacturers, when needed, to determine if they meet the SBA's definition of a small manufacturing facility and if their manufacturing facilities are located within the United States. Based on this analysis, DOE identified nine small manufacturers of commercial refrigeration equipment. DOE conducted on-site interviews with two small manufacturers who agreed to be interviewed to determine if there are differential impacts on these companies that may result from new energy conservation standards.

DOE found that, in general, small manufacturers have the same concerns as large manufacturers regarding new energy conservation standards. DOE summarized the key issues for commercial refrigeration equipment manufacturers in Section IV.I.3.a of today's notice. Both manufacturers echoed the same concerns regarding new energy conservation standards as the larger manufacturers, including investments needed to meet standards, meeting customer needs, equipment sales, and coverage of niche equipment. Specifically, DOE found no significant differences in the R&D emphasis or marketing strategies between small business manufacturers and large manufacturers. Therefore, for the equipment classes manufactured primarily by the small businesses, DOE believes the GRIM analysis, which models each equipment class separately, is representative of the small businesses affected by standards. The qualitative and quantitative GRIM results are summarized in Section V.B.2 of today's notice.

DOE reviewed the standard levels considered in today's notice of proposed rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Based on this review, DOE has prepared an IRFA for this rulemaking. The IRFA describes potential impacts on small businesses associated with commercial refrigeration equipment design and manufacturing.

The potential impacts on commercial refrigeration equipment manufacturers are discussed in the following sections. DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

1. Reasons for the Proposed Rule

Part A–1 of Title III of EPCA addresses the energy efficiency of certain types of commercial and industrial equipment. (42 U.S.C. 6311–6317) EPACT 2005, Pub. L. 109–58, included an amendment to Part A–1 requiring that DOE prescribe energy conservation standards for the commercial refrigeration equipment that is the subject of this rulemaking. (EPACT 2005, Section 136(c); 42 U.S.C. 6313(c)(4)(A)) Hence, DOE is proposing in today's notice, energy conservation standards for commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers.

2. Objectives of, and Legal Basis for, the Proposed Rule

EPCA provides that any new or amended standard for commercial refrigeration equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) But EPCA precludes DOE from adopting any standard that would not result in significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(e)(1)) Moreover, DOE may not prescribe a standard for certain equipment if no test procedure has been established for that equipment, or if DOE determines by rule that the standard is not technologically feasible or economically justified, and that such standard will not result in significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(e)(1)) EPCA also provides that, in deciding whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens after receiving comments on the proposed standard. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1)) To determine whether economic justification exists, DOE reviews comments received and conducts analysis to determine whether the economic benefits of the proposed standard exceed the burdens to the greatest extent practicable, taking into consideration seven factors set forth in 42 U.S.C. 6295(o)(2)(B) and 6316(e)(1) (see Section II.B of this preamble).

EPCA also states that the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and 6316(e)(1)) Further information concerning the background of this rulemaking is provided in Chapter 1 of the TSD.

3. Description and Estimated Number of Small Entities Regulated

DOE reviewed ARI's listing of commercial refrigeration equipment manufacturer members and surveyed the industry to develop a list of every manufacturer. DOE also asked stakeholders and ARI representatives within the industry if they were aware of any other small business manufacturers. DOE then looked at publicly available data and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a small business manufacturing facility and have their manufacturing facilities located within the U.S. Based on this analysis, DOE estimates that there are nine small commercial refrigeration equipment manufacturers. See Chapter 13 of the TSD for further discussion about the methodology used in DOE's manufacturer impact analysis and its analysis of small-business impacts.

4. Description and Estimate of Compliance Requirements

Potential impacts on manufacturers, including small businesses, come from impacts associated with commercial refrigeration equipment design and manufacturing. The margins and/or market share of manufacturers, including small businesses, in the commercial refrigeration equipment industry could be negatively impacted in the long term by the standard levels under consideration in this notice of proposed rulemaking, specifically TSL 4. The level of research and development needed to meet energy conservation standards increases with more stringent energy conservation standards. DOE expects that small manufacturers will have more difficulty funding the required research and development necessary to meet energy conservation standards than larger manufacturers. Therefore, at proposed TSL 4, as opposed to lower TSLs, small manufacturers would have less flexibility in choosing a design path. However, as discussed under subsection 6 (Significant alternatives to the rule) below, DOE expects that the differential impact on small commercial refrigeration equipment manufacturers (versus large businesses) would be smaller in moving from proposed TSL 1 to proposed TSL 2 than it would be in moving from proposed TSL 4 to proposed TSL 5. The rationale for DOE's expectation is best discussed in a comparative context and is therefore elaborated upon in subsection 6 (Significant alternatives to the rule). As discussed in the introduction to this IRFA, DOE expects that the differential impact associated with commercial refrigeration equipment design and manufacturing on small businesses would be negligible.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

The primary alternatives to the proposed rule considered by DOE are the other TSLs besides the one being considered today, proposed TSL 4. In addition to the other TSLs considered, the TSD associated with this proposed rule includes a report referred to in Section VI.A in the preamble as the regulatory impact analysis (RIA-discussed earlier in this report and in detail in the TSD). This report discusses the following policy alternatives: (1) No new regulatory action, (2) commercial customer rebates, and (3) commercial customer tax credits. The energy savings of these regulatory alternatives are one to two orders of magnitude smaller than those expected from the standard levels under consideration. The range of economic impacts of these regulatory alternatives is an order of magnitude smaller than the range of impacts expected from the standard levels under consideration.

The commercial refrigeration equipment industry is highly customized. Customers demand high levels of customization from commercial refrigeration equipment manufacturers to differentiate themselves from other retail stores. They do not want to lose any functionality or utility in their equipment, such as display area, because this affects their ability to merchandise products. Often, the customer's desire for easy consumer access requires equipment that is less energy efficient. They also do not want to lose any flexibility in design choices, such as lighting options. All manufacturers, including small businesses, would have to develop designs to enable compliance to higher TSLs. Product redesign costs tend to be fixed and do not scale with sales volume. Thus, small manufacturers would be at a relative disadvantage at higher TSLs because research and development efforts would be on the same scale as those for larger companies, but these expenses would be recouped over smaller sales volumes.

At proposed TSL 5, the max-tech level, manufacturers stated their concerns over the ability to be able to produce equipment by the future effective date of the standard. At proposed TSL 5, DOE estimates that the majority of manufacturers would be negatively impacted. Based on manufacturer interviews, some manufacturers stated that they could not meet proposed TSL 5 for medium-temperature equipment, and that they would need technological innovation to achieve these levels by 2012. Manufacturers believe that setting standards at the maximum level will affect their customers' ability to merchandise products by limiting the flexibility in choosing design options. For example, at TSL 5 specifically, the use of LED lighting technology may be necessary to meet the proposed levels for many equipment classes. Manufacturers expect that having limited choices in design options would commoditize the industry and reduce profit margins. This concern was echoed by all manufacturers, not just small business manufacturers.

For the proposed standard, TSL 4, and for alternative TSLs, TSL 1 through 3, DOE expects that impacts to small manufacturers would be less than the impacts described above for TSL 5. At lower TSLs, the differential impacts to small manufacturers are diminished because research and development efforts are less at lower TSLs. Chapter 12 of the TSD contains additional information about the impact of this rulemaking on manufacturers. As mentioned above, the other policy alternatives (no new regulatory action, commercial customer rebates, and commercial customer tax credits) are described in Section VI.A of the preamble and in the Regulatory Impact Analysis, Chapter 17 of the TSD. Since the impacts of these policy alternatives are lower than the impacts described above for TSL 5, DOE expects that the impacts to small manufacturers would also be less than the impacts described above for the proposed standard levels. DOE requests comment on the impacts to small business manufacturers for these and any other possible alternatives to the proposed rule. DOE will consider any comments received regarding impacts to small business manufacturers for all the alternatives identified, including those in the RIA, for the Final Rule.

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the

Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE is preparing an environmental assessment of the impacts of the proposed rule. DOE is preparing an environmental assessment of the impacts of the proposed rule. The assessment will include an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change as well as other types of environmental impacts. DOE anticipates completing a Finding of No Significant Impact (FONSI) before publishing the final rule on commercial refrigeration equipment, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR Part 1021).

E. Review Under Executive Order 13132

Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d) and 6316(b)(2(D)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

DOE reviewed this regulatory action under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), which requires each Federal agency to assess the effects of Federal regulatory actions on State, local and Tribal governments and the private sector. Today's final rule may impose expenditures of $100 million or more on the private sector. It does not contain a Federal intergovernmental mandate.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the notice of final rulemaking and the ''Regulatory Impact Analysis'' section of the TSD for this final rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by sections 325(o), 345(a) and 342(c)(4)(A) of EPCA (42 U.S.C. 6295(o), 6316(a) and 6313(c)(4)(A)), today's proposed rule would establish energy conservation standards for commercial refrigeration equipment that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for today's final rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by

OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's Notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA, OMB, a Statement of Energy Effects for any proposed significant energy action. A significant energy action is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, the OMB, in consultation with the Office of Science and Technology (OSTP), issued its Final Information Quality Bulletin for Peer Review (Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information.'' The Bulletin defines ''influential scientific information'' as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (January 14, 2005).

In response to OMB's Bulletin, DOE conducted formal, in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. The Energy Conservation Standards Rulemaking Peer Review Report dated February 2007 has been disseminated and is available at *http://www.eere.energy.gov/buildings/appliance_standards/ peer_review.html.*

VII. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are provided in the **DATES** and **ADDRESSES** sections at the beginning of this document. Anyone who wants to attend the public meeting must notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's Notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Please hand-deliver requests to speak to the address shown under the heading *''Hand Delivery/Courier''* in the **ADDRESSES** section of this NOPR, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Also, requests may be sent by mail to the address shown under the heading *''Postal Mail''* in the **ADDRESSES** section of this NOPR, or by e-mail to *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE asks persons selected to be heard to submit a copy of their statements at least two weeks before the public meeting, either in person, by postal mail, or by e-mail as described in the preceding paragraph. Please include an electronic copy of your statement on a computer diskette or compact disk when delivery is by postal mail or in person. Electronic copies must be in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format. At its discretion, DOE may permit any person who cannot supply an advance copy of his or her statement to participate, if that person has made alternative arrangements with the Building Technologies Program. In such situations, the request to give an oral presentation should ask for alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and Section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record and transcribe the proceedings. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings, and any other aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to the public meeting. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor,

Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding all aspects of this NOPR before or after the public meeting, but no later than the date provided at the beginning of this notice of proposed rulemaking. Please submit comments, data, and information electronically to the following e-mail address: *commercialrefrigeration.rulemaking@ee.doe.gov*. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE–2006–STD–0126 and/or RIN 1904–AB59, and whenever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document. No telefacsimiles (faxes) will be accepted.

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties concerning:

1. LED Price Projections

TSL 5 has an estimated −$200 million burden on the Nation. DOE recognizes that anticipated reductions in LED lighting costs by the effective date of the rule could shift the NPV, at the seven percent discount rate, for TSL 5 from a negative NPV (−$200 million) to a positive NPV. DOE calculated that a reduction in LED system cost of six percent would be sufficient to ensure a slightly positive aggregate NPV at TSL 5, at the seven percent discount rate, when compared with the base case. DOE fully expects that the aggregate six percent reduction in LED system costs could be attained and even exceeded by 2012 because of the rapid development of LED technology. Furthermore, if LED system costs achieve the 50 percent reduction projection, the NPV at a seven percent discount rate for TSL 5 would be substantially positive. DOE requests data or information on projected LED cost reductions and basis for such projections. DOE also seeks comment on its consideration of projected LED prices. DOE also seeks comment on the extent to which stakeholders expect projected LED cost reductions would occur, the timing of the projected LED cost reductions, and the certainty of the projected LED cost reductions. Also, considering the rapid development of LED technology and the steady reductions in cost, DOE seeks comment on the extent to which manufacturers would adopt LED technology into the design of commercial refrigeration equipment in the absence of standards. DOE recognizes that LED system replacement costs assumed in its LCC analysis would also be affected by projected LED cost reductions and seeks comment on how it can best predict the cost for LED fixture replacements in the LCC analysis. (See Section V.C of this NOPR for further details.)

2. Base Case Efficiency

DOE recognizes that baseline efficiency trends can change if equipment costs are different than those projected. For example, if LED prices drop more than assumed in the engineering analysis, consumer demand for LED-equipped equipment could change. DOE seeks comment on whether shipments of LED-equipped equipment would change if LED costs drop and if so, the extent and timing of such shipment changes. See Section IV.G.1.

3. Operating Temperature Ranges

One factor in determining which equipment class a commercial refrigeration equipment unit belongs to is its designed operating temperature. DOE is organizing equipment classes based on three operating temperature ranges. Medium temperature equipment operates at or above 32 °F, low temperature equipment operates at temperatures below 32 °F and greater than 5 °F, and ice-cream temperature equipment operates at or below −15 °F. DOE seeks comment on the temperatures selected to categorize equipment classes. (See Section IV.A.2 of this NOPR for further details.)

4. Offset Factors

For the NOPR, DOE developed offset factors as a way to adjust the energy efficiency requirements for smaller-sized equipment in each equipment class analyzed. These offset factors account for certain components of the refrigeration load (such as the conduction end effects) that remain constant even when equipment sizes vary. These constant loads affect smaller cases disproportionately. The offset factors are intended to approximate these constant loads and provide a fixed end point, corresponding to a zero TDA or zero volume case, in an equation that describes the relationship between energy consumption and the corresponding TDA or volume metric. DOE seeks comment on the use of offset factors and the methodology used to calculate them. (See Section V.A of this NOPR and Chapter 5 of the TSD for further details.)

5. Extension of Standards

DOE developed an extension approach to applying the standards developed for these 15 primary equipment classes to the remaining 23 secondary classes. This approach involves extension multipliers developed using both the 15 primary equipment classes analyzed and a set of focused matched-pair analyses. DOE believes that standards for certain primary equipment classes can be directly applied to other similar secondary equipment classes. DOE seeks comment on its approach to extending the results of the engineering analysis to the 23 secondary equipment classes. (See Section V.A of this NOPR and Chapter 5 of the TSD for further details.)

6. Standards for Hybrid Cases and Wedges

There are certain types of equipment that meet the definition of commercial refrigeration equipment (Section 136(a)(3) of EPACT 2005), but do not fall easily into any of the 38 equipment classes defined in the market and technology assessment. One of these types is hybrid cases, where two or

more compartments are in different equipment families and contained in one cabinet. Another is refrigerator-freezers, which have two compartments in the same equipment family but with different operating temperatures. There may also exist hybrid refrigerator-freezers, where two or more compartments are in different equipment families and have different operating temperatures. Another is wedge cases, which form miter transitions between standard display case lineups. DOE seeks comment on proposed language that will allow manufacturers to determine appropriate standard levels for these types of equipment. (See Section 0 of this NOPR for further details.)

7. Standard Levels

If, based on comment, DOE were to revise the LED system costs as described above (section V.C) the economic impacts of TSL 5 would change. DOE seeks comments on its consideration of TSL 5 and whether the benefits would outweigh the burdens.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

Issued in Washington, DC, on August 12, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Household appliances.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations, Part 431 is proposed to be amended to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.62 of subpart C is amended by adding in alphabetical order new definitions for ''air-curtain angle,'' ''commercial hybrid refrigerator, freezer, and refrigerator-freezer,'' ''door angle,'' ''horizontal closed,'' horizontal open'', ''semivertical open,'' ''vertical closed,'' ''vertical open,'' and ''wedge case'' to read as follows:

§ 431.62 Definitions concerning commercial refrigerators, freezers and refrigerator-freezers.

Air-curtain angle means:

(1) For equipment without doors and without a discharge air grille or discharge air honeycomb, the angle between a vertical line extended down from the highest point on the manufacturer's recommended load limit line and the load limit line itself, when the equipment is viewed in cross-section; and

(2) For all other equipment without doors, the angle formed between a vertical line and the straight line drawn by connecting the point at the inside edge of the discharge air opening with the point at inside edge of the return air opening, when the equipment is viewed in cross-section.

* * * * *

Commercial hybrid refrigerator, freezer, and refrigerator-freezer means a commercial refrigerator, freezer, or refrigerator-freezer that has two or more chilled and/or frozen compartments that are (1) in two or more different equipment families, (2) contained in one cabinet and (3) sold as a single unit.

* * * * *

Door angle means:

(1) For equipment with flat doors, the angle between a vertical line and the line formed by the plane of the door, when the equipment is viewed in cross-section; and

(2) For equipment with curved doors, the angle formed between a vertical line and the straight line drawn by connecting the top and bottom points where the display area glass joins the cabinet, when the equipment is viewed in cross-section.

* * * * *

Horizontal Closed means equipment with hinged or sliding doors and a door angle greater than or equal to 45°.

Horizontal Open means equipment without doors and an air-curtain angle greater than or equal to 80° from the vertical.

* * * * *

Semivertical Open means equipment without doors and an air-curtain angle greater than or equal to 10° and less than 80° from the vertical.

* * * * *

Vertical Closed means equipment with hinged or sliding doors and a door angle less than 45°.

Vertical Open means equipment without doors and an air-curtain angle greater than or equal to 0° and less than 10° from the vertical.

Wedge case means a commercial refrigerator, freezer, or refrigerator-freezer that forms the transition between two regularly-shaped display cases.

3. Section 431.66 of subpart C is amended by adding new paragraphs (a)(3) and (d) to read as follows:

§ 431.66 Energy conservation standards and their effective dates.

(a) * * *

(3) The term ''TDA'' means the total display area (ft^2) as defined in the Air-Conditioning and Refrigeration Institute Standard 1200–2006.

* * * * *

(d) Each commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit and without doors; commercial refrigerator, freezer, and refrigerator-freezer with a remote condensing unit; and commercial ice-cream freezer, manufactured on or after January 1, 2012, shall have a daily energy consumption (in kilowatt hours per day) that does not exceed the levels specified:

(1) For equipment other than hybrid equipment, refrigerator-freezers or wedge cases:

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Equipment Category	Condensing Unit Configuration	Equipment Family	Rating Temp. (°F)	Operating Temp. (°F)	Equipment Class Designation*	Maximum Daily Energy Consumption (kWh/day)
Remote Condensing Commercial Refrigerators and Commercial Freezers	Remote (RC)	Vertical Open (VOP)	38 (M)	≥ 32	VOP.RC.M	0.82 x TDA + 4.07
			0 (L)	> -5 and < 32	VOP.RC.L	2.28 x TDA + 6.85
		Semivertical Open (SVO)	38 (M)	≥ 32	SVO.RC.M	0.83 x TDA + 3.18
			0 (L)	> -5 and < 32	SVO.RC.L	2.28 x TDA + 6.85
		Horizontal Open (HZO)	38 (M)	≥ 32	HZO.RC.M	0.35 x TDA + 2.88
			0 (L)	> -5 and < 32	HZO.RC.L	0.57 x TDA + 6.88
		Vertical Closed Transparent (VCT)	38 (M)	≥ 32	VCT.RC.M	0.25 x TDA + 1.95
			0 (L)	> -5 and < 32	VCT.RC.L	0.6 x TDA + 2.61
		Horizontal Closed Transparent (HCT)	38 (M)	≥ 32	HCT.RC.M	0.16 x TDA + 0.13
			0 (L)	> -5 and < 32	HCT.RC.L	0.34 x TDA + 0.26
		Vertical Closed Solid (VCS)	38 (M)	≥ 32	VCS.RC.M	0.11 x V + 0.26
			0 (L)	> -5 and < 32	VCS.RC.L	0.23 x V + 0.54
		Horizontal Closed Solid (HCS)	38 (M)	≥ 32	HCS.RC.M	0.11 x V + 0.26
			0 (L)	> -5 and < 32	HCS.RC.L	0.23 x V + 0.54
		Service Over Counter (SOC)	38 (M)	≥ 32	SOC.RC.M	0.51 x TDA + 0.11
			0 (L)	> -5 and < 32	SOC.RC.L	1.08 x TDA + 0.22
Self-Contained Commercial Refrigerators and Commercial Freezers without Doors	Self-Contained (SC)	Vertical Open (VOP)	38 (M)	≥ 32	VOP.SC.M	1.74 x TDA + 4.71
			0 (L)	> -5 and < 32	VOP.SC.L	4.37 x TDA + 11.82
		Semivertical Open (SVO)	38 (M)	≥ 32	SVO.SC.M	1.73 x TDA + 4.59
			0 (L)	> -5 and < 32	SVO.SC.L	4.34 x TDA + 11.51
		Horizontal Open	38 (M)	≥ 32	HZO.SC.M	0.77 x TDA + 5.55
			0 (L)	> -5 and < 32	HZO.SC.L	1.92 x TDA + 7.08
Commercial Ice-Cream Freezers	Remote (RC)	Vertical Open (VOP)	-15 (I)	≤ -5	VOP.RC.I	2.9 x TDA + 8.7
		Semivertical Open (SVO)			SVO.RC.I	2.9 x TDA + 8.7
		Horizontal Open (HZO)			HZO.RC.I	0.72 x TDA + 8.74
		Vertical Closed Transparent (VCT)			VCT.RC.I	0.71 x TDA + 3.05
		Horizontal Closed Transparent (HCT)			HCT.RC.I	0.4 x TDA + 0.31
		Vertical Closed Solid (VCS)			VCS.RC.I	0.27 x V + 0.63
		Horizontal Closed Solid (HCS)			HCS.RC.I	0.27 x V + 0.63
		Service Over Counter (SVO)			SOC.RC.I	1.26 x TDA + 0.26
	Self-Contained (SC)	Vertical Open (VOP)			VOP.SC.I	5.55 x TDA + 15.02
		Semivertical Open (SVO)			SVO.SC.I	5.52 x TDA + 14.63
		Horizontal Open (HZO)			HZO.SC.I	2.44 x TDA + 9.
		Vertical Closed Transparent (VCT)			VCT.SC.I	0.73 x TDA + 3.29
		Horizontal Closed Transparent (HCT)			HCT.SC.I	0.56 x TDA + 0.43
		Vertical Closed Solid (VCS)			VCS.SC.I	0.38 x V + 0.88
		Horizontal Closed Solid (HCS)			HCS.SC.I	0.38 x V + 0.88
		Service Over Counter (SVO)			SOC.SC.I	1.76 x TDA + 0.36

*The meaning of the letters in this column is indicated in the three columns to the left.

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(2) For commercial refrigeration equipment with two or more compartments (hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator freezers), the maximum daily energy consumption (MDEC) for each model shall be the sum of the MDEC values for all of its compartments. For each compartment, measure the TDA or volume of that compartment, and determine the appropriate equipment class based on that compartment's equipment family, condensing unit configuration, and designed operating temperature. The MDEC value for each compartment shall be the amount derived by entering that compartment's TDA or volume into the standard equation in paragraph (d)(1) of this section for that compartment's equipment class. Measure the calculated daily energy consumption (CDEC) or total daily energy consumption (TDEC) for the entire case:

(i) For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two

or more independent condensing units each separately cool only one compartment, measure the total refrigeration load of each compartment separately according to the ANSI/ASHRAE Standard 72–2005 test procedure. Calculate compressor energy consumption (CEC) for each compartment using Table 1 in ANSI/ARI Standard 1200–2006 using the evaporator temperature for that compartment. The calculated daily energy consumption (CDEC) for the entire case shall be the sum of the CEC for each compartment, fan energy consumption (FEC), lighting energy consumption (LEC), anti-condensate energy consumption (AEC), defrost energy consumption (DEC), and condensate evaporator pan energy consumption (PEC) (as measured in ANSI/ARI Standard 1200–2006).

(ii) For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more compartments are cooled collectively by one condensing unit, measure the total refrigeration load of the entire case according to the ANSI/ASHRAE Standard 72–2005 test procedure. Calculated a weighted saturated evaporator temperature for the entire case by (A) multiplying the saturated evaporator temperature of each compartment by the volume of that compartment (as measured in ANSI/ARI Standard 1200–2006), (B) summing the resulting values for all compartments, and (C) dividing the resulting total by the total volume of all compartments. Calculate the CEC for the entire case using Table 1 in ANSI/ARI Standard 1200–2006, using the total refrigeration load and the weighted average saturated evaporator temperature. The CDEC for the entire case shall be the sum of the CEC, FEC, LEC, AEC, DEC, and PEC.

(iii) For self-contained commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, measure the total daily energy consumption (TDEC) for the entire case according to the ANSI/ASHRAE Standard 72–2005 test procedure.

(3) For remote-condensing and self-contained wedge cases, measure the CDEC or TDEC according to the ANSI/ASHRAE Standard 72–2005 test procedure. The MDEC for each model shall be the amount derived by incorporating into the standards equation in paragraph (d)(1) of this section for the appropriate equipment class a value for the TDA that is the product of (i) the vertical height of the air-curtain (or glass in a transparent door) and (ii) the largest overall width of the case, when viewed from the front.

[FR Doc. E8–19063 Filed 8–22–08; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Monday,
August 25, 2008

Part III

Election Assistance Commission

Information Collection Activity; Proposed Information Collection; Comment Request; Procedural Manual for the Election Assistance Commission's Voting System Test Laboratory Program Manual; Notices

ELECTION ASSISTANCE COMMISSION

Information Collection Activity; Proposed Information Collection; Comment Request

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice and request for comments.

SUMMARY: The U.S. Election Assistance Commission has submitted the following information collection request (*Voting System Test Laboratory Accreditation Program Manual*) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 2, 2008, at 73 FR 6494. The notice allowed for a 60-day public comment period. No comments were received on this information collection; however, modifications were made to improve and clarify the information collection based on comments submitted to a request for substantive comments (73 FR 6495) and internal review of the document. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 24, 2008. This process is conducted in accordance with 5 CFR 1320.10. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments must be submitted on or before September 24, 2008.

ADDRESSES: Written comments and recommendations on the proposed information collection must be sent to:

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the EAC's *Voting System Test Laboratory Accreditation Program Manual,* please contact Ms. Laiza N. Otero at (202) 566–2209 or via e-mail at *lotero@eac.gov.* You may also view the proposed collection instrument by visiting the EAC's Web site at *http://www.eac.gov.*

SUPPLEMENTARY INFORMATION:

Title: Voting System Test Laboratory Accreditation Program Manual.

OMB Number: Pending.

Type of Review: Regular submission.

Needs and Uses: Section 231(b) of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. § 15371(b)) requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards. Generally, the EAC considers for accreditation those laboratories evaluated and recommended by the National Institute of Standards and Technology (NIST) pursuant to HAVA Section 231(b)(1). However, consistent with HAVA Section 231(b)(2)(B), the Commission may also vote to accredit laboratories outside of those recommended by NIST upon publication of an explanation of the reason for any such accreditation. In order to meet its statutory requirements under HAVA § 15371(b), the EAC has developed the EAC's Voting System Test Laboratory Accreditation Program. The procedural requirements of the program are established in the proposed information collection, the *EAC Voting System Test Laboratory Accreditation Program Manual.* Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of this Manual will supersede any prior laboratory accreditation requirements issued by the EAC. This manual shall be read in conjunction with the EAC's *Voting System Testing and Certification Program Manual* (OMB 3265–0004).

Affected Public: Voting system test laboratories.

Estimated Number of Respondents: 8.

Total Annual Responses: 8.

Estimated Total Annual Burden Hours: 200 hours.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E8–19066 Filed 8–22–08; 8:45 am]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Procedural Manual for the Election Assistance Commission's Voting System Test Laboratory Program

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice; Publication of Voting System Test Laboratory Program Manual.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing a procedural manual for its Voting System Test Laboratory Program. This program sets the administrative procedures for laboratories to obtain and maintain accreditation to test voting systems under the EAC's Voluntary Testing and Certification Program. The program is mandated by the Help America Vote Act (HAVA) at 42 U.S.C. 15371.

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Director, Voting System Certification, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background

HAVA requires that the EAC certify and decertify voting systems through testing conducted by accredited laboratories. Section 231(a)(1) of HAVA (42 U.S.C. 15371) specifically requires the EAC to ''* * * provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories.'' To meet this obligation, the EAC has created a voluntary program to test voting systems to Federal voting system standards by accredited laboratories. The Voting System Test Laboratory Program Manual sets the procedures for the test laboratories to follow in order to receive and maintain accreditation as well as procedures for the documentation and publication of testing information.

In creating the Laboratory Manual the EAC sought input from experts and stakeholders. Specifically, the EAC conducted meetings with representatives from the voting system test laboratories and from the voting system manufacturing community. Additionally, the EAC sought input from the public. A draft version of the EAC Voting System Test Laboratory Program Manual was published with a request for public comment on February 4, 2008. (73 FR 6495). The public comment period was open until 5 p.m. EST on April 4, 2008. While previous notice and public comment period were not required by law, all comments received were considered in the drafting of this final administrative manual.

Discussion of Comments

The EAC received thirty-eight comments from the public. The majority of these comments came from voting system test laboratories, with the remainder coming from the general public.

The majority of comments received by the Commission raised concerns or questioned the meaning or application of various provisions of the manual. Another block of comments were less specific and focused on the fundamental purpose behind the program or its basic methodology. Comments in this category included concerns regarding the level of allowable participation by manufacturers in the testing process and the responsibilities of Voting System Test Laboratories regarding third party testing. Finally, there were a range of specific recommendations on a wide variety of topics. Examples include: (1) Changing the scope of core and non-core testing; (2) clarifying who is responsible for the validation of test methods; (3) allowing hardware mitigation by the manufacturer; (4) clarifying the scope of the use of prior testing in a testing campaign; (5) clarifying the restriction on testing at manufacturer owned or controlled facilities and the allowance of such activity in conjunction with the witness or trusted build; and (6) placing the responsibility for the proper identification of proprietary information on the manufacturer and not on the testing laboratory.

The EAC reviewed and considered each of the comments presented. In doing so, it also gathered additional information and performed research regarding the suggestions. The EAC's commitment to public participation is evident in the final version of the Laboratory Manual. The Manual has been enhanced in a number of areas in response to public comment. A total of about five pages have been added to the Manual. Throughout the entire Manual the EAC added or amended language to clarify its procedures consistent with the comments it received. For example, to further clarify terminology used throughout the Manual eight terms were newly defined or significantly clarified in the definition section of Chapter 1. Additionally, the EAC made changes to clarify the independent role of Voting System Test Labs in the program, enhance the supervision requirements of EAC accredited laboratories over third party contracted laboratories, and further defined the level of detail required by the EAC on test plans, test cases, and test reports. Finally, the EAC clarified financial stability documentation requirements for laboratories seeking accreditation.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

United States Election Assistance Commission

1225 New York Avenue, N.W.
Ste.1100
Washington, DC 20005
202-566-3100

Voting System Test Laboratory Program Manual

Version 1.0 - Effective July 2008 *www.eac.gov*

OMB Control No. *Pending*

BILLING CODE 6820–KF–C

Paperwork Reduction Act

The reporting requirements in this manual are pending approval under the Paperwork Reduction Act of 1995, by the Office of Management and Budget Control (OMB). Persons are not required to respond to this collection of information unless it displays a currently valid OMB number. Information gathered pursuant to this document and its forms will be used solely to administer the EAC Testing & Certification and Laboratory Accreditation Program. This program is voluntary. Individuals who wish to participate in the program, however, must meet its requirements. The estimated total annual hourly burden on the voting system manufacturing industry and election officials is 200 hours. This estimate includes the time required for reviewing the instructions, gathering information, and completing the prescribed forms. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Election Assistance Commission, Voting System Testing and Certification Program, Office of the Program Director, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

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Laboratory Accreditation Logo

1. Introduction

1.1. Background. The Federal Election Commission (FEC) adopted the first formal set of voluntary Federal standards for computer-based voting systems in January 1990. At that time, no national program or organization existed to test and certify such systems to the standards. The National Association of State Election Directors (NASED) stepped up to fill this void in 1994. NASED is an independent, nongovernmental organization of State election officials. The organization formed the nation's first national program to test and qualify voting systems to the new Federal standards. This program utilized independent laboratories to test voting system to voluntary Federal standards. To facilitate this process NASED accredited these test laboratories, which it referred to as Independent Test Authorities (ITA). In late 2002, Congress passed the Help America Vote Act of 2002 (HAVA). HAVA created the U.S. Election Assistance Commission (EAC) and assigned to the EAC the responsibility for both setting voting system standards and providing for the voluntary testing and certification of voting systems. This mandate represented the first time the Federal government provided for the voluntary testing, certification, and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC has developed the voting system standards in the form of the Voluntary Voting System Guidelines (VVSG), a voting system certification program in the form of the Voting System Testing and Certification Program Manual and this document, the Voting System Test Laboratory Manual.

1.2. Authority. HAVA Section 231(b) (42 U.S.C. § 15371(b)) requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards. Generally, the EAC considers for accreditation those laboratories evaluated and recommend by the National Institute of Standards and Technology (NIST) pursuant to HAVA Section 231(b)(1). However, consistent with HAVA Section 231(b)(2)(B), the Commission may also vote to accredit laboratories outside of those recommended by NIST upon publication of an explanation of the reason for any such accreditation.

1.3. Role of the National Institute of Standards and Technology. Section 231(b) (1) of HAVA requires that the National Institute of Standards and Technology ''conduct an evaluation of independent, non-federal laboratories and shall submit to the Commission a list of those laboratories * * * to be accredited. * * *'' Additionally, HAVA Section 231(c) requires NIST to monitor

and review the performance of EAC accredited laboratories. NIST has chosen its National Voluntary Laboratory Accreditation Program (NVLAP) to carry out these duties. NVLAP conducts a review of applicant laboratories in order to provide a measure of confidence that such laboratories are capable of performing testing of voting systems to Federal standards. Additionally, the NVLAP program monitors laboratories by requiring regular assessments. Laboratories are reviewed one year after their initial accreditation and biennially thereafter. The EAC has made NVLAP accreditation a requirement of its Laboratory Accreditation Program. However, a NVLAP accreditation is not an EAC accreditation. EAC is the sole Federal authority for the accreditation and revocation of accreditation of Voting System Test Laboratories (VSTL).

1.4. Scope. This Manual provides the procedural requirements of the EAC voting system Laboratory Accreditation Program. Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of this Manual supersede any prior laboratory accreditation requirements issued by the EAC. This manual shall be read in conjunction with the EAC Voting System Testing and Certification Manual.

1.5. Manual Maintenance and Revision. The Manual will be reviewed periodically and updated to meet the needs of the EAC, VSTLs, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with Federal law. Substantive input from stakeholders and the public will be sought whenever possible. Changes in policy requiring immediate implementation will be noticed via policy memoranda and will be issued to each VSTL and registered Manufacturers. Changes, addendums, or updated versions will also be posted to the EAC Web site at *www.eac.gov.*

1.6. Clarification of Program Requirements and Procedures. VSTLs and registered Manufacturers may request clarification regarding the requirements and procedures set forth in this manual. Requests for clarification must be based upon ambiguity arising from the application of this manual. Hypothetical questions will not be considered. Requests shall be submitted to the Program Director in writing. The request shall clearly identify the section of the manual and issue to be clarified, a proposed interpretation and all relevant facts. Clarifications issued by the EAC will be provided to all EAC VSTLs, registered Manufacturers and placed on EAC's Web site.

1.7. Program Personnel. All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All agents of the EAC involved in the Accreditation Program will be subject to conflict-of-interest reporting and review, consistent with Federal law and regulation.

1.8. Submission of Documents. Any documents submitted pursuant to the requirements of this Manual shall be submitted:

1.8.1. If sent electronically, via secure e-mail or physical delivery of a compact disk, unless otherwise specified. The submitted electronic files shall be in Microsoft Word or Adobe PDF format, formatted to protect the document from alteration.

1.8.2. With a proper signature when required by this Manual. Documents that require an authorized signature may be signed with an electronic representation or image of the signature of an authorized management representative.

1.8.3. If sent via physical delivery, by Certified Mail™ (or similar means that allows tracking) to the following address: Testing and Certification Program Director, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, D.C. 20005.

1.9. Receipt of Documents—VSTL. For purposes of this Manual, a document, notice, or other communication is considered received by a VSTL upon one of the following:

1.9.1. The actual, documented date the correspondence was received (either electronically or physically) at the VSTL, or

1.9.2. If no documentation of the actual delivery date exists, the date of constructive receipt of the communication. For electronic correspondence, documents will be constructively received the day after the date sent. For mail correspondence, the document will be constructively received 3 days after the date sent.

1.9.3. The term ''receipt'' shall mean the date a document or correspondence arrives (either electronically or physically) at the VSTL's place of business. Arrival does not require that an agent of the VSTL open, read, or review the correspondence.

1.10. Receipt of Documents—EAC. For purposes of this Manual, a document, notice, or other communication is considered received by the EAC upon its physical or electronic arrival at the agency. All documents received by the agency will be physically or electronically date stamped. This stamp shall serve as the date of receipt. Documents received after the regular business day (5:00 PM Eastern Standard Time), will be treated as if received on the next business day.

1.11. Record Retention—EAC. The EAC shall retain all records associated with accreditation of Voting System Test Laboratories. The records shall otherwise be retained or disposed of consistent with Federal statutes and regulations.

1.12. Publication and Release of Documents. The EAC will release documents consistent with the requirements of Federal law. It is EAC policy to make the laboratory accreditation process as open and public as possible. Any documents (or portions thereof) submitted under this program will be made available to the public unless specifically protected from release by law. The primary means for making this information available is through the EAC Web site. See Chapter 7 of this Manual for additional information.

1.13. References. The following documents are referenced in this Manual. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

—ISO/IEC 17011, Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies.
—ISO/IEC 17025, General requirements for the competence of testing and calibration laboratories.
—NIST Handbook 150, (NVLAP) Procedures and General Requirements.
—NIST Handbook 150–22, (NVLAP) Voting System Testing.

1.14. Definitions. For purposes of this Manual, the terms listed below have the following definitions.

Applicant Laboratory. An independent, non-Federal laboratory which has applied for EAC accreditation after receipt of an invitation.

Commission. The U.S. Election Assistance Commission, as an agency.

Commissioners. The serving commissioners of the U.S. Election Assistance Commission.

Contracted Third Party Laboratory. A laboratory contracted or otherwise providing testing services to a VSTL to meet program requirements.

Days. Calendar days, unless otherwise noted. When counting days, for the purpose of submitting or receiving a document, the count shall begin on the first full calendar day after the date the document was received.

Election Official. A State or local government employee who has as one of his or her primary duties the management or administration of a Federal election.

Federal Election. Any primary, general, runoff, or special Election in which a candidate for Federal office (President, Senator, or Representative) appears on the ballot.

Fielded Voting System. A voting system purchased or leased by a State or local government that is being use in a Federal election.

Gift. A Gift includes any gratuity, favor, discount, entertainment, travel, service, hospitality, loan, meal, forbearance, or other item having monetary value.

Integration Testing. The end-to-end testing of a full system configured for use in an election to assure that all legitimate configurations meet applicable standards.

Key Laboratory Staff. Laboratory employees serving as approval authorities of test reports (approved signatories per NIST Handbook 150) or otherwise responsible for the supervision of individuals performing voting system testing.

Lead Voting System Test Laboratory. The accredited Voting System Test Laboratory identified on an EAC approved Application for Testing (EAC Voting System Testing and Certification Program Manual, Sec. 4.3, Certification Application).

Manufacturer. The entity with ownership and control over a voting system submitted for certification.

Memorandum for the Record. A written statement drafted to document an event or finding, without a specific addressee other than the pertinent file.

Proprietary Information. Commercial information or trade secrets protected from release under the Freedom of Information Act (FOIA) and the Trade Secrets Act.

Recommended Laboratory. A laboratory recommended for EAC accreditation by the Director of NIST after evaluation by NVLAP.

Scope of Accreditation. The version or versions of the Federal voting system standards (VSS or VVSG) to which a VSTL is authorized to test.

Technical Reviewers. Technical experts in the areas of voting system technology and conformity assessment appointed by the EAC to provide expert guidance.

Testing and Certification Decision Authority. The EAC Executive Director or Acting Executive Director.

Testing and Certification Program Director. The individual appointed by the EAC Executive Director to administer and manage the Testing and Certification Program.

Voting System. The total combination of mechanical, electromechanical, and electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to define ballots, cast and count votes, report or display election results, interface the voting system to the voter registration system, and maintain and produce any audit trail information.

Voting System Standards. Voluntary voting system standards developed by the FEC. Voting System Standards have been published twice: once in 1990 and again in 2002. The Help America Vote Act made the 2002 Voting System Standards EAC guidance. All new voting system standards are issued by the EAC as Voluntary Voting System Guidelines.

Voting System Test Laboratories (VSTLs). Laboratories accredited by the EAC to test voting systems to EAC approved voting system standards.

Voluntary Voting System Guidelines. Voluntary voting system standards developed, adopted, and published by the EAC. The guidelines are identified by version number and date.

1.15. Acronyms and Abbreviations. For purposes of this Manual, the acronyms and abbreviations listed below represent the following terms.

Accreditation Program. The EAC Voting System Test Laboratory Accreditation Program

Certification Program. The EAC Voting System Testing and Certification Program

EAC. United States Election Assistance Commission

FEC. Federal Election Commission

HAVA. Help America Vote Act of 2002 (42 U.S.C. § 15301 et seq.)

ISO/IEC. The International Organization for Standardization & The International Electrotechnical Commission

NASED. National Association of State Election Directors

NIST. National Institute of Standards and Technology

NVLAP. National Voluntary Laboratory Accreditation Program

Program Director. Director of the EAC Testing and Certification Program

VSS. Voting System Standards

VSTL. Voting System Test Laboratory

VVSG. Voluntary Voting System Guidelines

2. Program Requirements

2.1. Overview. This chapter lists the requirements of the EAC's Voting System Test Laboratory Program. Adherence to these requirements is a condition of accreditation and a continuing obligation. Failure to demonstrate compliance with the requirements of this chapter may result in the denial of an application for accreditation, suspension of accreditation, or revocation of accreditation.

2.2. Program Requirements—Generally. In order to be considered for, receive, and maintain an EAC accreditation as a VSTL, laboratories must demonstrate compliance with the requirements of EAC's Voting System Test Laboratory Program. The program requirements are set forth in this Chapter.

2.2.1. *Continuing Compliance Obligation.* VSTLs have a continuing obligation to meet the requirements set forth in this Chapter. VSTLs are required to maintain their compliance with the program's requirements as long as they hold an EAC accreditation.

2.2.2. *Requests to Document Compliance.* VSTLs may be required by the EAC to document compliance at any time. Such requests will be in writing and VSTLs shall respond timely, consistent with the request (see Chapter 4 of this Manual).

2.2.3. *Failure to Comply, Effect.* Failure to meet each of the program's requirements may result in the denial of an application for accreditation, suspension of accreditation, or revocation of accreditation, consistent with the procedures of Chapter 5 of this Manual.

2.3. NIST Recommendation. As a condition of accreditation, all laboratories must be recommended to the EAC by the National Institute of Standards and Technology (NIST), unless the emergency provisions of Chapter 3 apply. NIST is responsible, pursuant to the Help America Vote Act of 2002, Section 231(b), for performing a technical evaluation of laboratories and identifying and recommending those competent to test voting systems. This recommendation is provided directly to the EAC from NIST.

2.4. NVLAP Accreditation. As a condition of accreditation, all VSTLs must hold a valid accreditation from NIST's National Voluntary Laboratory Accreditation Program (NVLAP), unless the emergency provisions of Chapter 3 apply. NVLAP accreditation is the primary means by which the EAC may ensure that each VSTL meets and continues to meet the technical requirements of the EAC program. It sets the standards for each of VSTL's technical, physical, and personnel resources, as well as its testing, management, and quality assurance policies and protocols. The loss or

suspension of a NVLAP accreditation will result in the suspension and possible revocation of any EAC accreditation consistent with the procedures of Chapter 5 of this Manual. VSTLs are required to immediately report any change in their NVLAP accreditation status to the EAC.

2.5. Conflict of Interest and Prohibited Practices Program. As a condition of accreditation, all laboratories must maintain and enforce policies which prohibit and prevent conflicts of interest or the appearance of conflicts of interest. A laboratory shall ensure that neither the Laboratory, its parent corporation, contracted third party laboratories, nor any individual staff member involved in the testing of voting systems have any vested interest in the outcome of the test process. Laboratories must have a written policy in place. This policy must, at a minimum, (1) prohibit conflicts of interest and other prohibited practices and (2) provide for enforcement, consistent with the subsections below.

2.5.1. *Prohibited Conflicts of Interest.* The purpose of a conflict of interest policy is to prevent situations where the exercise of an official duty directly impacts the actor's financial interests. For the purposes of this program, a prohibited conflict of interest exists if the duties and responsibilities of a laboratory, parent corporation, or a laboratory employee involved in the testing of voting systems under EAC's Certification Program will have a direct and predictable effect on the financial interest of that laboratory, parent corporation, or a laboratory employee.[1] For example, an employee who is responsible for testing a voting system on behalf of a VSTL would be prohibited from holding a financial interest in the entity whose product is being tested or a direct competitor of that entity. A prohibited conflict of interest would also include a contractual or other fiduciary relationship between a VSTL or VSTL employee and a Manufacturer (outside an agreement for State or Federal certification testing) when that VSTL or VSTL employee is concurrently responsible for conducting certification testing for that Manufacturer under this program. Additionally, financial interests may be imputed or attributed to a laboratory, parent corporation, or a laboratory employee through a relationship with a third party. For example, a VSTL employee responsible for the testing of a voting system would be conflicted from performing his or her duties if his or her spouse owned a financial interest in the manufacture of the voting system.

2.5.1.1. Involved in Testing—Defined. For the purposes of a financial conflict of interest, an organization is involved in the testing of a voting system any time it contractually or otherwise takes on the responsibility for testing a voting system to Federal standards under EAC's Certification Program. For the purposes of a financial conflict of interest, an employee is involved in the testing of a voting system when the individual's duties as a VSTL employee require him or her to perform testing on the system, manage the testing process or supervise those who perform testing on the system.

2.5.1.2. Financial Interest—Defined. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future.

2.5.1.3. Direct Effect—Defined. A matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this section.

2.5.1.4. Predictable Effect—Defined. A matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

2.5.1.5. Imputed Interests—Defined. An imputed interest is a financial interest held by a third party individual or organization that serves to disqualify an employee or laboratory to the same extent as if they were the employee's or laboratory's own interest. These interests include:

2.5.1.5.1. The financial interests of a spouse or dependent child shall be imputed to an employee.

2.5.1.5.2. The financial interest of any organization in which a laboratory, parent corporation, or a laboratory employee serves as an employee, officer, board member, partner, consultant, director, trustee or similar position shall be imputed.

2.5.1.5.3. The interests of any contracted third party laboratory shall be imputed to the utilizing VSTL.

2.5.1.5.4. The financial interest of a person or organization with whom an employee is negotiating or has an arrangement concerning prospective employment shall be imputed.

2.5.2. *Prohibited Practices.* Furthermore, irrespective of the existence of a conflict of interest, it is a prohibited practice for a laboratory, parent corporation, or laboratory employee to be involved in the development of a voting system or solicit or receive a gift from a voting system Manufacturer. No laboratory, parent corporation, or laboratory employee may:

2.5.2.1. Voting System Development and Testing. Provide, or have provided, consultation, developmental testing or other services to a voting system developer such that the independence, or appearance of independence, in the testing of a particular voting system or system component would be compromised.

2.5.2.1.1. A laboratory or individual may not be involved in both the development of a voting system and the certification of a system. Voting system development includes any testing, consultation or design work performed in order to ready a specific system for the marketplace or the certification process. Generally, any testing performed on behalf of a voting system manufacture that was not otherwise performed pursuant to a State or Federal voting system certification program will be considered developmental in nature.

2.5.2.1.2. The prohibition barring participation in both development and testing is voting system specific. An employee or laboratory that was previously involved[2] in product development with a Manufacturer is not

[1] For the purpose of this Program, agreements with voting system manufacturers to provide testing pursuant to the requirements of EAC or a State's certification program do not constitute a prohibited conflict of interest. Certification testing is considered a duty and responsibility of a VSTL, not an outside financial interest.

[2] The prohibition relates to a VSTL's prior involvement in system development. Concurrent development work and testing may constitute a prohibited conflict of interest under Section 2.5.2 of this Manual.

prohibited from testing all systems produced by that Manufacturer, just those systems in which the employee or laboratory participated directly in development. As voting systems are subject to change over time, for the purposes of this prohibition, a voting system shall be considered altered to the degree that it is a different system when:

2.5.2.1.2.1. A period of at least three years has passed since the VSTL or employee was involved in the system's development;

2.5.2.1.2.2. The system has been subject to both software and hardware modification since the VSTL or employee was involved in the system's development. De minimis changes (as defined in EAC Voting System Testing and Certification Program Manual) are not modifications; AND

2.5.2.1.2.3. The system has received a certification after being tested by a different independent laboratory since the VSTL or employee was involved in the system's development.

2.5.2.1.3. The prohibition barring participation in both development and testing does not prohibit a VSTL from allowing a Manufacturer to perform onsite hardware mitigation on a voting system in response to a minor system failure or anomaly. In such cases the VSTL:

2.5.2.1.3.1. Shall suspend all hardware testing;

2.5.2.1.3.2. Shall not participate or assist the Manufacturer in remediation;

2.5.2.1.3.3. May provide testing equipment and qualified operators to the Manufacturer for its use;

2.5.2.1.3.4. Shall monitor and document the Manufacturer's access to the system consistent with Section 2.11.1. of this manual; and

2.5.2.1.3.5. Shall document in the test report the failure or anomaly and remedial action taken by the Manufacturer consistent with Section 2.10.5.2.1 of this Manual and Chapter 4 of EAC's Certification Manual (anomaly matrix).

2.5.2.2. Gifts. Solicit or receive a gift, directly or indirectly, from any entity which holds a financial interest in the development, production, or sale of voting systems, or is otherwise impacted by the testing and certification of voting systems. Gifts given or received under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than position are not prohibited. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

2.5.3. *Program Enforcement Elements.* Prohibited conflicts and practices shall be enforced through a written program which:

2.5.3.1. Regarding Employees Involved in the Testing of Voting Systems.

2.5.3.1.1. Annually collects standard information from each employee, including assets, debts, outside or prior activities/employment, gifts, and any work on voting system development sufficient to demonstrate compliance with Section 2.5.1. and 2.5.2. of this Manual. The information collection must also reflect the financial interests of those individuals (like spouses and minor children) whose interests are imputed to the employee;

2.5.3.1.2. Requires and documents the review of information collected for potential conflicts and prohibited practices; and

2.5.3.1.3. Resolves all identified conflicts of interest or prohibited practices prior to the employee or laboratory's involvement in the testing of any voting system. Such resolution shall be documented. Resolutions may include the divestiture of assets or gifts, employee resignation from outside organizations, or the altering of an employee's responsibilities by prohibiting participation in Voting System Testing or the testing of a specific system.

2.5.3.2. Regarding the VSTL or VSTL's Parent Corporation.

2.5.3.2.1. Annually collects information pertaining to the holdings and activities of the VSTL and its parent corporation(s), sufficient to demonstrate compliance with Section 2.5.1. and 2.5.2. of this Manual;

2.5.3.2.2. Requires and documents the review of collected information for potential conflicts and prohibited practices; and

2.5.3.2.3. Resolves all identified conflicts of interest or prohibited practices prior to the laboratory's testing of any voting system. Such resolution shall be documented. Resolutions may include the divestiture of assets or gifts, the termination or rejection of conflicted or prohibited testing work.

2.5.3.3. Regarding Contracted Third Party Laboratories. The interest of a contracted third party laboratory may be imputed to a VSTL. VSTLs may meet and enforce the program requirements of this section with regard to this relationship in one of two ways:

2.5.3.3.1. Collection of third party laboratory information, review of information and resolution of conflicts or prohibited practices:

2.5.3.3.1.1. Collect information pertaining to the holdings and activities of the third party laboratory and its employees, sufficient to demonstrate compliance with Section 2.5.1. and 2.5.2. of this Manual. This includes gathering information concerning any involvement by the third party laboratory or its employees in the development of specific voting systems. This collection of information shall be performed prior to the execution of any contract for the testing of voting systems under this program and annually thereafter if the contract exceeds one year in duration.

2.5.3.3.1.2. Require and document the review of collected information for potential conflicts, and

2.5.3.3.1.3. Resolve all identified conflicts of interest prior to the laboratory's testing of any voting system.

2.5.3.3.2. VSTL Supervision of third party laboratories performing non-core testing. Where a third party laboratory is subject to direct VSTL supervision and observation, the third party laboratory's conflicts of interest or prohibited practices will not be imputed to the lead VSTL. Direct VSTL supervision under this section requires that a VSTL employee is physically present during the third party testing and directly observes and supervises the testing. This VSTL employee must: (1) have been properly vetted for conflict of interest and prohibited practices pursuant to Section 2.5 of this Manual, (2) be competent to supervise the testing being performed and (3) have no financial interest in the third party laboratory they are supervising.

2.5.4. *Waivers.* In rare circumstances, prohibited practices or conflicts of interest may be waived by the EAC after the conflict or prohibited practice is properly disclosed to the agency. Waivers may be granted at the sole discretion of the Program Director.

2.5.4.1. Requesting a Waiver. A request for a waiver shall be made in writing to the EAC Program Director. The request shall fully disclose the conflict of interest or prohibited practice for which the waiver is sought. The request shall also describe all steps taken to resolve the conflict or prohibited practice and the reasons why such attempts were unsuccessful or otherwise untenable. The request shall also state why the waiver should be granted, consistent with the standard in Section 2.5.4.2.

2.5.4.2. Waiver Standard. A disqualifying conflict of interest or prohibited practice is subject to waiver when the issuance of a waiver is in the best interest of the EAC Certification Program and the identified conflict or practice is unlikely to affect the integrity

or impartiality of the VSTL or VSTL employee's services under the EAC Certification Program. The Program Director may consider the following factors in making a waiver determination:

2.5.4.2.1. The value of any disqualifying financial interest;

2.5.4.2.2. The nature and impact of any prohibited practice;

2.5.4.2.3. The role and responsibility of the employee subject to the conflict of interest or prohibited practice;

2.5.4.2.4. The availability of other employees, VSTLs or laboratories to conduct the testing without a conflict or prohibited practice.

2.5.4.2.5. The level of discretion or sensitivity required to perform the conflicted or prohibited duties under the certification program;

2.5.4.2.6. The ability of an EAC waiver to adjust a VSTL or VSTL employee's testing process and duties or otherwise mandate additional safeguards which would limit or abrogate the impact of the conflict of interest or prohibited practice.

2.5.4.3. Issuing a Waiver. Any waiver issued by the Program Director shall be made in writing to the requestor. The waiver shall state with specificity the conflict of interest or prohibited practice waived. The waiver shall also clearly state any conditions for its issuance, such as mitigating processes or procedures or safeguards. The VSTL is responsible for meeting all waiver conditions prior to engaging in the waived activity. Failure to meet such condition may result in the revocation of a VSTLs accreditation. The Program Director shall publish all waivers on the EAC Web site.

2.5.4.4. Denying a Request for a Waiver. Any decision denying a request for a waiver shall be made by the Program Director in writing and provided to the VSTL. The Program Director shall publish all waiver denials on the EAC Web site.

2.6. Personnel Policies. As a condition of accreditation, all laboratories shall have in place written policies to ensure that the Laboratory does not employ individuals, in any capacity related to the testing of voting systems, who have been convicted of a felony offense or any criminal offense involving fraud, misrepresentation, or deception under either Federal or State law. The VSTL shall have a program in place to enforce this policy and document such enforcement.

2.7. Notification of Changes. As a condition of accreditation, all laboratories shall agree to notify the EAC in writing within fifteen (15) calendar days of any significant changes in laboratory operations from what the Laboratory described in any assertion that served as the basis for its EAC accreditation, including any assertions made to NIST's NVLAP or to the EAC pursuant to Chapter 3 of this Manual. Examples of events that require written notification include, but are not limited to:

2.7.1. A Laboratory's decision to withdraw from the EAC's program;

2.7.2. Changes in ownership of the Laboratory (other than minor-less that 15%-change in stock ownership),

2.7.3. A change in location of the Laboratory facility, or

2.7.4. Personnel changes in key staff positions.

2.8. Site Visits. As a condition of accreditation, all laboratories shall allow EAC representatives to enter their voting system testing and management facilities pursuant to the procedures and requirements of Chapter 4 of this Manual.

2.9. Notice of Lawsuits. As a condition of accreditation, all laboratories shall provide notice to the EAC of any lawsuits or claims filed against it, its subcontractors, subsidiaries, employees, officers, owners, operators, or insurers while the Laboratory holds an EAC accreditation and which relate to the work performed in, or management of, the Laboratory's voting system testing program.

2.10. Testing, Technical Practices and Reporting. As a condition of accreditation, each VSTL shall perform testing in conformance with the relevant standards of the applicable Federal Standards (VVSG or VSS). Additionally, the VSTL shall create written reports of such testing consistent with the requirements of the latest version of the VVSG, EAC's Voting System Testing and Certification Manual, any applicable test suites mandated by the EAC, and any other written guidance published by the EAC.

2.10.1. *Test Plan Package.* The VSTL shall submit a test plan package directly to the EAC consistent with the requirements of the Voting System Testing and Certification Manual, the latest version of the VVSG, this Manual and any other written guidance from the EAC. A test plan package includes:

2.10.1.1. Requirements Matrix. The Requirements Matrix is a form developed by the EAC which identifies each requirement found in Federal voting system standards (a version of the VVSG or VSS). VSTLs will be required to identify the standards that apply to the system being tested, identify the testing to be performed and provide additional information as required. The Requirements Matrix and instructions for its completion may be found on EAC Web site at *www.eac.gov.* The matrix will serve as both a tool to identify and a means to document what should be tested and how.

2.10.1.2. Test Plan. The purpose of the Test Plan is to provide information regarding test methods. The Test Plan contains more detail than the Requirements Matrix.

2.10.1.2.1. Format. VSTLs shall format each test plan consistent with the requirements of Appendix A of this Manual.

2.10.1.2.2. Content. Each test plan shall identify applicable voting system standards and contain a description of the testing proposed to verify conformance. Also, each test plan shall contain a statement indicating the scope of the labs accreditation.

* Required Content. For each test, the test plan shall provide detailed information referencing testing to be performed, including facility requirements, test set-up, test sequence, data recording requirements and pass criteria.[3]

* Exception. Where a VSTL utilizes EAC mandated or approved test methods, the test plan may simply reference these methods and identify, with specificity, all deviations. Mandated test methods are those test methods required for use by the EAC. Approved test methods are standard, verified VSTL test methods approved by the EAC. VSTLs may submit standard test methods for approval by submitting them in writing to the Program Director.

2.10.2. *Test Case.* After approval of the VSTLs Test Plan, the VSTL shall develop Test Cases. A Test Case is a system specific, step-by-step test procedure or laboratory testing process that provides detailed test operation procedures sufficient for trained laboratory personnel to fully conduct a given test and produce repeatable results. The VSTL shall inform the EAC, in writing, when all test cases for the voting system under test have been completed. This notice shall include an index identifying each test case created to test the system. The notification should indicate if these are standard test cases, modified standard test cases, or a new test case. These test cases shall be available to the EAC for review and approval upon request.

[3] This requirement is consistent with International Standards Organization requirements, which serve as a basis for NIST NVLAP's accreditation and recommendation to the EAC. Where established and approved test methods do not exist, ISO Standard 17025, Section 5.4.4., Non-Standard Method requires the testing to be validated by the laboratory prior to use. The EAC will review and approve the validated test methods.

2.10.3. *Testing.* The highest standards shall be applied to the testing of voting systems. VSTLs shall perform testing in conformance with the relevant standards of the applicable Federal Standards (VVSG or VSS) and consistent with any written EAC interpretations of these standards. The Laboratory shall maintain its technical practices consistent with the standards which served as the basis for its NVLAP accreditation. These standards include International Standard ISO/IEC 17025, General Requirements for the Competence of Testing and Calibration Laboratories; NIST Handbook 150, Procedures and General Requirement; NIST Handbook 150–22, Voting System Testing; any documents supplementing, updating or replacing these standards or handbooks; and any pertinent EAC guidance. When conducting testing under EAC's program, VSTLs shall only perform testing of voting systems consistent with the scope of their accreditation.

2.10.4. *Third Party Testing.* Lead VSTL's may contract or otherwise provide for the testing of voting systems by third parties under this program. However, the lead VSTL shall be responsible for the accuracy, quality assurance, and results of all tests performed. Under this program, no VSTL may perform or contract for the performance of testing outside the scope of its accreditation. Testing performed directly by lead VSTL personnel using third party contractor equipment and facilities is not considered third party testing.

2.10.4.1. Core Testing. Core voting system testing may only be performed by VSTLs. Therefore, a VSTL may only contract or otherwise provide for the core testing of voting systems if it uses a third party VSTL. Core testing includes: Technical Data Package review, physical configuration audit, source code review, functional configuration audit, system integration testing, volume testing, and security testing (not including cryptographic testing).

2.10.4.2. Non-Core Testing. Non-core testing may be performed by non-VSTLs if they hold an EAC recognized accreditation to perform the relevant testing. The EAC recognizes two national accreditation bodies, NIST's NVLAP program and the American Association of Laboratory Accreditation (A2LA). Generally, a VSTL may only contract or otherwise provide for the non-core testing of voting systems if it uses a NVLAP or A2LA laboratory accredited to the specific scope of testing necessary. Non-core testing includes: Electromagnetic compatibility testing, telecommunications testing, environmental testing, electrical testing, acoustical testing, and cryptographic testing.[4] In limited circumstances, laboratories not holding a recognized accreditation may be used by VSTLs for non-core testing only after approval by EAC's Program Director. Requests for such approval must be made in writing and demonstrate: (1) That there is no recognized laboratory available within a reasonable window of availability and geographic proximity (generally within the continental United States) and (2) that the VSTL has conducted a thorough assessment of the third party laboratory's capabilities, quality system, management system, and/or alternative accreditations and have determined and documented that the laboratory is qualified to perform testing. The EAC may visit, interview or audit any non-accredited laboratory at any time before, during, or after the testing has occurred to verify their qualifications.

2.10.4.3. VSTL Responsibilities. Lead VSTLs are responsible for all tests performed on voting systems submitted to them by Manufacturers under EAC's Testing and Certification Program. This includes testing (both core and non-core) performed by third party laboratories under their direction (including third party VSTL laboratories). Any procedural or substantive irregularities or errors which occur during the third party testing process will be imputed to the responsible lead VSTL. Such failures may serve as a basis for the revocation of accreditation. Lead VSTLs using third party laboratories (consistent with Sections 2.10.4.1 through 2.10.4.2, above) shall take steps to ensure that the third party laboratories they employ meet the standards of this Program. At a minimum, the lead VSTLs shall ensure:

2.10.4.3.1. The third party laboratory provides the lead VSTL verifiable documentation regarding its relevant accreditation;

2.10.4.3.2. Any hardware tested by the qualified third party laboratory is first validated by the lead VSTL as the same hardware presented to it for certification;

2.10.4.3.3. The third party laboratory provides the lead VSTL with evidence that it will direct its activities in compliance with any and all relevant VVSG requirements for testing and that the testing was, in fact, performed consistent with such specific requirements. Any special procedures, tools, or testing software necessary to meet VVSG requirements must be validated by the lead VSTL prior to use. For example, the VVSG requires that systems be tested while operating and that such operation be in a manner and under conditions that simulate election use. In such cases, the lead VSTL must ensure that the third party laboratory will properly implement the VVSG requirements, validate its election simulation tools, and properly performed the testing;

2.10.4.3.4. The lead VSTL performs all system accuracy, reliability, functionality and integration testing; and

2.10.4.3.5. The third party laboratory issues a report to the lead VSTL that fully documents its testing such that the lead VSTL may demonstrate compliance with this section and produce a report consistent with Section 2.10.5 of this Manual.

2.10.5. *Test Report Package.* The Test Report Package represents the culmination of the testing process. As such, it is vital that it accurately and completely document the testing performed and the results of such testing. VSTLs shall submit Test Report Packages directly to the EAC. The packages shall include:

2.10.5.1. Requirements Matrix. VSTLs shall complete the requirements matrix originally submitted with its test plan (see Section 2.10.1 above). The Requirements Matrix and instructions for its completion may be found on the EACs Web site at *www.eac.gov.* The final submission of the Requirements Matrix will serve as verification that the VSTL performed the testing required to demonstrate compliance with voting system standards.

2.10.5.2. Test Report. VSTLs shall provide a test report.

2.10.5.2.1. Content. All test reports shall document the testing process, including the documentation and justification of any divergence from the EAC approved test plan, methods, or cases and the identification of all failures and/or anomalies along with any remedial action taken[5] (see Chapter 4 of the EAC's Voting System Testing and Certification Manual regarding the anomaly matrix). Test reports shall also document any prescribed maintenance or modifications, performed by the Manufacturer, to a voting system in testing. Such maintenance or modifications shall be monitored by the

[4] For the purposes of the EAC's Voting System Test Laboratory Program, non-core cryptographic testing includes all testing involving evaluation of cryptographic operation and key management.

[5] VSTLs must report all errors and anomalies identified in the test campaign even when an error is identified during the testing of unrelated functionality.

VSTL consistent with Section 2.11.1 of this Manual.

2.10.5.2.2. Format. To the greatest extent possible, VSTLs shall write reports such that they are understandable to non-technical persons. As the EAC will publish these reports (bar portions prohibited by law), VSTLs shall refrain from including in them trade secrets or other commercial information protected from release unless substantively required. Where information protected from release may be included, it shall be identified consistent with Chapter 7 of this Manual. VSTLs shall format each test report consistent with the requirements of Appendix B of this Manual.

2.10.5.3. VSTL Attestation. The VSTL shall provide a letter, signed by a representative authorized to take action on behalf of the VSTL (see Sections 2.13 and 3.4.1.6. of this Manual), which attests that (1) all testing prescribed by the test plan or amended test plan was performed as identified or the divergence from the test plan was properly documented, (2) all identified voting system anomalies or failures were reported and resolved, (3) that the test report is accurate and complete, and (4) the VSTL recommends the system for certification.

2.10.6. *Acceptance of Prior Testing.* Generally, a valid test previously performed on a voting system by a VSTL, or by a third party test laboratory operating at the direction of a VSTL, may be reused at the discretion of the lead VSTL. The EAC encourages VSTLs to use such testing to fulfill current certification requirements. The EAC will accept prior testing only when the below requirements are met. Lead VSTLs are responsible for ensuring that the prior testing has met these requirements. Prior testing is valid when:

2.10.6.1. The discrete software or hardware component previously tested is demonstrably identical to that presently offered for testing. Lead VSTLs must examine the components to ensure no change has taken place consistent with all documentation. When valid prior testing is used, the system presented must be subject to regression testing, functional testing and system integration testing;

2.10.6.2. The voting system standards and relevant EAC interpretations applicable to the prior and current testing are identical;

2.10.6.3. The test methods used are equivalent or identical to current test methods approved by the EAC;

2.10.6.4. The prior testing has been reviewed by the VSTL and no errors or omissions are apparent. Any errors or omissions identified shall be reported to the EAC; and

2.10.6.5. The adoption and use of prior testing is noted in the test plan and test report. Like all testing, prior testing is subject to EAC review and approval.

2.10.7. *Termination of Testing Prior to Completion.* In the event testing is terminated prior to completion, VSTLs are required to notify the EAC Program Director. This notification shall be in writing and state the reasons for termination, provide a list of all testing completed, and produce a matrix of test anomalies or failures pursuant to Section 4.5.2 of the EAC Testing and Certification Program Manual.

2.10.7.1. Termination Defined. Voting system testing shall be considered terminated when the testing process is permanently ended or otherwise halted without a specific plan to recommence within 180 days of the last test performed.

2.10.7.2. Effect of Termination. Notification of termination will result in the suspension of the Manufacturer's Certification Application. Additionally, the termination and VSTL's written notice shall be posted on EAC's Web site.

2.10.7.3. Resubmission after Termination. Manufacturers may resubmit a system previously terminated by submitting an updated application consistent with Chapter 4 of the Voting System Testing and Certification Program Manual. Pursuant to Section 2.11 of this Manual and Section 4.3.1.2 of the Voting System Testing and Certification Program Manual, a system resubmitted to the EAC after termination must be tested by the VSTL identified on the original application.

2.11. Laboratory Independence. As a condition of accreditation, all laboratories shall maintain their independence from voting system Manufacturers, consistent with their roles and responsibilities as a key component of the EAC Certification program. VSTLs shall maintain an arm's length relationship with the manufacturers and avoid even the appearance of improper conduct. In order to maintain independence, VSTLs shall adhere to the following independence principles and requirements:

2.11.1. *Testing Independence.* Consistent with the requirements of this Manual, only the lead VSTL identified on a voting system's application form may test or oversee the testing of that system. Under no circumstances may a Manufacturer perform or participate in any testing which will serve as the basis of an EAC certification. Participation includes but is not limited to the observation of testing by the Manufacturer.[6] Additionally, lead VSTL's shall ensure that Manufactures' do not have access to a system under test unless accompanied and monitored by a VSTL representative.

2.11.2. *Decision Making.* Determinations regarding testing, test requirements, and test results shall be made on the basis and for the purpose of ensuring that the systems tested meet Federal voting system standards. A VSTL's primary purpose shall be to serve the public interest through adherence to the EAC Testing and Certification Program.

2.11.3. *Single Laboratory Requirement.* EAC's Testing and Certification Program prohibits Manufacturers from changing laboratories during the testing process. Once a lead VSTL is identified to the EAC by the Manufacturer to test a system, a test report will not be accepted by the EAC from any other laboratory unless authorized pursuant to Chapter 4 of the EAC's Voting System Testing and Certification Program Manual. This strict policy supports VSTLs in their independent decision making role. VSTLs shall immediately report to the EAC Certification Program Director any time a Manufacturer withdraws a product from testing or the testing is otherwise terminated (see Section 2.10.7. of this Manual).

2.11.4. *Fee for Service.* All fees paid by a Manufacturer to a VSTL shall be solely for services rendered. No payment may be accepted by a VSTL that is not directly linked to services necessary to complete system testing. No payment may be accepted by a VSTL that is conditioned or dependent on testing outcome.

2.11.5. *Written Communications.* To ensure and document the independent relationship between test laboratories and Manufacturers, all substantive discussions regarding the outcome, cost, payment and testing of a voting system shall be conducted or otherwise documented in writing by the VSTL. These records shall be maintained consistent with Section 2.15 of this Manual. Examples of substantive discussions between the lead VSTL and a Manufacturer include but are not limited to:

2.11.5.1. All contracts and amendments thereto;

[6] Not all activities required for EAC Certification are ''testing'' activities. Examples of certification requirements that do not fall into the category of ''testing'' include trusted and witness builds.

2.11.5.2. All discussions regarding the set up and operation of the voting system during testing;

2.11.5.3. All discussions with the Manufacturer regarding the test plan, test cases, testing, or the test report; and

2.11.5.4. All discussions regarding implementation or interpretation of the standards.

2.11.6. *Testing Facilities.* To avoid the appearance of impropriety and otherwise maintain laboratory independence, VSTLs shall not conduct testing [7] at a Manufacturer owned or controlled facility. If exceptional circumstances exist requiring that the VSTL use Manufacturer facilities, the VSTL may request a waiver from this prohibition. The request must be in writing to the Program Director and clearly state why such testing is necessary. A waiver may be granted at the sole discretion of the Program Director and may impose necessary restrictions, limitations and requirements on testing. Waivers will be granted only in exceptional circumstances.

2.11.7. *Improper Influence.* Any attempt by a Manufacturer to unduly influence the test process shall be immediately reported to the EAC's Certification and Testing Program Director.

2.12. Authority to do Business in the United States. As a condition of accreditation, all laboratories shall be lawfully entitled or otherwise not prohibited from doing business with the United States or its citizens or operating in the United States.

2.13. Communications. As a condition of accreditation, all laboratories shall designate and identify an individual or individuals who may speak for and take action on behalf of the VSTL. VSTLs shall maintain an open line of communication with EAC's Testing and Certification Program Director, providing prompt response to requests for information regarding the Program.

2.14. Resources and Financial Stability. As a condition of accreditation, all VSTLs shall allocate sufficient resources to enable the laboratory to properly use and maintain its test equipment, personnel, and facility and to satisfactorily perform all required laboratory functions. The laboratory shall maintain insurance policies sufficient to indemnify itself against financial liabilities or penalties that may result from its operations. VSTLs shall:

2.14.1. Maintain insurance policies (see Section 3.4.1.8.) that indemnify the laboratory against the potential losses identified in its liability assessment (see Section 3.4.1.9.); and

2.14.2. Document solvency through demonstrating that the laboratory's assets are greater than its liabilities in its audited financial statement (see Section 3.4.1.16.).

2.15. Recordkeeping. As a condition of accreditation, all laboratories shall have a written policy regarding the proper storage, management and retention of all records relating to the testing of voting systems. At a minimum, this policy shall require all forms, reports, test records, observations, calculations, and derived data for all tests performed on a given voting system (or component of said system) be retained for a period of at least 5 years after the last test performed on any version of that system (or component of any version of said system). The policy shall require that all documents are maintained in a safe and secure environment and stored in a manner that provides for organized and timely identification and retrieval. Additionally, all records must be kept in a data format usable and available to the EAC.

3. Accreditation Process

3.1. Overview. This chapter sets forth the required steps Applicant Laboratories must perform in order to receive an EAC Voting System Test Laboratory Accreditation. The process generally includes an application for and receipt of a NIST recommendation; receipt of an EAC invitation to apply; and the successful submission, acceptance and review of an EAC application.

3.2. NIST Recommendation. The Election Assistance Commission (EAC) is mandated under Section 231 of the Help America Vote Act of 2002 (HAVA) (42 U.S.C. § 15371(b)) to "* * * provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." As part of this process, HAVA requires the National Institute of Standards and Technology (NIST) to evaluate independent non-Federal test laboratories. NIST selects those laboratories technically qualified to test voting systems and recommends them to the EAC for accreditation. Generally, a Laboratory must have a NIST recommendation before it may be considered for EAC accreditation.

3.2.1. *NIST Recommendation Process.* NIST utilizes its National Voluntary Laboratory Accreditation Program (NVLAP) to perform this evaluation. NIST, through the NVLAP process, assesses laboratory technical capabilities, procedures and personnel before recommending a laboratory for EAC accreditation. The requirements, procedures and application process for requesting consideration by NIST (for recommendation to the EAC) may be found at *www.nist.gov/NVLAP* or by contacting NIST at, National Voluntary Laboratory Accreditation Program, Standards Services Division, NIST, 100 Bureau Drive, Stop 2140, Gaithersburg, MD, 20899–2140.

3.2.2. *Emergency EAC Accreditation without NIST Recommendation.* HAVA authorizes the EAC to consider and accredit laboratories without a NIST recommendation (42 U.S.C. § 15371(b)(2)(B)). The EAC will accredit laboratories without a NIST recommendation only as an emergency action.

3.2.2.1. Emergency Action-Defined. The EAC will take emergency action only in instances where (1) there is a significant national need for accredited laboratory testing capacity that cannot be met by existing VSTL's, (2) the shortage of laboratory testing capacity may cause a disruption in the orderly administration of Federal elections, and (3) NIST is not capable of timely providing new laboratories to meet needs. Consistent with HAVA, the EAC will publish its basis for emergency action following the above standards.

3.2.2.2. Emergency Action-Process. Laboratories shall be accredited by the EAC in an emergency action only after they have been properly assessed according to international standards and applicable NIST Guidance. These standards include International Standard ISO/IEC 17025, General Requirements for the Competence of Testing and Calibration Laboratories; NIST Handbook 150, Procedures and General Requirement; NIST Handbook 150–22, Voting System Testing; and/or any documents supplementing, updating or replacing these standards or handbooks.

3.2.2.3. Emergency Action-Provisional. Any accreditation provided by the EAC through its emergency action authority will be provisional in nature and limited in scope. All emergency accreditations must expire on a date certain.

3.3. EAC Invitation. After receipt of a NIST list of recommended laboratories, the EAC will send a letter to the laboratories inviting them to apply for EAC accreditation under the VSTL program. No laboratory may apply for EAC accreditation without an invitation from the Commission. The letter of invitation will identify the scope of

[7] As noted in footnote 6, above, this requirement only applies to "testing" and does not include other certification activities such as trusted and witness builds.

accreditation for which the laboratory may apply. The invited laboratories must follow the application procedure noted in Section 3.4, below.

3.4. Application. EAC is the sole authority for Voting System Test Laboratory Accreditation. While NIST's recommendation serves as a reliable indication of technical competency, the EAC must take additional steps to ensure that laboratory policies are in place regarding issues like conflict of interest, record maintenance, and financial stability. It must also ensure that the candidate laboratory is willing and capable to work with EAC in its Certification Program. To that end, applicant laboratories are required to submit a Letter of Application requesting accreditation. The letter shall be addressed to the Testing and Certification Program Director and attach (in either hard copy or on CD/DVD) (1) all required information and documentation; (2) a signed letter of agreement; and (3) a signed certification of conditions and practices.

3.4.1. *Information and Documents.* The applicant laboratory must submit the information and documents identified below as a part of its application. These documents will be reviewed by the EAC in order to determine whether the applicant laboratory meets the program requirements identified in Chapter 2. The grant of EAC accreditation is subject to receipt of the information and EAC's review and approval of the materials. The applicant laboratory shall properly label any documents, or portions of documents, it believes are protected from release under Federal law.

3.4.1.1. The legal name of the laboratory

3.4.1.2. Mailing address of the laboratory

3.4.1.3. Physical location of the laboratory (if different than the mailing address).

3.4.1.4. Name, phone number, fax number and e-mail address of the voting system testing program manager or individual otherwise immediately responsible for the voting system testing program.

3.4.1.5. Name, phone number, fax number, and e-mail address of the individual, CEO, president or otherwise titled head of the laboratory.

3.4.1.6. Name, title, phone number, fax number, and e-mail address of the individual or individuals designated to speak for and take action on behalf of the laboratory pursuant to Section 2.13 of this Manual.

3.4.1.7. The business contact information (such as point of contact, address, Web site, e-mail address) to be posted by the EAC on its Web site.

3.4.1.8. The identity of the laboratory's insurer(s), name of insured, and coverage limits for any comprehensive general liability policies, errors and omissions policies, professional liability policies, and bailee policies.

3.4.1.9. A written assessment of the laboratory's commercial general liability.

3.4.1.10. A signed statement certifying that it maintains workman's compensation policy coverage sufficient to meet the applicable State's minimum requirements.

3.4.1.11. A copy of the laboratory's organizational chart which includes the names of key staff responsible for the testing of voting systems.

3.4.1.12. A copy of the laboratory's conflict of interest policy which implements the standards of Section 2.5 of this Manual.

3.4.1.13. A copy of the laboratory's personnel policy which implements the standards of Section 2.6 of this Manual.

3.4.1.14. A copy of the laboratory's recordkeeping policy which implements the standards of Section 2.15 of this Manual.

3.4.1.15. A copy of the laboratory facilities brochure.

3.4.1.16. A copy of the most recent annual report, the names of the current board of directors and the previous year's board of directors, the names of any majority shareholders, and audited financial statements of the companies or entities that own and operate the laboratory. Laboratories not incorporated should provide comparable information.

3.4.2. *Letter of Agreement.* The applicant laboratory must submit a signed letter of agreement as a part of its application. This letter shall be signed by an official vested with the legal authority to speak for, contract on behalf of or otherwise bind the applicant laboratory (see Section 2.13). The purpose of this letter is to document that the applicant laboratory is aware of and agrees to abide by the requirements of the EAC Voting System Testing Laboratory Accreditation Program. No applicant laboratory will be considered for accreditation unless it has properly submitted a letter of agreement. The letter shall unequivocally state the following:

The undersigned representative of_____ (hereinafter ''Laboratory''), being lawfully authorized to bind Laboratory and having read the EAC Voting System Test Laboratory Program Manual, accepts and agrees on behalf of Laboratory to follow the program requirements as laid out in Chapter 2 of the Manual. Laboratory shall meet all program requirements as they relate to NVLAP accreditation; conflict of interest and prohibited practices; personnel policies; notification of changes; resources; site visits, notice of law suits; testing, technical practices and reporting; laboratory independence; authority to do business in the United States; VSTL communications; financial stability; and recordkeeping. Laboratory further recognizes that meeting these program requirements is a continuing responsibility. Failure to meet each of the requirements may result in the denial of an application for accreditation, a suspension of accreditation or a revocation of accreditation.

3.4.3. *Certification of Laboratory Conditions and Practices.* The applicant laboratory must submit a signed Certification of Laboratory Conditions and Practices as a part of its application. No applicant laboratory will be considered for accreditation unless it has properly affirmed its conditions and practices through the certification document. A Certification of Laboratory Conditions and Practices form may be found at Attachment C and is available electronically at *www.eac.gov.* By signing the certification, a laboratory affirms that it, in fact, has in place the policies, procedures, practices, resources and personnel stated in the document. Any false representations made in the certification process may result in the revocation of accreditation and/or criminal prosecution.

3.5. EAC Review of Application Package. The EAC will perform a review of each Applicant Laboratory's application package to ensure that it is complete and the laboratory meets the program requirements. Each package will be received and reviewed by the Testing and Certification Program Director to identify any apparent nonconformities or deficiencies. If necessary, the Program Director will notify Applicant Laboratories of any such nonconformities or deficiencies and provide them an opportunity to cure problems prior to forwarding the package to the Commissioners. The Program Director will issue a recommendation to the Commissioners when forwarding any application package. Consistent with HAVA, a laboratory will receive an accreditation only upon a vote of the Commissioners.

3.5.1. *Program Director Review.* Application packages shall be sent to the Program Director. The Program Director will perform a review of the packages before forwarding them to the Commissioners with a recommendation.

Upon receipt of an application package the Testing and Certification Program Director shall review the package to ensure:

3.5.1.1. The package is complete. No application may be forwarded to the Commission for a vote on accreditation unless is contains all required documentation (Section 3.4.1), a proper letter of agreement (Section 3.4.2), and a signed Certification of Laboratory Conditions and Practices (Section 3.4.3).

3.5.1.2. Evidence of compliance with program requirements. The Program Director shall also review the submissions to ensure that the information provided properly reflects and documents compliance with program requirements.

3.5.2. Notice of Nonconformity. In the event the Program Director identifies (1) missing documentation or information and/or (2) issues of non-compliance, the Program Director shall notify the Applicant Laboratory of the deficiencies prior to forwarding a recommendation to the Commissioners. The written notice of nonconformity shall:

3.5.2.1. Identify any missing documentation or information;

3.5.2.2. Identify any issues of potential non-compliance; and

3.5.2.3. Provide Applicant Laboratory a reasonable time period to submit additional information or amend their application package in response to identified non-conformities.

3.5.3. *Applicant Laboratory Action on Notice of Nonconformity*. Applicant Laboratories shall respond to a notice of nonconformity within the timeframe identified by the Program Director. Responses shall include any missing documents identified in the notice, as well as any additional or clarifying information or documentation responsive to an issue of non-compliance.

3.5.3.1. Request for Additional Time. Applicant Laboratories may request additional time in writing. Such request must state the basis for the request and identify a reasonable time period for response. The grant of additional time is at the sole discretion of the Program Director.

3.5.3.2. Failure to Respond—Missing Documentation or Information. If an Applicant Laboratory fails to provide required information or documentation within the timeframe provided in the notice of noncompliance, the Program Director shall reject the application as incomplete, returning the package to the applicant for resubmission consistent with the requirements of this Chapter.

3.5.3.3. Failure to Respond—Issue of Noncompliance. If, within the timeframe provided in the notice of noncompliance, an Applicant Laboratory (who has provided all required documentation) fails to provide additional, clarifying information or documentation in response to an identified issue of program noncompliance, the Program Director shall forward the original application to the Chair of the Commission for action.

3.5.4. *Recommendation to Commissioners*. After review, and if necessary an opportunity for the applicant to amend their application, the Program Director shall forward each application to the Chair of the Commission with a recommendation as to disposition. This application package shall include all documents and correspondence between the applicant laboratory and the EAC Program Director.

3.5.5. *Vote by Commissioners*. Upon receipt of an application package and recommendation from the Testing and Certification Program Director, the Chair of the Commission shall forward the information to each EAC Commissioner. After a reasonable time to review the forwarded materials, the Chair of the Commission shall bring the matter to a vote, consistent with the rules of the Commission. The measure presented for a vote shall take the form of a written Commissioners' Decision which (1) makes a clear determination as to accreditation and (2) states the basis for the determination.

3.6. Grant of Accreditation. Upon a vote of the EAC Commissioners to accredit a laboratory, the Testing and Certification Program Director shall inform the laboratory of the decision, Issue a Certificate of Accreditation and post information regarding the laboratory on the EAC Web site.

3.6.1. *Certificate of Accreditation*. A Certificate of Accreditation shall be issued to each laboratory accredited by vote of the Commissioners. The certificate shall be signed by the Chair of the Commission and state:

3.6.1.1. The name of the VSTL;

3.6.1.2. The scope of accreditation, by stating the Federal standard or standards to which the VSTL is competent to test;

3.6.1.3. The effective date of the certification, which shall not exceed a period of two (2) years; and

3.6.1.4. The technical standards to which the laboratory was accredited.

3.6.2. *Post Information on Web Site*. The Program Director shall make information pertaining to each accredited laboratory available to the public on EAC's Web site. This information shall include (but is not limited to):

3.6.2.1. NIST's Recommendation Letter;

3.6.2.2. The VSTL's Letter of Agreement;

3.6.2.3. The VSTL's Certification of Conditions and Practices;

3.6.2.4. The Commissioner's Decision on Accreditation; and

3.6.2.5. The Certificate of Accreditation.

3.7. Effect of Accreditation. Receipt of an EAC Accreditation indicates that a laboratory has met the applicable technical, procedural, management and staffing requirements and may serve as a Voting System Test Laboratory (VSTL) under EAC's Testing and Certification Program.

3.7.1. *Scope of Accreditation*. A laboratory shall operate within the limits of the scope of accreditation as stated on its Certificate of Accreditation.

3.7.2. *Representation*. No VSTL may make representations regarding its accreditation beyond its scope of accreditation.

3.7.3. *No Endorsement*. A Certificate of Accreditation is not an endorsement of the recipient laboratory. A VSTL may not state or imply EAC endorsement.

3.7.4. *Accreditation Logo*. A VSTL may display the EAC laboratory accreditation logo. Only the EAC authorized logo may be used. The display must be used in a manner consistent Sections 3.7.1.—3.7.3., above. Specifications for the reproduction and use of the EAC logo are found in Appendix D.

3.8. Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending.

3.9. Denial of Accreditation. Upon a vote of the EAC Commissioners not to accredit a laboratory, the Testing and Certification Program Director shall inform the laboratory of the decision and post relevant information on the EAC Web site.

3.9.1. Notice of Denial. The Program Director shall inform the applicant laboratory (in writing) of the Commissioners' Decision. This notice must include:

3.9.1.1. A statement of the decision and brief summary explanation of the basis for the decision;

3.9.1.2. Notice of the Applicant Laboratory's right to appeal; and

3.9.1.3. A copy of the Commissioners' Decision.

3.9.2. *Post Information on Web Site*. The Program Director shall publish on EAC Web site:

3.9.2.1. A copy of the Commissioners' Decision, and

3.9.2.2. The Notice of Denial.

3.10. Requesting Appeal. An applicant laboratory that has been denied accreditation by a vote of the Commissioners shall have the right to appeal. An Applicant Laboratory may appeal a Denial of Accreditation by first issuing a written request for appeal.

3.10.1. *Submission*. Requests must be submitted in writing to the Program Director, addressed to the Chair of the U.S. Election Assistance Commission.

3.10.2. *Timing of Appeal*. The Applicant Laboratory may request an appeal within 7 calendar days of receipt of the Notice of Denial. Late requests will not be considered.

3.10.3. *Contents of Request*. The request must petition for reconsideration of the Commissioners' Decision and clearly state the specific conclusions of the Decision the Applicant Laboratory wishes to appeal.

3.11. EAC Action on a Request for Appeal. The Program Director shall accept any request for appeal timely submitted. Untimely requests shall be rejected. Upon receipt of a request for appeal, the Program Director shall notify the requestor applicant laboratory, in writing, as to whether their appeal has been accepted as timely. The notice for accepted requests shall inform the applicant laboratory of the requirements for submitting their appeal per Section 3.12 of this Manual.

3.12. Submission of Appeal. After submission of a timely request for appeal, the Applicant Laboratory shall submit its appeal. This appeal shall (1) clearly identify the specific conclusions of the Commissioners' Decision the Laboratory wishes to challenge, (2) provide the basis for its position on appeal and (3) submit a written argument in support of its appeal. In addition, the applicant laboratory may submit documentary or other relevant, physical evidence in support of the appeal. The Appeal and all supporting materials must be received by the EAC within 20 days of the applicant laboratory's receipt of the Program Director's notice of acceptance of the request to appeal.

3.13. Consideration of Appeal. All timely appeals will be considered by the Commissioners. Upon receipt of an appeal, the Chair of the Commission shall forward to each EAC Commissioner the Applicant Laboratory's appellate submission, along with the original application package, Commissioners' Decision, and Program Director's recommendation. After a reasonable time to review and consider the forwarded materials, the Chair of the Commission shall bring the matter to a vote, consistent with the rules of the Commission. The measure presented for a vote shall take the form of a written Commissioners' Decision on Appeal.

3.14. Commissioner's Decision on Appeal. The Commissioners shall make a written, final Decision on Appeal and shall provide it to the Applicant Laboratory.

3.14.1. *Contents*. The Decision on Appeal shall:

3.14.1.1. State the final determination of the Commission.

3.14.1.2. Address the matters raised by the Applicant Laboratory on appeal.

3.14.1.3. Provide the reasoning behind the decision.

3.14.1.4. State that the Decision on Appeal is final.

3.14.2. *Determinations*. The Commissioners shall make one of two determinations on appeal.

3.14.2.1. Grant of Appeal. If the Commissioners determine that the previous Decision of the Commission shall be overturned in full, the appeal shall be granted. In such cases, the Applicant Laboratory shall be granted accreditation.

3.14.2.2. Denial of Appeal. If the Commissioners determine that any part of the previous Decision of the Commission shall be upheld such that the procedural requirements of Chapter 3 or the Program requirements of Chapter 2 of this manual will not be met in full, the appeal shall be denied. In such cases, the application for appeal is finally denied.

3.14.3. *Effect*. All Decisions on Appeal shall be final and binding on the Applicant Laboratory. No additional request for appeal shall be granted.

3.15. Effect of Denial of Accreditation. An EAC denial of accreditation indicates only that an applicant laboratory has failed to document or otherwise demonstrate that it has the procedures, policies, management or personnel in place to meet the requirements of the Accreditation Program. A denial of accreditation is based upon current policy and procedure and is not an indicator of past performance. Laboratories denied accreditation have the right to cure any identified defect and reapply by resubmitting their application package consistent with Section 3.4 of this Chapter.

4. Compliance Management Program

4.1. Purpose. The purpose of the Compliance Management Program is to improve EAC's Laboratory Accreditation Program and Testing; increase coordination, communication and understanding between the EAC and its VSTLs; and increase public confidence in elections by facilitating VSTL accountability. The program accomplishes this by increasing personal interaction between EAC staff and VSTL personnel, collecting information and performing reviews to ensure continued compliance with program requirements, and requiring that VSTLs promptly remedy any identified areas of noncompliance.

4.2. Compliance Management Program, Generally. The Compliance Management Program meets its purposes by gathering information on the procedures and practices of its VSTLs. There are three main sources of information: (1) VSTL Notifications of Changes, (2) EAC Requests for Documents or Information and (3) EAC On Site Reviews. The information collected is reviewed by the EAC to ensure that VSTLs are meeting all program requirements. Any areas of noncompliance or recommendations for improvement are presented to VSTLs in a Compliance Management Report. VSTLs are required to promptly remedy any noncompliance or face revocation of accreditation.

4.3. VSTL Notification of Changes. VSTLs are obligated to report any significant changes regarding the information, agreements or certifications made to the EAC as a condition of accreditation (see Section 2.7). This requirement serves as the primary means by which the EAC maintains VSTL compliance. Failure to report changes in conditions or practices may result in suspension or revocation of accreditation consistent with the requirements and procedures of Chapter 5.

4.4. Request for Documents and Information. The Program Director may request a VSTL to provide the EAC information and/or documents to demonstrate the laboratory's continuing compliance with the Accreditation Program requirements noted in Chapter 2 (See Section 2.2).

4.4.1. *EAC Request*. A request for documents or information shall be made in writing by the Program Director and provide a reasonable timeframe for VSTL response. The request may be for documents, information or both:

4.4.1.1. Request for Documents. A request for documents must identify the specific documents sought. A request for documents is not a demand for the VSTL to create a document, but to provide the EAC a copy of any existing documentation responsive to the request.

4.4.1.2. Request for Information. Requests for information shall take the form of interrogatories. Each inquiry shall take the form of a discrete question. VSTLs are expected to provide complete answers to each question.

4.4.2. VSTL Response. VSTLs shall respond within the timeframe provided by the Program Director. If additional time is needed, VSTLs may request an extension. Such requests must be made within the timeframe of the original request. The grant of additional time is at the sole discretion of the Program Director.

4.4.2.1. Request for Documents. VSTLs shall respond to requests for documents by having knowledgeable staff conduct a thorough search of VSTL records. VSTLs shall provide copies of all documents responsive to the request. If any document responsive to a request is considered privileged or otherwise protected from release under Federal law, it should be properly labeled. If no documents responsive to the request are found, the VSTL shall state that no records were found.

4.4.2.2. Request for Information. VSTLs shall respond to requests for information by having knowledgeable staff answer each question posed. VSTLs shall ensure that each question is answered completely and accurately. The VSTL may submit documents in support of its responses.

4.4.3. *Failure to Respond*. Failure to timely respond to a request for documents or information may result in a suspension or revocation of accreditation consistent with the requirements and procedures of Chapter 5.

4.5. *On Site Laboratory Review—Generally*. The Program Director shall provide for regular on site reviews of VSTLs. There are two types of on site review:

4.5.1. *On Site Review—Policy, Procedures and Practices Review*. The most common type of review is the Policy, Procedure and Practices Review. This type of review requires EAC personnel to enter a VSTL facility, examine a variety of documentation and meet with VSTL personnel to confirm that the VSTL's policies, procedures and practices meet the requirements of the Laboratory Accreditation Program (Chapter 2).

4.5.2. *On Site Review—Testing Observation and Technical Assessment*. A Testing Observation and Technical Assessment Review requires an expert EAC laboratory assessor to enter a VSTL facility and assess the laboratory's technical procedures, policies, management and personnel to verify compliance with applicable laboratory standards. Additionally, the EAC assessor may observe VSTL employees during the testing of voting systems to ensure that VSTL practices match technical policies.[8]

4.6. On Site Laboratory Review—Frequency. The Program Director shall ensure that each VSTL receives an On Site Policy, Procedures and Practices Review at least once every two years.

4.7. On Site Laboratory Review—Procedure. The Program Director shall determine when and what type of on site review will be conducted for each VSTL. Before any on site review, the Program Director shall provide the VSTL with reasonable notice. Reviews shall be conducted with as little impact as possible on the activities of the VSTL. The VSTL and its employees are required to participate in the review and cooperate with on site EAC personnel. Finally, the reviewer shall provide the VSTL a short exit briefing prior to the termination of the on site review.

4.7.1. Notice. The Program Director shall coordinate on site reviews with VSTL management. As reviews require the availability of laboratory documents and key personnel, a notice of on site review shall be in writing and be provided to the VSTL at least 15 calendar days before the on site review date. The notice shall provide the VSTL with the following information:

4.7.1.1. Duration of Review. The notice shall provide an estimated timeframe during which EAC reviewers will be on site.

4.7.1.2. Type of Review. The notice shall identify the type of review to be performed (see Section 4.5.).

4.7.1.3. Scope of Review. The notice shall provide information regarding the scope of review. This information shall be sufficient to allow the VSTL to identify the documents, personnel and testing it must make available to EAC reviewers. The notice shall specifically identify:

4.7.1.3.1. The type of documents and/or program areas to be reviewed.

4.7.1.3.2. The testing that is to be observed.

4.7.1.4. VSTL's Responsibilities. The notice shall briefly inform the VSTL of its responsibility to coordinate and cooperate with the EAC throughout the on site review process.

4.7.2. *VSTL Response to Notice*. Upon receipt of a notice of on site review, the VSTL shall coordinate the logistics of the review with the Program Director. In the event the noticed date or timeframe makes access to the required personnel, documents or testing untenable, the VSTL shall contact the Program Director in writing and identify, (1) The conflict or other problem which makes the proposed date and timeframe untenable, and (2) a proposed alternative date for the on site review. The acceptance of an alternative on site review date is at the sole discretion of the Program Director.

4.7.3. *Review*. An on site review begins upon the arrival of EAC personnel at the VSTL's facility. EAC reviewers will ordinarily conduct reviews during the VSTL's normal working hours. The reviewers will make every effort to work as efficiently as possible and avoid impacting the laboratory's routine operations. The VSTL and its employees are required to cooperate with EAC reviewers. This cooperation includes providing a private, physical location for EAC personnel to review documents and speak with VSTL employees. Generally, the VSTL shall be responsible for ensuring:

4.7.3.1. Document Access and Availability. That the reviewers have access to all requested VSTL documents. All documents specifically identified in the notice of on site review shall be presented to reviewers upon arrival.

4.7.3.2. Personnel Access and Availability. That the reviewers have reasonable access to requested personnel. The VSTL shall ensure that key personnel for each substantive area identified in the notice of on site review be available to EAC reviewers during the noticed review period.

4.7.3.3. Facilities and Testing Access and Availability. That the reviewers have access to VSTL facilities involved in the testing of voting systems, including the facilities of third party contractor laboratories. Additionally, VSTLs must coordinate access to view testing consistent with the notice of on site review.

4.7.4. *Exit Briefing*. EAC reviewers shall provide the VSTL personnel an exit briefing. Exit briefings shall be informal. The briefing shall identify any documents, information or personnel which the VSTL remains responsible for

[8] EAC's authority to observe testing and conduct technical assessments serves only as an additional tool to ensure technical compliance. The primarily means by which EAC ensures technical compliance is through NIST's NVLAP program. The NVLAP program monitors laboratories by requiring regular assessments. Laboratories are reviewed one year after their initial accreditation and biennially thereafter.

making available to the reviewers; inform the VSTL of the next steps in the review process; and provide the VSTL an opportunity to ask questions about the process.

4.8. EAC Compliance Management Reports. The EAC shall issue a written Compliance Management Report after performing any on site review. A Compliance Management Report shall also be issued after a Request for Documents/Information or VSTL Notification of Change when either indicates a noncompliance with program requirements. All reports shall be posted on the EAC Web site and (1) provide a brief summary of the review process, request for information or VSTL Notification of Change (2) state any findings resulting from the review, and (3) identify any corrective action required.

4.8.1. *Purpose*. The purpose of the report is to provide the VSTL with EAC's findings regarding its program so that:

4.8.1.1. Items of noncompliance may be identified and rectified,

4.8.1.2. Exceptional practices may be identified and encouraged, and

4.8.1.3. EAC recommendations (beyond the program requirements) may be put forth in an effort to improve the VSTL's program.

4.8.2. *Summary of Process*. The report shall provide a brief summary of the review process, request for information or VSTL Notification of Change. The purpose of this summary is to provide background information regarding how the information supporting EAC findings was collected. This includes identifying sources of information, methodology and standards. For the purposes of on site reviews, the summary shall state:

4.8.2.1. The dates of the review,

4.8.2.2. The type of review performed,

4.8.2.3. The program areas reviewed, including any specific documents and personnel discussions which were integral to the report findings, and

4.8.2.4. The processes used by the reviewers to determine compliance.

4.8.3. *Findings*. The report shall outline any findings of the review, request for information or VSTL Notification of Change. A finding is any factual determination that the VSTL is not in compliance with the program requirements identified in Chapter 2 of this Manual or an EAC recommendation for program improvement which does not rise to the level of noncompliance. While reports may also contain recognition of exceptional practices, such statements are not considered findings. Reports shall identify three types of findings:

4.8.3.1. Critical. A critical finding is a determination that the VSTL has not met a requirement of the program that is fundamentally critical to the VSTL's technical capability to test voting systems. A critical noncompliance is a violation of program requirements that by its very nature comprises the integrity of the EAC Testing and Certification Program.

4.8.3.2. Required. A required finding is a determination that the VSTL has failed to meet a requirement of the program that is not considered technically critical pursuant to Section 4.8.3.1., above.

4.8.3.3. Recommended. A recommended finding is a determination that VSTL practices could be improved, but that the identified improvement is not required by the program. In some cases, recommended practices may be practices the EAC plans to make program requirements.

4.8.4. *Corrective Action*. The report shall specify the action to be taken by the EAC and/or VSTL based upon the review findings.

4.9. Corrective Action. Based upon the Compliance Management Report, corrective action may be required. EAC action and VSTL responsibilities will vary depending upon the nature of the report's findings.

4.9.1. Critical. Critical Findings require the EAC to initiate the immediate suspension of the VSTL consistent with the requirements and procedures of Chapter 5, Revocation of Accreditation. The VSTL's rights to remedy its noncompliance or be heard are laid out in Chapter 5.

4.9.2. Required. Required Findings obligate the VSTL to resolve the identified non-compliance within 20 days. Failure to do so within the 20 day timeframe will result in suspension or revocation of accreditation consistent with the procedures laid out in Chapter 5, Revocation of Accreditation. The VSTL may resolve a Required Finding by:

4.9.2.1. Challenging the Finding. The VSTL may challenge a finding if it believes its procedures and practices were in compliance with program requirements at the time of the review. A VSTL shall challenge a Required Finding by providing factual information which documents its claim of compliance. Challenges must be filed within 5 days of receipt of the EAC Report. The challenge must be in writing, state the basis for the challenge, address the facts and conclusions in the EAC report, and provide information which unambiguously documents that the VSTL was in compliance at the time of the review, request for information or VSTL Notification of Change. The EAC Program Director will accept or reject a VSTL's challenge in writing. If a challenge is accepted, no corrective action will be required. If the challenge is rejected, the VSTL will have 20 days from receipt of the notice of rejection to perform remedial action.

4.9.2.2. Conducting Remedial Action. VSTLs may take corrective action by submitting a remedial plan within 20 days of receipt of the report. The remedial plan shall (for each finding of noncompliance) identify the noncompliance, outline the steps to be taken to achieve compliance, state the timeframe for each step and identify the means and final date by which the VSTL will document compliance. A remedial plan is subject to approval from the Program Director. A VSTL's failure to obtain approval of a remedial plan or unauthorized deviation from an approved plan's requirements or deadlines will result in suspension or revocation of accreditation consistent with the procedures laid out in Chapter 5, Revocation of Accreditation.

4.9.3. Recommended. Recommended findings do not require VSTL action. The proposed remedial actions for recommended findings are not program requirements, but EAC suggested practices.

5. Revocation of Accreditation

5.1. Overview. This chapter puts forth the process for revoking the accreditation of an EAC VSTL. The process for revocation begins with factual findings made pursuant to the Compliance Management Program (Chapter 4). Prior to any revocation of accreditation, VSTLs which fail to comply with program requirements are provided notice of (1) EAC's intent to suspend, (2) suspension and (3) an opportunity to be heard or cure noncompliance. A laboratory that has its accreditation revoked has the right to appeal.

5.2. Revocation Policy. EAC Accreditation is subject to revocation. The EAC shall revoke an accreditation upon a factual finding that a VSTL has failed to meet a requirement of the Accreditation Program and is unable or unwilling to timely and properly remedy the non-compliance.

5.3. Revocation—Generally. The EAC monitors its VSTLs through its Compliance Management Program (Chapter 4). This program monitors compliance through (1) the VSTL's continuing obligation to provide EAC Notifications of Changes, (2) EAC's authority to issue Requests for Documents or Information and (3) the performance of On Site Reviews.

Determinations that a VSTL is not complying with program requirements shall be made in Compliance Management Reports (findings of non-compliance). The process outlined in this chapter to suspend and revoke a VSTL's accreditation shall be initiated (1) immediately for Critical Findings of noncompliance and (2) after an opportunity to remedy the noncompliance for Required Findings (consistent with the process mandated by Section 4.9). Revocation of Accreditation is a three-step process.

5.3.1. Notice of Intent to Suspend;

5.3.2. Suspension of Accreditation; and

5.3.3. Commissioners' Decision on Revocation of Accreditation.

5.4. Notice of Intent to Suspend. The revocation process shall be initiated by issuing a Notice of Intent to Suspend to a non-compliant VSTL. Such notices shall be issued by the Program Director. VSTLs shall have three days to submit a response to the notice. The EAC will issue a decision on suspension after consideration of the VSTL's submission.

5.4.1. *Written Notice*. The Notice of Intent to Suspend shall be in writing and:

5.4.1.1. Inform the VSTL of the EAC's intent to suspend the laboratory;

5.4.1.2. Identify the program requirement or requirements with which the VSTL has failed to comply;

5.4.1.3. State the factual finding or findings that serve as the basis of the action;

5.4.1.4. Provide a copy of the relevant Compliance Management Report; and

5.4.1.5. Inform the VSTL of its right to file a response to the notice.

5.4.2. VSTL Response. The VSTL may respond to the notice of intent to suspend. Responses must be received by the EAC Program Director within three days of the VSTLs receipt of the Notice of Intent to Suspend to be eligible for consideration. The VSTL response:

5.4.2.1. Must be in writing;

5.4.2.2. Must be timely submitted to be considered;

5.4.2.3. Must challenge the factual finding or findings that serve as the basis of the suspension;

5.4.2.4. May include relevant documentation in support of its challenge.

5.4.3. *EAC Consideration of Response*. The EAC shall consider the timely submission of a VSTL before issuing a Decision of Suspension. The EAC may consult experts, perform research and request additional information from the VSTL during the consideration process.

5.4.4. *EAC Decision on Suspension*. The EAC shall issue a Decision on Suspension. The decision shall be made in writing by the Program Director. A decision shall state (1) the decision of the Program Director, (2) the basis for and reasoning behind the decision and (3) the VSTL's obligations and rights during suspension (if applicable). A Decision on Suspension shall be provided to the VSTL, issued to all registered Manufacturers and posted on EAC's Web site. The Program Director may make one of two determinations in a Decision on Suspension:

5.4.4.1. Program Compliance. Based upon the EAC's consideration of a VSTL's response to the notice of intent to suspend, the Program Director may overturn the factual findings that served as the basis of the notice. In such cases, the Program Director shall determine that the VSTL is in compliance with all program requirements. A decision that the VSTL is in compliance shall end the revocation process.

5.4.4.2. Suspension. The Program Director shall suspend the VSTL consistent with the notice of intent to suspend when the preponderance of the evidence indicates noncompliance with program requirements. Suspension is effective as of the VSTL's receipt of the decision.

5.5. Suspension of Accreditation. Suspension is the second step in the revocation process. The purpose of Suspension is (1) to provide the suspended VSTL an opportunity to timely cure the noncompliance which served as the basis of Suspension or (2) grant the suspended VSTL an opportunity to be heard prior to revocation of accreditation. A suspended VSTL shall have 20 days to either cure its noncompliance or request an opportunity to be heard. If no action is taken by the suspended VSTL within the 20 days, the EAC Commissioners shall make a decision on revocation.

5.5.1. *Effect of Suspension*. A suspended VSTL shall immediately cease all testing of voting systems under the EAC's Certification Program. Any testing performed by a suspended VSTL during its suspension will not be accepted by the EAC under its Voting System Certification Program. Any period of suspension must be clearly documented in a VSTL's test report (see Chapter 4 of the EAC Voting System Testing and Certification Manual). Testing under the EAC Certification Program shall not resume unless the suspension is lifted or the VSTL is otherwise authorized by the EAC (in writing) to recommence testing.

5.5.2. *Opportunity to Cure*. A suspended VSTL may request the opportunity to cure its noncompliance within 20 days of its receipt of the Program Director's Decision on Suspension. The request must include a detailed remedial plan. If this plan is accepted, properly executed and verified, the VSTL's suspension will be lifted and it may resume testing.

5.5.2.1. Remedial Plan. A request to cure noncompliance must include a plan by which the VSTL outlines how it will timely bring its laboratory into full compliance with the program. The remedial plan shall:

5.5.2.1.1. Identify each noncompliance which served as the basis of its suspension;

5.5.2.1.2. For each identified noncompliance, outline the steps to be taken to achieve compliance. This includes identifying the resources and personnel needed for each step;

5.5.2.1.3. Provide a timeframe for the completion of each identified step and state the final date by which the VSTL will complete the compliance plan;

5.5.2.1.4. Provide a schedule of periodic progress reports to the Program Director; and

5.5.2.1.5. Require the VSTL to provide the EAC a written certification attesting to its completion of the remedial plan and full compliance with program requirements at close of the process.

5.5.2.2. EAC Action on Plan. A remedial plan is subject to approval by the Program Director. The Program Director will work with the suspended VSTL to develop and approve a Remedial Plan that appropriately brings the laboratory into compliance within an acceptable timeframe. Remedial Plans shall be approved in writing. Ultimately, a VSTL's failure to cooperate or otherwise obtain approval of a remedial plan will result in the termination of the cure process. A determination to terminate the cure process will be made in writing by the Program Director. Upon receipt of a notice that the cure process has been terminated, a suspended VSTL shall have 10 days to request an opportunity to be heard on revocation of accreditation (see Section 5.5.3., below).

5.5.2.3. VSTL Implementation of Plan. After the remedial plan has been approved by the Program Director, the VSTL shall begin implementation. The VSTL shall not deviate from an approved plan's procedures, requirements or deadlines without the written consent of the Program Director. Failure to follow the remedial plan will result in the termination of the cure process. A determination to terminate the cure process will be made in writing by the Program Director. Upon receipt of a notice that the cure process has been terminated, a suspended VSTL shall have 10 days to request an opportunity

to be heard on revocation of accreditation (see Section 5.5.3., below).

5.5.2.4. EAC Verification of Remedy. Upon a VSTL's timely completion of the remedial plan and receipt of the VSTL's Certification (see Section 5.5.2.1.5.), the Program Director shall verify compliance. At the discretion of the Program Director, he or she may verify compliance through the acceptance of the VSTL's Certification or through the various components of the Compliance Management Program (Chapter 4). If the Program Director determines that the remedial plan was not completed, he or she may terminate the cure process. A determination to terminate the cure process will be made in writing. Upon receipt of a notice that the cure process has been terminated, a suspended VSTL shall have 10 days to request an opportunity to be heard on revocation of accreditation (see Section 5.5.3., below).

5.5.2.5. Notice of Compliance. The Program Director shall document his or her verification that the remedial plan was complete by providing a written notice of compliance to the VSTL. This notice shall state that the VSTL is in compliance with program requirements and that the suspension is lifted. The notice shall be posted on the EAC's Web site and provided to all registered Manufacturers.

5.5.3. *Opportunity to be Heard on Revocation of Accreditation.* A VSTL has the right to timely challenge the revocation of its accreditation prior to an EAC Decision on Revocation. Unless otherwise noted above, a VSTL has 20 days from the date it received its Decision on Suspension to submit a challenge. Late submissions will not be considered. All challenges of revocation will be heard by the EAC Commissioners. A challenge of revocation shall be submitted to the Program Director, and addressed to the Chair of the U.S. Election Assistance Commission. Each challenge of revocation shall be in writing and:

5.5.3.1. Shall identify each noncompliance which served as the basis of its suspension;

5.5.3.2. Shall identify, document and provide verification of any remedial action completed;

5.5.3.3. Shall provide, for each identified noncompliance, a written argument challenging the finding of noncompliance; and

5.5.3.4. May provide any documentation and information in support of the written statement.

5.6. Commissioners' Decision on Revocation of Accreditation. Pursuant to HAVA, a VSTL may have its accreditation revoked only by a vote of the EAC Commissioners. Upon a timely receipt of a challenge of revocation, the program Director shall provide each Commissioner all relevant documentation including: (1) The VSTL's submission challenging revocation, (2) copies of any terminated cure plans, (3) the Notice of Intent to Suspend, (4) the Compliance Management Report; (5) any documents pertaining to challenges or remedial plans provided by the VSTL in response to a relevant Compliance Management report; and (6) a Program Director recommendation as to disposition.

5.6.1. *Consideration.* Each Commissioner shall review and consider all relevant materials he or she has been provided. A Commissioner may request the Program Director to provide additional relevant materials or information held by the EAC or VSTL. Such requests and any responsive materials shall be provided to each Commissioner. The Chair of the Commission shall ensure that each Commissioner has sufficient time to consider the relevant material before a vote is called.

5.6.2. *Process.* After a reasonable time to review the forwarded materials, the Chair of the Commission shall bring the Decision of Revocation of Accreditation to a vote, consistent with the rules of the Commission. The measure presented for a vote shall take the form of a written Commissioners' Decision on Revocation, which:

5.6.2.1. Makes a clear determination as to revocation on accreditation. The Commissioners shall ultimately make one of two decisions:

5.6.2.1.1. Program Compliance. If the VSTL demonstrates that it meets all program requirements, successfully challenging all previous findings of noncompliance, the Commissioners shall find the VSTL compliant, reject the revocation of accreditation and lift the VSTL's suspension.

5.6.2.1.2. Revocation of Accreditation. If the VSTL does not demonstrate that it meets all program requirements and at least one previous finding of noncompliance stands, the Commissioners shall find the VSTL noncompliant and revoke its accreditation.

5.6.2.2. Provides a finding with regard to each identified noncompliance which served as the basis of suspension; and

5.6.2.3. Identifies the documents and information that served as the basis for the Decision.

5.6.3. *Decision-Notice.* After a vote of the Commissioners adopting a Decision on Revocation, the Program Director shall forward the decision to the VSTL. At that time the Program Director shall provide the VSTL notice of decision which includes a summary of the laboratory's appeal rights consistent with Section 5.8., below.

5.6.4. *Decision-Publication.* After a vote of the Commissioners adopting a Decision on Revocation, the Program Director shall cause the decision to be posted on the EAC's Web site, issue a copy to each registered voting system Manufacturer and provide the decision to the Director of NIST.

5.7. Effect of Revocation of Accreditation. A revocation of accreditation is effective upon the vote of the Commissioners. Laboratories that have had their accreditation revoked may no longer test voting systems or submit test reports under the EAC certification program. The laboratories may not represent themselves as accredited by EAC. A laboratory which has had its accreditation revoked may reapply for an EAC accreditation consistent with the requirements of Chapter 2, only after the EAC receives a new recommendation for their participation from NIST. Where a revocation of accreditation results in the termination of testing prior to completion, the laboratory which has had its accreditation revoked must provide information to the EAC consistent with 2.10.7. of this manual. Manufacturers may request the EAC grant permission to replace their lead VSTL pursuant to Section 4.3.1.2. of the Voting System Testing and Certification Program Manual.

5.8. Requesting Appeal. A laboratory that has had its accreditation revoked by a vote of the Commissioners shall have the right to appeal. A Laboratory may appeal a Decision to Revoke an Accreditation by first issuing a written request for appeal.

5.8.1. *Submission.* Requests must be submitted in writing to the Program Director, addressed to the Chair of the U.S. Election Assistance Commission.

5.8.2. *Timing of Appeal.* The laboratory may request an appeal within 7 calendar days of receipt of the Notice of Decision. Late requests will not be considered.

5.8.3. *Contents of Request.* The request must petition for reconsideration of the Commissioners' Decision on Revocation and clearly state the specific conclusions of the Decision the laboratory wishes to appeal.

5.9. EAC Action on a Request for Appeal. The Program Director shall accept any request for appeal timely submitted. Untimely requests shall be rejected. Upon receipt of a request for appeal, the Program Director shall notify the requestor laboratory, in writing, as to whether their appeal has been accepted as timely. The notice for

accepted requests shall inform the applicant laboratory of the requirements for submitting their appeal per Section 5.10. of this Manual.

5.10. Submission of Appeal. After submission of a timely request for appeal, the Laboratory shall submit its appeal. This appeal shall (1) clearly identify the specific conclusions of the Commissioners' Decision the laboratory wishes to challenge, (2) provide the basis for its position on appeal and (3) submit a written argument in support of its appeal. In addition, the applicant laboratory may submit documentary or other relevant, physical evidence in support of the appeal. The Appeal and all supporting materials must be received by the EAC within 20 days of the applicant laboratory's receipt of the Program Director's notice of acceptance of the request to appeal.

5.11. Consideration of Appeal. All timely appeals will be considered by the Commissioners. Upon receipt of an appeal, the Chair of the Commission shall forward to each EAC Commissioner the laboratory's appellate submission, along with the original information considered during the Commissioners' Decision on Revocation (see Section 5.6.). After a reasonable time to review and consider the forwarded materials, the Chair of the Commission shall bring the matter to a vote, consistent with the rules of the Commission. The measure presented for a vote shall take the form of a written Commissioners' Decision on Appeal.

5.12. Commissioners' Decision on Appeal. The Commissioners shall make a written, final Decision on Appeal and shall provide it to the laboratory.

5.12.1. *Contents.* The Decision on Appeal shall:

5.12.1.1. State the final determination of the Commission.

5.12.1.2. Address the matters raised by the laboratory on appeal.

5.12.1.3. Provide the reasoning behind the decision.

5.12.1.4. State that the Decision on Appeal is final.

5.12.2. *Determinations.* The Commissioners shall make one of two determinations on appeal.

5.12.2.1. Grant of Appeal. If the Commissioners determine that the previous Decision of the Commission shall be overturned in full, and the laboratory meets all program requirements, the appeal shall be granted. In such cases, the laboratory shall have its accreditation immediately reinstated.

5.12.2.2. Denial of Appeal. If the Commissioners determine that any part of the previous Decision of the Commission shall be upheld such that the procedural requirements of Chapter 3 or the Program requirements of Chapter 2 of this manual will not be met in full, the appeal shall be denied. In such cases, the application for appeal is finally denied.

5.12.3. *Effect.* All Decisions on Appeal shall be final and binding on the Applicant Laboratory. No additional request for appeal shall be granted.

5.12.4. *Notice.* After a vote of the Commissioners adopting a Decision on Appeal, the Program Director shall forward the decision to the VSTL.

5.12.5. *Publication.* After a vote of the Commissioners adopting a Decision on Appeal, the Program Director shall cause the decision to be posted on the EAC Web site, issue a copy to each registered voting system Manufacturer and provide the decision to the Director of NIST.

6. Requests for Interpretations

6.1. Overview. A Request for Interpretation is a means by which a registered Manufacturer or VSTL may seek clarification on a specific EAC voting system standard (VVSG or VSS). An Interpretation is a clarification of the voting system standards and guidance on how to properly evaluate conformance to it. Suggestions or requests for modifications to the standards are provided by other processes. This chapter outlines the policy, requirements, and procedures for submitting a Request for Interpretation.

6.2. Policy. Registered Manufacturers or VSTLs may request that the EAC provide a definitive Interpretation of EAC-accepted voting system standards (VVSG or VSS) when, in the course of developing or testing a voting system, facts arise that make the meaning of a particular standard ambiguous or unclear. The EAC may self-initiate such a request when its agents identify a need for interpretation within the program. An Interpretation issued by the EAC will serve to clarify what a given standard requires and how to properly evaluate compliance. An Interpretation does not amend voting system standards, but serves only to clarify existing standards.

6.3. Requirements for Submitting a Request for Interpretation. An EAC Interpretation is limited in scope. The purpose of the Interpretation process is to provide Manufacturers or VSTLs who are in the process of developing or testing a voting system a means for resolving the meaning of a voting system standard in light of specific voting system technology without having to present a finished product to EAC for certification. To submit a Request for Interpretation, one must (1) be a proper requester, (2) request interpretation of an applicable voting system standard, (3) present an actual controversy, and (4) seek clarification on a matter of unsettled ambiguity.

6.3.1. *Proper Requestor.* A Request for Interpretation may be submitted only by a registered Manufacturer or a VSTL. Requests for Interpretation will not be accepted from any other parties.

6.3.2. *Applicable Standard.* A Request for Interpretation is limited to queries on EAC voting system standards (i.e., VVSG or VSS). Moreover, a Manufacturer or VSTL may submit a Request for Interpretation only on a version of EAC voting system standards to which the EAC currently offers certification.

6.3.3. *Existing Factual Controversy.* To submit a Request for Interpretation, a Manufacturer or VSTL must present a question relative to a specific voting system or technology proposed for use in a voting system. A Request for Interpretation on hypothetical issues will not be addressed by the EAC. To submit a Request for Interpretation, the need for clarification must have arisen from the development or testing of a voting system. A factual controversy exists when an attempt to apply a specific section of the VVSG or VSS to a specific system or piece of technology creates ambiguity.

6.3.4. *Unsettled, Ambiguous Matter.* Requests for Interpretation must involve actual controversies that have not been previously settled. This requirement mandates that interpretations contain actual ambiguities not previously clarified.

6.3.4.1. Actual Ambiguity. A proper Request for Interpretation must contain an actual ambiguity. The interpretation process is not a means for challenging a clear EAC voting system standard. Recommended changes to voting system standards are welcome and may be forwarded to the EAC, but they are not part of this program. An ambiguity arises (in applying a voting system standard to a specific technology) when one of the following occurs:

6.3.4.1.1. The language of the standard is unclear on its face;

6.3.4.1.2. One section of the standard seems to contradict another, relevant section;

6.3.4.1.3. The language of the standard, though clear on its face, lacks sufficient detail or breadth to determine its proper application to a particular technology;

6.3.4.1.4. The language of a particular standard, when applied to a specific technology, clearly conflicts with the

established purpose or intent of the standard; or

6.3.4.1.5. The language of the standard is clear, but the proper means to assess compliance is unclear.

6.3.4.2. Not Previously Clarified. The EAC will not accept a Request for Interpretation when the issue has previously been clarified.

6.4. Procedure for Submitting a Request for Interpretation. A Request for Interpretation shall be made in writing to the Program Director. All requests should be complete and as detailed as possible because Interpretations issued by the EAC are based on, and limited to, the facts presented. Failure to provide complete information may result in an Interpretation that is off point and immaterial to the issue at hand. The following steps must be taken when writing a Request for Interpretation:

6.4.1. *Establish Standing To Make the Request.* To make a request, one must meet the requirements identified in Section 6.3. above. Thus, the written request must provide sufficient information for the Program Director to conclude that the requestor is (1) a proper requester, (2) requesting an Interpretation of an applicable voting system standard, (3) presenting an actual factual controversy, and (4) seeking clarification on a matter of unsettled ambiguity.

6.4.2. *Identify the EAC Voting System Standard To Be Clarified.* The request must identify the specific standard or standards for which the requestor seeks clarification. The request must state the version of the voting system standards at issue (if applicable) and quote and correctly cite the applicable standards.

6.4.3. *State the Facts Giving Rise to the Ambiguity.* The request must provide the facts associated with the voting system technology that gave rise to the ambiguity in the identified standard. The requestor must be careful to provide all necessary information in a clear, concise manner. Any Interpretation issued by the EAC will be based on the facts provided.

6.4.4. *Identify the Ambiguity.* The request must identify the ambiguity it seeks to resolve. The ambiguity shall be identified by stating a concise question that meets the following requirements:

6.4.4.1. Shall be clearly stated;

6.4.4.2. Shall be related to and reference the voting system standard and voting system technology information provided; and

6.4.4.3. Shall be limited to a single issue. Each question or issue arising from an ambiguous standard must be stated separately. Compound questions are unacceptable. If multiple issues exist, they should be presented as individual, numbered questions.

6.4.4.4. Shall be stated in a way that can ultimately be answered yes or no.

6.4.5. *Provide a Proposed Interpretation.* A Request for Interpretation should propose an answer to the question posed. The answer should interpret the voting system standard in the context of the facts presented. It should also provide the basis and reasoning behind the proposal.

6.5. EAC Action on a Request for Interpretation. Upon receipt of a Request for Interpretation, the EAC shall take the following action:

6.5.1. *Review the Request.* The Program Director shall review the request to ensure it is complete, is clear, and meets the requirements of Section 6.3. Upon review, the Program Director may take the following action:

6.5.1.1. Request Clarification. If the Request for Interpretation is incomplete or additional information is otherwise required, the Program Director may request that the Manufacturer or VSTL clarify its Request for Interpretation and identify any additional information required.

6.5.1.2. Reject the Request for Interpretation. If the Request for Interpretation does not meet the requirements of Section 6.3., the Program Director may reject it. Such rejection must be provided in writing to the Manufacturer or VSTL and must state the basis for the rejection.

6.5.1.3. Notify Acceptance of the Request. If the Request for Interpretation is acceptable, the Program Director will notify the Manufacturer or VSTL in writing and provide it with an estimated date of completion. A Request for Interpretation may be accepted in whole or in part. A notice of acceptance shall state the issues accepted for interpretation.

6.5.2. *Consideration of the Request.* After a Request for Interpretation has been accepted, the matter shall be investigated and researched. Such action may require the EAC to employ technical experts. It may also require the EAC to request additional information from the Manufacturer or VSTL. The Manufacturer or VSTL shall respond promptly to such requests.

6.5.3. *Interpretation.* The Decision Authority shall be responsible for making determinations on a Request for Interpretation. After this determination has been made, a written Interpretation shall be sent to the Manufacturer or VSTL. The following actions are necessary to prepare this written Interpretation:

6.5.3.1. State the question or questions investigated;

6.5.3.2. Outline the relevant facts that served as the basis of the Interpretation;

6.5.3.3. Identify the voting system standards interpreted;

6.5.3.4. State the conclusion reached; and

6.5.3.5. Inform the Manufacturer or VSTL of the effect of an Interpretation (see Section 6.6.).

6.6. Effect of Interpretation. Interpretations are fact specific and case specific. They are not tools of policy, but specific, fact-based guidance useful for resolving a particular problem. An Interpretation is determinative and conclusive only with regard to the case presented. Nevertheless, Interpretations do have some value as precedent. Interpretations published by the EAC shall serve as reliable guidance and authority over identical or similar questions of interpretation. These Interpretations will help users understand and apply the provisions of EAC voting system standards.

6.7. Library of Interpretations. To better serve Manufacturers, VSTLs, and those interested in the EAC voting system standards, the Program Director shall publish EAC Interpretations. All proprietary information contained in an Interpretation will be redacted before publication consistent with Chapter 7 of this Manual. The library of published opinions is posted on the EAC Web site: *www.eac.gov*.

7. Release of Laboratory Accreditation Program Information

7.1. Overview. VSTLs participating in the Certification Program will be required to provide the EAC a variety of documents. In general, these documents will be releasable to the public. Moreover, in many cases, the information provided will be affirmatively published by the EAC.

In limited cases, however, documents may not be released if they include trade secrets, confidential commercial information, or personal information. While the EAC is ultimately responsible for determining which documents Federal law protects from release, VSTLs must identify the information they believe is protected and provide substantiation and a legal basis for withholding. This chapter discusses EAC's general policy on the release of information and provides VSTL's with standards, procedures, and requirements for identifying documents as trade secrets or confidential commercial information.

7.2. EAC Policy on the Release of Certification Program Information. The EAC seeks to make its Voting System

Test Laboratory Program as transparent as possible. The agency believes that such action benefits the program by increasing public confidence in the process and creating a more informed and involved public. As such, it is the policy of the EAC to make all documents, or severable portions thereof, available to the public consistent with Federal law (e.g., Freedom of Information Act (FOIA) and the Trade Secrets Act).

7.2.1. *Requests for information*. As in any Federal program, members of the public may request access to Certification Program documents under FOIA (5 U.S.C. § 552). The EAC will promptly process such requests per the requirements of that Act.

7.2.2. *Publication of documents*. Beyond the requirements of FOIA, the EAC intends to affirmatively publish program documents (or portions of documents) it believes will be of interest to the public. This publication will be accomplished through the use of the EAC Web site (*www.eac.gov*). The published documents will cover the full spectrum of the program, including information pertaining to:

7.2.2.1. Accredited Laboratories;

7.2.2.2. VSTL test plans;

7.2.2.3. VSTL test reports;

7.2.2.4. Agency decisions;

7.2.2.5. Denials of Certification;

7.2.2.6. Issuance of Certifications;

7.2.2.7. Compliance Management Reports;

7.2.2.8. Suspensions or Revocation of Accreditations;

7.2.2.9. Appeals;

7.2.2.10. Official Interpretations (VVSG or VSS); and

7.2.2.11. Other topics as determined by the EAC.

7.2.3. *Trade Secret and Confidential Commercial Information*. Federal law places a number of restrictions on a Federal agency's authority to release information to the public. Two such restrictions are particularly relevant to the Accreditation Program: (1) Trade secrets information and (2) privileged or confidential commercial information. Both types of information are explicitly prohibited from release by the FOIA and the Trade Secrets Act (18 U.S.C. § 1905).

7.3. Trade Secrets. A trade secret is a secret, commercially valuable plan, process, or device that is used for the making or processing of a product and that is the end result of either innovation or substantial effort. It relates to the productive process itself, describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.

7.3.1. The following examples illustrate productive processes that may be trade secrets:

7.3.1.1. Plans, schematics, and other drawings useful in production.

7.3.1.2. Specifications of materials used in production.

7.3.1.3. Voting system source code used to develop or manufacture software where release would reveal actual programming.

7.3.1.4. Technical descriptions of manufacturing processes and other secret information relating directly to the production process.

7.3.2. The following examples are likely not trade secrets:

7.3.2.1. Information pertaining to a finished product's capabilities or features.

7.3.2.2. Information pertaining to a finished product's performance.

7.3.2.3. Information regarding product components that would not reveal any commercially valuable information regarding production.

7.4. Privileged or Confidential Commercial Information. Privileged or confidential commercial information is that information submitted by a VSTL that is commercial or financial in nature and privileged or confidential.

7.4.1. Commercial or Financial Information. The terms commercial and financial should be given their ordinary meanings. They include records in which a submitting VSTL has any commercial interest.

7.4.2. Privileged or Confidential Information. Commercial or financial information is privileged or confidential if its disclosure would likely cause substantial harm to the competitive position of the submitter. The concept of harm to one's competitive position focuses on harm flowing from a competitor's affirmative use of the proprietary information. It does not include incidental harm associated with upset customers or employees.

7.5. EAC's Responsibilities. The EAC is ultimately responsible for determining whether or not a document (in whole or in part) may be released pursuant to Federal law. In doing so, however, the EAC will require information and input from the VSTL submitting the documents. This requirement is essential for the EAC to identify, track, and make determinations on the large volume of documentation it receives. The EAC has the following responsibilities:

7.5.1. *Managing Documentation and Information*. The EAC will control the documentation it receives by ensuring that documents are secure and released to third parties only after the appropriate review and determination.

7.5.2. *Contacting a VSTL on Proposed Release of Potentially Protected Documents*. In the event a member of the public submits a FOIA request for documents provided by a VSTL or the EAC otherwise proposes the release of such documents, the EAC will take the following actions:

7.5.2.1. Review the documents to determine if they are potentially protected from release as trade secrets or confidential commercial information. The documents at issue may have been previously identified as protected by the VSTL when submitted (see Section 7.6.1. below) or identified by the EAC on review.

7.5.2.2. Grant the submitting VSTL an opportunity to provide input. In the event the information has been identified as potentially protected from release as a trade secret or confidential commercial information, the EAC will notify the submitter and allow it an opportunity to submit its position on the issue prior to release of the information. The submitter shall respond consistent with Section 7.6.1. below.

7.5.3. *Final Determination on Release*. After providing the submitter of the information an opportunity to be heard, the EAC will make a final decision on release. The EAC will inform the submitter of this decision.

7.6. VSTL's Responsibilities. Although the EAC is ultimately responsible for determining if a document, or any portion thereof, is protected from release as a trade secret or confidential commercial information, the VSTL shall be responsible for identifying documents, or portions of documents, it believes warrant such protection. Moreover, the VSTL will be responsible for providing the legal basis and substantiation for its determination regarding the withholding of a document. This responsibility arises in two situations: (1) Upon the initial submission of information and (2) upon notification by the EAC that it is considering the release of potentially protected information.

7.6.1. *Initial Submission of Information*. When a VSTL is submitting documents to the EAC as required by the Accreditation or Certification Programs, it is responsible for identifying any document or portion of a document that it believes is protected from release by Federal law. VSTLs shall identify protected information [9] by taking the following action:

[9] Documents submitted by the VSTL may include information that is a trade secret or confidential

Continued

7.6.1.1. Submitting a Notice of Protected Information. This notice shall identify the document, document page, or portion of a page that the VSTL believes should be protected from release. This identification must be done with specificity. For each piece of information identified, the VSTL must state the legal basis for its protected status.

7.6.1.1.1. Cite the applicable law that exempts the information from release.

7.6.1.1.2. Clearly discuss why that legal authority applies and why the document must be protected from release.

7.6.1.1.3. If necessary, provide additional documentation or information. For example, if the VSTL claims a document contains confidential commercial information, it would also have to provide evidence and analysis of the competitive harm that would result upon release.

7.6.1.2. Label Submissions. Label all submissions identified in the notice as ''Proprietary Commercial Information.'' Label only those submissions identified as protected. Attempts to indiscriminately label all materials as proprietary will render the markings moot.

7.6.2. *Notification of Potential Release*. In the event a VSTL is notified that the EAC is considering the release of information that may be protected, the VSTL shall take the following action:

7.6.2.1. Respond to the notice in writing within 15 calendar days. If additional time is needed, the VSTL must promptly notify the Program Director. Requests for additional time will be granted only for good cause and must be made before the 15-day deadline. VSTLs that do not respond in a timely manner will be viewed as not objecting to release.

7.6.2.2. Clearly state one of the following in the response:

7.6.2.2.1. There is no objection to release, or

7.6.2.2.2. The VSTL objects to release. In this case, the response must clearly state which portions of the document the VSTL believes should be protected from release. The VSTL shall follow the procedures discussed in Section 7.6.1 above.

7.7. Personal Information. Certain personal information is protected from release under FOIA and the Privacy Act (5 U.S.C. § 552a). This information includes private information about a person that, if released, would cause the individual embarrassment or constitute an unwarranted invasion of personal privacy. Generally, the EAC will not require the submission of private information about individuals. The incidental submission of such information should be avoided. If a VSTL believes it is required to submit such information, it should contact the Program Director. If the information will be submitted, it must be properly identified. Examples of such information include the following:

7.7.1. Social Security Number.

7.7.2. Bank account numbers.

7.7.3. Home address.

7.7.4. Home phone number.

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commercial information of a Manufacturer. The VSTL shall take steps to identify any information it believes may be protected. The VSTL may seek the input of the Manufacturer when identifying potentially protected information pursuant to the requirements of this chapter. All communications on this matter shall be in writing.

Appendix A

Certification Test Plan Format and Content

OMB Control Number: *Pending*

BILLING CODE 6820–KF–C

Appendix A. Certification Test Plan Format and Content

The primary purpose of the test plan is to document the VSTL's development of the certification tests conducted on a voting system submitted as a candidate for EAC certification. Although this appendix serves as a general guide to preparing test plans, VSTL's may tailor the scope and detail of these requirements to the design of the specific voting system submitted for testing, the type of hardware components submitted for testing, and the complexity of the software submitted for testing.

This appendix should be used in conjunction with the requirements noted in the applicable version or versions of the EAC's VVSG when developing test plans.

Test Plan Format

Test Plans produced by VSTLs shall follow the format outlined below:

1. Introduction
   - 1.1 References
   - 1.2 Terms and Abbreviations
   - 1.3 Testing Responsibilities
2. Evaluation of Prior Non-VSTL Tests
   - 2.1 Tests conducted prior to the certification engagement
   - 2.2 Prior test results
3. Materials Required for Testing
   - 3.1 Software
   - 3.2 Equipment
   - 3.3 Test materials
   - 3.4 Deliverable materials
4. Test Specification
   - 4.1 Requirements
   - 4.2 Hardware configuration and design
   - 4.3 Software system functions
5. Test Data
   - 5.1 Test data recording
   - 5.2 Test data criteria
   - 5.3 Test data reduction
6. Test Procedure and Conditions
   - 6.1 Facility requirements
   - 6.2 Test set-up
   - 6.3 Test sequence
7. Proprietary Data

Required Content of Test Plan

Introduction

Test Plan references shall list all documents containing materials used to prepare the test plan. This section of the plan shall include a copy of the implementation statement provided by the manufacture and any interpretations made by the VSTL to fully identify the implementation under test and the scope of the testing engagement. The VSTL shall identify all parties responsible for conducting testing of the candidate voting system, including all subcontracted testing laboratories and all engineers assigned to the test engagement.

Evaluation of Previous Testing

The VSTL shall document all previous certifications, reviews or other testing that may impact the VSTL's determination of the scope of the conformity assessment testing for the candidate voting system. The VSTL may recognize certifications, and tests conducted by other labs, including non-VSTLs, as making some portions of the voting system testing campaign redundant. For example, a COTS computer should already have been certified to comply with the rules and regulations of the Federal Communications Commission (FCC), Part 15, Subpart B requirements for both radiated and conducted emissions and need not be retested for this requirement. Also, if a slightly modified system is submitted for reassessment, the VSTLs finding that some of the previous testing need not be repeated would be documented in this section of the Test Plan subject to approval of the EAC.

Materials

The VSTL shall enumerate all materials delivered by the Manufacturer to enable the test engagement to occur. These materials include not only the applicable hardware and software, but also the Technical Data Package (TDP) test ballot, test data, and all other materials necessary to conduct appropriate testing. All materials delivered to the VSTL shall be identified by specific version number, product number, serial number, etc., if appropriate, and the quantity of each item delivered shall be noted.

Specifications

For all applicable tests specified in the VVSG, the VSTL shall document the implementation details that determine how the standard tests are realized for the voting system under test. For all tests that the VSTL is adopting from publicly available test suites (including those that may be developed by NIST at a future date), the VSTL shall identify the public reference and document the implementation details that determine how the public tests are realized for the voting system under test. For all other tests, the VSTL shall incorporate all relevant information into the test plan as needed to reproduce the testing.

Data

The VSTL shall identify what data is to be measured, and how tests and results are recorded. The VSTL shall supply any special instrumentation needed to satisfy the data requirements. The VSTL shall describe the criteria against which the results will be evaluated, including but not limited to criteria defining the acceptable range for voting system conformance (tolerances); criteria defining the minimum number of combinations or alternatives of input and output conditions that can be exercised to constitute an acceptable test of the parameters involved (sampling); and criteria defining the maximum number of interrupts, halts or other system breaks that may occur due to non-test conditions (events).

Procedures and Conditions

The VSTL shall provide the information necessary to reproduce the testing that it performs. This information includes facility requirements, test set-up, test sequence, and pass criteria.

Proprietary Data

The VSTL shall list and describe in this section all documentation and data that are proprietary to the Manufacturer and hence subject to restrictions on use, release, or disclosure. All proprietary data and information must be included in this section, preferably as a separate electronic file, in order to easily publish the test plans on the EAC Web site while withholding information considered proprietary or confidential by Federal law.

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Appendix B

Certification Test Report Format and Content

OMB Control Number: *Pending*

BILLING CODE 6820–KF–C

Appendix B. Certification Test Report Format and Content

The primary purpose of the test report is to facilitate the presentation of conclusions and recommendations regarding voting system conformance to the VVSG. The Test Report also provides a summary of test operations, test results, test data records and analysis to support the conclusions and recommendations presented by the VSTL. Although this appendix serves as a general guide to preparing the test reports, VSTL's may tailor the scope and detail of the testing conducted on the candidate voting system.

This appendix should be used along with the requirements noted in the applicable version or versions of the EAC's VVSG when developing test reports.

Test Report Format

Test Reports produced by VSTLs shall follow the format outlined below:

1. System Identification and Overview
2. Certification Test Background
   2.1 Revision History
   2.2 Implementation Statement
3. Test Findings and Recommendation
   3.1 Summary Finding and Recommendation
   3.2 Reasons for Recommendation to Reject
   3.3 Anomalies
   3.4 Correction of Deficiencies

Appendix A. Additional Findings
Appendix B. Warrant of Accepting Change Control Responsibility
Appendix C. Witness Build
Appendix D. Test Plan
Appendix E. State Test Reports

System Identification and Overview

The VSTL shall provide basic information about the voting system software and supporting hardware including the system name and major subsystems or their equivalent and their version numbers. In addition, this section shall describe the design and structure of the voting system, technologies used, processing capacity claimed by the Manufacturer for system components such as ballot counters, and vote consolidation equipment. The description of the voting system, both software and hardware shall have enough detail and specificity to allow the identification of a voting system in the field as being either identical to that tested or a modified version of the system. This section may also identify other products that interface with the voting system.

Certification Test Background

For modifications to previously tested voting systems, the VSTL shall include references to the test reports that are precedential to the current testing engagement. The VSTL shall also include the implementation statement submitted by the Manufacturer, amended to reflect any changes that were necessitated during the course of the testing engagement.

Test Findings and Recommendation

This section provides a summary of the results of the testing engagement and indicates any special considerations that affect the conclusions derived from the test results.

The VSTL shall present a summary finding of whether or not the voting system, as tested, satisfied all applicable mandatory (''shall'') requirements of the VVSG. The VSTL shall also provide a specific recommendation to the EAC for approval or rejection of the candidate system. If the VSTL finds that the voting system under test does not satisfy all applicable mandatory requirements of the VVSG, the VSTL shall identify each of the specific requirements that were not satisfied, and include a description of the inspections or tests that detected the nonconformities and include any applicable evidence (e.g., vote data report, citation of logic error in source code, etc.) The VSTL shall also summarize all failures, errors, nonconformities and anomalies that were observed during the testing engagement. Finally, the VSTL shall identify any deficiencies corrected during the course of the test engagement and identify inspections or tests that confirm that the deficiencies were corrected.

Appendix A. Additional Findings

The VSTL shall include as Appendix A of the Test Report identification of each applicable non-mandatory test (''shoulds'') for which conformity was demonstrated during the testing engagement. Appendix A shall also include identification of all tests that were identified as non-applicable to the voting system under test and therefore waived during the test engagement. Appendix A shall also include the laboratory response to any additional information, report or review provided by the EAC regarding the voting system under testing, and whether or not the items noted in the materials presented have any relevance to the system under test.

Appendix B. Warrant of Accepting Change Control Responsibility

If the Manufacturer must make changes to the voting system to successfully complete the conformance testing, the VSTL shall include as Appendix B of the Test Report a signed warrant from the Manufacturer that those changes will be included in the product that is delivered to customers.

Appendix C. Witness Build

The VSTL shall include as Appendix C of the Test Report a copy of the record of the final witness build and sufficient description of the build process to enable reproduction of the build.

Appendix D. Test Plan

The VSTL shall include a copy of the voting system Test Plan, amended to reflect any deviations from the original, EAC approved, test Plan during the course of testing.

Appendix E. State Test Reports

The VSTL shall include the results or reports form any testing engagement requested by a State to the EAC candidate system conducted concurrent to the EAC testing engagement. The results of State test reports shall not impact the EAC certification of the voting system if the system successfully meets all requirements of the EAC VVSG and Testing and Certification Program.

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Appendix C

Certification of Laboratory Conditions and Practices Form

Available in electronic format at www.eac.gov

OMB Control Number: *Pending*

Appendix C.

CERTIFICATION OF LABORATORY CONDITIONS AND PRACTICES

I, the undersigned, having investigated or caused to be investigated each matter, below; certify, affirm and acknowledge that each of the following numbered statements are true and otherwise accurately reflect the status, condition and operations of _____ (hereinafter "Laboratory"). I understand that by certifying the information below, I am making a statement or representation to the U.S. Election Assistance Commission required for receiving a Laboratory Accreditation under 42 U.S.C. §15371(b). I further understand, that to the extent any of the below representations or certifications are found to be materially false, the U.S. Election Assistance Commission may revoke any Accreditations granted to the above named laboratory and that I may be subject to criminal prosecution under 18 U.S.C. §1001.

1. **Signing Official.** I hereby certify that I am an officer, partner or other official vested with the legal authority to speak for, contract on behalf of, or otherwise bind the above noted company, corporation, partnership or organization (Laboratory).

2. **Personnel.** I certify, consistent with Section 2.6. of the EAC *Voting System Test Laboratory Accreditation Program Manual* (hereinafter Laboratory Manual), that the laboratory has written policies in place to ensure that it does not currently, and will not in the future, employ any individuals in any capacity related to the testing of voting systems who have been convicted of a felony offense or any criminal offense involving fraud, misrepresentation, or deception under either Federal or State law.

3. **Conflicts of Interest and Prohibited Practices.** I certify, consistent with Section 2.5. of the Laboratory Manual, that the Laboratory maintains and enforces written policies which:

    a. Prohibit conflicts of interest or the appearance of conflicts of interest pursuant to Section 2.5.1. of the Laboratory Manual.

    b. Prohibit practices such as participation in both the development and testing of a voting system or the solicitation or acceptance of gifts from a voting system manufacture pursuant to Section 2.5.2. of the Laboratory Manual.

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c. Provide clear mechanisms for enforcement of the prohibitions noted above pursuant to Section 2.5.3. of the Laboratory Manual.

4. **Financial Stability.** I certify, consistent with Section 2.14. of the Laboratory Manual, that the laboratory possess sufficient resources to enable it to properly use and maintain its test equipment and facility, to satisfactorily perform all required functions, and to adequately indemnify itself against financial liabilities or penalties that may result from its operations.

5. **Authority to do Business in the United States.** I certify, consistent with Section 2.12. of the Laboratory Manual, that the Laboratory is lawfully entitled or otherwise not prohibited from doing business with the United States or its citizens or operating in the United States.

6. **Recordkeeping**. I certify, consistent with Section 2.15. of the Laboratory Manual, that the laboratory operates and manages a records system in which it maintains all forms, reports, test records, observations, calculations and derived data for all tests performed for a period of at least 5 years.

I, by signing my name below, certify, affirm and acknowledge, under penalty of Federal law, that each of the above numbered paragraphs accurately represent the operations, conditions and practices of _____ (Laboratory).

Signed this day,_____:

_____(Signature)

_____(Name of Signing Official)

_____(Title of Signing Official)

OMB Control Number: *Pending*

Appendix D

Specification for Reproduction and use of the EAC Laboratory Accreditation Logo

Accreditation Logo Available in electronic format at www.eac.gov

OMB Control Number: *Pending*

BILLING CODE 6820–KF–C

Appendix D. Specification for Reproduction and Use of the EAC Laboratory Accreditation Logo

To maintain a high level of quality and consistency in a variety of applications, the following guidelines have been developed for VSTL use of the EAC laboratory accreditation logo.

Use and Display

The EAC VSTL logo contains the following elements:

The ''U.S. Election Assistance Commission'' and ''VSTL'' logotype separated by a divider rule. The EAC will provide all accredited VSTLs with high resolution digital files for use on approved written or electronic documents.

The logo may only be used by EAC accredited VSTLs and shall not misrepresent the specific standards or guidelines to which the VSTL has been accredited. The EAC VSTL logo may be displayed on all reports and work documents that contain exclusive results from testing activities that have been carried out within the labs' EAC scope of accreditation. Accredited laboratories may also incorporate the logo in publicity and/or advertising materials, including brochures and organization publications, technical literature, business reports, Web sites and quotations or proposals for work.

Only the approved version of the VSTL logo may be used. When using the logo:

* Do not print the logo in black over a dark background.
* Do not change any colors of the logo.
* Do not configure the elements of the logo in a different format.
* Do not crop or remove any part of the logo.
* Do not distort the logo.
* Do not tilt the logo in any direction.
* Do not add shadows, effects or other elements to the logo.
* Do not change the typeface/font used in the logo.

Minimum Size

The full VSTL logo must remain readable in all uses and should not be reduced to a size smaller than 2.5 inch x 1 inch.

Minimum Clear Space

The clear space surrounding the VSTL logo is an integral part of the logo design. An area of clear space must be maintained around the logo to prevent it from being in conflict with other design elements on the page. The clear space should measure at least X on all sides, where X equals ½ the height of the upper case letters ''VSTL'' in the logo. Do not place any other logo, logotype, trademark, text, or other graphic element in the minimum clear space area.

One Color Printing

A black version of the logo may be printed on white or light color background paper. In these instances, the logo should appear in 100% black.

Color Printing

Whenever possible, the full color version of the logo should be used. The appropriate colors are provided below for 4 color process printing or RGB for electronic use.

Blue

CMYK = 98/78/0/29
RGB = 0/51/153
HSL = 156/255/77

Red

CMYK = 5/96/98/5
RGB = 204/51/0
HSL = 10/255/102
Embossing on ''VSTL'' = CMYK 97/92/0/65

BILLING CODE 6820–KF–P

U.S. Election Assistance Commission

VSTL

OMB Control Number: *Pending*

[FR Doc. E8–19064 Filed 8–22–08; 8:45 am]
BILLING CODE 6820–KF–C

Federal Register

Monday,
August 25, 2008

Part IV

Office of Personnel Management

5 CFR Part 591

Nonforeign Area Cost-of-Living Allowances; 2007 Interim Adjustments: Alaska and Puerto Rico; Proposed Rule and Notice

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AL65

Nonforeign Area Cost-of-Living Allowances; 2007 Interim Adjustments: Alaska and Puerto Rico

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to change the cost-of-living allowance (COLA) rates received by certain white-collar Federal and U.S. Postal Service employees in Anchorage, Fairbanks, and Juneau, Alaska, and in Puerto Rico. The proposed rate changes are the result of interim adjustments OPM calculated based on relative Consumer Price Index differences between the COLA areas and the Washington, DC, area. The proposed regulations would reduce the COLA rates for Anchorage, Fairbanks, and Juneau by 1 percentage point and would increase the rate for Puerto Rico by 1 percentage point.

DATES: We will consider comments received on or before October 24, 2008.

ADDRESSES: Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7300B, 1900 E Street, NW., Washington, DC 20415–8200; *fax:* (202) 606–4264; or *e-mail: COLA@opm.gov.*

FOR FURTHER INFORMATION CONTACT: J. Stanley Austin, (202) 606–2838; fax: (202) 606–4264; or *e-mail: COLA@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands (USVI). Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts living-cost surveys in each allowance area and in the Washington, DC, area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area. We set the COLA rate for each area based on the results of these surveys.

As required by section 591.223 of title 5, Code of Federal Regulations, we conduct COLA surveys once every 3 years on a rotating basis. For areas not surveyed during a particular year, we adjust COLA rates by the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington, DC, area. (See 5 CFR 591.224–226.) We adopted these regulations pursuant to the stipulation for settlement in *Caraballo et al.* v. *United States,* No. 1997–0027 (D.V.I), August 17, 2000. *Caraballo* was a class-action lawsuit which resulted in many changes in the COLA methodology and regulations.

We computed interim adjustments based on the relative change in the CPI for the Alaska and Caribbean COLA areas. A separate notice on the calculation of these interim adjustments accompanies this proposed rule. The interim adjustments indicate that the Anchorage, Fairbanks, and Juneau, Alaska, COLA rates should be reduced by 1 percentage point in each area.

We published a proposed rule on January 3, 2008, that would, when implemented, reduce the COLA rates in Anchorage, Fairbanks, and Juneau from 24 percent to 23 percent based on the results of the 2006 COLA survey in Alaska. The 1 percentage point reduction proposed in this rule would further reduce the rates in these areas to 22 percent. However, 5 CFR 591.228(c) limits COLA rate decreases to 1 percentage point in a 12-month period. Therefore, we will not implement COLA rate reductions under this proposed rule until 12 months have elapsed since the effective date of the proposed reductions based on the 2006 survey results. For example, if the proposed reductions based on the 2006 survey results become effective in mid-October of this year, the reductions proposed under this rule would not be implemented before mid-October of 2009.

The 2007 interim adjustments would also increase the COLA rate for Puerto Rico by 1 percentage point. We published a final rule on May 29, 2008, at 73 FR 30727, that increased the Puerto Rico COLA rate to 13 percent. The 2007 interim adjustment would further raise the COLA rate for Puerto Rico to 14 percent when published as final. We plan to implement this increase separately from the Alaska reductions to avoid the 12-month delay imposed by 5 CFR 591.228(c).

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management

Michael W. Hager,

Acting Director.

Accordingly, OPM proposes to amend subpart B of 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Revise appendix A of subpart B to read as follows:

Appendix A to Subpart B of Part 591—Places and Rates at Which Allowances Are Paid

This appendix lists the places approved for a cost-of-living allowance and shows the authorized allowance rate for each area. The allowance rate shown is paid as a percentage of an employee's rate of basic pay. The rates are subject to change based on the results of future surveys.

Geographic coverage	Allowance rate (percent)
State of Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	22
City of Fairbanks and 80-kilometer (50-mile) radius by road	22
City of Juneau and 80-kilometer (50-mile) radius by road	22

Geographic coverage	Allowance rate (percent)
Rest of the State	25
State of Hawaii:	
City and County of Honolulu	25
Hawaii County, Hawaii	18
County of Kauai	25
County of Maui and County of Kalawao	25
Territory of Guam and Commonwealth of the Northern Mariana Islands	25
Commonwealth of Puerto Rico	14
U.S. Virgin Islands	25

[FR Doc. E8–19592 Filed 8–22–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Nonforeign Area Cost-of-Living Allowances; 2007 Interim Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the 2007 interim adjustments for the Alaska and Caribbean Nonforeign Cost-of-Living Allowance (COLA) areas. The Federal Government conducts COLA surveys in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands to set COLA rates. These surveys are conducted once every 3 years on a rotating basis. In between COLA surveys, the Government adjusts COLA rates for the areas not surveyed using the relative change in the Consumer Price Index (CPI) for the COLA areas compared with the Washington-Baltimore CPI. The Alaska and Caribbean COLA areas were not surveyed in 2007; therefore, OPM is calculating and publishing interim adjustments for these COLA areas.

DATES: We will consider comments received on or before October 24, 2008.

ADDRESSES: Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7300B, 1900 E Street, NW., Washington, DC 20415–8200; fax: (202) 606–4264; or e-mail: *COLA@opm.gov.*

FOR FURTHER INFORMATION CONTACT: J. Stanley Austin, (202) 606–2838; fax: (202) 606–4264; or e-mail: *COLA@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands (USVI). Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts living-cost surveys in each allowance area and in the Washington, DC, area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area.

As required by section 591.223 of title 5, Code of Federal Regulations, OPM conducts COLA surveys in the Alaska, Pacific, and Caribbean areas on a 3-year rotating basis, and in the Washington, DC, area on an annual basis. OPM sets the COLA rate for each area based on the results of these surveys. For areas not surveyed during a particular year, OPM computes interim adjustments to COLA rates based on the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington, DC, area. (See 5 CFR 591.224–226.)

In 2007, we surveyed the Pacific COLA areas of Honolulu County, Hawaii County, Maui County, and Kauai County, Hawaii, and Guam. We did not survey the Alaska or Caribbean COLA areas. Therefore, we are adjusting the previous Alaska and Caribbean survey price indexes using the relative change in CPIs. As required by 5 CFR 591.225, we used the CPI, All Urban Consumers (CPI–U), as published by the Bureau of Labor Statistics (BLS) for Alaska and the Washington-Baltimore area and the Puerto Rico CPI as produced by the Puerto Rico Department of Work and Human Resources.

2006 Alaska Survey Results and Interim Adjustments

First, we computed the change in prices for the Anchorage area compared with the change in prices for the Washington-Baltimore area using the CPI–Us for each area. Table 1 shows this process.

TABLE 1—ANCHORAGE AND WASHINGTON-BALTIMORE CPI–U CHANGES 2004 TO 2006

Survey area	CPI–U
Anchorage 2006 CPI–U First Half	176.7
Anchorage 2007 CPI–U First Half	179.394
Anchorage change	1.5246%
DC-Baltimore 2006 CPI–U first half	127.7
DC-Baltimore 2007 CPI–U first half	132.0
DC-Baltimore change	3.3673%

Next, we multiplied the *price* indexes from the four 2006 Alaska surveys—Anchorage, Fairbanks, Juneau, and Rest of the State of Alaska (represented by Kodiak)—by the change in the Anchorage CPI–U and divided that by the change in the Washington-Baltimore CPI–U. We used the Alaska area price indexes from the 2006 Alaska survey report, published on January 3, 2008, at 73 FR 774. The price index is the COLA survey index before the addition of the adjustment factor specified in 5 CFR 591.227. The adjustment factor reflects differences in need, access to and availability of goods and services, and quality of life in the COLA area relative to the DC area and is a fixed amount. Therefore, it is not adjusted by the change in the CPI.

Table 2 shows the interim adjustment process. For example, the 2006 Fairbanks COLA survey adjusted index, as published in the **Federal Register**, is 118.90. The Fairbanks adjustment factor is 9 points. Therefore, subtracting the adjustment factor shows 109.90 as the *price* index from the 2006 survey. We increased this price index by 1.5246 percent (*i.e.*, multiplied by 1.015246), the change in the Anchorage CPI–U, and reduced it by 3.3673 percent (*i.e.*, divided by 1.033673), the change in the Washington-Baltimore CPI–U, to give a new price index of 107.94. We then added the 9 point adjustment factor to the new price index, which yields a 2007 Fairbanks Interim Adjustment COLA rate of 116.94.

TABLE 2—ALASKA COLA AREA CPI–U PRICE INDEX ADJUSTMENTS

	Anchorage	Fairbanks	Juneau	Kodiak
2006 COLA Survey Indexes	109.81	118.90	120.08	132.82
Adjustment Factors	7	9	9	9
2006 COLA Survey Price Indexes	102.81	109.90	111.08	123.82
2007 CPI Adjusted Price Indexes	100.98	107.94	109.10	121.61
2007 COLA Indexes with Adj. Factors	107.98	116.94	118.10	130.61

2005 Caribbean Survey Results and Interim Adjustments

The process we used to compute the interim adjustments for the Caribbean areas (*i.e.*, Puerto Rico and USVI) is identical to the one for the Alaska areas except that we used the Puerto Rico CPI as produced by the Puerto Rico Department of Work and Human Resources, as specified in 5 CFR 591.225. The Puerto Rico Department of Labor and Human Resources implemented a revised methodology for producing its CPI calculations effective December 2006. As shown in table 3, the changed methodology had a substantial effect on the measured inflation rate, demonstrating a significant overstatement of the inflation rate under the old methodology.

TABLE 3—PUERTO RICO CPI MEASUREMENTS 2006 TO 2007

Period	Old methodology	New methodology
December 2006 CPI	334.8	100.00
June 2007 CPI	373.5	103.06
Percent increase from January 2006 to June 2007	11.5591%	3.0600%

The Puerto Rican Department of Labor and Human Resources estimated the inflation rate for the year beginning June 2006 and ending June 2007 to be in the range of 5 to 6 percent under the new methodology. To provide more precision, we applied the 3.06 percent inflation rate for the last 6 months of the year to the first half of the year. This resulted in an annual inflation rate of 6.2136 percent (1.0306 x 1.0306), exceeding the estimate by the Puerto Rico Department of Labor and Human Resources. Using this value for the annual inflation rate, we multiplied 106.2136 by 312.2 (the June 2006 CPI) to arrive at a CPI of 331.60 for June 2007. Table 4 shows the relative change in the Puerto Rico CPI from June 2005 to June 2007 compared with the Washington-Baltimore CPI–U.

TABLE 4—PUERTO RICO AND WASHINGTON-BALTIMORE CPI–U CHANGES 2005 TO 2006

Survey area	CPI–U
Puerto Rico 2005 CPI first half	277.2
Puerto Rico 2007 CPI first half	331.6
Puerto Rico change	19.625%
DC–Baltimore 2005 CPI–U first half	122.8
DC–Baltimore 2007 CPI–U first half	132.0
DC–Baltimore change	7.4919%

We multiplied the Puerto Rico and USVI price indexes by the change in the Puerto Rico CPI and divided that by the change in the Washington-Baltimore CPI–U. We used price indexes for Puerto Rico and USVI from the 2005 Caribbean survey report published at 71 FR 63179. As noted in section 4.2.3 of the report, we calculated the Puerto Rico survey index (103.32) after we re-priced water utilities based on a post-survey increase in water utility rates. The CPI for Puerto Rico already reflects this increase; therefore, we reverted to the pre-increase index level (103.06) to avoid duplication in the interim adjustment calculation. Table 5 shows the 2005 indexes, the interim adjustment process, and the final results.

TABLE 5—CARIBBEAN COLA AREA CPI–U PRICE INDEX ADJUSTMENTS

	Puerto Rico	USVI
2005 COLA Survey Indexes	103.06	128.21
Adjustment Factors	7	9
2005 COLA Survey Price Indexes	96.06	119.21
2007 CPI Adjusted Price Indexes	106.90	132.67
2007 COLA Indexes with Adj. Factors	113.90	141.67

Interim Adjustments Summarized

In a proposed rule published with this notice, we propose to adjust COLA rates based on the interim CPI adjustments. In Alaska, the results indicate that COLA rates in Anchorage, Fairbanks, and Juneau should continue to be reduced by an additional 1 percentage point in each area. (COLA rates may be reduced by no more than 1 percentage point in a 12-month period as provided under 5 CFR 591.228(c).) In the Caribbean, the results indicate that the COLA rate for the U.S. Virgin Islands is currently set at the appropriate level and the rate for Puerto Rico should be increased to 14 percent.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

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Registration of Importers and Importation of Motor Vehicles; Schedule of Fees; comments due by 9-3-08; published 8-4-08 [FR E8-17516]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials:

Combination Packages Containing Liquids Intended for Transport by Aircraft; comments due by 9-5-08; published 7-7-08 [FR E8-15372]

VETERANS AFFAIRS DEPARTMENT

Vocational Rehabilitation and Employment Program; Duty to Assist; comments due by 9-2-08; published 7-1-08 [FR E8-14823]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4040/P.L. 110–314

Consumer Product Safety Improvement Act of 2008 (Aug. 14, 2008; 122 Stat. 3016)

H.R. 4137/P.L. 110–315

Higher Education Opportunity Act (Aug. 14, 2008; 122 Stat. 3078)

H.R. 6432/P.L. 110–316

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the animal drug user fee program, to establish a program of fees relating to generic new animal drugs, to make certain technical corrections to the Food and Drug Administration Amendments Act of 2007, and for other purposes. (Aug. 14, 2008; 122 Stat. 3509)

Last List August 14, 2008

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–064–00001–7)	5.00	[4] Jan. 1, 2008
2	(869–064–00002–5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
4	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–064–00005–0)	63.00	Jan. 1, 2008
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–064–00007–6)	64.00	Jan. 1, 2008
6	(869–064–00008–4)	13.50	Jan. 1, 2008
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–064–00012–2)	65.00	Jan. 1, 2008
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–064–00014–9)	45.00	Jan. 1, 2008
700–899	(869–064–00015–7)	46.00	Jan. 1, 2008
900–999	(869–064–00016–5)	63.00	Jan. 1, 2008
1000–1199	(869–064–00017–3)	22.00	Jan. 1, 2008
1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
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1940–1949	(869–064–00021–1)	50.00	Jan. 1, 2008
1950–1999	(869–064–00022–0)	49.00	Jan. 1, 2008
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10 Parts:			
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51–199	(869–064–00028–9)	61.00	Jan. 1, 2008
200–499	(869–064–00029–7)	46.00	Jan. 1, 2008
500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–064–00031–9)	44.00	Jan. 1, 2008
12 Parts:			
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200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–064–00034–3)	64.00	Jan. 1, 2008
300–499	(869–064–00035–1)	47.00	Jan. 1, 2008
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60–139	(869–064–00041–6)	61.00	Jan. 1, 2008
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200–1199	(869–064–00043–2)	53.00	Jan. 1, 2008
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15 Parts:			
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16 Parts:			
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1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
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18 Parts:			
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19 Parts:			
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141–199	(869–064–00057–2)	61.00	Apr. 1, 2008
200–End	(869–064–00058–1)	34.00	Apr. 1, 2008
20 Parts:			
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800–1299	(869–064–00069–6)	63.00	Apr. 1, 2008
1300–End	(869–064–00070–0)	28.00	Apr. 1, 2008
22 Parts:			
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300–End	(869–064–00072–6)	48.00	Apr. 1, 2008
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24 Parts:			
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§§ 1.170–1.300	(869–064–00082–3)	63.00	Apr. 1, 2008
§§ 1.301–1.400	(869–064–00083–1)	50.00	Apr. 1, 2008
§§ 1.401–1.440	(869–064–00084–0)	59.00	Apr. 1, 2008
§§ 1.441–1.500	(869–064–00085–8)	61.00	Apr. 1, 2008
§§ 1.501–1.640	(869–064–00086–6)	52.00	Apr. 1, 2008
§§ 1.641–1.850	(869–064–00087–4)	64.00	Apr. 1, 2008
§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
§§ 1.908–1.1000	(869–064–00089–1)	63.00	Apr. 1, 2008
§§ 1.1001–1.1400	(869–064–00090–4)	64.00	Apr. 1, 2008
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
2–29	(869–064–00093–9)	63.00	Apr. 1, 2008
30–39	(869–064–00094–7)	44.00	Apr. 1, 2008
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50–299	(869–064–00096–3)	45.00	Apr. 1, 2008

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1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
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200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
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630–699	(869–062–00123–1)	37.00	July 1, 2007
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800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
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125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
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300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
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38 Parts:			
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52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
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63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
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150–189	(869–062–00161–4)	50.00	July 1, 2007
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266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
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430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
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156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
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1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
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49 Parts:			
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300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
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CFR Index and Findings Aids	(869–064–00050–5)	65.00	Jan. 1, 2008
Complete 2008 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.