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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0342; Directorate Identifier 2007–NM–305–AD; Amendment 39–15706; AD 2008–22–10]

RIN 2120–AA64

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

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

ACTION: Final rule.

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

During planned maintenance visit on one A320 aircraft, a cross connection of the fire extinguishing circuit system was identified. In case of fire, this cross connection will activate (discharge) the wrong forward or aft cargo compartment fire extinguisher bottle.

Failure to activate the correct bottle when required is classified as potentially catastrophic.

* * * * *

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

DATES: This AD becomes effective December 19, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 19, 2008.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 25, 2008 (73 FR 15681). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During planned maintenance visit on one A320 aircraft, a cross connection of the fire extinguishing circuit system was identified. In case of fire, this cross connection will activate (discharge) the wrong forward or aft cargo compartment fire extinguisher bottle.

Failure to activate the correct bottle when required is classified as potentially catastrophic.

For the reasons described above, this AD requires a one-time inspection and check of the cargo firing circuit continuity to confirm the correct connection of the dedicated wires between the discharge pushbutton switches and the relevant cargo bottle.

Corrective action includes modifying the wiring connection on plug 1505VC–A. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Revise Applicability

Northwest Airlines (NWA) requests that we revise the applicability of the NPRM to state that the AD applies only to those airplanes produced before February 28, 2007 that have fewer than 8,000 total flight hours and that have not had Airbus A318/A319/A320/A321 Maintenance Review Board Report (MRBR) Task 26.23.00/03 and 26.23.00/07, or Airbus Service Bulletin A320–26A1068, dated March 19, 2007, accomplished.

We disagree that the applicability needs to be clarified. Paragraph (c), ''Applicability,'' of the NPRM already excludes airplanes on which the MRBR tasks have been performed. Paragraph (f), ''Actions and Compliance,'' gives credit for airplanes on which the service bulletin has been accomplished before the effective date of this AD. These exclusions are valid no matter the number of total flight hours on the airplane. We have not changed the AD in this regard.

Clarifications of the AD

We have clarified the applicability to include a reference to the German standard airworthiness certificate or original German export certificate of airworthiness. The applicability of the NPRM referred only to the French standard airworthiness certificate or original French export certificate of airworthiness. Some of the airplanes affected by this AD were produced in Germany.

We have removed the reference to Airbus A318/A319/A320/A321 MRBR Task 26.23.00/03 or 26.23.00/07 in paragraph (f) of this AD to be consistent with FAA policy and Office of the Federal Register regulations. We may consider approving the use of Airbus A318/A319/A320/A321 MRBR Task 26.23.00/03 or 26.23.00/07 as an alternative method of compliance with this AD, as provided by paragraph (g)(1) of this AD.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect 679 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $325,920, or $480 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–22–10 Airbus: Amendment 39–15706. Docket No. FAA–2008–0342; Directorate Identifier 2007–NM–305–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes, certificated in any category, all certified models; all serial numbers which have received an original French or German (as applicable) standard airworthiness certificate or original French or German (as applicable) export certificate of airworthiness prior to February 28, 2007, and have been fitted with a cargo compartment fire extinguisher bottle installed in production, or in service by an Airbus service bulletin; except airplanes on which Airbus A318/A319/A320/A321 Maintenance Review Board Report (MRBR) Task 26.23.00/03 or 26.23.00/07 has been performed.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire Protection.

Reason

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

During planned maintenance visit on one A320 aircraft, a cross connection of the fire extinguishing circuit system was identified. In case of fire, this cross connection will activate (discharge) the wrong forward or aft cargo compartment fire extinguisher bottle.

Failure to activate the correct bottle when required is classified as potentially catastrophic.

For the reasons described above, this AD requires a one-time inspection and check of the cargo firing circuit continuity to confirm the correct connection of the dedicated wires between the discharge pushbutton switches and the relevant cargo bottle.

Corrective action includes modifying the wiring connection on plug 1505VC–A.

Actions and Compliance

(f) Within 600 flight hours after the effective date of this AD, unless already done, perform the inspection and continuity check of the cargo firing circuit and, before next flight, do applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–26A1068, Revision 01, dated July 19, 2007. Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–26A1068, dated March 19, 2007, are considered acceptable for compliance with the requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0249, dated September 24, 2007; and Airbus Mandatory Service Bulletin A320–26A1068, Revision 01, dated July 19, 2007; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A320–26A1068, Revision 01, excluding Appendix 01, dated July 19, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 33 33; Internet *http://www.airbus.com.*

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 9, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25640 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1063; Directorate Identifier 2008–NE–32–AD; Amendment 39–15725; AD 2008–23–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61 Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as affecting only RB211 Trent 500 series turbofan engines that have not incorporated Rolls-Royce plc (RR) Service Bulletin (SB) No. RB.211–72–D733, dated August 21, 2002, or Revision 1 of that SB, dated March 6, 2008, as follows:

The intermediate-pressure (IP) turbine blade shrouds of the RB211 Trent 500 series engines feature closure welds (dust caps). Development engine testing has revealed the potential for dust caps to crack, lift and release. The latter may potentially allow hot annulus gas to be ingested down the core passages of IP turbine blades. Radial inflow of annulus gas into the IP disc rim region could cause local heating of the disc firtree, resulting in creep of the disc material. Failure of the disc rim in creep could simultaneously release two blades and a disc post. Failure to this extent could be beyond the containment capabilities of the casing. Consequently, release of the dust caps would constitute a potentially unsafe condition.

This AD requires actions that are intended to address the unsafe condition described in the MCAI, which could result in uncontained release of IP turbine blades and disc posts, resulting in damage to the airplane.

DATES: This AD becomes effective December 1, 2008.

We must receive comments on this AD by December 15, 2008.

The Director of the Federal Register approved the incorporation by reference of Rolls-Royce plc Alert Service Bulletin (ASB) No. RB.211–72–AF994, Revision 1, dated September 1, 2008 and SB No. RB.211–72–D733, Revision 1, dated March 6, 2008, listed in the AD as of December 1, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2008–0109 R1, dated June 17, 2008, to correct an unsafe condition for the specified products. The EASA AD states that for RB211 Trent 500 series turbofan engines that have not incorporated RR SB No. RB.211–72–D733, dated August 21, 2002, or Revision 1 of that SB, dated March 6, 2008, the unsafe condition is as follows:

The intermediate-pressure (IP) turbine blade shrouds of the RB211 Trent 500 series engines feature closure welds (dust caps). Development engine testing has revealed the potential for dust caps to crack, lift and release. The latter may potentially allow hot annulus gas to be ingested down the core passages of IP turbine blades. Radial inflow of annulus gas into the IP disc rim region could cause local heating of the disc firtree, resulting in creep of the disc material. Failure of the disc rim in creep could simultaneously release two blades and a disc post. Failure to this extent could be beyond the containment capabilities of the casing. Consequently, release of the dust caps would constitute a potentially unsafe condition.

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

Relevant Service Information

Rolls-Royce plc has issued ASB No. RB.211–72–AF994, Revision 1, dated September 1, 2008 and SB No. RB.211–72–D733, Revision 1, dated March 6, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

Although no airplanes registered in the United States use these engines, the possibility exists that the engines could be used on airplanes registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other engines of

the same type design. We are issuing this AD to prevent release of IP turbine blades and disc posts, resulting in damage to the airplane. This AD requires:

• Initial and repetitive borescope inspections for missing or lifting IP turbine blade outer shroud dust caps; and

• Installation of core restrictor plugs in the IP turbine blade roots, if 20 or more IP turbine blade outer shroud dust caps are found lifting, or if 1 or more dust caps are missing.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Differences Between the AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we require the initial borescope inspection to be done within 5 flight cycles, since the MCAI required the initial inspection to be done before July 1, 2008, which has already passed.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1063; Directorate Identifier 2008–NE–32–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–23–04 Rolls-Royce plc: Amendment 39–15725.; Docket No. FAA–2008–1063; Directorate Identifier 2008–NE–32–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 1, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61 turbofan engines that have not incorporated RR Service Bulletin (SB) No. RB.211–72–D733, dated August 21, 2002, or Revision 1 of that SB, dated March 6, 2008. These engines are installed on, but not limited to, Airbus A340–500 and –600 series airplanes.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2008–0109 R1, dated June 17, 2008, states that for RB211 Trent 500 series turbofan engines that have not incorporated RR SB No. RB.211–72–D733, dated August 21, 2002, or Revision 1 of that SB, dated March 6, 2008, the unsafe condition is as follows:

The intermediate-pressure (IP) turbine blade shrouds of the RB211 Trent 500 series engines feature closure welds (dust caps). Development engine testing has revealed the potential for dust caps to crack, lift and release. The latter may potentially allow hot annulus gas to be ingested down the core passages of IP turbine blades. Radial inflow of annulus gas into the IP disc rim region could cause local heating of the disc firtree, resulting in creep of the disc material. Failure of the disc rim in creep could simultaneously release two blades and a disc post. Failure to this extent could be beyond the containment capabilities of the casing. Consequently, release of the dust caps would constitute a potentially unsafe condition.

We are issuing this AD to prevent uncontained release of IP turbine blades and disc posts, resulting in damage to the airplane.

Actions and Compliance

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

(1) Within 5 flight cycles, on engines installed or not installed, carry out the initial borescope inspection of the IP turbine blade outer shroud dust caps, using Section 3, Accomplishment Instructions of RR Alert Service Bulletin (ASB) No. RB.211–72–AF994, Revision 1, dated September 1, 2008.

(2) Thereafter, depending on the results of the inspection specified in paragraph (e)(1) of this AD, follow the appropriate action in the following Table 1:

TABLE 1—REQUIRED ACTIONS AND COMPLIANCE TIMES

Results of Borescope inspection	Actions that must be carried out
(i) Total number of IP turbine blade outer shroud dust caps lifting is 0.	At intervals not to exceed 100 cycles, re-inspect the dust caps using Section 3, Accomplishment Instructions of Rolls-Royce plc ASB No. RB.211–72–AF994, Revision 1, dated September 1, 2008.
(ii) Total number of IP turbine blade outer shroud dust caps lifting exceeds 0 but is equal to or fewer than 10.	At intervals not to exceed 20 cycles, re-inspect the dust caps using Section 3, Accomplishment Instructions of Rolls-Royce plc ASB No. RB.211–72–AF994, Revision 1, dated September 1, 2008.
(iii) Total number of IP turbine blade outer shroud dust caps lifting exceeds 10 but is equal to or fewer than 20.	At intervals not to exceed 10 cycles, re-inspect the dust caps using Section 3, Accomplishment Instructions of Rolls-Royce plc ASB No. RB.211–72–AF994, Revision 1, dated September 1, 2008.
(iv) Total number of IP turbine blade outer shroud dust caps lifting exceeds 20.	Within 10 cycles, remove the engine from service and install core restrictor plugs in the IP turbine blade roots, using Section 3, Accomplishment Instructions of RR Service Bulletin (SB) No. RB.211–72–D733, Revision 1, dated March 6, 2008.
(v) Total number of IP turbine blade outer shroud dust caps missing exceeds 1.	Before further flight, remove the engine from service and install core restrictor plugs in the IP turbine blade roots, using Section 3, Accomplishment Instructions of RR SB No. RB.211–72–D733, Revision 1, dated March 6, 2008.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) EASA AD by requiring the initial borescope inspection to be done within 5 flight cycles. The MCAI required the initial inspection to be done before July 1, 2008, which has already passed.

(g) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI EASA AD 2008–0109 R1, dated June 17, 2008, for related information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use the Rolls-Royce plc service information specified in the following Table 2 to do the actions required by this AD.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document No.	Page	Revision	Date
Alert Service Bulletin No. RB.211–72–AF994 ..... Total Pages: 24.	All	1	September 1, 2008.
Service Bulletin No. RB.211–72–D733, including Supplement ..... Total Pages: 9.	All	1	March 6, 2008.

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

(2) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, UK, telephone 44–0–1332 242424; fax 44–0–1332 249936.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on October 28, 2008.

Diane S. Romanosky,

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

[FR Doc. E8–26200 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1200; Directorate Identifier 2008–NM–178–AD; Amendment 39–15737; AD 2008–23–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The existing AD currently requires inspecting to identify the wing anti-ice ducts (piccolo tubes) in the wing leading edge. For airplanes with affected piccolo tubes, the existing AD requires revising the airplane flight manual (AFM) to introduce new procedures for operation in icing conditions. The existing AD provides an optional implementation of repetitive inspections for cracks of affected piccolo tubes, and corrective actions if necessary, which terminates the operational limitations. The existing AD also provides an optional installation of certain new piccolo tubes, which terminates both the AFM revision and the inspections. This AD adds airplanes to the applicability, requires revising the AFM to introduce new procedures for operation in icing conditions, and requires inspecting to determine if certain anti-ice piccolo ducts are installed, and replacing or repairing the piccolo duct if necessary. This AD also provides an optional terminating action of replacing all affected piccolo ducts. This AD results from reports of failed piccolo tubes. We are issuing this AD to prevent cracked piccolo tubes, which could result in air leakage, a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to

the flight crew, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective December 1, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 1, 2008.

On September 7, 2005 (70 FR 49164, August 23, 2005), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

We must receive any comments on this AD by December 15, 2008.

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

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

For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada; telephone 514–855–8500; fax 514–855–8501; E-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, New York Aircraft Certification Office, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

On August 11, 2005, the FAA issued AD 2005–17–12, amendment 39–14223 (70 FR 49164, August 23, 2005). That AD applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires inspecting to identify the wing anti-ice ducts (piccolo tubes) in the wing leading edge. For airplanes with affected piccolo tubes, that AD requires revising the airplane flight manual (AFM) to introduce new procedures for operation in icing conditions. That AD provides an optional implementation of repetitive inspections for cracks of affected piccolo tubes, and corrective actions if necessary, which terminates the operational limitations. That AD also provides an optional installation of certain new piccolo tubes, which terminates both the AFM revision and the inspections. That AD resulted from reports of failed piccolo tubes. The actions specified in that AD are intended to prevent cracked piccolo tubes, which could result in air leakage, a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane.

Actions Since AD Was Issued

Since we issued AD 2005–17–12, we received a report that faulty piccolo tubes might have been installed in a number of leading edge assemblies built as spares, and whose current locations are not specifically known. These faulty parts may have been installed on airplanes affected by that AD. Faulty piccolo tubes could crack, which could result in air leakage, a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane.

Relevant Service Information

Bombardier has issued Canadair Temporary Revision RJ/155–6, dated September 17, 2008 (''the TR''), to the Canadair Regional Jet AFM, CSP A–012. The TR describes new procedures for operation in icing conditions and supersedes Canadair TR RJ/155, dated July 5, 2005 (which we referred to as the appropriate source of service information for doing the AFM revision required by AD 2005–17–12).

Bombardier has also issued Service Bulletin 601R–30–029, Revision B, dated August 29, 2005. We referred to Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, as the appropriate source of service information for doing certain actions required by AD 2005–17–12. Revision B contains the same procedures as Revision A but adds airplanes to the effectivity and removes certain other airplanes from the effectivity.

Bombardier has also issued Alert Service Bulletin A601R–30–032, dated September 18, 2008. This service bulletin supersedes Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. Bombardier Alert Service Bulletin A601R–30–032 describes procedures for inspecting to determine if certain anti-ice piccolo ducts are installed, and replacing or repairing the piccolo duct if necessary.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. Transport Canada Civil Aviation (TCCA) mandated the service information and issued Canadian airworthiness directive CF–2008–30, dated October 7, 2008 (referred to after this as ''the MCAI''), to ensure the continued airworthiness of these airplanes in Canada. Canadian airworthiness directive CF–2008–30 supersedes Canadian airworthiness directive CF–2005–26R1, dated September 21, 2005, and adds airplanes to the applicability. We referred to Canadian airworthiness directive CF–2005–26, dated July 11, 2005, in our AD 2005–17–12.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to supersede AD 2005–17–12. This new AD retains certain requirements of the existing AD. This AD also requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the Service Information.'' This AD also adds airplanes to the applicability and removes certain other airplanes from the applicability.

Differences Between the AD and the Service Information

Where Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, specifies that Bombardier may be contacted for information regarding repair, this AD

requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent).

Interim Action

We consider this AD interim action. We are currently considering requiring the replacement of all piccolo ducts that have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with piccolo ducts that do not have the affected serial numbers, which will constitute terminating action for the actions required by this AD. However, the planned compliance time for the replacement would allow enough time to provide notice and opportunity for prior public comment on the merits of the replacement.

FAA's Justification and Determination of the Effective Date

Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to ensure proper functioning of the anti-ice systems during the upcoming winter season, and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1200; Directorate Identifier 2008–NM–178–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14223 (70 FR 49164, August 23, 2005) and adding the following new AD:

2008–23–16 Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–1200; Directorate Identifier 2008–NM–178–AD; Amendment 39–15737.

Effective Date

(a) This AD becomes effective December 1, 2008.

Affected ADs

(b) This AD supersedes AD 2005–17–12.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; serial numbers (S/Ns) 7003 through 7067 inclusive, 7069 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096, and 8097.

Unsafe Condition

(d) This AD results from reports of failed piccolo tubes. We are issuing this AD to prevent cracked piccolo tubes, which could result in air leakage, a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 2005–17–12

Identification of Affected Piccolo Tubes

(f) For airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: Before the airplane accumulates 3,000 total flight hours, or within 14 days after September 7, 2005 (the effective date of AD 2005–17–12), whichever occurs later, determine whether any affected piccolo tube is installed on the airplane. Affected piccolo tubes are identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. Doing the action required by paragraph (p), (q), (r), or (w) of this AD terminates the requirements of this paragraph.

Revision to Airplane Flight Manual (AFM)

(g) For airplanes with an affected or unidentifiable piccolo tube found during the

action required by paragraph (f) of this AD: Before the airplane accumulates 3,000 total flight hours, or within 14 days after September 7, 2005, whichever occurs later, revise the Operating Limitations and Abnormal Procedures sections of the Canadair Regional Jet AFM, CSP A–012, to include the information in Canadair Temporary Revision (TR) RJ/155, dated July 5, 2005, as specified in the TR. This may be done by inserting a copy of the TR into the AFM. This TR introduces new procedures for operation in icing conditions. Operate the airplane according to the limitations and procedures in the TR except as required by paragraph (n) of this AD. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the TR. After the AFM revision required by paragraph (n) of this AD has been done, remove the AFM limitation specified in this paragraph.

Optional Inspections

(h) For airplanes with an affected or unidentifiable piccolo tube found during the action required by paragraph (f) of this AD: The operating limitations and abnormal procedures specified in Canadair TR RJ/155, dated July 5, 2005, as required by paragraph (g) of this AD, may be removed from the AFM, provided all requirements of this paragraph have been satisfied.

(1) A fluorescent dye penetrant inspection for cracks of the piccolo tubes is done and repeated thereafter within 2,000-flight-hour intervals in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. An inspection done before September 7, 2005, in accordance with Bombardier Service Bulletin 601R–30–029, dated June 17, 2005, is acceptable for compliance with the requirements of paragraph (h)(1) of this AD. Doing the inspection required by paragraph (u) of this AD terminates the actions required by this paragraph.

(2) All applicable corrective actions are done as specified in paragraph (j) of this AD.

AFM Limitations Required for Exceeding Inspection Interval

(i) For airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: During any period in which the inspection interval exceeds 2,000 flight hours after the initial inspection specified in paragraph (h)(1) of this AD, the airplane must be operated under the limitations and abnormal procedures specified in paragraph (g) of this AD. Doing the action required by paragraph (p), (q), (r), or (w) of this AD terminates the requirements of this paragraph.

Corrective Action

(j) If any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, do the actions specified in paragraph (j)(1), (j)(2), (j)(3), (j)(4), or (j)(5) of this AD, except as required by paragraph (k) of this AD.

(1) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a new piccolo tube that has the same part number as identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, but that does not have a serial number listed in that paragraph.

(2) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a new piccolo tube that has a part number identified in the applicable Bombardier illustrated parts catalog but not identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, or with a new piccolo tube identified in paragraph (l) of this AD.

(3) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a piccolo tube that has been inspected in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, is not cracked, and has not accumulated any air time (hours' time-in-service) since inspection.

(4) Replace the cracked piccolo tube with a piccolo tube that has been repaired in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE–172, FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); and has not accumulated any air time (hours time-in-service) since the repair.

(5) Reinstall the cracked piccolo tube and operate the airplane in accordance with a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent). Operation in accordance with the provisions of Master Minimum Equipment List (MMEL) entry 30–12–03 is acceptable for compliance with the requirements of this paragraph.

Exception to Service Bulletin Procedures

(k) Where Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, specifies that Bombardier may be contacted for information regarding repair, this AD requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent).

Optional Terminating Action for Paragraphs (f), (g), (h), (i), and (j)

(l) For airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: Installation, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, of a complete set of new inboard, center, and outboard piccolo tubes, as identified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD terminates the requirements of paragraphs (f), (g), (h), (i), and (j) of this AD. When these piccolo tubes have been installed, remove the Operating Limitations and Abnormal Procedures, if inserted in accordance with paragraph (g) of this AD, from the AFM.

(1) For the inboard piccolo tube: P/N 601–80032–7 (14432–107) and 601–80032–8 (14432–108).

(2) For the center piccolo tube: P/N 14464–105 and 14464–106.

(3) For the outboard piccolo tube: P/N 14463–109 and 14463–110.

Parts Installation

(m) For airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: As of September 7, 2005, no person may install, on any airplane, a piccolo tube having a P/N listed in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, unless the applicable requirements of paragraphs (f) through (l) of this AD have been accomplished for that piccolo tube before the effective date of this AD or the requirements specified in paragraph (v) of this AD have been accomplished. As of the effective date of this AD, the requirements of paragraph (v) of this AD must be followed.

New Requirements of This AD

New Revision to AFM

(n) For all airplanes: Within 14 days after the effective date of this AD, revise the Operating Limitations and Abnormal Procedures sections of the Canadair Regional Jet AFM, CSP A–012, to include the information in Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, as specified in that TR. This may be done by inserting a copy of Canadair (Bombardier) TR RJ/155–6 into the AFM. This TR introduces new procedures for operation in icing conditions. After the AFM revision specified in this paragraph has been done, the AFM limitation required by paragraph (g) of this AD must be removed from the AFM.

Note 1: When Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Canadair (Bombardier) TR RJ/155–6.

(o) Before further flight after accomplishing paragraph (n) of this AD, operate the airplane according to the limitations and procedures in Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, except that MMEL entry 30–12–03, which permits the wing anti-ice system to be inoperative with specific provisions, is not affected by this AD.

Records Check

(p) For airplanes having S/Ns 7003 through 7013 inclusive, 7015, 7016, 7018 through 7036 inclusive, 7038 through 7045 inclusive, 7047 through 7058 inclusive, 7060 through 7067 inclusive, 7069 through 7075 inclusive,

7077 through 7104 inclusive, 7106 through 7126 inclusive, 7128 through 7150 inclusive, 7152 through 7156 inclusive, 7158 through 7162 inclusive, 7164 through 7178 inclusive, 7180 through 7202 inclusive, 7204 through 7227 inclusive, 7229 through 7270 inclusive, 7272 through 7346 inclusive, 7348 through 7358 inclusive, 7360, 7361, 7363 through 7377 inclusive, 7379, 7380, 7382 through 7416 inclusive, 8056 through 8076 inclusive, 8082, 8086, 8090 though 8092 inclusive, 8096 and 8097: Within 30 days after the effective date of this AD, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections have been replaced since May 1, 2000. Doing the review in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) of this AD terminates the requirements of this paragraph.

(1) If no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, no further action is required by this paragraph.

(2) If any anti-ice piccolo duct or complete leading edge section has been replaced since May 1, 2000, or if it cannot be conclusively determined that no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, before further flight, inspect the serial numbers of the replaced ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review.

(i) If none of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(ii) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

(q) For airplanes having S/Ns 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378, 7381, 7417 through 7990 inclusive, and 8000 through 8055 inclusive, on which Bombardier Service Bulletin 601R–30–029 has been accomplished: Within 30 days after the effective date of this AD, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections have been replaced since accomplishing Bombardier Service Bulletin 601R–30–029. Doing the action in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) of this AD terminates the requirements of this paragraph.

(1) If no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, no further action is required by this paragraph.

(2) If any anti-ice piccolo duct or complete leading edge section has been replaced since May 1, 2000, or if it cannot be conclusively determined that no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, before further flight, inspect the serial numbers of the replaced ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review.

(i) If none of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(ii) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

(r) For airplanes having S/Ns 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378, 7381, 7417 through 7990 inclusive, and 8000 through 8055 inclusive, on which Bombardier Service Bulletin 601R–30–029 has not been accomplished: Within 30 days after the effective date of this AD, inspect the serial numbers of the piccolo ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review. Doing the inspection in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) of this AD terminates the requirements of this paragraph.

(1) If none of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(2) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

Inspection of the Wing Anti-Ice Piccolo Ducts

(s) For airplanes having a piccolo duct identified in paragraph (p)(2)(ii), (q)(2)(ii), or (r)(2) of this AD: Within 30 days after doing the action specified in paragraph (p), (q), or (r) of this AD, as applicable, do a fluorescent dye penetrant inspection for cracking of the piccolo ducts in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 2,000 flight hours. Doing the action specified in paragraph (w) of this AD terminates the requirements of this paragraph.

(t) If any cracking is found during any inspection required by paragraph (s) of this AD, before further flight, do the actions specified in paragraph (t)(1), (t)(2), or (t)(3) of this AD, except where Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, specifies to contact Bombardier for information regarding repair, this AD requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent). Doing the action specified in paragraph (w) of this AD terminates the requirements of this paragraph.

(1) Replace the cracked piccolo duct, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with a new piccolo duct that has the same part number as identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, but that does not have a serial number listed in that paragraph.

(2) Replace the cracked piccolo duct, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with a new piccolo duct that has a part number identified in the applicable Bombardier illustrated parts catalog but not identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008.

(3) Replace the cracked piccolo duct with a piccolo duct that has been repaired in accordance with a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent).

Repetitive Inspection of the Wing Anti-Ice Piccolo Ducts

(u) For airplanes on which an inspection required by paragraph (h)(1) of this AD has been done, except for airplanes on which the terminating action specified in paragraph (l) of this AD has been done: Within 2,000 flight hours since the last inspection, or 30 days after the effective date of this AD, whichever occurs later, do the actions specified in paragraph (s) of this AD. Doing the inspection required by this paragraph terminates the actions required by paragraph (h)(1) of this AD. Doing the action specified in paragraph (w) of this AD terminates the requirements of this paragraph.

New Parts Installation Paragraph

(v) As of the effective date of this AD, the requirements specified in paragraphs (v)(1) and (v)(2) of this AD must be followed.

(1) For airplanes on which the terminating action specified in paragraph (w) of this AD has not been done: No person may install a piccolo duct having a part number identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, on any airplane, unless the requirements specified in paragraphs (s) and (t) of this AD, as applicable, have been accomplished for that piccolo duct.

(2) For airplanes on which the terminating action specified in paragraph (w) of this AD

has been done: No person may install a piccolo duct having a part number identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, on any airplane.

Optional Terminating Action

(w) Replacing all piccolo ducts that have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with piccolo ducts that do not have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, terminates the requirements of paragraphs (f), (h), (i), (p), (q), (r), (s), (t), and (u) of this AD.

Optional Service Information for Certain Requirements of This AD

(x) Actions accomplished according to Bombardier Service Bulletin 601R–30–029, Revision B, dated August 29, 2005; or Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008; are considered acceptable for compliance with the corresponding actions specified in paragraphs (h)(1), (j)(1), (j)(2), (j)(3), and (l) of this AD.

Alternative Methods of Compliance (AMOCs)

(y) The Manager, New York ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Fabio Buttitta, Aerospace Engineer, New York Aircraft Certification Office, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(z) Canadian airworthiness directive CF–2008–30, dated October 7, 2008, also addresses the subject of this AD.

Material Incorporated by Reference

(aa) You must use the service information listed in Table 1 of this AD to perform the actions that are required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Bombardier Alert Service Bulletin A601R–30–032, including Appendix A and Appendix B	Original	September 18, 2008.
Bombardier Service Bulletin 601R–30–029, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.	A	July 7, 2005.
Canadair (Bombardier) Temporary Revision RJ/155–6 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.	Original	September 17, 2008.
Canadair Temporary Revision RJ/155 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.	Original	July 5, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–30–032, including Appendix A and Appendix B, dated September 18, 2008; and Canadair (Bombardier) Temporary Revision RJ/155–6 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012, dated September 17, 2008; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On September 7, 2005 (70 FR 49164, August 23, 2005), the Director of the Federal Register approved the incorporation by reference of Canadair Temporary Revision RJ/155, dated July 5, 2005, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012; and Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.

(3) Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada; telephone 514–855–8500; fax 514–855–8501; E-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*; for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 4, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26911 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–095–AD; Amendment 39–15714; AD 2008–22–17]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 747 series airplanes. That AD currently requires repetitive inspections for cracking and corrosion of all exposed surfaces of the carriage spindles (including the inner bore and aft links) of the trailing edge flaps, and additional inspection and corrective action if necessary. That AD also currently requires repetitive overhaul of the carriage spindle and aft link, which terminates the repetitive inspections. This new AD adds a repetitive inspection to detect broken parts, and revises the overhaul threshold and repetitive intervals. This AD results from analysis that showed additional inspections should be done to prevent the loss of a flap, and that the flight-hour-based interval should be revised to a flight-cycle-based interval, because the greatest loads on the spindles happen during takeoff and landing. We are issuing this AD to detect and correct failed carriage spindles or aft links of the inboard or outboard trailing edge flaps. Such failure could cause the flap to depart the airplane, reducing the flightcrew's ability to maintain the safe flight and landing of the airplane.

DATES: This AD becomes effective December 19, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 19, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707,

Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com;* Internet *http://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 90–17–19, amendment 39–6705 (55 FR 33280, August 15, 1990). The existing AD applies to certain Boeing Model 747 series airplanes. That NPRM was published in the **Federal Register** on April 28, 2008 (73 FR 22845). That NPRM proposed to retain the requirements of the existing AD but to add a repetitive inspection to detect broken parts, and revise the overhaul threshold and repetitive intervals.

Comments

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

Support for the NPRM

Boeing has reviewed the NPRM and concurs with the contents of the proposed rule. Northwest Airlines (NWA) has no technical objection to the AD.

Requests To Revise Inspection Threshold

The Hong Kong Civil Aviation Department, and Air Transport Association (ATA), on behalf of its member NWA, request that we revise the inspection threshold for the inspection for broken parts proposed in paragraph (i) of the NPRM. The commenters point out that the NPRM stated the first inspection should be done at the earlier of 12 months or 400 flight cycles after the effective date of the AD; however, Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008, specifies doing that inspection at the later of those two times.

We agree with the commenters. It was our intent that the compliance threshold should match that of the Boeing Service Bulletin 747–27–2280, Revision 6. We have revised paragraph (i) of the AD as requested.

Request To Clarify Compliance Times

ATA on behalf of NWA, requests that we revise paragraph (j), ''Repetitive Overhauls,'' of the NPRM to clarify the compliance threshold for the initial overhaul for carriage assemblies previously overhauled in accordance with the requirements of AD 90–17–19. NWA requests that we specify that the compliance threshold is measured from the completion of the overhaul mandated by AD 90–17–19 for carriages/assemblies previously overhauled.

We agree that the compliance times can be clarified, although we do not agree that it is necessary to change the AD in this regard. Paragraph (j) of the NPRM specifies doing the initial overhaul at the later of the applicable thresholds specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008; or 48 months after the effective date of the AD. Paragraph 1.E. of the service bulletin includes notes (a) and (e). Note (a) states, ''Compliance Time and Repeat Interval applies to each new or overhauled carriage or aft link from the time it enters service, regardless of whether the part is removed and installed on another airplane.'' Note (e) states, ''The initial overhaul must be accomplished prior to terminating the repetitive overhauls at the compliance times specified in FAA AD 90–17–19.'' These notes provide the information requested by the commenter. It is the intent of this new AD that if the initial or repetitive overhaul required by AD 90–17–19 is due prior to ''48 months after the effective date of this AD,'' the compliance time for the initial carriage overhaul will not be affected by the new requirements of this AD. However, if the initial or repetitive carriage overhaul required by AD 90–17–19 is due subsequent to ''48 months after the effective date of this AD,'' the required carriage overhauls are governed by the new compliance times of this AD. Specifically, the compliance time for carriages with sleeved journals is to accomplish the initial overhaul within 6000 flight cycles or 8 years, whichever occurs first, since new or since completion of the overhaul mandated by AD 90–17–19; and the compliance time for carriages with chrome-plated forward and aft journals is to accomplish the initial overhaul within 9000 flight cycles or 8 years, whichever occurs first, since new or since completion of the overhaul mandated by AD 90–17–19. We have not changed the AD in this regard.

Request To Revise Optional Terminating Action

Japan Airlines (JAL) requests that we refer to the latest aft links. JAL explains that the latest aft links do not require a repeat overhaul, and points out that the latest aft links are not shown in Boeing Service Bulletin 747–27–2371, dated December 20, 2000 (we referred to this service bulletin in paragraph (k) of the NPRM as the source of service information for the optional terminating action of replacing the existing 4340M aft link with a new corrosion resistant steel (CRES) aft link). JAL states that the latest aft links are shown in paragraph 3.B.5. of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008.

We agree that the newest aft links do not require a repeat overhaul and that a note in paragraph 3.B.5. of Boeing Service Bulletin 747–27–2280, Revision 6, refers to these links. Therefore, we have revised paragraph (k) of this AD to state that replacing the existing 4340M aft link with a new CRES aft link in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2371, dated December 20, 2000, or with an aft link specified in paragraph 3.B.5. of the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008, terminates the repetitive inspection requirements of paragraph (f) of this AD and the repetitive overhaul requirements of paragraphs (g) and (j) of this AD for that aft link only.

Request To Revise Repetitive Intervals

All Nippon Airways (ANA) requests that we use the results of a Boeing analysis, using ANA flight data as a basis, to change intervals in the NPRM for Boeing Model 747–400D series airplanes, or provide the intervals as an alternative method of compliance (AMOC). ANA states that it operates five Boeing Model 747–400 series airplanes, for which the maximum takeoff weight

(MTOW) is 899,600 pounds, and 11 Boeing Model 747–400D series airplanes for which the MTOW is 599,600 pounds. ANA believes that the loads on the spindles must be smaller for the Model 747–400D series airplanes because of the difference between the takeoff and landing weights. ANA requests that Boeing develop for Model 747–400D series airplanes different repetitive intervals for the flap carriage overhaul and the general visual inspection. ANA makes this request because the repetitive flap carriage overhaul must be done every two to three C–checks (3 to 4.5 years) and the general visual inspection must be done every 2 months, thus requiring a lot of manpower and costs. ANA provided no analysis to justify this requested increase.

We disagree with the request to change the AD to include revised intervals for Boeing Model 747–400D series airplanes. The intervals for inspection proposed in the NPRM were based on analysis provided by the manufacturer. In the absence of any analysis showing the differences in landing weights for these spindles, there is no evidence that increasing the intervals would provide an acceptable level of safety. However, as ANA noted, under the provisions of paragraph (m) of the AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the change to the intervals would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

There are about 925 airplanes of the affected design in the worldwide fleet, which includes 160 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Inspection and overhaul (required by AD 90–17–19).	Between 120 and 140, per flap per cycle.	$0	Between $9,600 and $11,200, per flap per overhaul cycle.	Between $1,536,000 and $1,792,000, per flap per cycle.
Repetitive inspection for broken parts (new action).	2, per inspection cycle	0	$160, per inspection cycle	$25,600, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–6705 (55 FR 33280, August 15, 1990) and by adding the following new airworthiness directive (AD):

2008–22–17 Boeing: Amendment 39–15714. Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–095–AD.

Effective Date

(a) This AD becomes effective December 19, 2008.

Affected ADs

(b) This AD supersedes AD 90–17–19.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from analysis that showed that additional inspections should be done to prevent the loss of a flap, and that the flight-hour-based interval should be revised to a flight-cycle-based interval, because the greatest loads on the spindles happen during takeoff and landing. We are issuing this AD to detect and correct failed carriage spindles or aft links of the inboard or outboard trailing edge flaps. Such failure could cause the flap to depart the airplane, reducing the flightcrew's ability to maintain the safe flight and landing of the airplane.

Compliance

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

Requirements of AD 90–17–19

Repetitive Inspections

(f) For all airplanes except those airplanes on which the repetitive overhauls required by paragraph B. of AD 90–17–19 are being accomplished as of the effective date of this AD: Prior to the accumulation of 30,000 flight hours or 8 years on each new or previously overhauled flap carriage spindle, whichever occurs first, remove the aft link and thrust collars from the trailing edge flaps' carriage spindles and perform a detailed inspection of all exposed surfaces of the carriage spindles, including inner bore, and aft links to detect cracking and corrosion, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 3, dated November 30, 1989.

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

(1) If no cracking or corrosion is found, repeat the inspections required by paragraph (f) of this AD at intervals not to exceed 12 months until the carriage spindles are overhauled in accordance with paragraph (g) of this AD.

(2) If a cracked carriage spindle or aft link is found, prior to further flight, replace the part(s) in accordance with the service bulletin.

(3) If corrosion is found on any part of the carriage spindle/aft link assembly, but not on the other assembly on the same flap, perform a repetitive general visual inspection in accordance with the service bulletin at intervals not to exceed 2 months. Overhaul or replace corroded parts in accordance with the service bulletin within 36 months after detection of the corrosion.

(4) If corrosion is found on any part of both carriage spindle/aft link assemblies on the same flap, prior to further flight, overhaul or replace the part(s) in accordance with the service bulletin or repair in accordance with the procedures specified in paragraph (m) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Initial and Repetitive Overhauls

(g) For all airplanes: Prior to the accumulation of 8 years or 30,000 flight hours on any new or previously overhauled flap carriage spindle, whichever occurs later, remove the carriage spindle and aft link, and overhaul in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 3, dated November 30, 1989. Repeat the overhaul thereafter at intervals not to exceed 8 years or 30,000 flight hours, whichever occurs earlier. Accomplishment of initial overhaul required by this paragraph terminates the requirements of paragraph (f) of this AD.

New Requirements of This AD

Terminating Requirements

(h) The actions specified in paragraphs (i) and (j) of this AD must be accomplished in their entirety, at the specified compliance times, to terminate the requirements of paragraphs (f) and (g) of this AD. There is no terminating action for the requirements of paragraphs (i) and (j) of this AD.

Repetitive Inspection for Broken Parts

(i) For all airplanes: Within 12 months or 400 flight cycles after the effective date of this AD, whichever occurs later, do a general visual inspection of all eight carriage spindles and aft links to detect a broken carriage spindle or broken aft link, and do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 400 flight cycles. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008. For airplanes identified in Note (d) of Table 1 in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008, the initial compliance time and repetitive interval for a flap may be extended to 1,000 flight cycles when new carriages are installed at both the inboard and outboard carriage locations on the flap.

Repetitive Overhauls

(j) For all airplanes: At the later of the times specified in paragraph (j)(1) or (j)(2) of this AD, remove the carriage spindle and aft link, and overhaul in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008. Repeat the overhaul thereafter at the applicable repeat interval specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008.

(1) The applicable threshold specified in paragraph 1.E. ''Compliance,'' of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008.

(2) Within 48 months after the effective date of this AD.

Optional Terminating Action

(k) For Groups 1 and 3 airplanes identified in Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008: Replacing the existing 4340M aft link with a new corrosion resistant steel (CRES) aft link in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2371, dated December 20, 2000, or with an aft link specified in paragraph 3.B.5. of the Accomplishment Instructions of Boeing Service Bulletin 747–27–2280, Revision 6, dated February 14, 2008, terminates the repetitive inspection requirements of paragraph (f) of this AD, and the repetitive overhaul requirements of paragraphs (g) and (j) of this AD for that aft link only. The repetitive inspections for broken parts required by paragraph (i) of this AD cannot be terminated.

Credit for Actions Done Using Previous Revision of Service Bulletin

(l) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–27–2280, Revision 4, dated April 26, 2001, are acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD. Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–27–2280, Revision 5, dated April 5, 2007, are acceptable for compliance with the corresponding requirements of paragraphs (i) and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 90–17–19 are approved as AMOCs for the corresponding provisions of this AD.

(4) Adjustments to the compliance times approved previously in accordance with AD 90–17–19 are not approved for the corresponding provisions of this AD.

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

Material Incorporated by Reference

(n) You must use the applicable service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

If you accomplish the optional terminating actions specified by this AD, you must use the service information identified in Table 2 of this AD to perform those actions, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE FOR ACTIONS REQUIRED IN THIS AD

Service Bulletin	Revision level	Date
Boeing Service Bulletin 747–27–2280.	3	Nov. 30, 1989.
Boeing Service Bulletin 747–27–2280.	6	Feb. 14, 2008.

Boeing Service Bulletin 747–27–2280, Revision 3, dated November 30, 1989, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–26	3	Nov. 30, 1989.
27–29	2	Mar. 23, 1989.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE FOR THE OPTIONAL TERMINATING ACTION IN THIS AD

Service Bulletin	Revision level	Date
Boeing Service Bulletin 747–27–2280.	6	Feb. 14, 2008.
Boeing Service Bulletin 747–27–2371.	Original	Dec. 20, 2000.

(1) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*; for a copy of this service information.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25761 Filed 11–13–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0854; Directorate Identifier 2008–CE–050–AD; Amendment 39–15718; AD 2008–22–21]

RIN 2120–AA64

Airworthiness Directives; Allied Ag Cat Productions, Inc. Model G–164 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) to supersede AD 78–08–09, which applies to certain Allied Ag Cat Productions, Inc. (formerly Grumman-American) (Allied Ag Cat) Models G–164, G–164A, and G–164B airplanes. AD 78–08–09 currently requires repetitively inspecting the interior and the exterior of the main tubular spar of the rudder assembly for corrosion, taking necessary corrective action if corrosion is found, and applying corrosion protection. Since we issued AD 78–08–09, the rudder main tubular spar failed on a later production airplane. Consequently, this AD retains the actions required in AD 78–08–09 and expands the applicability to include all G–164 series airplanes. We are issuing this AD to detect and correct corrosion in the rudder main tubular spar, which could result in failure of the weld to the main spar tube. This failure could lead to loss of directional control.

DATES: This AD becomes effective on December 19, 2008.

On December 19, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Allied Ag Cat Productions, Inc., 301 West Walnut Street, P.O. Box 482, Walnut Ridge, Arkansas 72479; telephone: (870) 886–2418.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2008–0854; Directorate Identifier 2008–CE–050–AD.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, 10100 Reunion Pl., Ste. 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On August 1, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Allied Ag Cat Models G–164, G–164A, and G–164B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 7, 2008 (73 FR 45900). The NPRM proposed to supersede AD 78–08–09 with a new AD that would retain the actions required in AD 78–08–09 and expand the applicability to include all G–164 series airplanes.

Comments

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

Comment Issue No. 1: AD Is Supported

Ronald I. Gustin, Craig T. Fountain, and Ken J. Kuther all state that they support the AD action as proposed in the NPRM.

Ronald Gustin states that of the 13 Ag Cat airplanes inspected by mechanics at Gustin Aviation, which was prompted by the NPRM, 4 airplanes had severe corrosion of the rudder main spar tube that required repair; 2 airplanes had light rust; and 7 airplanes were corrosion free. Craig T. Fountain and Ken J. Kuther, who collectively own four of the airplanes inspected by Gustin Aviation, confirm the reported corrosion found and also support the proposed AD action.

The commenters support the NPRM.

We are not changing the final rule AD action based on these comments.

Comment Issue No. 2: Extend Comment Period

Bryan D. Hauschild states that he is planning to recover the rudder on his airplane during the off-season, which is November through March. He states that at that time he would be able to get a good look at the area in question.

Mr. Hauschild requests to extend the comment period for the NPRM so that his airplane is not pulled from its seasonal service at this time.

We do not agree with the commenter. We believe that the fleet service history and severity of corrosion reported on Ag Cat rudders requires AD action. Extending the comment period in order to delay the effective date of this AD

would create an unacceptable safety risk.

We are not changing the final rule AD action based on this comment.

Conclusion

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

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

Costs of Compliance

We estimate that this AD affects 2,700 airplanes in the U.S. registry.

We estimate the following costs to do the inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	Not applicable	$320	$864,000

We have no way of determining the cost of repairs, parts replacement, or the number of airplanes that may require repair or parts replacement based on the result of the proposed inspections.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0854; Directorate Identifier 2008–CE–050–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 78–08–09, Amendment 39–3191, and adding the following new AD:

2008–22–21 Allied Ag Cat Productions, Inc.: Amendment 39–15718; Docket No. FAA–2008–0854; Directorate Identifier 2008–CE–050–AD.

Effective Date

(a) This AD becomes effective on December 19, 2008.

Affected ADs

(b) This AD supersedes AD 78–08–09, Amendment 39–3191.

Applicability

(c) This AD applies to the following airplane models, all serial numbers, that are certificated in any category:

Models
G–164, G–164A, G–164B, G–164B with 73'' wing gap, G–164B–15T, G–164B–34T, G–164B–20T, G–164C, G–164D, and G–164D with 73'' wing gap.

Unsafe Condition

(d) This AD results from a report of the rudder main tubular spar failing on a later production airplane. We are issuing this AD to detect and correct corrosion in the rudder main tubular spar, which could result in failure of the weld to the main spar tube. This failure could lead to loss of directional control.

Compliance

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

Actions	Compliance	Procedures
(1) Drill an access hole and do a visual inspection using a borescope of the lower end internal cavity of the rudder main spar tube for corrosion and do a visual inspection of the exterior of the rudder main spar tube for corrosion.	(i) For airplanes previously affected by AD 78–08–09: Initially inspect within the next 60 months after the last inspection required in AD 78–08–09 or within the next 30 days after December 19, 2008 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 60 calendar months.	Following Steps 1 through 3 of Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977.

Actions	Compliance	Procedures
	(ii) For airplanes not previously affected by AD 78–08–09: Initially inspect within the next 30 days after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 60 calendar months.	
(2) If corrosion is found during any inspection required in paragraph (e)(1) of this AD, repair in accordance with Advisory Circular 43.13–1B, Chg 1, dated September 27, 2001, or replace the damaged part(s).	Before further flight after any inspection in which corrosion is found.	As specified in Steps 5 and 6 of Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977, and following Advisory Circular 43.13–1B, Chg 1, dated September 27, 2001, which can be found at *http://rgl.faa.gov/*.
(3) After each inspection, repair, or replacement required in this AD, corrosion protect the spar tube internal cavity by filling with warm, raw linseed oil, Paralketone, or CRC3 (LPS Heavy Duty Rust Inhibitor Type 3), or suitable equivalent protector for alloy steel, and allow to drain. Seal access hole with Scotch caulking compound, a suitable silicone based sealant, or equivalent.	Before further flight after any inspection required in paragraph (e)(1) of this AD and after any repair or replacement required in paragraph (e)(2) of this AD.	As specified in Step 4 of Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977.
(4) Verify rigging check of the rudder	Before further flight after any inspection required in paragraph (e)(1) of this AD and after any repair or replacement required in paragraph (e)(2) of this AD.	(i) Following Ag-Cat Maintenance Manual pages 6–14 through 6–16, copyright 1978; or (ii) Following Ag-Cat G–164D Maintenance Manual pages 6–24 and 6–29, copyright 1995.
(5) Only install a rudder that has been inspected as specified in paragraph (e)(1) of this AD, is free of corrosion, and has had the corrosion protection applied and sealed as specified in paragraph (e)(3) of this AD.	As of the next 30 days after December 19, 2008 (the effective date of this AD).	Not applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Andy McAnaul, Aerospace Engineer, ASW–150, FAA San Antonio MIDO–43, 10100 Reunion Place, Suite 650, San Antonio, Texas 78216, phone: (210) 308–3365; fax: (210) 308–3370. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(g) AMOCs approved for AD 78–08–09 are not approved for this AD.

Material Incorporated by Reference

(h) You must use Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977, and Ag-Cat Maintenance Manual pages 6–14 through 6–16, copyright 1978; or Ag-Cat G–164D Maintenance Manual pages 6–24 and 6–29, copyright 1995, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Allied Ag Cat Productions, Inc., 301 West Walnut Street, P.O. Box 482, Walnut Ridge, Arkansas 72479; telephone: (870) 886–2418.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 23, 2008.

John Colomy,

Acting, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25766 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0729; Directorate Identifier 2008–NM–052–AD; Amendment 39–15700; AD 2008–22–05]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 Airplanes

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

ACTION: Final rule.

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

This Airworthiness Directive (AD) is issued following the discovery of a potential chafing between the rheostat of the 3rd crew member control panel reading light and the air gasper flexible hose, or with the electrical wires nearby. If le[f]t uncorrected, this chafing may expose the metallic spiral armature of the flexible hose, or damage the electrical wires insulation, which could result in a short-circuit generating sustained overheating and smoke emission.

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

DATES: This AD becomes effective December 19, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 19, 2008.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 7, 2008 (73 FR 38346). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is issued following the discovery of a potential chafing between the rheostat of the 3rd crew member control panel reading light and the air gasper flexible hose, or with the electrical wires nearby. If le[f]t uncorrected, this chafing may expose the metallic spiral armature of the flexible hose, or damage the electrical wires insulation, which could result in a short-circuit generating sustained overheating and smoke emission.
>
> This AD requires an inspection of the air gasper installation in the 3rd crew control panel of the LH [left-hand] and RH [right-hand] crew closet for interference and damage and applicable related corrective actions.

The corrective actions include replacing the flexible hoses and installing ROUNDIT insulation sleeving to the wires near the rheostat. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Include New Service Information

Dassault recommends that the AD reflect the updated service information that was issued after the date of the MCAI. Dassault states that the most recent revisions of the service information are as follows:

- Dassault Mandatory Service Bulletin F900–360, Revision 1, dated February 15, 2008.
- Dassault Mandatory Service Bulletin F900EX–261, Revision 1, dated February 15, 2008.
- Dassault Mandatory Service Bulletin F2000–316, Revision 1, dated February 15, 2008.

We agree to change the AD to reflect the current service information. Revision 1 of the service information contains an editorial change that does not affect the procedures. Table 1 of paragraph (f) of the AD has been changed accordingly, and we have added new paragraph (g) and Table 2 to the AD to give credit for actions performed according to the original versions of the service information.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 335 products of U.S. registry. We also estimate that it will take 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $107,200, or $320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2008–22–05 Dassault Aviation: Amendment 39–15700. Docket No. FAA–2008–0729; Directorate Identifier 2008–NM–052–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Mystere-Falcon 900 airplanes from serial number (S/N) 1 to 200 inclusive; Model Falcon 900EX airplanes from S/N 1 to 129 inclusive; and Model Falcon 2000 airplanes from S/N 1 to 210 inclusive; when fitted with a third crew member control panel; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

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

This Airworthiness Directive (AD) is issued following the discovery of a potential chafing between the rheostat of the 3rd crew member control panel reading light and the air gasper flexible hose, or with the electrical wires nearby. If le[f]t uncorrected, this chafing may expose the metallic spiral armature of the flexible hose, or damage the electrical wires insulation, which could result in a short-circuit generating sustained overheating and smoke emission.

This AD requires an inspection of the air gasper installation in the 3rd crew control panel of the LH [left-hand] and RH [right-hand] crew closet for interference and damage and applicable related corrective actions.

The corrective actions include replacing the flexible hose and installing ROUNDIT insulation sleeving to the wires near the rheostat.

Actions and Compliance

(f) Unless already done: Within 7 months after the effective date of this AD, do a detailed inspection of the air gasper installation in the 3rd crew member control panel of the left-hand and right-hand crew closet for interference and damage, and do all applicable related corrective actions as instructed in the Accomplishment Instructions of the applicable service information listed in Table 1 of this AD. Corrective actions must be done before further flight.

TABLE 1—SERVICE INFORMATION

Dassault Mandatory Service Bulletin—	Revision—	Date—
F900–360	1	Feb. 15, 2008.
F900EX–261	1	Feb. 15, 2008.
F2000–316 ...	1	Feb. 15, 2008.

(g) Actions done before the effective date of this AD in accordance with the service information listed in Table 2 of this AD are acceptable for compliance with the requirements of paragraph (f).

TABLE 2—CREDIT SERVICE INFORMATION

Dassault Service Bulletin—	Date—
F900–360	July 20, 2005.
F900EX–261	July 20, 2005.
F2000–316	July 27, 2005.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0013, dated January 24, 2008, and the service information listed in Table 1 and Table 2 of this AD, for related information.

Material Incorporated by Reference

(j) You must use the service information specified in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Dassault Mandatory Service Bulletin—	Revision—	Date—
F900–360	1	Feb. 15, 2008.
F900EX–261	1	Feb. 15, 2008.
F2000–316 ...	1	Feb. 15, 2008.

Issued in Renton, Washington, on October 10, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25639 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0483; Directorate Identifier 2008–NM–006–AD; Amendment 39–15716; AD 2008–22–19]

RIN 2120–AA64

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

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

ACTION: Final rule.

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

It has been found the occurrence of smoke in the flight deck originated from Pitot ½ and TAT ½ current sensor relays and [their] respective sockets, caused by poor electrical contacts between those relays and their sockets.

The unsafe condition is that smoke in the flight deck may interfere with the flightcrew's ability to operate the

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

DATES: This AD becomes effective December 19, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 19, 2008.

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 29, 2008 (73 FR 23134). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been found the occurrence of smoke in the flight deck originated from Pitot ½ and TAT ½ current sensor relays and [their] respective sockets, caused by poor electrical contacts between those relays and their sockets.

The unsafe condition is that smoke in the flight deck may interfere with the flightcrew's ability to operate the airplane. Corrective actions include inspecting for damage of the Pitot 1 and 2 and TAT 1 and 2 current sensor relays and sockets; and, as applicable, replacing the A1 and C1 electrical contacts of the sockets and reidentifying the sockets, replacing the sockets, and replacing current sensor relays. Damage may include melted points or stuck material of the silicone gasket, incorrect shape of the current sensor relay/sockets, discoloration of contacts, loose pin-type contacts, cracking or loose material of the polish and sealant of the bases, contaminants of the current sensor relays/sockets, and stuck material or roughness of the surface of the current sensor relay/pin-type contact. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Clarify the Requirements of This AD

ExpressJet Airlines requests that we clarify the requirements for the inspection proposed by the NPRM. Embraer Service Bulletin 145–30–0052, dated August 2, 2007 (specified in the NPRM), calls for doing a general visual inspection, reporting damage that was found, and reporting service bulletin compliance. ExpressJet states that the NPRM calls for a detailed inspection and does not omit the reporting requirements. ExpressJet notes that it is not clear if inspections accomplished before the effective date of the AD according to the service bulletin would be acceptable for compliance or if an additional inspection would need to be accomplished. ExpressJet also notes it is not clear if reporting is required.

We agree that clarification is needed. Agência Nacional de Aviação Civil (ANAC), which issued the Brazilian Airworthiness Directive referenced in the NPRM, determined that a detailed inspection is necessary, instead of the general visual inspection specified in the referenced service bulletin, to adequately detect possible damage. We concurred with that determination. Wherever the requirements of an AD and the referenced service information differ, the AD takes precedence. Therefore, an inspection for possible damage that is accomplished before the effective date of this AD must be a detailed inspection to be acceptable for compliance with the requirements of this AD.

After we published the NPRM, we received Revision 01 to Embraer Service Bulletin 145–30–0052, dated January 23, 2008; and Revision 01 to Embraer Service Bulletin 145LEG–30–0019, dated January 25, 2008 (the original issue was referred to in the NPRM). Revision 01 of each service bulletin specifies a detailed inspection. We have revised paragraph (f) of this AD to reference Revision 01 of each service bulletin and provide credit for accomplishing the original issue of the service bulletin, as long as a detailed inspection technique is used.

Additionally, although the service bulletin specifies reporting damage and service bulletin compliance, this AD does not require reporting. Our intent is to match the actions specified in the Brazilian Airworthiness Directive, which does not require the reporting. However, an operator may elect to submit such information, although not required to do so by this AD. We have not changed the AD in this regard.

Request To Shorten Compliance Time

Air Line Pilots Association, International (ALPA), supports the intent of the AD, but considers the proposed 2,500-flight-hours or 24-months (whichever is first) compliance time to be excessive. ALPA recommends a shorter compliance time.

We disagree with the commenter's request. While the service bulletins recommend a compliance time of 6,000 flight hours or 48 months, ANAC specified a compliance time of 2,500 flight hours or 24 months based on its engineering analysis. We concur with ANAC's engineering analysis and have determined that the compliance time, as proposed, represents an appropriate interval of time in which the required actions can be performed and provides an acceptable level of safety. We have not changed the AD in this regard.

Explanation of Change to Applicability

We have revised the model designations in the applicability of this AD to match the designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 704 products of U.S. registry. We also estimate that it will take about 8 work-

hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $450,560, or $640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–22–19 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15716. Docket No. FAA–2008–0483; Directorate Identifier 2008–NM–006–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; having serial numbers 145002 through 145362, 145364 through 145590, and 145592 through 14500987.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

It has been found the occurrence of smoke in the flight deck originated from Pitot 1/2 and TAT 1/2 current sensor relays and [their] respective sockets, caused by poor electrical contacts between those relays and their sockets.

The unsafe condition is that smoke in the flight deck may interfere with the flightcrew's ability to operate the airplane. Corrective actions include inspecting for damage of the Pitot 1 and 2 and TAT 1 and 2 current sensor relays and sockets; and, as applicable, replacing the A1 and C1 electrical contacts of the sockets and reidentifying the sockets, replacing the sockets, and replacing current sensor relays. Damage may include melted points or stuck material of the silicone gasket, incorrect shape of the current sensor relay/sockets, discoloration of contacts, loose pin-type contacts, cracking or loose material of the polish and sealant of the bases, contaminants of the current sensor relays/sockets, and stuck material or roughness of the surface of the current sensor relay/pin-type contact.

Actions and Compliance

(f) Unless already done: Within 2,500 flight hours or 24 months after the effective date of this AD, whichever occurs first, do the following actions in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0052, Revision 01, dated January 23, 2008; or 145LEG–30–0019, Revision 01, dated January 25, 2008; as applicable. Do all applicable replacements and re-identification before further flight.

(1) Perform a detailed inspection of the Pitot 1 (K0053), Pitot 2 (K0054), TAT 1 (K0064), and TAT 2 (K0494) current sensor relays for possible damage caused by overheating in their contacts, enclosure, and finishing material.

(i) If no damage is found on a current sensor relay, that relay may be reinstalled.

(ii) If any damage is found on a current sensor relay, replace the relay with a new relay having the same part number (P/N), CS500–060–D4A.

(2) Perform a detailed inspection on the Pitot 1 (XK0053), Pitot 2 (XK0054), TAT 1 (XK0064), and TAT 2 (XK0494) relay sockets for possible damage caused by overheating in their contacts, enclosure, and finishing material.

(i) If no damage is found on a socket, replace electrical contacts A1 and C1 of the socket with new contacts having P/N M39029/92–536; re-identify the socket from P/N S500–9140 to S500–9140–A; and re-identify the socket electrical code from XK0053, XK0054, XK0064, and XK0494, to XK1243, XK1242, XK1245, and XK1244, respectively.

(ii) If any damage is found on a socket, replace the socket with a new socket having P/N S500–9140–A or S500–9216.

(3) Actions accomplished in accordance with Embraer Service Bulletin 145–30–0052, dated August 2, 2007; or 145LEG–30–0019, dated August 28, 2007; as applicable; are acceptable for compliance with this AD, provided that a detailed inspection is accomplished in place of the general visual inspection specified in the service bulletins.

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

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–11–04R1, effective December 21, 2007; Embraer Service Bulletin 145–30–0052, Revision 01, dated January 23, 2008; and Embraer Service Bulletin 145LEG–30–0019, Revision 01, dated January 25, 2008; for related information.

Material Incorporated by Reference

(i) You must use Embraer Service Bulletin 145–30–0052, Revision 01, dated January 23, 2008; or Embraer Service Bulletin 145LEG–30–0019, Revision 01, dated January 25, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25756 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD; Amendment 39–15722; AD 2008–23–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A318, A319, A320, and A321 airplanes. That AD currently requires inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the airplane flight manual (AFM) and the FAA-approved maintenance program. The existing AD also provides for optional terminating action for compliance with the revisions to the AFM and the maintenance program. This new AD requires modifying or replacing the fuel tank boost pumps, which would terminate the AFM limitations and the maintenance program revisions. This AD results from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We are issuing this AD to prevent electrical arcing in the fuel tank boost pump motor, which, in the presence of a combustible air-fuel mixture in the pump, could result in an explosion and loss of the airplane.

DATES: This AD becomes effective December 19, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 19, 2008.

On July 3, 2006 (71 FR 34814, June 16, 2006), the Director of the Federal Register approved the incorporation by reference of a certain other publication.

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–12–02, amendment 39–14626 (71 FR 34814, June 16, 2006). The existing AD applies to all Airbus Model A318, A319, A320, and A321 airplanes. That supplemental NPRM was published in the **Federal Register** on March 13, 2008 (73 FR 13507). That supplemental NPRM proposed to supersede an existing AD that currently requires inspecting to determine the part number and serial number of the fuel tank boost pumps and, for airplanes with affected pumps, revising the airplane flight manual (AFM) and the FAA-approved maintenance program. The existing AD also provides for optional terminating action for compliance with the revisions to the AFM and the maintenance program. That supplemental NPRM proposed to require modifying or replacing the fuel tank boost pumps, which would terminate the AFM limitations and the maintenance program revisions. That supplemental NPRM proposed to exclude certain modified airplanes from the applicability, require the AFM/maintenance program revisions on

additional airplanes, and require modification or replacement of additional fuel tank boost pumps.

Comments

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

Request To Remove Paragraph (k) of the Supplemental NPRM

Airbus states a concern that we have introduced Airbus Modification 36734/Mandatory Service Bulletin A320–28–1153, dated May 5, 2006, as terminating action to the AD. Airbus recognizes that this modification and associated service bulletin were terminating action for AD 2006–12–02, however Airbus points out that any modified pump installed according to either Airbus Modification 36734 or Airbus Mandatory Service Bulletin A320–28–1153 is two-way interchangeable with an affected pump having a part number ending in –005, –002, or –001. Airbus points out that Airbus Modification 37508 and Airbus Mandatory Service Bulletin A320–28–1159, dated January 8, 2007, are the only means to ensure that no affected pumps are on the airplanes. Further, Airbus states that operators that do not use Airbus Mandatory Service Bulletin A320–28–1159 will not be allowed to update their AFMs.

From these statements, we infer that Airbus is requesting that we remove paragraph (k) of the supplemental NPRM, which provides credit for actions done using Airbus Mandatory Service Bulletin A320–28–1153, and that we remove reference to Airbus Modification 36734 from the applicability statement of the supplemental NPRM. We do not agree. This AD requires accomplishment of Airbus Mandatory Service Bulletin A320–28–1159, which, as Airbus points out, allows operators to remove the TR from the AFM. We have determined that any affected fuel pump modified in accordance with the actions specified in Airbus Mandatory Service Bulletin A320–28–1153 (Modification 36734) will be the same as any affected fuel pump modified in accordance with Airbus Mandatory Service Bulletin A320–28–1159. Therefore, paragraph (k) of this AD merely provides credit to operators that have previously modified an affected fuel pump before the effective date of this AD using Airbus Mandatory Service Bulletin A320–28–1153 for that pump only. While we understand Airbus' concern that the modified pumps may be interchanged with unmodified pumps, we note that paragraph (j) of this AD allows removal of the AFM TR only if all pumps have been replaced or modified. Therefore, we have made no change to this AD in this regard.

Request To Refer to Latest Temporary Revision (TR)

Airbus notes that Airbus TR 4.03.00/28, Issue 02, dated May 18, 2007, to the Airbus A318/319/320/321 AFM has replaced Airbus TR 4.03.00/28, dated May 4, 2006. From this statement, we infer that Airbus requests that we revise this AD to refer to Airbus TR 4.03.00/28, Issue 02. Because Airbus TR 4.03.00/28, Issue 02, is already referred to in paragraph (g)(2) of this AD, we do not agree that any change to the AD is necessary in this regard.

Request To Remove Certain Fuel Boost Pumps

Air Transport Association (ATA), on behalf of one of its members, Northwest Airlines (NWA), states that the proposed actions should not apply to fuel boost pumps below serial number (S/N) 6137 and that no operating restrictions should be placed on airplanes with those pumps. NWA states that there have been no definitive findings of missing or loose fasteners on pumps below S/N 6137. NWA further asserts that the fuel boost pump vendor, Eaton, has indicated the cause of the unsecured nuts was errors made by a robotic tool used during assembly, which was not used prior to S/N 6137 and not used on any older pump part numbers.

From these statements, we infer that the commenters request that we remove fuel boost pumps having S/N below S/N 6137 from the requirements of this AD. We do not agree. While it is true that there have not been any confirmed loose or missing fasteners found on the –001, –002, or –005 Eaton fuel boost pump with a serial number below S/N 6137, these pumps are vulnerable to the same unsafe condition. We, along with Airbus and the European Aviation Safety Agency (EASA), have determined that all of the subject fuel boost pumps might have had inadequate torque applied to the screws during assembly, whether hand-driven (below S/N 6137) or robotic-driven (above S/N 6137). Therefore, the operational restriction must be applied to all airplanes with the affected Eaton fuel boost pumps installed until the fuel boost pumps are modified in accordance with the AD. We have made no change to the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received on the supplemental NPRM, and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Identification of boost pumps.	1	$80	None	$80	670	$53,600.
Revisions to AFM and maintenance program.	1	80	None	80	Up to 670	Up to $53,600.
Modifications	3	80	Eaton states that pumps will qualify for free repair.	240	Up to 670	Up to $160,800.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–14626 (71 FR 34814, June 16, 2006) and by adding the following new AD:

2008–23–01 Airbus: Amendment 39–15722. Docket No. FAA–2007–27011; Directorate Identifier 2006–NM–175–AD.

Effective Date

(a) This AD becomes effective December 19, 2008.

Affected ADs

(b) This AD supersedes AD 2006–12–02.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category, except those airplanes on which Airbus Modification 36734 or 37508 has been incorporated in production.

Unsafe Condition

(d) This AD results from a report that a fuel tank boost pump failed in service, due to a detached screw of the boost pump housing that created a short circuit between the stator and rotor of the boost pump motor and tripped a circuit breaker. We are issuing this AD to prevent electrical arcing in the fuel tank boost pump motor, which, in the presence of a combustible air-fuel mixture in the pump, could result in an explosion and loss of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2006–12–02

Part and Serial Number Inspection

(f) Within 10 days after July 3, 2006 (the effective date of AD 2006–12–02), inspect to determine the part number (P/N) and serial number (S/N) of each fuel tank boost pump installed in the wing and center fuel tanks. A review of maintenance records may be performed instead of the required inspection if the P/N and S/N of the fuel boost pump can be conclusively determined from that review. Airbus Mandatory Service Bulletin A320–28–1152, dated May 5, 2006; or Revision 01, dated July 17, 2006; is acceptable for complying with the requirements of this paragraph.

Revisions to Airplane Flight Manual (AFM)/ Maintenance Program

P/N 568–1–27202–005 With S/Ns 6137 and Subsequent

(g) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR–HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–005 with S/N 6137 and subsequent: Prior to further flight after accomplishing the inspection required by paragraph (f) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2), as applicable of this AD, until the modifications/replacements required by paragraph (j) of this AD have been done.

(1) Revise the Limitations section of the Airbus A318/319/320/321 AFM (''the AFM'') and the FAA-approved maintenance program by incorporating the following. This may be accomplished by inserting copies of this AD into the AFM and the maintenance program.

''Apply the following procedure at each fuel loading:

Refueling:

Before refueling, all pumps must be turned off, in order to prevent them from automatically starting during the refueling process.

Ground fuel transfer:

For all aircraft, do not start a fuel transfer from any wing tank, if it contains less than 700 kg (1,550 lb) of fuel.

For A318, A319, and A320 aircraft with a center tank, do not start a fuel transfer from the center tank, if it contains less than 2,000 kg (4,500 lb) of fuel.

If a tank has less than the required quantity, it is necessary to add fuel (via a transfer from another tank or refueling) to enable a transfer to take place.

Defueling:

For all aircraft, when defueling the wings, do not start the fuel pumps if the fuel quantity in the inner tank (wing tank for A321) is below 700 kg (1,550 lb). If the fuel on the aircraft is not sufficient to achieve the required fuel distribution, then transfer fuel or refuel the aircraft to obtain the required fuel quantity in the wing tank.

For A318, A319, and A320 aircraft with a center tank, when performing a pressure defuel of the center tank, make sure that the center tank contains at least 2,000 kg (4,500 lb) of fuel. If it has less than the required quantity, then transfer fuel to the center tank. Defuel the aircraft normally, and turn OFF the center tank pumps immediately after the FAULT light on the corresponding pushbutton-switch comes on.''

(2) For all airplanes equipped with a center tank (Modification 20024) excluding A321 models, revise the Limitations section of the Airbus A318/319/320/321 AFM (''the AFM'') to incorporate the changes specified in Airbus Temporary Revision (TR) 4.03.00/28, dated May 4, 2006; or 4.03.00/28, Issue 02, dated May 18, 2007. This may be accomplished by inserting a copy of the TR into the AFM. When general revisions of the AFM have been issued that incorporate the revisions specified in the TR, the copy of the TR may be removed from the AFM, provided the relevant information in the general revision is identical to that in TR 4.03.00/28, dated May 4, 2006; or 4.03.00/28, Issue 02, dated May 18, 2007.

New Requirements of This AD

Part and Serial Number Inspection

(h) For all airplanes: Within 10 days after the effective date of this AD, inspect to determine the type and part number of each fuel tank boost pump installed in the wing and center fuel tanks. A review of maintenance records may be performed instead of the required inspection if the part number and serial number of the fuel boost pump can be conclusively determined from that review. Airbus Mandatory Service Bulletin A320–28–1159, dated January 8, 2007, is acceptable for complying with the requirements of this paragraph.

Revisions to AFM/Maintenance Program: P/Ns 568–1–27202–001 and –002; and P/N 568–1–27202–005 With S/Ns Below 6137

(i) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR–

HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–001 or 568–1–27202–002; or P/N 568–1–27202–005 with any serial number below 6137: Before further flight after accomplishing the inspection required by paragraph (h) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable, until the modifications/replacements required by paragraph (j) of this AD have been done.

Terminating Action

(j) For airplanes equipped with one or more Eaton Aerospace Limited (formerly FR–HITEMP Limited) fuel boost pumps, having P/N 568–1–27202–001, –002, or –005: Within 5,000 flight hours or 18 months, whichever occurs first after the effective date of this AD, modify or replace affected fuel boost pumps in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–28–1159, dated January 8, 2007. Modification or replacement of all affected fuel tank boost pumps on an airplane terminates the requirements of this AD, and the limitations required by paragraph (g) of this AD may be removed from the Airbus A318/319/320/321 AFM and the maintenance program for that airplane.

Note 1: For additional sources of service information for the fuel pump modification/replacement, Airbus Mandatory Service Bulletin A320–28–1159, dated January 8, 2007, refers to EATON Service Bulletin 8410–28–05, dated October 2, 2006.

Credit for Actions Done Using Alternative Service Information

(k) Modification of a fuel pump before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A320–28–1153, dated May 5, 2006, is acceptable for compliance with the corresponding requirements of paragraph (j) of this AD, for that pump only.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 2006–12–02 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(m) European Aviation Safety Agency airworthiness directive 2007–0218, dated August 10, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

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

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Service information	Revision/issue level	Date
Airbus Mandatory Service Bulletin A320–28–1152, including Appendix 01	Original	May 5, 2006.
Airbus Mandatory Service Bulletin A320–28–1152, including Appendix 01	Revision 01	July 17, 2006.
Airbus Mandatory Service Bulletin A320–28–1159	Original	January 8, 2007.
Airbus Temporary Revision 4.03.00/28	Original	May 4, 2006.
Airbus Temporary Revision 4.03.00/28 to the Airbus A318/319/320/321 Airplane Flight Manual.	Issue 02	May 18, 2007.

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

TABLE 2—NEW MATERIAL INCORPORATED BY REFERENCE

Service information	Revision/issue level	Date
Airbus Mandatory Service Bulletin A320–28–1152, including Appendix 01	Original	May 5, 2006.
Airbus Mandatory Service Bulletin A320–28–1152, including Appendix 01	Revision 01	July 17, 2006.
Airbus Mandatory Service Bulletin A320–28–1159	Original	January 8, 2007.
Airbus Temporary Revision 4.03.00/28 to the Airbus A318/319/320/321 Airplane Flight Manual.	Issue 02	May 18, 2007.

(2) On July 3, 2006 (71 FR 34814, June 16, 2006), the Director of the Federal Register previously approved the incorporation by reference of Airbus Temporary Revision 4.03.00/28, dated May 4, 2006.

(3) Contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com,* for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25997 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1147; Directorate Identifier 2008–NM–128–AD; Amendment 39–15719; AD 2008–13–12 R1]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD currently requires various repetitive inspections for cracking of the upper frame to side frame splice of the fuselage, and other specified and corrective actions if necessary. That AD also provides for an optional preventive modification, which terminates the repetitive inspections. This new AD adds an optional terminating action that was inadvertently omitted from that AD. This AD results from a report that the upper frame of the fuselage was severed between stringers S–13L and S–14L at station 747, and the adjacent frame at station 767 had a 1.3-inch-long crack at the same stringer location. We are issuing this AD to detect and correct fatigue cracking of the upper frame to side frame splice of the fuselage, which could result in reduced structural integrity of the frame and adjacent lap joint. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and result in decompression of the airplane.

DATES: Effective December 1, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 1, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD on August 12, 2008 (73 FR 38905, July 8, 2008).

We must receive comments on this AD by January 13, 2009.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On June 12, 2008, we issued AD 2008–13–12, amendment 39–15575 (73 FR 38905, July 8, 2008), for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD requires various repetitive inspections for cracking of the upper frame to side frame splice of the fuselage, and other specified and corrective actions if necessary. That AD also provides for an optional preventive modification, which terminates the repetitive inspections. That AD resulted from a report that the upper frame of the fuselage was severed between stringers S–13L and S–14L at station 747, and the adjacent frame at station 767 had a 1.3-inch-long crack at the same stringer location. We issued that AD to detect and correct fatigue cracking of the upper frame to side frame splice of the fuselage, which could result in reduced structural integrity of the frame and adjacent lap joint. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and result in decompression of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2008–13–12, we have determined that we inadvertently omitted paragraph (j)(3) from that AD. Paragraph (j)(3) provided operators with a third option for doing an optional terminating action, which terminates the repetitive inspections required by paragraph (f) of the existing AD.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2008–13–12. This new AD retains the requirements of the existing AD. This AD also adds an optional terminating action inadvertently omitted from the existing AD.

Costs of Compliance

There are about 1,509 airplanes of the affected design in the worldwide fleet. This AD continues to affect about 524 airplanes of U.S. registry. The inspections currently required by AD 2008–13–12 and retained in this AD take between 18 and 38 work hours per airplane, depending on airplane configuration. The average labor rate is $80 per work hour. Based on these figures, the estimated cost of the currently required inspections required by this AD for U.S. operators is between

$754,560 and $1,592,960, or $1,440 and $3,040 per airplane, per inspection cycle.

FAA's Justification and Determination of the Effective Date

The omitted paragraph was previously published in the NPRM for the existing AD and affected operators had the opportunity to comment on that action at that time. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–15719; Directorate Identifier 2008–NM–128–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15575 (73 FR 38905, July 8, 2008) and adding the following new airworthiness directive (AD):

2008–13–12 R1 Boeing: Amendment 39–15719. Docket No. FAA–2008–1147; Directorate Identifier 2008–NM–128–AD.

Effective Date

(a) This AD becomes effective December 1, 2008.

Affected ADs

(b) This AD revises AD 2008–13–12.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1261, dated January 19, 2006.

Unsafe Condition

(d) This AD results from a report that the upper frame of the fuselage was severed between stringers S–13L and S–14L at station 747, and the adjacent frame at station 767 had a 1.3-inch-long crack at the same stringer location. We are issuing this AD to detect and correct fatigue cracking of the upper frame to side frame splice of the fuselage, which could result in reduced structural integrity of the frame and adjacent lap joint. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and result in decompression of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–13–12

Repetitive Inspections/Corrective Actions

(f) At the applicable compliance time listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006; except as provided by paragraph (g) of this AD: Do the applicable inspections for cracking of the upper frame to side frame splice of the fuselage by doing all of the actions, as specified in the Accomplishment Instructions of the service bulletin; except as provided by paragraphs (h) and (i) of this AD. Do all applicable specified and corrective actions before further flight in accordance with the service bulletin. Repeat the applicable inspections thereafter at intervals not to exceed 6,000 flight cycles until the terminating action in paragraph (j) of this AD has been accomplished.

(g) Where Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006, specifies a compliance time relative to the date on the service bulletin, this AD requires compliance within the specified compliance time after August 12, 2008 (the effective date of AD 2008–13–12).

(h) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the crack in accordance with the procedures specified in paragraph (k) of this AD.

(i) For airplanes on which a repair has been previously accomplished: If, during accomplishment of the corrective actions required by paragraph (f) of this AD, it is found that the repair was not done per the Boeing 737–100/200 Structural Repair Manual (SRM) 53–10–4, Figure 1; or the Boeing 737–300/400/500 SRM 53–00–07, Figure 201, Repair 1; as applicable; before further flight, repair in accordance with the procedures specified in paragraph (k) of this AD.

Optional Terminating Action

(j) Accomplishing the actions specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable, terminates the repetitive inspections required by paragraph (f) of this AD for the repaired or modified frames only.

(1) Accomplishment of the repair specified in Part 3, or the preventive modification specified in Part 4, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006.

(2) Accomplishment of the repair or the preventive modification specified in Boeing Message M–7200–02–01294, dated August 20, 2002.

(3) Accomplishment of the repair or the preventive modification in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO).

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 737–53A1261, dated January 19, 2006, to do the actions required by this AD, unless the AD specifies otherwise. If you do the optional terminating actions specified in this AD, you must use Boeing Message M–7200–02–01294, dated August 20, 2002; or Boeing Alert Service Bulletin 737–53A1261, dated January 19, 2006; to do those optional actions, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Message M–7200–02–01294, dated August 20, 2002, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 12, 2008 (73 FR 38905, July 8, 2008), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–53A1261, dated January 19, 2006.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com;* Internet *https://www.myboeingfleet.com.*

(4) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 10, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25893 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1420

Final Rule: Standard for All Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The recently-enacted Consumer Product Safety Improvement Act of 2008 (''CPSIA''), sets forth several requirements for all terrain vehicles (''ATVs''). Among these, the CPSIA requires the United States Consumer Product Safety Commission (''Commission'' or ''CPSC'') to publish in the **Federal Register** as a mandatory consumer product safety standard the *American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements* developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1–2007). This document satisfies that requirement and reviews other provisions of the CPSIA that apply to ATVs.

DATES: The rule takes effect April 13, 2009. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 13, 2009.

FOR FURTHER INFORMATION CONTACT: Tanya Topka, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7594.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') was enacted on August 14, 2008. Public Law 110–314, 122 Stat. 3016 (August 14, 2008). The CPSIA amends statutes which the U.S. Consumer Product Safety Commission (''Commission'' or ''CPSC'') administers, adding requirements with broad applicability and some product-specific provisions as well. Section 232 of the CPSIA adds a new section 42 to the Consumer Product Safety Act (''CPSA'') that sets forth numerous requirements for all terrain vehicles (''ATVs''). 15 U.S.C. 42, as added by CPSIA § 232.

The Commission has been involved with ATVs since the 1980s. In 1987, the Commission filed a lawsuit to declare ATVs an imminently hazardous consumer product under section 12 of the CPSA against the five companies that were the major distributors of ATVs in the U.S. at that time. The section 12 lawsuit was settled by Consent Decrees that were filed on April 28, 1988 and remained in effect for ten years. The Consent Decrees contained provisions concerning restrictions on the distribution of three-wheel ATVs; development of a voluntary performance standard; requirements for ATV warning labels, owner's manuals, point of purchase safety materials, free rider training, and media and advertising materials. The parties also agreed to promote and sell adult-size ATVs (defined in the Consent Decrees as ATVs with engines greater than 90 cc) only for the use of riders 16 years of age and older.

In accordance with the Consent Decrees, the main distributors, working through the Specialty Vehicle Institute of America (''SVIA''), continued work on a voluntary standard for ATVs. The standard, known as ANSI/SVIA, *The American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements,* was first published in 1990, was revised in 2001 and again in 2007.

While the Consent Decrees were in effect, the companies entered into monitoring agreements with the CPSC agreeing to monitor their dealers' compliance with the Consent Decrees' requirements, particularly the age restrictions.

After the Consent Decrees expired, the distributors who had been parties to the Consent Decrees (and three companies that had entered the market later) developed action plans, also known as letters of undertaking, in which the companies agreed to undertake

voluntary actions to continue many of the actions that were required under the Consent Decrees and to continue monitoring their dealers. *See* 63 FR 48199 (1998).

B. CPSIA Requirements for ATVs

1. Mandating the Voluntary Standard

Section 232 of the CPSIA (now section 42 of the CPSA) states that within 90 days of enactment of the CPSIA ''the Commission shall publish in the **Federal Register** as a mandatory consumer product safety standard the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1–2007).'' 15 U.S.C. 42(a)(1) as added by CPSIA § 232.

The ANSI/SVIA standard specifies requirements concerning the vehicle's equipment and configuration (including requirements for owner's/operator's manuals, labels and hang tags), maximum speed capability, speed capability of youth ATVs, service and parking brakes, pitch stability, electromagnetic compatibility, and sound level limits. It also requires that ATVs have a certification label indicating that they comply with the ANSI/SVIA standard.

The CPSIA requires the Commission to publish the ANSI/SVIA standard in the **Federal Register**. The Commission is fulfilling this direction by incorporating the ANSI/SVIA standard by reference. Congress mandated that the ANSI/SVIA standard will go into effect as a consumer product safety standard 150 days after it is published in the **Federal Register**. The Freedom of Information Act states that a standard that is incorporated by reference in the **Federal Register** and made reasonably available is deemed to be published in the **Federal Register**. 5 U.S.C. 552(a)(1)(E). Because Congress mandated the standard without any changes, we believe that it is appropriate to incorporate the standard by reference.

The standard takes effect as a consumer product safety standard 150 days after this publication in the **Federal Register**. *See* 15 U.S.C. 2058(g)(1). This means that ATVs manufactured on or after the effective date must comply with the standard. They also must meet additional requirements related to action plans. *See* 15 U.S.C. 42(a)(2) and (e)(2), as added by CPSIA § 232. The statute provides: ''After the standard takes effect, it shall be unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled all-terrain vehicle unless'' the ATV complies with the newly-mandated standard, the ATV is subject to an ATV action plan filed with and (unless the action plan was filed with the Commission before August 14, 2008) approved by the Commission, and the manufacturer or distributor is in compliance with the action plan. (CPSA § 42(a)(2) as added by CPSIA § 232). Failure to comply with these requirements is deemed to be a failure to comply with a consumer product safety standard and subjects the violator to the penalties and remedies applicable under the CPSA. *Id.* § 42(a)(3).

2. Action Plans

The statute requires ATV manufacturers and distributors to file with the Commission an ATV action plan. Unless the ATV action plan was filed with the Commission before August 14, 2008 the action plan must be approved by the Commission. The manufacturer or distributor must be in compliance with the action plan. CPSA § 42(a)(2), as added by CPSIA § 232.

The statute defines ''ATV action plan'' as a plan or letter of undertaking describing safety-related actions the manufacturer or distributor agrees to take concerning ATVs. The plan must be ''substantially similar'' to the action plans distributors entered into in 1998. CPSA § 42(e)(2), as added by CPSIA § 232.

3. Three-Wheel ATVs

The CPSIA also addresses 3-wheel ATVs. It provides that until the Commission issues a consumer product safety standard applicable to 3-wheel ATVs (and the standard goes into effect) ''new 3-wheeled all terrain vehicles may not be imported into or distributed in commerce in the United States.'' CPSA § 42(c), as added by CPSIA § 232. Violation of this restriction is a prohibited act under section 19(a)(1) of the CPSA.

4. Future Actions

The CPSIA provides procedures for modifying the standard in the future either if SVIA revises the underlying voluntary standard or if the Commission determines on its own to amend the standard.

The CPSIA also requires the Commission to issue a final rule in its open rulemaking concerning ATVs. (The Commission issued a notice of proposed rulemaking related to ATVs on August 10, 2006. *See* 73 FR 54564.) The CPSIA directs the Commission to consult with the National Highway Traffic Safety Administration (''NHTSA'') and consider whether to establish a multiple factor method of categorizing youth ATVs. Also in consultation with NHTSA, the Commission must review the mandated ANSI/SVIA standard and ''establish additional safety standards for all-terrain vehicles to the extent necessary to protect the public health and safety.'' The statute specifies certain provisions that the Commission is to consider adding or strengthening. CPSA § 42(d), as added by CPSIA § 232(a).

The CPSIA also requires the U.S. Government Accountability Office (''GAO'') to conduct a study of ATVs' utility, recreational and other benefits and the costs associated with ATV-related accidents and injuries. CPSIA § 232(b).

List of Subjects in 16 CFR Part 1420

Consumer protection, Imports, Incorporation by reference, Information, Infants and children, Labeling, Law enforcement, Recreation and recreation areas, Reporting and recordkeeping requirements, Safety.

For the reasons stated in the preamble, the Commission amends Title 16 of the Code of Federal Regulations by adding a new part 1420 to read as follows:

PART 1420—REQUIREMENTS FOR ALL TERRAIN VEHICLES

Sec.

1420.1 Scope, application and effective date.
1420.2 Definitions.
1420.3 Requirements for four-wheel ATVs.
1420.4 Restrictions on three-wheel ATVs.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. Law 110–314, § 232, 122 Stat. 3016 (August 14, 2008).

§ 1420.1 Scope, application and effective date.

This part 1420, a consumer product safety standard, prescribes requirements for all terrain vehicles. The requirements for four-wheel ATVs in § 1420.3 take effect on April 13, 2009, and apply to new assembled or unassembled ATVs manufactured or imported on or after that date. The restrictions on three-wheel ATVs stated in § 1420.4 take effect September 13, 2008.

§ 1420.2 Definitions.

In addition to the definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for purposes of this Part 1420.

(a) *All terrain vehicle or ATV* means:

(1) Any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering control; but

(2) Does not include a prototype of a motorized, off-highway, all-terrain vehicle that is intended exclusively for research and development purposes unless the vehicle is offered for sale.

(b) *ATV action plan* means a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the ATVs, the monitoring of such sales, and other safety related measures, and that is substantially similar to the plans described under the heading ''The Undertakings of the Companies'' in the Commission Notice published in the **Federal Register** on September 9, 1998 (63 FR 48199–48204).

§ 1420.3 Requirements for four-wheel ATVs.

(a) Each ATV shall comply with all applicable provisions of the American National Standard for Four Wheel All-Terrain Vehicles (American National Standards Institute, Inc. ANSI/SVIA 1–2007), approved July 23, 2007. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, California 92618–3806; telephone 949–727–3727 ext. 3023; *http://www.svia.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD. 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) Each ATV must be subject to an ATV action plan filed with the Commission before August 14, 2008 or subsequently filed with and approved by the Commission, and shall bear a label certifying such compliance and identifying the manufacturer, importer or private labeler and the ATV action plan to which it is subject.

(c) The ATV manufacturer or distributor shall be in compliance with all provisions of the applicable ATV action plan.

§ 1420.4 Restrictions on three-wheel ATVs.

Until a mandatory consumer product safety standard applicable to three-wheel ATVs promulgated pursuant to the Consumer Product Safety Act is in effect, new three wheel ATVs may not be imported into or distributed in commerce in the United States.

Dated: November 7, 2008.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–26974 Filed 11–13–08; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–3–000; Order No. 716]

Mandatory Reliability Standard for Nuclear Plant Interface Coordination

November 7, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of October 27, 2008, a final rule approving the Nuclear Plant Interface Coordination Reliability Standard developed by the North American Electric Reliability Corporation (NERC) and directing NERC to develop a modification the Reliability to address certain concerns. This document corrects references in two footnotes of the final rule.

DATES: *Effective Date:* November 26, 2008.

FOR FURTHER INFORMATION CONTACT: Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8744.

SUPPLEMENTARY INFORMATION: In FR Document E8–25139, published October 27, 2008 (73 FR 63770) make the following corrections to citations in Footnotes 51 and 60:

1. On page 63781, column 1, Footnote 51, second sentence, change ''125 FERC ¶ 61,062.'' to ''125 FERC ¶ 61,064.''

2. On page 6378, column 2, footnote 60, second sentence, change ''125 FERC ¶ 61,062'' to ''125 FERC ¶ 61,064.''

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26971 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9416]

RIN 1545–BH74

Determining the Amount of Taxes Paid for Purposes of Section 901; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9416) that were published in the **Federal Register** on Wednesday, July 16, 2008 (73 FR 40727) under section 901 of the Internal Revenue Code providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit.

DATES: *Effective Date:* This correction is effective November 14, 2008, and is applicable on July 16, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Gilman, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subjects of this document are under section 901 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9416) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.901–2T is amended as follows:

■ 1. The first sentence of paragraph (e)(5)(iv)(C)(*5*)(*i*) is revised.

■ 2. Paragraph (e)(5)(iv)(D) *Example 5.* paragraphs (i)(A), (i)(B) and (ii) are revised.

■ 3. The first sentence of paragraph (e)(5)(iv)(D) *Example 8*.(i)(B) is revised.

§ 1.901–2T Income, war profits, or excess profits tax paid or accrued (temporary).

* * * * *

(e) * * *

(5) * * *

(iv) * * *

(C) * * *

(5) * * *

(i) *In general.* The term *passive investment income* means income described in section 954(c), as modified by this paragraph (e)(5)(iv)(C)(*5*)(*i*) and paragraph (e)(5)(iv)(C)(*5*)(*ii*) of this section. * * *

* * * * *

(D) * * *

Example 5. * * *

(i) * * *

(A) A country X corporation (Foreign Bank) contributes $2 billion to a newly-formed country X company (Newco) in exchange for all of the common stock of Newco and securities that are treated as debt of Newco for U.S. tax purposes and preferred stock of Newco for country X tax purposes. A domestic corporation (USP) contributes $1 billion to Newco in exchange for securities that are treated as preferred stock of Newco for U.S. tax purposes and debt of Newco for country X tax purposes. Newco loans the $3 billion to a wholly-owned, country X subsidiary of Foreign Bank (FSub) in return for a $3 billion, seven-year note paying interest currently. The Newco securities held by USP entitle the holder to fixed distributions of $4 million per year, and the Newco securities held by Foreign Bank entitle the holder to receive $82 million per year, payable only on maturity of the $3 billion FSub note in year 7. At the end of year 5, pursuant to a prearranged plan, Foreign Bank acquires USP's Newco securities for a prearranged price of $1 billion. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. Under an income tax treaty between country X and the United States, country X does not impose country X tax on interest received by U.S. residents from sources in country X. None of Foreign Bank's stock is owned, directly or indirectly, by USP or any shareholders of USP that are domestic corporations, U.S. citizens or resident alien individuals.

(B) In each of years 1 through 7, FSub pays Newco $124 million of interest on the $3 billion note. Newco distributes $4 million to USP in each of years 1 through 5. The distributions are deductible for country X tax purposes, and Newco pays country X $36 million with respect to $120 million of taxable income from the FSub note in each year. For U.S. tax purposes, in each year Newco's post-1986 undistributed earnings are increased by $124 million of interest income and reduced by accrued interest expense with respect to the Newco securities held by Foreign Bank.

(ii) *Result.* The $36 million payment to country X is not a compulsory payment, and thus is not an amount of tax paid, because the foreign payment is attributable to a structured passive investment arrangement. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*5*) of this section; Newco's only asset, a note of FSub, is held to produce such income; the payment to country X is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(*1*)(*i*) of this section. Second, if the foreign payment were an amount of tax paid, USP would be deemed to pay its pro rata share of the foreign payment under section 902(a) in each of years 1 through 5 and, therefore, would be eligible to claim a credit under section 901(a). Third, USP would not pay any country X tax if it directly owned its proportionate share of Newco's assets, a note of FSub. Fourth, for country X tax purposes, Foreign Bank is eligible to receive a tax-free distribution of $82 million attributable of each of years 1 through 5, and that amount corresponds to more than 10 percent of the foreign base with respect to which USP's share of the foreign payment was imposed. Fifth, Foreign Bank is a counterparty because it owns stock of Newco for country X tax purposes and none of Foreign Bank's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the United States and country X treat various aspects of the arrangement differently, including whether the Newco securities held by Foreign Bank and USP are debt or equity. The amount of credits claimed by USP if the payment to country X were an amount of tax paid is materially greater than it would be if, for U.S. tax purposes, the securities held by USP were treated as debt or the securities held by Foreign Bank were treated as equity, and the amount of income recognized by Newco for U.S. tax purposes is materially less than the amount of income recognized for country X tax purposes. Because the payment to country X is not an amount of tax paid, USP is not deemed to pay any country X tax under section 902(a). USP has dividend income of $4 million in each of years 1 through 5.

* * * * *

Example 8. * * *

(i) * * *

(B) The transaction is structured in such a way that, for U.S. tax purposes, there is a loan of $1.5 billion from FC to USP, and USP is the owner of the class C stock and the class A stock. * * *

* * * * *

Guy Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–27023 Filed 11–13–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9428]

RIN 1545–BD72

Section 1367 Regarding Open Account Debt; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9428) that were published in the **Federal Register** on Monday, October 20, 2008 (73 FR62199) relating to the treatment of open account debt between S corporations and their shareholders. These final regulations provide rules regarding the definition of open account debt and the adjustments in basis of any indebtedness of an S corporation to a shareholder under section 1367(b)(2) of the Internal Revenue Code for shareholder advances and repayments on advances of open account debt. The regulations affect shareholders of S corporations and are necessary to provide guidance needed to comply with the applicable tax law.

DATES: *Effective Date:* This correction is effective November 14, 2008, and is applicable on October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Stacy L. Short or Deane M. Burke, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subjects of this document are under section 1367 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9428) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1367–2(e) is amended by revising the title of paragraph *Example 6.* and the first sentence of paragraph *Example 7.*(i) to read as follows:

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

* * * * *

(e) * * *

Example 6. The $25,000 aggregate principal amount applies to each shareholder. * * *

* * * * *

Example 7. * * *

(i) The facts are the same as in *Example 6,* in addition to which, on December 31, 2009, A's basis in the open account debt is reduced under paragraph (b) of this section to $8,000. * * *

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–27024 Filed 11–13–08; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in December 2008. Interest assumptions are also published on the PBGC's Web site (http://www.pbgc.gov).

DATES: Effective December 1, 2008.

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

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

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during December 2008, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during December 2008, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during December 2008.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.92 percent for the first 20 years following the valuation date and 6.99 percent thereafter. These interest assumptions represent an increase (from those in effect for November 2008) of 0.83 percent for the first 20 years following the valuation date and 0.83 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for November 2008) of 1.00 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

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

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2008, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects

29 CFR Part 4022

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

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

■ 2. In appendix B to part 4022, Rate Set 182, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
182	12–1–08	01–1–09	4.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 182, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
182	12–1–08	01–1–09	4.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for December 2008, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occuring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
December 2008	.0792	1–20	.0699	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of November 2008.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation.

[FR Doc. E8–27095 Filed 11–13–08; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AD69

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule implements recent management decisions affecting Denali National Park and Preserve regarding backcountry management, climbing Mount McKinley, and off-road vehicle use for subsistence purposes.

DATES: This rule is effective on December 15, 2008.

FOR FURTHER INFORMATION CONTACT: National Park Service, Victor Knox, Deputy Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3510. E-mail: *akro_regulations@nps.gov*. Fax: (907) 644–3816.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 2008, the NPS published in the **Federal Register** proposed regulations to revise Denali National Park and Preserve regulations in Subpart L of 36 CFR part 13. This rule implements certain decisions made in the 2006 Final Environmental Impact Statement (EIS) and Record of Decision (ROD) regarding the Denali Backcountry Management Plan (BMP) and the 2007 Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for subsistence use of off-road vehicles in the Cantwell Traditional Use Area (TUA). The final regulations (1) establish group size limits in the backcountry, restrict the number of climbers on Mount McKinley from April 1 through August 1 to a maximum of 1500, and require camping permits (currently required through the compendium) in accordance with the 2006 BMP/EIS; and (2) restrict off-road vehicle use for subsistence purposes to designated routes and trails in Windy Creek, Cantwell Creek, and Bull River drainages in the Cantwell Traditional Use Area in accordance with the 2007 EA/FONSI. Comments received and the corresponding NPS responses are summarized below. Modifications to the proposed rule are listed under Changes to the Final Rule. As used within this document, the terms ''we,'' ''our,'' and ''us'' refer to the National Park Service.

Summary of Comments

The proposed rule was published for public comment on April 28, 2008 (73 FR 22890), with a 60 day comment period lasting until June 27, 2008. The National Park Service received three timely comments. Of the three comments, one was from the State of Alaska, one was from non-governmental organizations (consolidated response from two signatory groups), and one was

submitted by an individual. Many proposed changes either received supporting comments or no comments. The proposed regulations are being adopted as proposed unless noted otherwise below. The proposed sections that did receive substantive comments are discussed below.

Section 13.903 Subsistence Off-Road Vehicle Use

1. The NPS received three comments regarding subsistence use of off-road vehicles. The State of Alaska asked for clarification on whether any qualified subsistence users who are currently using ORVs in the Cantwell TUA would be unable to continue to do so based on the requirement that subsistence users either be residents of the Cantwell resident zone community or residents of Alaska Game Management Unit (GMU) 13E holding a permit to use ORVs issued under 36 CFR 13.440. The State also suggested providing the Superintendent discretion to authorize subsistence users to use ORVs if they move outside the boundaries of this area.

The NPS appreciates the opportunity to explain the eligibility criteria for using ORVs in the Cantwell TUA. Section 811(b) of the Alaska National Interest Lands Act authorizes the use of ORVs for subsistence purposes if such ORV use was ''traditionally employed.'' In 2005, the NPS reviewed information regarding historical ORV use in the Cantwell area of Denali National Park. Several individuals who reside in and around Cantwell provided information regarding ORV use that occurred before this portion of the park was established in 1980. Based on this information, the NPS determined that Cantwell area residents used ORVs for successive generations in that portion of Denali National Park prior to the park's establishment in 1980. Because only residents of the Cantwell area have demonstrated traditional ORV use, this regulation restricts ORV use in the 1980 Park additions to those residents. The 2007 FONSI specifically stated that ORV use would be limited to residents of the Cantwell resident zone community and those residents of GMU 13E holding a 13.440 permit. For this reason, the NPS declines to accept the suggestion to allow individuals who move outside the Cantwell area to continue to use of ORVs for subsistence purposes.

The State requested additional information regarding the basis for the 1,000 pound weight limit and if this proposed limit will cause hardship to any existing qualified subsistence uses that may already possess vehicles exceeding the weight limit. The State noted the weight limit for ORVs on adjacent state land is 1,500 pounds curb weight and that consistent weight limits on adjacent park land would benefit ORV operators. Consistent with a recommendation by the Denali Subsistence Resource Commission, the NPS selected the 1,000 pound curb (unloaded) vehicle weight requirement during the EA process in an effort to minimize damage to park resources while still allowing ORV access to subsistence resources. The NPS also notes ORVs are limited to 1,000 pounds in several State of Alaska Game Refuges, including Palmer Hay Flats, Yakataga, Susitna Flats, and Goose Bay State Game Refuges. The NPS does not believe that this weight limit will curtail subsistence activities and has not received any comments through either the compliance or rulemaking process from existing qualified subsistence users indicating that a 1,000 pound limit would cause hardship.

Finally, the State requested clarification that this regulation does not apply to the use of snowmachines. The NPS appreciates the opportunity to clarify that this regulation does not close or restrict the use of snowmachines for subsistence purposes. The term ''motor vehicle'' is defined in 36 CFR 1.4 and excludes snowmobiles (which are defined to be the same as snowmachines). Accordingly, this regulation does not affect the use of snowmachines in the park.

The National Parks Conservation Association (NPCA) and Denali Citizens Council (DCC) requested that the procedure for closing and opening areas to ORV use follow a procedure similar to that outlined in 36 CFR 13.960 for snowmachine use.

The NPS agrees with NPCA and DCC that notifying the public of closures to ORV use and lifting those closures should be done via press release and other appropriate means. The NPS modified this provision to include the means of notice that we believe will be most effective for communicating closure information to qualified subsistence users in the Cantwell area. These means include issuing a press release, posting at local post offices, posting on the park website, posting signs at designated trails or areas if appropriate, use of electronic media, and via other appropriate means. We believe this modification also enables the NPS to respond more quickly to changing conditions.

A third commenter opposed permitting ORV use for subsistence uses. This comment misunderstands the effect of this regulation. Subsistence is a recognized and authorized use of the ANILCA additions of Denali National Park (Denali park additions). Section 811(b) of ANILCA provides that ''the Secretary shall permit * * * appropriate use [of] * * * surface transportation traditionally employed'' for subsistence uses by federally qualified local rural residents, subject to reasonable regulation.

In 2005 the NPS determined that ORVs were used by successive generations of Cantwell residents for subsistence in the Cantwell area (TUA) of the Denali National Park additions and therefore are authorized for subsistence purposes in this area under ANILCA section 811 and 36 CFR 13.460. This regulation merely implements the 2007 FONSI on subsistence ORV use in the TUA.

2. Section 13.904 Camping

The State of Alaska requested clarification that the camping permit provision only applies in designated areas and not throughout the former Mount McKinley National Park. The NPS appreciates the opportunity to clarify that a camping permit is only required in designated areas of the backcountry. Camping is also allowed in the Frontcountry Developed Area in accordance with 36 CFR 13.972–13.974.

Changes to the Final Rule

Based on the preceding comments and responses as well as internal NPS comments, the NPS has made the following changes to the proposed rule language:

- *13.903(d), Subsistence use of off-road vehicles.* The NPS modified the provision specifying means of public notice for closures to subsistence ORV use. This change will provide more effective notice of closures to interested parties.
- *13.910(a), Mountain climbing.* The NPS replaced the provision requiring all individuals to apply for a permit 60 days in advance of any climb on Mount McKinley or Mount Foraker with a provision that the superintendent will establish application procedures. These procedures will be published in the Superintendent's compendium. This modification will enable the superintendent to relax the 60 day advance application requirement for climbers who have previously climbed Mount McKinley or Mount Foraker under certain circumstances.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the

Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an 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. A qualitative cost/benefit analysis was conducted to examine costs and benefits associated with the proposed rule. That analysis concludes that positive net benefits will be generated by each component of the proposed regulatory action, and hence by the regulatory action overall. The analysis also indicates that governmental processes in NPS-administered areas in Alaska will be improved. Therefore, it is anticipated that economic efficiency will be improved by this proposed regulatory action.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency-specific rule that will not interfere with other agencies or local government plans, policies, or controls. The proposals included with this rulemaking apply to areas managed by the National Park Service and do not conflict with other federal regulations. The review process used to develop the rulemaking proposals included consultation with the State of Alaska to seek views of appropriate officials and to provide consistency with state rules on adjacent lands as well as active participation where NPS is proposing variation from similar state regulations.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. No grants or other forms of monetary supplements are involved.

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

Regulatory Flexibility Act

The Department of the Interior certifies that this 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 economic effects of this rule are local in nature and positive or negligible in scope. This rule either implements rules unrelated to business activity or makes permanent various temporary and emergency rules under which area businesses have been operating. This rule will have no effect or in some cases a salutary effect by eliminating year to year uncertainty for park visitors.

A qualitative Regulatory Flexibility threshold analysis was conducted to examine potential impacts to small entities. The analysis concludes that, since no significant costs are anticipated for any component of the rule, significant economic impacts would not be imposed on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million or more. Expenses related to compliance with various provisions of this proposed rule are slight. No new user fees or charges are proposed. Any incidental costs from this rule would be small and generally would not be additional to those already associated with visiting park areas.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The provisions of this rule will generally continue existing rules and use patterns for the park areas in Alaska.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The various provisions of this rule do not apply differently to U.S.-based enterprises and foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency-specific rule and imposes no other requirements on small governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implications assessment is not required because no taking of property will occur as a result of this final rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rule is limited in effect to federal lands and waters administered by the NPS and does not have a substantial direct effect on state and local government in Alaska. The rule was initiated in part at the request of the State of Alaska and was developed in close consultation with the State of Alaska and, as such, promotes the principles of federalism.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require any information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A Record of Decision (ROD) for the Denali National Park and Preserve Final Backcountry Management Plan Environmental Impact Statement was approved on February 21, 2006. On September 18, 2007, a Finding of No Significant Impact (FONSI) was approved for the Cantwell Subsistence ORV Management Environmental Assessment. These documents together represent the environmental analysis for this proposed rule, and are available for review at: *http://www.nps.gov/dena/parkmgmt/managementdocs.htm, or http://www.regulations.gov.*

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); the Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; part 512 of the Departmental Manual, Chapter 2 ''Departmental Responsibilities for Indian Trust Resources''; and various park consultation agreements with tribal

governments, the potential effects on Federally-recognized Indian tribes have been evaluated, and it has been determined at this time that there are no potential effects that have not been addressed in prior decision documents.

While the consultation agreements noted above have not resulted in findings of potential effects, review of this rule has been facilitated by the relationships established through government-to-government consultation.

Drafting Information: The principal contributors to this rule are: Vic Knox, Chuck Passek, Jane Hendrick, Andee Sears and Paul Hunter, Alaska Regional Office; and Jerry Case, Regulations Program Manager, NPS, Washington, DC.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Subpart N also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681–259, October 21, 1998; Pub. L. 106–31, 113 Stat. 72, May 21, 1999; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

Subpart L—[Amended]

■ 2. Revise § 13.902 to read as follows:

§ 13.902 Subsistence resident zone.

The following communities and areas are included within the resident zone for Denali National Park addition: Cantwell (limited to the area within a 3-mile radius of the Cantwell post office as shown on a map available at the park visitor center), Minchumina, Nikolai, and Telida.

■ 3. Add § 13.903 to subpart L to read as follows:

§ 13.903 Subsistence use of off-road vehicles.

Operating a motor vehicle off road is prohibited except by authorized residents as defined in this section when engaged in subsistence uses. For purposes of this section, ''authorized residents'' means residents of the Cantwell resident zone community as defined by this subpart or those residents of Alaska Game Management Unit 13E holding a permit issued under § 13.440 of this part. Operating a motor vehicle off road for subsistence purposes outside any trail or area designated by this section is prohibited. A map and GPS coordinates of designated trails and areas are available on the park website and at the park visitor center.

(a) Authorized residents may operate vehicles off road only in the following designated areas and trails:

(1) The Windy Creek Trail;

(2) The Cantwell Airstrip Trail;

(3) The Pyramid Trail;

(4) The Cantwell Creek Floodplain Trail/Corridor; and

(5) A trail or area along the Bull River Floodplain designated by the superintendent under paragraph (b) of this section.

(b) The superintendent may designate a trail or area along the Bull River Floodplain Corridor for motor vehicle use by authorized residents if the superintendent determines that the following conditions are met:

(1) Access across adjacent non-NPS lands has been secured;

(2) An NPS-approved trail has been constructed on NPS lands; and

(3) Off-road vehicle use continues to be necessary for reasonable access to the Bull River for subsistence resources by authorized residents.

(c) All of the following are prohibited:

(1) Motor vehicles greater than 5.5 feet wide;

(2) Motor vehicles exceeding 1,000 pounds curb (unloaded) weight;

(3) Motor vehicles that steer by locking or skidding a wheel or track; and

(4) Operating a motor vehicle in violation of § 13.460(d) of this part.

(d) The superintendent may restrict or prohibit motor vehicle use authorized by this section in accordance with § 13.460(b) of this part. The Superintendent will notify the public of the proposed restriction or closure by issuing a press release, posting at local post offices, posting on the park website, posting signs at designated trails or areas if appropriate, use of electronic media, and via other appropriate means.

■ 4. Revise § 13.904 to read as follows:

§ 13.904 Camping.

Camping without a permit in designated areas in the former Mount McKinley National Park or the Kantishna area is prohibited. A map showing areas where a permit is required for camping is available at the park visitor center and on the park website. Violating terms and conditions of the permit is prohibited.

■ 5. Add § 13.905 to subpart L to read as follows:

§ 13.905 Group size.

(a) The following are prohibited:

(1) Group sizes exceeding 12 individuals on the east side of the park outside the Frontcountry Developed Area as defined by this subpart.

(2) Group sizes exceeding 6 individuals on the west side of the park outside the Frontcountry Developed Area as defined by this subpart.

(b) A map showing the east and west boundaries is available at the park visitor center.

(c) The superintendent may authorize larger groups on a case-by-case basis.

■ 6. Revise § 13.910 to read as follows:

§ 13.910 Mountain climbing.

(a) Climbing Mount McKinley or Mount Foraker without a permit is prohibited. The superintendent will establish procedures for applying for a permit. The superintendent may authorize a maximum of 1500 climbers on Mount McKinley from April 1 through August 1 each calendar year.

(b) Violating terms and conditions of the permit is prohibited.

Dated: October 28, 2008.

Lyle Laverty,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E8–27049 Filed 11–13–08; 8:45 am]

BILLING CODE 4310–EF–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–1 and CP2009–2; Order No. 128]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Parcel Return Service Contract 1 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 73 FR 64370 (October 29, 2008).

The Postal Service seeks to add a new product identified as Parcel Return Service Contract 1 to the Competitive Product List. For the reasons discussed

below, the Commission approves the request.

I. Background

On October 15, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Parcel Return Service Contract 1 to the Competitive Product List. The Postal Service asserts that the Parcel Return Service Contract 1 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This request has been assigned Docket No. MC2009–1.[1]

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–2. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of the Parcel Return Service Contract 1; [2] (2) a redacted version of the contract, which among other things, provides that the contract will expire 2 years from the effective date which is proposed to be 1 day after the Commission issues all regulatory approvals; [3] (3) requested changes in the MCS product list; [4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32; [5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Daniel J. Barrett, Acting Manager, Product & Business Development, Ground Shipping Services, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). *See id.,* Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Parcel Return Service Contract 1, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2.

In Order No. 119, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment. In addition, the Commission posed questions to the Postal Service seeking supplemental information.

II. Comments

Comments were filed by the Public Representative.[7] No filings were submitted by other interested parties. The Public Representative's comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2–4.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. Also, based upon a review of materials filed by the Postal Service in this proceeding, the Public Representative concludes that the contract reduces costs for both parties. *Id.* at 2–3.

The Public Representative notes that the contract is intended to promote new volumes for the Postal Service and provide incentives for the shipper. He concludes, *inter alia,* that the contract should generate sufficient revenue to cover the product's attributable costs, and contribute to the recovery of total institutional costs assigned to competitive products. *Id.* at 4.

III. Commission Analysis

The Commission's statutory responsibilities in this instance entail assigning Parcel Service Return Contract 1 to either the Market Dominant Product List or the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposals for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. 39 U.S.C. 3642 governs the assignment of new products to the Market Dominant or Competitive Product List. In this case, Parcel Return Service Contract 1 is being proposed by the Postal Service to be added to the Competitive Product List.

The statutory standard that the Commission must consider is whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product must be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2–3. The Postal Service also contends that the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* at 2. It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that due to the fact that the market for ground shipping services requires a substantial infrastructure to support a national network, only large shippers serve the market under consideration. Accordingly, the Postal Service is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Parcel Return Service Contract 1 as competitive. Having considered the statutory requirements and the support offered by the Postal Service and the public comment, the Commission finds that Parcel Return Service Contract 1 is appropriately classified as a competitive product and

[1] Request of the United States Postal Service to Add Parcel Return Service Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 15, 2008 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governor's Decision notes, among other things, that the cost estimates may vary but the risks reviewed and evaluated are limited.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Public Representative Comments in Response to United States Postal Service Request to Add Parcel Return Service Contract to Competitive Product List, October 29, 2008.

should be added to the Competitive Product List.

Cost considerations. The Commission has reviewed the contract, the financial analysis provided under seal that accompanies the agreement including the responses to the questions posed in PRC Order No. 119, as well as the comments by the Public Representative. Based on an analysis of the information submitted, the cost accounting methods proposed in Docket No. RM2008–6 are to be used for updating costs for subsequent years of the contract.[8] The analysis of the Commission is included as part of the record of these proceedings in Library Reference PRC–CP2009–2–NP–LR–1.

Library Reference PRC–CP2009–2–NP–LR–1 is the analysis of the Postal Service data which updates the original data with the supplemental data filed by the Postal Service on October 27, 2008, and provides calculations for revenue per piece for each of the negotiated service agreement's rate categories. The analysis finds that the updated data do not cause financial results to vary significantly.

Based on the data submitted, the Commission finds that Parcel Return Service Contract 1 should cover its attributable costs (39 U.S.C. 3633(a)(2)); should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the proposed Parcel Return Service Contract 1 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Parcel Return Service Contract 1 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It is ordered:

1. Parcel Return Service Contract 1 (MC2009–1 and CP2009–2) is added to the Competitive Product List as a new product under Negotiated Service Agreement, Domestic.

2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this Order.

3. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Market Dominant Product Descriptions

First-Class Mail [Reserved for Class Description]
- Single-Piece Letters/Postcards [Reserved for Product Description]
- Bulk Letters/Postcards [Reserved for Product Description]
- Flats [Reserved for Product Description]
- Parcels [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International [Reserved for Product Description]

Standard Mail (Regular and Nonprofit) [Reserved for Class Description]
- High Density and Saturation Letters [Reserved for Product Description]
- High Density and Saturation Flats/Parcels [Reserved for Product Description]
- Carrier Route [Reserved for Product Description]
- Letters [Reserved for Product Description]
- Flats [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels [Reserved for Product Description]

Periodicals [Reserved for Class Description]
- Within County Periodicals [Reserved for Product Description]
- Outside County Periodicals [Reserved for Product Description]

Package Services [Reserved for Class Description]
- Single-Piece Parcel Post [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]
- Bound Printed Matter Flats [Reserved for Product Description]
- Bound Printed Matter Parcels [Reserved for Product Description]
- Media Mail/Library Mail [Reserved for Product Description]

Special Services [Reserved for Class Description]
- Ancillary Services [Reserved for Product Description]
- Address Correction Service [Reserved for Product Description]
- Applications and Mailing Permits [Reserved for Product Description]
- Business Reply Mail [Reserved for Product Description]
- Bulk Parcel Return Service [Reserved for Product Description]
- Certified Mail [Reserved for Product Description]
- Certificate of Mailing [Reserved for Product Description]
- Collect on Delivery [Reserved for Product Description]
- Delivery Confirmation [Reserved for Product Description]
- Insurance [Reserved for Product Description]
- Merchandise Return Service [Reserved for Product Description]
- Parcel Airlift (PAL) [Reserved for Product Description]

[8] In its supplemental filing, the Postal Service indicated its intent to do so. *See* Response of the United States Postal Service to Commission's Inquiries in Order No. 119, section IV, October 27, 2008.

Registered Mail [Reserved for Product Description]
Return Receipt [Reserved for Product Description]
Return Receipt for Merchandise [Reserved for Product Description]
Restricted Delivery [Reserved for Product Description]
Shipper-Paid Forwarding [Reserved for Product Description]
Signature Confirmation [Reserved for Product Description]
Special Handling [Reserved for Product Description]
Stamped Envelopes [Reserved for Product Description]
Stamped Cards [Reserved for Product Description]
Premium Stamped Stationery [Reserved for Product Description]
Premium Stamped Cards [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]
International Registered Mail [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]
International Restricted Delivery [Reserved for Product Description]
Address List Services [Reserved for Product Description]
Caller Service [Reserved for Product Description]
Change-of-Address Credit Card Authentication [Reserved for Product Description]
Confirm [Reserved for Product Description]
International Reply Coupon Service [Reserved for Product Description]
International Business Reply Mail Service [Reserved for Product Description]
Money Orders [Reserved for Product Description]
Post Office Box Service [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]
Bookspan Negotiated Service Agreement [Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Outbound International
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Competitive Product Descriptions
Express Mail [Reserved for Group Description]
Express Mail [Reserved for Product Description]
Outbound International Expedited Services [Reserved for Product Description]
Inbound International Expedited Services [Reserved for Product Description]
Priority [Reserved for Product Description]
Priority Mail [Reserved for Product Description]
Outbound Priority Mail International [Reserved for Product Description]
Inbound Air Parcel Post [Reserved for Product Description]
Parcel Select [Reserved for Group Description]
Parcel Return Service [Reserved for Group Description]
International [Reserved for Group Description]
International Priority Airlift (IPA) [Reserved for Product Description]
International Surface Airlift (ISAL) [Reserved for Product Description]
International Direct Sacks—M-Bags [Reserved for Product Description]
Global Customized Shipping Services [Reserved for Product Description]
International Money Transfer Service [Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]
International Registered Mail [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]
International Restricted Delivery [Reserved for Product Description]
International Insurance [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Group Description]
Domestic [Reserved for Product Description]
Outbound International [Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E8–26960 Filed 11–13–08; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–93; FRL–8740–4]

Withdrawal of Direct Final Rule Removing the Federal Antidegradation Policy Applicable to Waters of the United States Within the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing a direct final rule that the Agency published on September 15, 2008. The direct final rule would have removed from the Code of Federal Regulations a rule that EPA promulgated in 1996 making provisions of the federal antidegradation policy directly applicable for all waters of the United States within the Commonwealth of Pennsylvania. EPA published the direct final rule with a parallel proposal to remove the federal antidegradation rule as it applies to waters in Pennsylvania. In a separate action today, EPA is also re-opening the comment period of the proposed rule to ensure all parties have adequate opportunity to express their views to the Agency prior to taking final action on the proposed rule.

DATES: Effective on November 14, 2008, EPA withdraws the direct final rule published at 73 FR 53140, on September 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2007–0093. All documents in the docket are listed on the www.regulations.gov Web site. Although listed on the web site, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the OW Docket Center. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, and 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Caroline Whitehead at U.S. EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave, NW., Washington, DC 20460 (telephone: 202–566–2907, fax: 202–566–0409 or e-mail: *whitehead.caroline@epa.gov*) or Denise Hakowski at U.S. EPA Region 3, (3WP30) 1650 Arch Street, Philadelphia, Pennsylvania 19103 (telephone: 215–814–5726, fax: 215–814–2318 or e-mail: *hakowski.denise@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Entities

Citizens concerned with water quality in Pennsylvania may be interested in this rulemaking. Entities discharging pollutants to the surface waters of Pennsylvania could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits.

Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities.
Industry	Industries discharging pollutants to surface waters in Pennsylvania.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Pennsylvania.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

II. Today's Action

As EPA explained in its September 15, 2008 notices (73 FR 53140 and 73 FR 53178), EPA proposed to remove the federal regulation that made provisions of the federal antidegradation policy directly applicable in Pennsylvania. EPA proposed to remove the federal rule because Pennsylvania now has an EPA-approved antidegradation policy meeting the federal requirements at 40 CFR 131.12. Therefore, the federal antidegradation regulation promulgated by EPA for Pennsylvania is no longer needed. On September 15, EPA also published a direct final rule to remove the federal regulation at 40 CFR 131.32.

EPA has determined that additional opportunity for public comment would be beneficial. Therefore, EPA is withdrawing the direct final rule (73 FR 53140).

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: November 6, 2008.

Stephen L. Johnson,

Administrator.

■ Accordingly, the amendments to the rule published on September 15, 2008 (73 FR 53140) are withdrawn as of November 14, 2008.

[FR Doc. E8–26952 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0250; FRL–8362–4]

Inert Ingredient: Exemption from the Requirement of a Tolerance for (S,S)–Ethylenediaminedisuccinic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of (S,S)–Ethylenediaminedisuccinic acid (CAS Reg. No. 20846–91–7) ((S,S)–EDDS) when used as an inert ingredient sequestrant or chelating agent in pesticide formulations applied to growing crops only under 40 CFR 180.920. Associated Octel Company, Limited, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of (S,S)–Ethylenediaminedisuccinic acid.

DATES: This regulation is effective November 14, 2008. Objections and requests for hearings must be received on or before January 13, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0250. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8825; e–mail address: *samek.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

•Crop production (NAICS code 111).

•Animal production (NAICS code 112).

•Food manufacturing (NAICS code 311).

•Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0250 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 13, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0250, by one of the following methods:

•*Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

•*Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

•*Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of January 19, 2005 (70 FR 3026) (FRL–7690–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4E6818) by Associated Octel Company, Limited, P.O. Box 17, Oil Sites Road, Ellesmere Port, South Wirral L65 4HF, United Kingdom. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of (S,S)–Ethylenediaminedisuccinic acid (CAS Reg. No. 20846–91–7) when used as an inert ingredient sequestrant or chelating agent in pesticide formulations. That notice provided a summary of studies summated by the petitioner, Associated Octel Company, Limited. There were no comments received in response to the notice of filing. For ease of reading in this document, (S,S)–Ethylenediaminedisuccinic acid is referred to as (S,S)–EDDS.

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

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

III. Toxicological Profile

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

The following provides a brief summary of the risk assessment and conclusions for the Agency's review of (S,S)–EDDS. The Agency's full decision document for this action is available in EPA's Electronic Docket at *http://www.regulations.gov* under docket number EPA–HQ–OPP–2007–0250.

Studies show that (S,S)–EDDS has low acute and subchronic toxicity, is a mild eye irritant, and is not a dermal irritant or skin sensitizer. Based on the results of submitted mutagenicity studies, (S,S)–EDDS is not likely to be mutagenic. No carcinogenicity studies are available on (S,S)–EDDS, however, NTP tested trisodium EDTA in mice and rats showed no carcinogenic potential. Based on its similarity with EDTA and lack of mutagenicity, (S,S)–EDDS is not likely to be carcinogenic to humans at low doses. In addition, metabolism studies show that (S,S)–EDDS is poorly absorbed but rapidly excreted within 72 hours.

The (S,S)–EDDS studies indicate developmental toxicity only at high dosage levels that resulted in maternal toxicity (limit dose levels). In a developmental toxicity study in rats, the maternal toxicity LOAEL is 944.1 milligrams/kilograms, body weight/day (mg/kg bw/day) (16,000 ppm) (limit dose) based on reductions in body weight, body weight gain, feed consumption, and blood levels of zinc, iron, and copper, and the NOAEL is 551.1 mg/kg bw/day (8,000 ppm). The developmental toxicity LOAEL is 944.1

mg/kg bw/day (16,000 ppm) (limit dose) was manifested as an increase in fetal death, reduced fetal growth, and multiple developmental malformations and variations affecting almost all major organ systems and skeletal structures, and the NOAEL is 551.1 mg/kg bw/day (8,000 ppm). Therefore, the maternal and developmental NOAEL are both 551.1 mg/kg bw/day (8,000 ppm). The results of this dietary study indicate qualitative evidence of increased susceptibility, however, the concern for this increased susceptibility is low for the reasons discussed in Unit VII.

IV. Aggregate Exposures

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

There are no data provided on (S,S)–EDDS residues in food or on non-occupational exposures to (S,S)–EDDS. In the absence of actual residue data for (S,S)–EDDS, the Agency performed a dietary (food and drinking water) exposure assessment for (S,S)–EDDS in which it was assumed that (a) (S,S)–EDDS would be used as an inert ingredient in all food use pesticide formulations, applied to all crops; (b) one hundred percent of all food crops would be treated with pesticides containing (S,S)–EDDS; (c) (S,S)–EDDS residues would be present in all crops at levels equal to or exceeding the highest established tolerance levels for any pesticide active ingredient, and (d) (S,S)–EDDS would be present in all sources of drinking water at concentrations equal to the highest established standards for drinking water contaminants established by EPA.

This approach is highly conservative as it is extremely unlikely that (S,S)–EDDS would have such use as a pesticide product inert ingredient and be present in food commodities and drinking water at such high levels. In addition, this highly conservative exposure assessment is protective of any possible non-occupational exposures to (S,S)–EDDS as it results in exposure estimates orders of magnitude greater than the high-end exposure estimates for residential uses of pesticides routinely used by EPA.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to (S,S)–EDDS and any other substances, and the chemical does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that (S,S)–EDDS has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

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

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. EPA concluded that the FQPA safety factor could be removed for (S,S)–EDDS for the following reasons:

1. EPA has sufficient data to assess the toxicity of (S,S)–EDDS. Although the toxicological database on (S,S)–EDDS is limited, adequate long term studies are available on structurally related compounds such as calcium disodium EDTA, and trisodium EDTA. Based on the structural similarities in these compounds, EPA concluded the database for (S,S)–EDDS is adequate.

2. EPA has low concern regarding the potential developmental effects of (S,S)–EDDS. The (S,S)–EDDS studies indicate developmental toxicity only at high dosage levels that resulted in maternal toxicity (limit dose levels). In a developmental toxicity study in rats, the maternal toxicity LOAEL is 944.1 mg/kg bw/day (16,000 ppm) (limit dose) based on reductions in body weight, body weight gain, feed consumption, and blood levels of zinc, iron, and copper, and the NOAEL is 551.1 mg/kg bw/day (8,000 ppm). The developmental toxicity LOAEL is 944.1 mg/kg bw/day (16,000 ppm) (limit dose) was manifested as an increase in fetal death, reduced fetal growth, and multiple developmental malformations and variations affecting almost all major organ systems and skeletal structures, and the NOAEL is 551.1 mg/kg bw/day (8,000 ppm). Therefore, the maternal and developmental NOAEL are both 551.1 mg/kg bw/day (8,000 ppm). The results of this dietary study indicate qualitative evidence of increased susceptibility, however, the concern for this increased susceptibility is low because:

i. Effects were seen only at the limit dose and in the presence of maternal toxicity.

ii. There is a well characterized NOAEL (551.1 mg/kg/day) protecting from these effects.

iii. The presence of zinc, iron and copper may have contributed to the observed developmental toxicity, since other chelating agents (such as EDTA) have been shown to impact zinc, iron, and copper levels and some of the developmental toxicity.

iv. The results were not reproduced in a concurrently conducted gavage study in rats at doses up to 1,000 mg/kg/day.

3. In the absence of actual exposure data on (S,S)–EDDS, a highly conservative exposure estimate was utilized thereby reducing uncertainty associated with exposures by infants and children to (S,S)– EDDS.

VII. Determination of Safety for U.S. Population, Infants, and Children

EPA determines whether pesticide chemical exposures are safe by comparing aggregate exposure estimates to the dose at which no adverse effects were seen in the most sensitive animal studies. In the case of (S,S)–EDDS, the estimated exposures are compared to a dose level equal of 551.1 mg/kg/day derived from the rat developmental toxicity study. Utilizing the highly conservative aggregate exposure assessment discussed in Unit IV of this document, EPA has concluded that aggregate exposures to (S,S)–EDDS are more than three orders of magnitude less than the dose at which no adverse effects were seen in the most sensitive animal study, and therefore, are below the level of concern for the entire U.S. population, including infants and children.

Based on this risk assessment, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to residues of (S,S)–EDDS. Accordingly, EPA finds that the tolerance exemption under 40 CFR 180.920 for residues of (S,S)–EDDS will be safe and is granting the requested tolerance exemption.

VIII. Other Considerations

A. Analytical Method

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

B. International Tolerances

There are no known international tolerances for residues of (S,S)–EDDS in food or animal feed.

IX. Statutory and Executive Order Reviews

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

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

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

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

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 31, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

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

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

* * * * *

Inert ingredients	Limits	Uses
* * *	*	*
(S,S)–Ethylenediaminedisuccinic acid (CAS Reg. No. 20846–91–7)		Sequestrant or chelating agent
* * *	*	*

[FR Doc. E8–26973 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1161; FRL–8386–7]

Tetraconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of tetraconazole in or on grape. Interregional Research Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 14, 2008. Objections and requests for hearings must be received on or before January 13, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1161. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1161 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before January 13, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–1161, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of January 23, 2008 (73 FR 3964) (FRL–8345–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7273) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.557 be amended by establishing a tolerance for residues of the fungicide tetraconazole, 1–[2–(2,4–dichlorophenyl)–3–(1,1,2,2–tetrafluoroethoxy)propyl]–1*H*–1,2,4–triazole, in or on grape at 0.15 parts per million (ppm). That notice referenced a summary of the petition prepared on behalf of IR–4 by Isagro, S.p.A, the registrant, which is available to the public in the docket, at *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance level for grape from 0.15 ppm to 0.20 ppm. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of tetraconazole on grape at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

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

subgroups of consumers, including infants and children.

Tetraconazole has low acute toxicity via the oral, dermal and inhalation routes. It is a slight eye irritant but not a dermal irritant or a dermal sensitizer. The liver and kidney are the primary target organs of tetraconazole. In the subchronic, chronic and reproduction rat studies, subchronic and carcinogenicity mouse studies, and the chronic dog study, increases in liver weight, increases in liver serum enzymes or gross and microscopic liver pathology were noted at various doses, providing evidence of liver toxicity. There is no evidence in the toxicity database that tetraconazole is an immuno- or neurotoxicant.

Tetraconazole is classified as ''likely to be carcinogenic to humans'' by the oral route of exposure, based on the occurrence of liver tumors in male and female mice. Cancer risk is assessed by EPA using the linear low dose extrapolation approach with a potency factor (Q_1*) of 2.3 x 10^{-2} milligrams/kilograms/day (mg/kg/day)$^{-1}$.

Oral rat and rabbit developmental toxicity studies showed no increased susceptibility of fetuses to tetraconazole. Maternal toxicity (decreased body weight gain and food consumption, increased water intake and increased liver and kidney weights) and developmental toxicity (increased incidence of small fetuses, supranumerary ribs and hydroureter and hydronephrosis) occurred at the same dose level in the rat study. No developmental toxicity was seen in the rabbit study, whereas maternal toxicity (decreased body weight gain) was noted at the highest dose tested. Similarly, there was no evidence of increased susceptibility of offspring in the 2–generation rat reproduction study. Parental toxicity (increased mortality in parental females) was observed at a lower dose (4.9 mg/kg/day) than the dose (35.5 mg/kg/day) resulting in pup effects (decreased litter weight and mean pup weight in litters of all generations before weaning and increased relative liver weight at weaning in both sexes of all litters).

Specific information on the studies received and the nature of the adverse effects caused by tetraconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Tetraconazole: Human-Health Risk Assessment for New Use on Grapes and a Label Amendment for Pecans*, page 34 in docket ID number EPA–HQ–OPP–2007–1161.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for tetraconazole used for human risk assessment can be found at *http://www.regulations.gov* in the document *Tetraconazole: Human-Health Risk Assessment for New Use on Grapes and a Label Amendment for Pecans*, page 12 in docket ID number EPA–HQ–OPP–2007–1161.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tetraconazole, EPA considered exposure under the petitioned-for tolerance as well as all existing tetraconazole tolerances in 40 CFR 180.557. Additional metabolites of toxicological concern (M14360–alcohol (free and conjugated), M14360–acid, M14360–DFA, and M14360–hydroxydetriazolyl–O–malonyldiglucoside) that are not included in the tolerance expression were included in the dietary exposure assessments based on the ratio of metabolite to parent found in metabolism studies. EPA assessed dietary exposures from tetraconazole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA identified such effects (increased incidence of small fetuses and supernumerary ribs) for the population subgroup, females 13 years and older; however, no such effects were identified for the general population, including infants and children.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues of tetraconazole and 100 percent crop treated (PCT) for all existing and new uses.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. The assessment was refined through the incorporation of empirical processing factors, average field trial residues, average residues from the feeding studies and projected percent crop treated (PPCT) estimates for the feed commodities. 100 PCT was assumed for all food commodities.

iii. *Cancer*. Tetraconazole is classified as ''likely to be carcinogenic to humans'' by the oral route of exposure. Cancer risk from tetraconazole exposure is assessed by EPA using the linear low dose extrapolation approach with a potency factor (Q_1*) of 2.3 x 10^{-2} (mg/kg/day)$^{-1}$. EPA used the same food residue estimates as discussed in Unit III.C.1.ii., chronic exposure.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information,

EPA must require pursuant to section 408(f)(1) of FFDCA that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used projected percent crop treated (PPCT) information as follows:

In the chronic and cancer dietary assessments, EPA used PPCT for the feed commodities derived from peanuts (77%), soybeans (27%) and sugar beets (70%). Since tetraconazole was registered for use on these crops recently (2007 and 2008), PCT estimates based on actual usage data are not sufficient indicators of potential usage on these crops.

EPA estimates PPCT for a new pesticide use by assuming that the PCT during the pesticide's initial 5 years of use on a specific use site will not exceed the average PCT of the market leader (i.e., the one with the greatest PCT) on that site. Typically, EPA uses USDA/National Agriculture Statistic Service (NASS) as the primary source for PCT data. When a specific use site is not surveyed by USDA/NASS, EPA uses other sources, including proprietary data, and calculates the PCT. Comparisons are only made among pesticides of the same pesticide types (i.e., the leading fungicide on the use site is selected for comparison with the new fungicide). The PCTs included in the average may be for the same pesticide, or for different pesticides, since the same, or different pesticides, may dominate for each year selected. This PPCT, based on the average PCT of the market leader, is appropriate for use in chronic dietary risk assessment. The method of estimating a PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. The predominant factors that bear on whether the estimated PPCT could be exceeded are whether a new pesticide use or new pesticide is more efficacious or controls a broader spectrum of pests than the dominant pesticide; and/or whether there are concerns with pest pressures as indicated in emergency exemption requests or other readily available information; and/or other factors based on analysis of additional information, such as the total crop acreage and the geographical distribution of the crops and pests. All information currently available for the predominant factors mentioned above or relevant to the case in question have been considered for this chemical, and EPA has determined that it is unlikely that actual PCT for tetraconazole will exceed the PPCT during the next 5 years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which tetraconazole may be applied in a particular area.

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of tetraconazole for acute exposures are estimated to be 10.45 parts per billion (ppb) for surface water and 0.40 ppb for ground water. For chronic exposures for non-cancer assessments, EDWCs are estimated to be 4.68 ppb for surface water and 0.40 ppb for ground water. For chronic exposures for cancer assessments, EDWCs are estimated to be 3.29 ppb for surface water and 0.40 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 10.45 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 4.68 ppb was used to assess the contribution to drinking water. For cancer dietary risk assessment, the water concentration of value 3.29 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Tetraconazole is not registered for any specific use patterns that would result in residential exposure.

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

Tetraconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in fungi by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do

not necessarily constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

Tetraconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite, 1,2,4–triazole (T), and several triazole conjugates, including triazole alanine (TA) and triazole acetic acid (TAA). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including tetraconazole, EPA conducted a human health risk assessment for exposure to T, TA, and TAA resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment was a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov* (Docket ID EPA–HQ–OPP–2005–0497). In March of 2008, EPA updated the triazole risk assessment to include new uses of fenbuconazole, ipconazole, metconazole, tebuconazole and uniconazole. The updated risk assessment can be found at *http://www.regulations.gov* in the document *Dietary Exposure Assessments for the Common Triazole Metabolites 1,2,4–Triazole, Triazolylalanine, Triazolylacetic Acid, and Triazolylypyruvic Acid; Updated to Include New Uses of Fenbuconazole, Ipconazole, Metconazole, Tebuconazole, and Uniconazole; and a Change in Plant-back Restriction for Tetraconazole* in docket ID number EPA–HQ–OPP–2007–1199. When EPA updated the triazole risk assessment, it considered triazole residues on grapes, because other triazole fungicides are already registered for this use site. Triazole residues on grapes from the use of tetraconazole are not expected to exceed those from the use of other triazole fungicides on grapes; therefore, establishing this tolerance for tetraconazole on grape will not increase aggregate exposure to the triazole metabolites, and an updated triazole risk assessment is unnecessary.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The pre- and postnatal toxicology database for tetraconazole includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. As discussed in section III.A, Toxicological Profile, there was no evidence of increased susceptability to tetraconazole of *in utero* rats or rabbits or offspring in these studies. In the rat developmental toxicity study, maternal and developmental toxicity occurred at the same dose, and in the rabbit study, no developmental toxicity was seen at doses that resulted in maternal toxicity. In the rat reproduction study, parental toxicity was observed at a lower dose than that which resulted in pup effects.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for tetraconazole is complete, except for immunotoxicity testing. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement went into effect well after the tolerance petition was submitted, these studies are not yet available for tetraconazole. In the absence of specific immunotoxicity studies, EPA has evaluated the available tetraconazole toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There was no evidence of adverse effects on the organs of the immune system at the LOAEL in any study with tetraconazole. In addition, tetraconazole does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on these considerations, EPA does not believe that conducting a special series 870.7800 immunotoxicity study will result in a point of departure less than the NOAEL of 0.73 mg/kg/day used in calculating the cPAD for tetraconazole; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There is no indication that tetraconazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that tetraconazole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment assumed tolerance-level residues and 100 PCT. The chronic and cancer dietary food exposure assessments were refined using reliable PPCT information and anticipated residue values calculated from valid field trial results. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to tetraconazole in drinking water. Residential exposure to tetraconazole is not expected. These assessments will not underestimate the

exposure and risks posed by tetraconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tetraconazole will occupy < 1% of the aPAD for females, 13 to 49 years old, the only population group for which an acute toxicity endpoint of concern was identified.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tetraconazole from food and water will utilize 7.7% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for tetraconazole.

3. *Short-/intermediate-term risk*. Short- and intermediate term aggregate exposures take into account short- and intermediate-term residential exposure plus chronic exposure from food and water (considered to be a background exposure level). Tetraconazole is not registered for any use patterns that would result in residential exposure. Therefore, the short- and intermediate-term aggregate risk is the sum of the risk from exposure to tetraconazole through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. Using the exposure assumptions described in this unit for the cancer risk assessment, EPA has concluded that exposure to tetraconazole from food and water will result in a lifetime cancer risk of 3 x 10^{-6} for the U.S. population. EPA generally considers cancer risks in the range of 10^{-6} or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the log scale; for example, risks falling between 3.16 x 10^{-7} and 3.16 x 10^{-6} are expressed as risks in the range of 10^{-6}. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3 x 10^{-6}. Since the calculated cancer risk for tetraconazole falls within this range, estimated cancer risk is considered to be negligible.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tetraconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with electron capture detection (GC/ECD)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian or Mexican maximum residues levels established for tetraconazole.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA has revised the tolerance level for grape from 0.15 ppm to 0.20 ppm. EPA revised the tolerance level based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*. The recommended value differs from the value proposed by IR–4, because only data from field plots harvested at the proposed pre-harvest interval (PHI) were used in calculating the tolerance level.

V. Conclusion

Therefore, a tolerance is established for residues of tetraconazole, 1–[2–(2,4–dichlorophenyl)–3–(1,1,2,2–tetrafluoroethoxy)propyl]–1*H*–1,2,4–triazole, in or on grape at 0.20 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 31, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.557 is amended by alphabetically adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.557 Tetraconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Grape	0.20
* * *	* *

* * * * *

[FR Doc. E8–26946 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS–4138–IFC2]

RIN 0938–AP52

Medicare Program; Revisions to the Medicare Advantage and Prescription Drug Benefit Programs: Clarification of Compensation Plans

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period (IFC) revises the regulations governing the Medicare Advantage (MA) program (Part C), and prescription drug benefit program (Part D). This IFC sets forth new requirements governing the marketing of Part C and Part D plans which by statute must be in place at a date specified by the Secretary, but no later than November 15, 2008. The new marketing requirements, which set forth new limits on the compensation that can be paid to agents or brokers with respect to Part C and Part D plans, are based on authority under provisions in the Medicare Improvements for Patients and Providers Act (MIPPA) that became law on July 15, 2008.

DATES: *Effective date:* These regulations are effective on November 10, 2008.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 15, 2008.

ADDRESSES: In commenting, please refer to file code CMS–4138–IFC2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed)

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4138–IFC2, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4138–IFC2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201;

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Camille Brown, 410–786–0274, or Chevell Thomas, 410–786–1387.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the

comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov. Follow the search instructions* on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) was enacted on December 8, 2003. The MMA established the Medicare prescription drug benefit program (Part D) and made revisions to the provisions in Medicare Part C, governing what is now called the Medicare Advantage (MA) program (formerly Medicare+Choice). The MMA directed that important aspects of the new Medicare prescription drug benefit program under Part D be similar to, and coordinated with, regulations for the MA program.

The MMA also directed implementation of the prescription drug benefit and revised MA program provisions by January 1, 2006. The final rules for the MA and Part D prescription drug programs appeared in the **Federal Register** on January 28, 2005 (70 FR 4588 and 70 FR 4194, respectively). Many of the provisions relating to applications, marketing, contracts, and the new bidding process, for the MA program, became effective on March 22, 2005, 60 days after publication of the rule, so that the requirements for both programs could be implemented by January 1, 2006. All of the provisions regarding the new Part D prescription drug program became effective on March 22, 2005.

As we gained more experience with the MA program and the prescription drug benefit program, we proposed to revise areas of both programs and issued a proposed rule on May 16, 2008 (73 FR 28556) that would have clarified existing policies or codified current guidance for both programs. Several of these proposed regulatory revisions were overtaken by statutory provisions enacted in the Medicare Improvements for Patients and Providers Act (MIPPA) (Pub. L. 110–275), enacted on July 15, 2008. These MIPPA provisions directly address in statute several issues we proposed to address through rulemaking, and thus superseded our rulemaking in these areas.

B. Relevant Legislative History and Overview

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established a new ''Part C'' in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act)) which provided for a Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Medicare Part B, except for most individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the original Medicare program or an M+C plan, if one was offered where he or she lived.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–111, amended the M+C provisions of the BBA. Further amendments were made to the M+C program by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000.

As noted above, the MMA was enacted on December 8, 2003. Title I of the MMA added a new ''Part D'' to the Medicare statute (sections 1860D–1 through 1860D–42) creating the Medicare Prescription Drug Benefit Program, the most significant change to the Medicare program since its inception in 1965.

Sections 201 through 241 of title II of the MMA made significant changes to the Part C program. Title II of the MMA renamed the M+C program the MA program and included new payment and bidding provisions, new regional MA plans and special needs plans, reestablished authority for medical savings account (MSA) plans that had been provided in the BBA on a temporary basis, and made other changes. Title I of the MMA created prescription drug benefits under Medicare Part D, and a new retiree drug subsidy program.

Both the MA and prescription drug benefit regulations were published separately, as proposed and final rules, though their development and publication were closely coordinated. On August 3, 2004, we published in the **Federal Register** proposed rules for the MA program (69 FR 46866) and the prescription drug benefit program (69 FR 46632). In response to public comments on the proposed rules, we made several revisions to the proposed policies for both programs. For further discussion of these revisions, see the respective final rules (70 FR 4588) and (70 FR 4194).

As noted above, on July 15, 2008, the Medicare Improvements for Patients and Providers Act became law, making several significant new revisions to the MA and Part D prescription drug benefit programs.

On September 18, 2008, we published an interim final rule with comment period, Revisions to the Medicare Advantage and Prescription Drug Benefit Programs (73 FR 54226), that revised the regulations governing the MA program, prescription drug benefit program, and section 1876 cost plans to reflect new statutory requirements enacted in MIPPA. This included new requirements governing the marketing of Part C and Part D plans. Specifically, among other things, the September 18, 2008 regulations established requirements governing MA plan and prescription drug plan (PDP) compensation structures designed to ensure that agents and brokers enroll individuals in the MA plan or PDP that best meets their health care needs. The provisions regarding compensation structures in the September 18, 2008 rule were effective upon publication, and public comments are being accepted until November 17, 2008.

II. Provisions of the Interim Final Rule

In the section that follows, we discuss the revisions made in this interim final rule with comment period to the regulations in 42 CFR parts 422 and 423 governing, respectively, the MA and prescription drug benefit programs.

Medicare Advantage and Prescription Drug Program Marketing Requirements (Subparts V)—Broker and Agent compensation (§ 422.2274 and § 423.2274)

Section 103(b)(1)(B) of MIPPA charged the Secretary with establishing guidelines to ''ensure that the use of compensation creates incentives for agents and brokers to enroll individuals in the Medicare Advantage plan that is intended to best meet their health care needs.'' Section 103(b)(2) of MIPPA applies these same guidelines to PDP sponsors.

On September 18, 2008 we published the new Medicare regulations, Medicare Advantage and Prescription Drug Benefit Programs; Final Marketing Provisions (73 FR 54208) and Revisions to the Medicare Advantage and Prescription Drug Benefit Programs (73 FR 54226), and a guidance document to

assist plans in implementing these new regulations. Among other things, these new rules were intended to implement the MIPAA requirement to ensure that agents or brokers enroll beneficiaries based on the plan that ''best meet[s] their health care needs'' by imposing requirements pertaining to agent and broker compensation designed to reduce existing financial incentives to enroll a beneficiary in a new plan based on the agent or broker's financial interests rather than the beneficiary's health care needs. These rules provided that, after a beneficiary is enrolled in an MA plan or PDP by an agent or broker, a renewal compensation would be paid for five years after the initial compensation, and that if any agent or broker enrolls the beneficiary in a different plan of a ''like plan type'' during this five-year period, renewal compensation would be paid. A ''like plan type'' refers to PDP, MA or MA–PD, or cost plan (as defined in 422.2274(a)(3)(i) and 423.2274(a)(3)(i)). This renewal compensation will apply whether or not the new enrollment is in the same or a new (receiving) organization. The renewal compensation will be paid by the organization offering the plan into which the enrollment occurs, and the amount of the renewal compensation will be based on that organization's compensation structure. That organization will pay renewal compensation for the remainder of the cycle provided that the enrollment remains with that organization. Thus, the agent or broker will receive compensation at the renewal rate, as described above, whether the enrollee stays in the same plan, or moves to a different plan of a like type, regardless of whether the move is within the existing organization or to a different organization. However, if an enrollee moves to a plan of a different plan type (as defined in 422.2274(a)(3)(ii) and 423.2274(a)(3)(ii)) within the existing organization, the agent or broker may receive compensation at the initial rate. This is designed to ensure that recommendations will be based on the best interests of the beneficiary as MIPPA required.

Under the September 18th regulations, compensation in the initial year in this six-year cycle could not exceed 200 percent of the amount paid for renewal years. We released additional guidance on October 8 and 17, 2008 to further clarify the marketing requirements contained in these new rules. On October 24, 2008, we rescinded the October 8, 2008 guidance memorandum in light of concerns about how the compensation guidance was being interpreted. Based on comments and complaints about how the September 18, 2008 regulations were being implemented, we became concerned that MA and Part D plans were misinterpreting our intent in the compensation structure requirements in § 422.2274(a) and § 423.2274(a) by proposing structures under which compensation in the initial year in the cycle was less than the renewal years and renewal compensation varied from year to year.

First, in limiting the amount by which the initial year compensation can exceed the compensation paid for the five renewal years in the six-year cycle, the regulations clearly contemplated that the initial year compensation would be higher than the renewal compensation level. The very purpose of the regulatory scheme, ensuring that an entity does not get the benefit of a initial year level of compensation for moving a member to another plan after the first year, is clearly premised on this assumption.

In addition, we believed that the words of the regulation text made clear that, once a plan chooses an appropriate renewal amount, this fixed renewal amount would be paid for all five renewal years of the six-year cycle in question. Sections 422.2274(a)(1) and 423.2274(a)(1) refer to the ''first year compensation'' amount being ''no more than 200 percent of the compensation paid for selling or servicing the enrollee in *each* individual subsequent renewal year * * *.'' (Emphasis added). Thus, we believed that the current regulations made clear that the renewal ''compensation paid'' for a renewal year, whatever that amount is, be paid for ''each'' of the five ''individual'' renewal years of the six-year cycle.

Because, as noted, we have received reports of compensation structures that are inconsistent with the intent of the September 18 interim final rule with comment period, we are revising the regulations to expressly specify in §§ 422.2274(a)(1) and 423.2274(a)(1) that the aggregate (commissions, bonuses, etc.) of the compensation amount paid for selling or servicing an enrollee during each of the 5 individual renewal years of a six-year cycle must be fair-market value for the work performed and no more, and no less, than 50 percent of the aggregate (commissions, bonuses, etc.) of the compensation amount paid for that beneficiary in the initial year of the six-year cycle. These new regulations are necessary to achieve the original intent of the September 18, 2008 regulations. We recognize this is a significant change in approach to a compensation structure from September 18, 2008, interim final rule with comment period, where the first year in the six-year cycle could not exceed 200 percent of the amount paid for renewal years, which was modeled after the National Association of Insurance Commissioner's compensation requirements for Medicare supplemental policies. We are making this change, however, to modify the difference between initial year compensation rates and renewal rates to better ensure that agents and brokers enroll beneficiaries in a plan that is intended to best meet the beneficiaries' health care needs.

We do not currently have the administrative capability to communicate to plans as part of our enrollment acceptance process whether an individual enrolling in a plan in 2009 is a new enrollee to Part C or Part D, or an individual who, under the compensation structure provided for in this interim final rule, is subject to the renewal compensation level rather than the initial compensation level. Thus, we are in this interim final rule, for 2009 only, initially deeming all individuals enrolling in a plan to be in the first year of the five renewal years in the six-year cycle provided for under these regulations.

This means that for enrollments with effective dates in 2009, the MA or PDP plan initially pays the renewal compensation amount to the broker or agent enrolling an individual. Several times in 2009, we will run a report identifying those beneficiaries enrolled in an MA plan or PDP who were newly entitled or enrolled from original Medicare. We will sort the report by plan and send each organization the list of enrollees in a plan offered by that organization, for which, if an agent or broker wrote the policy, that agent or broker would be entitled to an initial compensation amount. Organizations can use the report to identify the agents or brokers who are entitled to an initial compensation amount.

Under this interim final rule, organizations will be required to adjust the compensation from renewal compensation in these cases only to the amount that would have been paid in compensation for an initial enrollment under the six year cycle in question. For the remainder of 2009, this interim final rule requires that organizations pay agents and brokers an initial compensation when a beneficiary enrolls in an MA plan during the beneficiary's Initial Coverage Election Period (ICEP) or in a PDP during the Initial Enrollment Period (IEP). This approach enables organizations to compensate agents and brokers for the

additional work involved in explaining all of the attributes of an MA plan (and the Part C program generally) or a PDP (and the Part D program generally) to a beneficiary who has had no prior experience with Part C or Part D, while at the same time reducing the financial incentive for moving a beneficiary who is in a renewal cycle (and is thus already familiar with these types of products) to a new plan that may be contrary to his or her health care needs.

In addition to the above changes to the September 18, 2008 regulations, we are also in this interim final rule addressing the amount paid in agent and broker compensation for 2009 and beyond. We have received information that some organizations are proposing to offer extremely generous compensation in 2009 far in excess of amounts paid for the previous three years by the organization in question, or substantially in excess of the amounts paid generally in the area for the plan type involved. We are concerned about the financial incentive to enroll beneficiaries in a new plan that is created by the potential for an agent or broker to receive such a substantial increase in compensation relative to the amount he or she would be paid for a renewal in the beneficiary's current plan. We also believe that these excessive compensation structures are detrimental to sustaining an enrollee's long term relationship with the plan in which he or she is enrolled.

In order to protect against the incentive that such a substantially higher compensation level may create to enroll beneficiaries in a different plan even when doing so might not be in their best interest, and to ensure that beneficiaries' long term relationships with their plans are preserved for as long as they are in the beneficiary's interest, we are also in this interim final rule establishing a requirement that compensation levels under the new regulatory scheme must satisfy one of two regulatory standards. For an organization that offered plans in 2006, and used agents and brokers to sell its Medicare products, the MA organization or PDP sponsor offering the plan can comply with our new rules if the ''initial year'' compensation under the six-year cycle provided for under this rule is the same, adjusted for inflation, that was paid for the same plan type in the same area by the MA or PDP organization, as applicable, in 2006, and the MA or PDP organization certifies to that effect. The inflation adjustment will be based on the average change in MA plan growth rates for MA organizations and Part D growth rates for Part D organizations, as published in the MA and Part D rate announcements published on the first Monday in April. Because 2009 is initially deemed to be the first renewal year in the six-year cycle, this means that the organization will initially pay 50 percent of the inflation adjusted amount of the initial enrollment compensation it paid in 2006 for the plan type in question. Unless the 2009 compensation amount is adjusted to be changed to an initial enrollment compensation amount as discussed above, this renewal amount will also be paid by the current organization for the remainder of the renewal years in the six-year cycle (for example, 2010 through 2013), assuming that the enrollee remained enrolled in the current organization in the same plan type. If an agent or broker moves the enrollee to a like-plan type in a different organization, the new organization will pay renewal compensation for the remainder of the cycle at the new (receiving) organization's renewal compensation amount.

Organizations that offered plans in an area in 2006 will also have another option, which will be the only option for organizations that did not offer a plan of the type in question in the area involved in 2006 or did offer a plan of the type in question in 2006, but did not use agents and brokers to sell that product. Under this alternate test, renewal compensation initially paid in 2009 must be 50 percent of an initial rate that was determined, based on market analysis to be commensurate with the ''market'' rates paid by all organizations in the geographic area for an initial enrollment in the plan type in question during 2006 and 2007, also adjusted for inflation based on changes in MA and Part D growth rates. Essentially, any rates in excess of what was paid by organizations in the area must be justified. We will reserve the right to determine, based on data we receive from MA and Part D contractors, whether the compensation amount proposed meets this test. See the chart below for a reference regarding the required six-year compensation cycle. We note that for purposes of both of the foregoing tests, the ''area'' in which the plan is offered corresponds to the area the organization uses to determine any geographic adjustments to the amount of compensation paid. If the organization pays the same amount in each county, or MSA, or Statewide, that would be the area in question.

For 2010 and subsequent years, the compensation amount paid to an agent or broker for an initial enrollment of a Medicare beneficiary into an MA or PDP plan is the prior year's compensation adjusted by the change in MA rates for MA plans as published in the MA rate announcement and the change in the Part D rates for PDP plans as published in the Part D rate announcement. CMS releases annually the rate announcements for MA and Part D to publish on the first Monday in April.

We have removed and reserved § 422.2274(a)(2) and § 423.2274(a)(2) as it is redundant to § 422.2274(a)(1)(iii) and § 423.2274(a)(1)(iii) in this rule.

We invite comment on the extent to which the compensation structure, or some alternative compensation structure, will promote long-term relationships (that are based on the beneficiaries' interests) between beneficiaries and the plans in which they are enrolled. We are particularly interested in comments on whether this goal would be served (1) by providing for higher levels of compensation for an initial enrollment in Part C or Part D (given the added costs of explaining how the programs work) than for a change in enrollment from one Part C plan or Part D plan to another, (2) by establishing a flat fee schedule, or (3) by providing for lower payments in early years and higher payments in the renewal years, or in later renewal years, to incentivize agents or brokers to keep enrollees in the same plan rather than giving them an incentive to move enrollees.

We note that, to the extent that the high levels of agent or broker compensation that have been reported are already in place for 2008, and were not included in bids for 2008, we intend to ensure in our review of bids for 2010 that these additional uncovered costs are not included in 2010 bid amounts. Similarly, if the compensation paid for 2009, even under this new interim final rule, exceeds the amount assumed in the bids submitted this spring for 2009, we will similarly ensure in our bid review that these 2009 costs are not built into bids for 2010.

These new requirements will apply to the compensation paid to the agent or broker who actually enrolls the beneficiary, whether that agent or broker is paid directly by the MA organization or PDP sponsor, or by an intermediate entity, such as a ''Field Marketing Organization'' (FMO) or similar type entity that has been retained to sell a plan's Medicare products on its behalf.

We are also concerned about amounts paid to FMOs or other similar type entities for their services that do not necessarily flow down to the agent or broker who deals with the beneficiary. Examples of such services are training, material development, customer service, direct mail, and agent recruitment.

Specifically, we are concerned that these FMOs or other similar entities could engage in a ''bidding war'' with respect to payments they retain, agree to contract to recruit agents, or perform other services only for MA and PDP organizations that are the ''highest bidders'' for their services. Thus, in this interim final rule, in addition to limiting the compensation that is ultimately paid to agents or brokers as set forth above, we are requiring that, for organizations that contract with FMOs or pay other similar type entities, any amount paid to such a third party must be fair-market value and may not exceed an amount that is commensurate with the amount that organization paid to a third party for similar services in each of the prior two years.

Finally, we have learned that some organizations did not post their compensation structures by October 15, 2008, but instead posted them after they had the opportunity to review competitors' compensation structure postings. In fact, it appears that some organizations have yet to post their compensation levels. In light of the new requirements set forth in this interim final rule with comment period, MA and PDP organizations must submit compensation structures paid for the 3 previous years, and the compensation structures for the upcoming plan year in accordance with our instructions. This information must be submitted to the following mailbox: *MA_PDPSales Compensation@cms.hhs.gov* (there is an underscore between ''MA_PDP'') no later than the date we specify. For MA and PDP organizations that did not sell products through agents and brokers in any of these years, they would not be required to provide information for those years. Nevertheless, all MA and PDP organizations must respond to the data requests in accordance with our instructions. In addition, if the MA and PDP organization contracts with an FMO or other third party, the compensation structure paid to each third party in each of the past three years, and the compensation structure for 2009, should be reported.

We will consider an organization that does not submit compensation structure information for the appropriate years to us by the date indicated to be out of compliance with our marketing requirements and the organization will face potential sanctions and/or other penalties. An organization's submission must include a signed certification from its CEO or CFO (or other authorized senior official). MA and PDP organizations must distribute their rates by November 15, 2008 to agents, brokers, and other third parties under contract to sell Medicare Advantage and Part D plans. Once plans distribute their 2009 compensation rates and submit that information to CMS, they cannot change the rate without prior CMS approval.

Based on public comments and discussions with the industry, we realize that while our current compensation regulations are relevant to the way independent agents and brokers are compensated, the relationship and compensation arrangements between MA and Part D organizations and employed agents is very different. As a result, the new compensation requirements in this interim final rule will not apply to employed agents. CMS considers agents employed if the employed agent sells exclusively for one organization and receives a set salary in addition to any compensation tied to volume of sales. We are interested in receiving public comments on what, if any, compensation requirements should apply to employed agents.

In accordance with the above new requirements, we will investigate outliers whose current compensation is not reasonable in light of the compensation paid during the previous three years and compensation paid in that geographic area by similar plan types to ensure that organizations are in compliance with our requirements and take enforcement action as appropriate, including requiring organizations to be prepared to adjust the compensation rates submitted to CMS, or to take other steps to ensure that beneficiaries' interests are not harmed by the excessive compensation paid. In addition, as noted in the preamble to the September 18, 2008 interim final rule (73 FR 54239), all parties should be mindful that their compensation arrangements including arrangements with FMOs and other similar type entities must comply with the fraud and abuse laws, including the anti-kickback statute.

REQUIRED SIX-YEAR COMPENSATION CYCLE

Year 1—''Initial year compensation''	Year 2—''Renewal compensation'' (2009)	Year 3—''Renewal compensation ''	Year 4—''Renewal compensation ''	Year 5—''Renewal compensation ''	Year 6—''Renewal compensation ''
While not initially applicable for 2009, the first year compensation assumed as part of the six-year cycle will either be the amount paid by the MA organization or PDP sponsor for the plan type in question in the area for 2006, or an amount commensurate with the market rate in the area for the plan type in 2006 and 2007, adjusted for inflation. This rate will apply in 2009 if an adjustment is required in the case of a beneficiary new to Part C or Part D.	This amount must be no more and no less than half the assumed initial amount under the six-year cycle.	Same amount as year 2.	Same amount as year 2.	Same amount as year 2.	Same amount as year 2.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking, Full 60-Day Comment Period, and Delay in Effective Date

A. Waiver of Proposed Rulemaking and Full 60-Day Comment Period

We ordinarily publish a notice of proposed rulemaking in the **Federal**

Register and allow a 60-day public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. In addition, under section 1871(b)(1)(B) of the Act, prior notice and comment are not required when ''a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment'' of the statute in which the deadline is contained. The MIPPA was enacted on July 15, 2008. The deadline for issuing the compensation rules included in this interim final rule with comment period are required by MIPPA to be in effect on a date specified by the Secretary, but no later than November 15, 2008, which is less than 150 days after enactment of MIPPA. For this reason, we find good cause to waive the proposed rulemaking requirement and to shorten the customary 60-day comment period to 30 days.

B. Waiver of Delay of Effective Date

In addition, since the provision discussed above which is required by statute to be in effect by a date specified by the Secretary, but in no case later than November 15, 2008, we find good cause to waive the 30-day delay in effective date that would otherwise apply under section 1871(e)(1)(B)(i) of the Act and section 553(d) of the Administrative Procedure Act (APA).

Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act ordinarily require that a regulation be effective no earlier than 30 days after publication. Under section 553(d)(3) this requirement can be waived for good cause, and under section 1871(e)(1)(B)(ii) this requirement can be waived if necessary to comply with statutory requirements, or if a delay is contrary to the public interest.

As noted above, Congress enacted MIPPA on July 15, 2008 and directed that many of the marketing provisions including the provision related to agent/broker compensation in this rule be effective on a date specified by the Secretary, but in no event later than November 15, 2008, so that they could be implemented in time for this fall's marketing for the 2009 plan year. As a result, we find good cause to waive the APA delay of effective date, and find that a delay under section 1871 is contrary to the public interest.

In addition, 5 U.S.C. section 801 generally requires that agencies submit major rules to the Congress 60 days before the rules are scheduled to become effective. This delay does not apply, however, when there has been a finding of good cause for waiver of prior notice and comment as set forth above.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

A. ICRs Regarding Broker and Agent Compensation and Training of Sales Agents (§ 422.2274)

Section 422.2274(d) states that upon CMS' request, the organization must provide to CMS the information necessary for it to conduct oversight of marketing activities. Specifically, we are requiring all Medicare Advantage plans to post revised compensation structures to brokers or agents that conform precisely to our regulations and guidance (for 2009, these rates must be posted by November 15, 2008). We are further requiring organizations to submit their compensation structures for the previous years plus the current year to CMS (for example, 2009 plans must submit 2006 through 2009). In addition to the compensation structures, every complete submission must include a signed certification from the organization's CEO or CFO (or other authorized senior official). The burden associated with this requirement is the time and effort put forth by the organization to post the compensation structures and to provide the structures and certification to CMS.

We anticipate it would take 1 organization 56 hours to fulfill this requirement. We estimate 670 MA organizations would be affected annually by this requirement. Therefore, the total annual burden associated with this requirement is 37,520 hours.

In this interim final rule with comment period, we are collecting additional information to implement § 422.2274(d). We submitted a revision of the currently approved information collection request assigned to OMB control number 0938–0753. The information collection requirements contained in § 422.2274(d) will be included in the revised information collection request.

B. ICRs Regarding Broker and Agent Compensation and Training of Sales Agents (§ 423.2274)

Section 423.2274(d) states that the Part D sponsor provide information for it to conduct oversight of marketing activities upon CMS' request. Specifically, we are requiring all Medicare Prescription Drug Plans to post revised compensation structures to brokers or agents that conform precisely to our regulations and guidance (for 2009, these rates must be posted by November 15, 2008). We are further requiring organizations to submit their compensation structures for the 3 previous years plus the current year to CMS (for example, 2009 plans must submit 2006 through 2009). In addition to the compensation structures, every complete submission must include a signed certification from the organization's CEO or CFO (or other authorized senior official). The burden associated with this requirement is the time and effort put forth by the organization to post the compensation structures and to provide the structures and certification to CMS.

We anticipate it would take 1 Part D sponsor 49 hours to fulfill this requirement. We estimate 87 Part D sponsors would be affected annually by this requirement. Therefore, the total annual burden associated with this requirement is 4,263 hours.

The information collection requirements contained in § 423.2274 were submitted to OMB for approval as part of an emergency revision of the currently approved information collection request assigned to OMB Control Number 0938–0964.

As reflected in the table that follows, the aggregate annual burden associated

with the collection of information section for this rule totals 41,783 hours.

TABLE 2—AGGREGATE ANNUAL BURDEN

OMB control No.	Requirements	Number of respondents	Burden per response (hours)	Total annual burden (hours)
0938–0753	422.2274(d)	670	56	37,520
0938–0964	423.2274(d)	87	49	4,263
Total				41,783

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this rule; or

2. Mail copies to the address specified in the **ADDRESSES** section of this rule and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: CMS Desk Officer, CMS–4138–IFC2, Fax (202) 395–6974.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As a result of our analysis, this interim final rule does not meet the threshold of being economically significant and is consequently not a major rule.

B. Regulatory Flexibility Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has significant impact on a substantial number of small entities. Under the RFA, we are not required to conduct an initial regulatory flexibility analysis for interim final rules. However, it is our longstanding policy to provide an analysis when we believe it would aid understanding of the effects of the interim final rule. We are providing a summary of the minimal costs associated with this interim final rule. Costs for preparing and reporting compensation structures to CMS are as follows: MA program $54.98 × 37,520 hours = $2,062,849. Costs for the PDP program are $54.98 × 4,263 hours = $234,379. The aggregate new burden costs are estimated to be $2,297,228.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. That threshold level is currently approximately $130 million. We anticipate that this interim final rule would not impose costs above the $130 million UMRA threshold on State, local, tribal governments, in the aggregate or by the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The changes and additions contained in this interim final rule do not impose new costs on states or local governments. Thus, there are no anticipated Federalism implications.

C. Conclusion

Given that we expect the cost of implementing this provision to be minimal and under the $100 million threshold; we did not conduct a full economic impact analysis with regard to those entities potentially impacted by these provisions, as outlined by the regulatory flexibility analysis or Section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart V—Medicare Advantage Marketing Requirements

■ 2. Section 422.2274 is amended by—

■ A. Revising the introductory paragraph.

■ B. Revising paragraph (a)(1).

■ C. Removing and reserving paragraph (a)(2).

The revisions read as follows:

§ 422.2274 Broker and agent requirements.

For purposes of this section ''compensation'' includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to, commissions, bonuses, gifts, prizes,

awards and finders fees.
''Compensation'' does not include the payment of fees to comply with State appointment laws, training, certification, and testing costs; reimbursement for mileage to, and from, appointments with beneficiaries; or reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials. If a Medicare Advantage organization markets through independent (i.e., non-employee) brokers or agents, the following requirements must be met:

(a) * * *

(1) An MA organization (or other entity on its behalf) may provide compensation to a broker or agent for the sale of an MA product if the following requirements are met:

(i) The compensation amount paid to the broker or agent for an initial enrollment of a Medicare beneficiary into an MA plan in 2009 is one of the following:

(A) The compensation paid by the MA organization in the geographic area for initial enrollment for the plan type in question in 2006, adjusted by the average change in MA rates as published by CMS in the MA rate announcement; or

(B) A compensation amount commensurate with the market rate for initial enrollments paid by (or on behalf of) MA organizations offering plans in the geographic area for the plan type in question during 2006 and 2007, adjusted by the average change in MA rates as published by CMS in the MA rate announcement.

(ii) For 2010 and subsequent years, the compensation amount paid to an agent or broker for enrollment of a Medicare beneficiary into an MA plan is:

(A) For an initial enrollment, the prior year's initial compensation adjusted by the change in MA rates that CMS announces each year.

(B) For renewals, an amount equal to 50 percent of the initial compensation in (A) above.

(iii) The broker or agent is paid a renewal compensation for each of the next 5 years the enrollee remains in the plan in an amount equal to 50 percent of the initial year compensation amount (creating a 6-year compensation cycle). For purposes of paragraph (a)(1)(i), individuals enrolling in an MA plan in 2009 are initially deemed to be in the first renewal year (the second year) in the 6-year cycle. With respect to an individual identified by the MA organization as in an Initial Coverage Election Period (ICEP) or subsequently identified by CMS as in an ICEP or new to the MA program, the individual is considered to be in the initial year of the 6-year cycle. The MA organization must adjust the compensation paid for these new enrollees from renewal compensation to the amount that would have been paid for an initial enrollment under the 6-year compensation structure initiated in the year the enrollment occurred.

(iv) If the MA organization contracts with a third party entity such as a Field Marketing Organization or similar type entity to sell its insurance products, or perform services (for example, training, customer service, or agent recruitment), the amount paid to the third party must be fair-market value and must not exceed an amount that is commensurate with the amounts paid by the MA organization to a third party for similar services during each of the previous 2 years.

(2) Reserved

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 3. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart V—Part D Marketing Requirements

■ 4. Section 423.2274 is amended by—
■ A. Revising the introductory paragraph.
■ B. Revising paragraph (a)(1).
■ C. Removing and reserving (a)(2).
The revisions read as follows:

§ 423.2274 Broker and agent requirements.

For purposes of this section ''compensation'' includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to, commissions, bonuses, gifts, prizes, awards and finders fees.
''Compensation'' does not include the payment of fees to comply with State appointment laws, training, certification, and testing costs; reimbursement for mileage to, and from, appointments with beneficiaries; or reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials. If a Part D sponsor markets through independent (i.e., non-employee) brokers or agents, the following requirements must be met:

(a) * * *

(1) A Part D sponsor (or other entity on its behalf) may provide compensation to a broker or agent for the sale of a Part D plan only if the following requirements are met:

(i) The compensation amount paid to the broker or agent for an initial enrollment of a Medicare beneficiary into a PDP in 2009 is either one of the following:

(A) The compensation paid by the Part D sponsor in the area for an initial enrollment for the plan type in question in 2006, adjusted by the average change in Part D rates as published by CMS in the Part D rate announcement; or

(B) A compensation amount commensurate with the market rate for initial enrollments paid by (or on behalf of) Part D sponsors offering plans in the geographic area for the plan type in question during 2006 and 2007, adjusted by the average change in Part D rates as published in the Part D rate announcement by CMS.

(ii) For 2010 and subsequent years, the compensation amount paid to an agent or broker for enrollment of a Medicare beneficiary into PDP is:

(A) For an initial enrollment, the prior year's initial compensation adjusted by the change in Part D rates that CMS announces each year.

(B) For renewals, an amount equal to 50 percent of the initial compensation in (A) above.

(iii) The broker or agent is paid a renewal compensation for each of the next 5 years the enrollee remains in the plan in an amount equal to 50 percent of the initial year compensation paid (creating a 6-year compensation cycle). For purposes of paragraph (a)(1)(i), individuals enrolling in a PDP in 2009 are initially deemed to be in the first renewal year (the second year) in the 6-year cycle. With respect to an individual identified by the PDP sponsor as in an Initial Enrollment Period (IEP) or subsequently identified by CMS as in an IEP or new to the Part D program, the individual is considered to be in the initial year of the 6-year cycle. The PDP Sponsor must adjust the compensation paid for these new enrollees from renewal compensation to the amount that would have been paid for an initial enrollment under the 6-year compensation structure initiated in the year the enrollment occurred.

(iv) If the Part D sponsor contracts with a third party entity such as a Field Management Organization or similar type entity to sell its insurance products or perform services (for example, training, customer service, or agent recruitment), the amount paid to the third party must be fair-market value and must not exceed an amount that is commensurate with the amounts paid by the PDP organization to a third party

for similar services during each of the previous 2 years.

(2) Reserved.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 31, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 7, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–27041 Filed 11–10–08; 12:55 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–8051]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

Previously, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
North Carolina:				
Andrews, Town of, Cherokee County ...	370060	July 29, 1975, Emerg; February 1, 1985, Reg; November 19, 2008, Susp.	Nov. 19, 2008 ...	Nov. 19, 2008.
Cherokee County, Unincorporated Areas.	370059	July 18, 1979, Emerg; February 2, 1989, Reg; November 19, 2008, Susp.	.....do*	Do.
Clay County, Unincorporated Areas	370063	March 9, 1994, Emerg; April 1, 1999, Reg; November 19, 2008, Susp.	.....do	Do.
Hayesville, Town of, Clay County	370431	December 23, 2002, Emerg; —, Reg; November 19, 2008, Susp.	.....do	Do.
Murphy, Town of, Cherokee County	370061	April 30, 1975, Emerg; July 3, 1986, Reg; November 19, 2008, Susp.	.....do	Do.
South Carolina:				
Bishopville, Town of, Lee County	450127	June 17, 1975, Emerg; July 1, 1988, Reg; November 19, 2008, Susp.	.....do	Do.
Lee County, Unincorporated Areas	450126	November 19, 1990, Emerg; December 15, 1990, Reg; November 19, 2008, Susp.	.....do	Do.
Lynchburg, Town of, Lee County	450128	December 15, 1986, Emerg; February 1, 1991, Reg; November 19, 2008, Susp.	.....do	Do.
Region V				
Wisconsin:				
Big Bend, Village of, Waukesha County	550477	August 19, 1974, Emerg; March 1, 1984, Reg; November 19, 2008, Susp.	.....do	Do.
Brookfield, City of, Waukesha County ..	550478	February 23, 1972, Emerg; August 19, 1986, Reg; November 19, 2008, Susp.	.....do	Do.
Butler, Village of, Waukesha County	550536	March 7, 1974, Emerg; May 15, 1978, Reg; November 19, 2008, Susp.	.....do	Do.
Delafield, City of, Waukesha County	550479	July 15, 1975, Emerg; August 15, 1983, Reg; November 19, 2008, Susp.	.....do	Do.
Dousman, Village of, Waukesha County	550480	June 30, 1975, Emerg; April 17, 1987, Reg; November 19, 2008, Susp.	.....do	Do.
Hartland, Village of, Waukesha County	550481	July 25, 1975, Emerg; December 1, 1982, Reg; November 19, 2008, Susp.	.....do	Do.
Lac La Belle, Village of, Waukesha County.	550565	May 25 1976, Emerg; January 18, 1984, Reg; November 19, 2008, Susp.	.....do	Do.
Lannon, Village of, Waukesha County ..	550482	July 18, 1975, Emerg; December 1, 1982, Reg; November 19, 2008, Susp.	.....do	Do.
Menomenee Falls, Village of, Waukesha County.	550483	November 12, 1973, Emerg; September 15, 1978, Reg; November 19, 2008, Susp.	.....do	Do.
Mukwonago, Village of, Waukesha County.	550485	February 18, 1975, Emerg; July 5, 1985, Reg; November 19, 2008, Susp.	.....do	Do.
Muskego, City of, Waukesha County	550486	April 12, 1974, Emerg; December 1, 1982, Reg; November 19, 2008, Susp.	.....do	Do.
New Berlin, City of, Waukesha County	550487	May 18, 1973, Emerg; March 18, 1987, Reg; November 19, 2008, Susp.	.....do	Do.
Oconomowoc, City of, Waukesha County.	550488	May 1, 1975, Emerg; September 1, 1983, Reg; November 19, 2008, Susp.	.....do	Do.
Oconomowoc Lake, Village of, Waukesha County.	550582	July 29, 1975, Emerg; October 16, 1984, Reg; November 19, 2008, Susp.	.....do	Do.
Pewaukee, Village of, Waukesha County.	550489	March 24, 1975, Emerg; June 15, 1982, Reg; November 19, 2008, Susp.	.....do	Do.
Sussex, Village of, Waukesha County ..	550490	June 24, 1975, Emerg; June 19, 1989, Reg; November 19, 2008, Susp.	.....do	Do.
Waukesha, City of, Waukesha County	550491	April 2, 1974, Emerg; September 2, 1982, Reg; November 19, 2008, Susp.	.....do	Do.
Waukesha County, Unincorporated Areas.	550476	May 25, 1973, Emerg; August 1, 1983, Reg; November 19, 2008, Susp.	.....do	Do.
Region VII				
Kansas:				
Cherokee County, Unincorporated Areas.	200044	May 10, 1985, Emerg; August 5, 1991, Reg; November 19, 2008, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 4, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–27039 Filed 11–13–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modication	Community No.
Alabama:					
Jefferson (FEMA Docket No.: B–7797).	City of Birmingham (08–04–2759P).	June 20, 2008; June 27, 2008; *The Birmingham News.*	The Honorable Larry P. Langford, Mayor, City of Birmingham, 710 North 20th Street, Birmingham, AL 35203.	July 28, 2008	010116
Madison (FEMA Docket No.: B–7789).	City of Huntsville (08–04–1222P).	May 9, 2008; May 16, 2008; *Madison County Record.*	The Honorable Loretta Spencer, Mayor, City of Huntsville, P.O. Box 308, Huntsville, AL 35804.	September 15, 2008	010153
Tuscaloosa (FEMA Docket No.: B–7793).	City of Tuscaloosa (08–04–1080P).	June 11, 2008; June 18, 2008; *The Northport Gazette.*	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35403.	October 16, 2008	010203
Arizona:					
Mohave (FEMA Docket No.: B–7788).	City of Kingman (08–09–0713P).	May 14, 2008; May 21, 2008; *Kingman Daily Miner.*	The Honorable Lester Byram, Mayor, City of Kingman, 310 North Fourth Street, Kingman, AZ 86401.	September 18, 2008	040060

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modication	Community No.
Mohave (FEMA Docket No.: B–7788).	Unincorporated areas of Mohave County (08–09–0713P).	May 14, 2008; May 21, 2008; *Kingman Daily Miner*.	The Honorable Pete Byers, Chairman, Mohave County, Board of Supervisors, 700 West Beale Street, Kingman, AZ 86401.	September 18, 2008	040058
Pima (FEMA Docket No.: B–7793).	City of Tucson (08–09–0001P).	June 6, 2008; June 13, 2008; *The Daily Territorial*.	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, AZ 85726.	May 23, 2008	040076
California:					
Placer (FEMA Docket No.: B–7789).	City of Lincoln (07–09–0934P).	May 21, 2008; May 28, 2008; *Roseville Press-Tribune*.	The Honorable Primo Santini, Mayor, City of Lincoln, 640 Fifth Street, Lincoln, CA 95648.	September 25, 2008	060241
Placer (FEMA Docket No.: B–7789).	Unincorporated areas of Placer County (07–09–0934P).	May 21, 2008; May 28, 2008; *Roseville Press-Tribune*.	The Honorable Jim Holmes, Chairman, Placer County, Board of Supervisors, 175 Fulweiler Avenue, Auburn, CA 95603.	September 25, 2008	060239
Shasta (FEMA Docket No.: B–7789).	Unincorporated areas of Shasta County (08–09–0622P).	May 21, 2008; May 28, 2008; *Valley Post*.	The Honorable Mark Cibula, Supervisor, District Two, Shasta County, 1450 Court Street, Suite 308 B, Redding, CA 96001.	September 25, 2008	060358
Colorado:					
Adams (FEMA Docket No.: B–7797).	City of Thornton (08–08–0377P).	June 5, 2008; June 12, 2008; *Northglenn-Thornton Sentinel*.	The Honorable Erik Hansen, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	October 10, 2008	080007
Douglas (FEMA Docket No.: B–7788).	Town of Castle Rock (08–08–0159P).	May 15, 2008; May 22, 2008; *Douglas County News-Press*.	The Honorable Randy Reed, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	September 19, 2008	080050
Routt (FEMA Docket No.: B–7793).	Unincorporated areas of Routt County (08–08–0085P).	June 8, 2008; June 15, 2008; *Steamboat Pilot*.	The Honorable Nancy Stahoviak, Chairperson, Routt County Board of County Commissioners, P.O. Box 3598, Steamboat Springs, CO 80477.	May 30, 2008	080156
Routt (FEMA Docket No.: B–7793).	City of Steamboat Springs (08–08–0085P).	June 8, 2008; June 15, 2008; *Steamboat Pilot*.	The Honorable Paul Antonucci, City Council President, City of Steamboat Springs, P.O. Box 775088, Steamboat Springs, CO 80477.	May 30, 2008	080159
Florida:					
Orange (FEMA Docket No.: B–7793).	Unincorporated areas of Orange County (05–04–1535P).	June 5, 2008; June 12, 2008; *Orlando Weekly*.	The Honorable Richard T. Crotty, Mayor, Orange County, 201 South RosaLind Avenue, Fifth Floor, Orlando, FL 32801.	October 10, 2008	120179
Seminole (FEMA Docket No.: B–7797).	City of Winter Springs (08–04–4157P).	June 18, 2008; June 25, 2008; *Orlando Sentinel*.	The Honorable John F. Bush, Mayor, City of Winter Springs, 21 Tarpon Circle, Winter Springs, FL 32708.	October 23, 2008	120295
Idaho: Madison (FEMA Docket No.: B–7797).	Unincorporated areas of Madison County (08–10–0206P).	July 3, 2008; July 10, 2008; *Standard Journal*.	The Honorable Ralph Robison, Chairman, Madison County Board of Commissioners, P.O. Box 389, Rexburg, ID 83440.	June 16, 2008	160217
Lake (FEMA Docket No.: B–7797).	Unincorporated areas of Lake County (08–05–1098P).	June 5, 2008; June 12, 2008; *Lake County News-Sun*.	The Honorable Suzi Schmidt, Chair, Lake County Board, 18 North County Street, Room 1001, Waukegan, IL 60085.	October 10, 2008	170357
Illinois:					
Lake (FEMA Docket No.: B–7797).	Village of Lake Barrington (08–05–1098P).	June 5, 2008; June 12, 2008; *Lake County News-Sun*.	The Honorable Kevin Richardson, President, Village of Lake Barrington, 23860 Old Barrington Road, Lake Barrington, IL 60010.	October 10, 2008	170372
Lake (FEMA Docket No.: B–7797).	Village of North Barrington (08–05–1098P).	June 5, 2008; June 12, 2008; *Lake County News-Sun*.	The Honorable Bruce J. Sauer, President, Village of North Barrington, 111 Old Barrington Road, North Barrington, IL 60010.	October 10, 2008	170383
McHenry (FEMA Docket No.: B–7793).	Unincorporated areas of McHenry County (08–05–1169P).	June 12, 2008; June 19, 2008; *Northwest Herald*.	The Honorable Kenneth D. Koehler, Chairman, McHenry County Board, McHenry County Government Center, 2200 North Seminary Avenue, Woodstock, IL 60098.	October 17, 2008	170732
McHenry (FEMA Docket No.: B–7793).	City of Woodstock (08–05–1169P).	June 12, 2008; June 19, 2008; *Northwest Herald*.	The Honorable Brian Sager, Mayor, City of Woodstock, 121 West Calhoun Street, Woodstock, IL 60098.	October 17, 2008	170488
Will County (FEMA Docket No.: B–7793).	Village of Frankfort (07–05–5331P).	June 12, 2008; June 19, 2008; *Daily Southtown*.	The Honorable Jim Holland, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	July 17, 2008	170701
Will County (FEMA Docket No.: B–7793).	Unincorporated areas of Will County (08–05–1175P).	June 18, 2008; June 25, 2008; *Herald News*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	October 23, 2008	170695
Indiana:					
Allen (FEMA Docket No.: B–7793).	City of Fort Wayne (08–05–1821P).	June 13, 2008; June 20, 2008; *The Journal Gazette*.	The Honorable Tom Henry, Mayor, City of Fort Wayne, One Main Street, Fort Wayne, IN 46802.	June 3, 2008	180003

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modication	Community No.
Marion (FEMA Docket No.: B–1001).	City of Indianapolis (08–05–2727P).	July 8, 2008; July 15, 2008; *Indianapolis Star*.	The Honorable Gregory A. Ballard, Mayor, City of Indianapolis, 200 East Washington Street, Indianapolis, IN 46204.	June 25, 2008	180159
Kansas: Sedgwick (FEMA Docket No.: B–7789).	City of Goddard (08–07–0155P).	May 29, 2008; June 6, 2008; *Wichita Eagle*.	The Honorable Marcey Gregory, Mayor, City of Goddard, P.O. Box 667, Goddard, KS 67052.	May 21, 2008	200500
Maryland: Washington (FEMA Docket No.: B–1001).	Unincorporated areas of Washington County (08–03–0660P).	June 4, 2008; June 11, 2008; *The Herald-Mail*.	The Honorable John Barr, President, Washington County Commissioners, 100 West Washington Street, Room 226, Hagerstown, MD 21740.	October 9, 2008	240070
Minnesota:					
Anoka (FEMA Docket No.: B–7797).	City of Blaine (08–05–1446P).	June 6, 2008; June 13, 2008; *Blaine-Spring Lake Park Life*.	The Honorable Thomas Ryan, Mayor, City of Blaine, 10801 Town Square Drive Northeast, Blaine, MN 55449.	October 13, 2008	270007
St. Louis (FEMA Docket No.: B–7793).	City of Duluth (07–05–3554P).	June 12, 2008; June 19, 2008; *Duluth News Tribune*.	The Honorable Don Ness, Mayor, City of Duluth, 411 West First Street, Duluth, MN 55802.	October 17, 2008	270421
Missouri:					
St. Louis (FEMA Docket No.: B–7788).	Town of Huntleigh (08–07–0367P).	May 17, 2008; May 24, 2008; *The Countian*.	The Honorable Paul Von Gontard, Mayor, Town of Huntleigh, One City Center, Suite 1500, 2845 South Lindbergh Boulevard, St. Louis, MO 63101.	September 19, 2008	290359
St. Louis (FEMA Docket No.: B–7788).	City of Ladue (08–07–0367P).	May 17, 2008; May 24, 2008; *The Countian*.	The Honorable Irene Holmes, Mayor, City of Ladue, 9345 Clayton Road, St. Louis, MO 63124.	September 19, 2008	290363
Montana: Flathead (FEMA Docket No.: B–7797).	Unincorporated areas of Flathead County (08–08–0430P).	June 13, 2008; June 20, 2008; *Daily Inter Lake*.	The Honorable Gary D. Hall, Chairman, Flathead County Board of Commissioners, 800 South Main Street, Kalispell, MT 59901.	June 2, 2008	300023
Nevada: Clark (FEMA Docket No.: B–7789).	City of Henderson (08–09–0980X).	May 22, 2008; May 29, 2008; *Las Vegas Review-Journal*.	The Honorable James B. Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, NV 89015.	September 17, 2008	320005
Pennsylvania: Dauphin (FEMA Docket No.: B–7793).	Township of West Hanover (08–03–0651P).	June 12, 2008; June 19, 2008; *The Patriot News*.	The Honorable Larry Hartman, Chair, Board of Supervisors, West Hanover Township, 7171 Allentown Boulevard, Harrisburg, PA 17112.	October 17, 2008	421600
South Carolina: Jasper (FEMA Docket No.: B–7788).	Town of Hardeeville (08–04–3462P).	May 9, 2008; May 16, 2008; *Beaufort Gazette*.	The Honorable A. Brooks Willis, Mayor, Town of Hardeeville, 205 East Main Street, Hardeeville, SC 29927.	September 15, 2008	450113
Tennessee:					
Coffee (FEMA Docket No.: B–7797).	City of Tullahoma (07–04–5627P).	May 14, 2008; May 21, 2008; *The Tullahoma News*.	The Honorable Troy Bisby, Mayor, City of Tullahoma, 201 West Grundy Street, Tullahoma, TN 37388.	September 18, 2008	470036
Davidson (FEMA Docket No.: B–7788).	Metropolitan Government of Nashville and Davidson County (08–04–0256P).	May 12, 2008; May 19, 2008; *The Tennessean*.	The Honorable Karl Dean, Mayor, Metropolitan Government of Nashville and Davidson County, 100 Metropolitan Courthouse, Nashville, TN 37201.	September 15, 2008	470040
Wilson (FEMA Docket No.: B–7797).	City of Lebanon (08–04–1439P).	May 28, 2008; June 4, 2008; *The Wilson Post*.	The Honorable Don Cox, Mayor, City of Lebanon, 200 North Castle Heights Avenue, Suite 100, Lebanon, TN 37087.	May 16, 2008	270208
Texas:					
Bexar (FEMA Docket No.: B–7788).	Unincorporated areas of Bexar County (08–06–0794P).	May 22, 2008; May 29, 2008; *San Antonio Express-News*.	The Honorable Nelson W. Wolff, Bexar County Judge, 100 Dolorosa Street, Suite 120, San Antonio, TX 78205.	September 19, 2008	480035
Brazos (FEMA Docket No.: B–7789).	Unincorporated areas of Brazos County (07–06–2185P).	May 14, 2008; May 21, 2008; *Bryan College Station Eagle*.	The Honorable Amanda S. Matzke, Brazos County Judge, 300 East 26th Street, Suite 211, Bryan, TX 77803.	September 16, 2008	481195
Brazos (FEMA Docket No.: B–7789).	City of Bryan (07–06–2185P).	May 14, 2008; May 21, 2008; *Bryan College Station Eagle*.	The Honorable D. Mark Conlee, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	September 16, 2008	480082
Ellis (FEMA Docket No.: B–7797).	City of Waxahachie (08–06–0662P).	May 28, 2008; June 4, 2008; *Waxahachie Daily Light*.	The Honorable Joe Jenkins, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75165.	October 2, 2008	480211
Gillespie (FEMA Docket No.: B–7789).	Unincorporated areas of Gillespie County (08–06–0677P).	May 28, 2008; June 4, 2008; *Fredericksburg Standard-Radio Post*.	The Honorable Mark Stroeher, Gillespie County Judge, 101 West Main Street, Fredericksburg, TX 78624.	October 3, 2008	480696
Harris (FEMA Docket No.: B–1001).	Unincorporated areas of Harris County (08–06–0795P).	July 2, 2008; July 9, 2008; *Houston Chronicle*.	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	June 25, 2008	480287
Tarrant (FEMA Docket No.: B–7797).	City of Fort Worth (07–06–2613P).	May 30, 2008; June 6, 2008; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	September 29, 2008	480596
Tarrant (FEMA Docket No.: B–1001).	City of Grapevine (07–06–0439P).	May 30, 2008; June 6, 2008; *Grapevine Courier*.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	September 4, 2008	480598

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modication	Community No.
Williamson (FEMA Docket No.: B–7789).	City of Cedar Park (08–06–1336P).	May 29, 2008; June 5, 2008; *Round Rock Leader*.	The Honorable Bob Lemon, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	May 16, 2008	481282
Williamson (FEMA Docket No.: B–7788).	City of Round Rock (07–06–2411P).	May 13, 2008; May 20, 2008; *Round Rock Leader*.	The Honorable Nyle Maxwell, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	September 17, 2008	481048
Wisconsin:					
Kenosha (FEMA Docket No.: B–7789).	Village of Pleasant Prairie (08–05–2135P).	May 30, 2008; June 6, 2008; *Kenosha News*.	The Honorable John Steinbrink, Village President, Village of Pleasant Prairie, 8640 88th Avenue, Pleasant Prairie, WI 53158.	May 16, 2008	550613
Ozaukee (FEMA Docket No.: B–7797).	Unincorporated areas of Ozaukee County (08–05–1362P).	June 5, 2008; June 12, 2008; *Ozaukee Press*.	The Honorable Robert Brooks, Chairman, Ozaukee County Board, P.O. Box 994, Port Washington, WI 53074–0994.	October 10, 2008	550310
Washington (FEMA Docket No.: B–7788).	Village of Germantown (08–05–2438P).	May 6, 2008; May 13, 2008; *West Bend Daily News*.	The Honorable Thomas Kempinski, President, Village of Germantown, W169 N11504 Biscayne Drive, Germantown, WI 53022.	September 10, 2008	550472

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 5, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–27037 Filed 11–13–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 08–147]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Do-Not-Call Registry, Report and Order (*DNC Report and Order*). This notice is consistent with the DNC *Report and Order*, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the rule.

DATES: Section 64.1200(c)(2) introductory text, published at 73 FR 40185, July 14, 2008 is effective November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Erica McMahon, Consumer Policy Division, Consumer & Governmental Affairs Bureau, at (202) 418–0346.

SUPPLEMENTARY INFORMATION: This document announces that, on October 31, 2008, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *DNC Report and Order*, FCC 08–147, published at 73 FR 40183, July 14, 2008. The OMB Control Number is 3060–0519. The Commission publishes this notice as an announcement of the effective date of the rule. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0519, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to f*cc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on October 31, 2008, for the information collection requirements contained in the Commission's rules at 47 CFR 64.1200(c)(2). The OMB Control Number is 3060–0519. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 49,397 respondents, 135,607,383 responses, total annual burden hours of 625,406 hours, and $4,590,000 in total annual costs. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB 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, which does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–27097 Filed 11–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2305; MB Docket No. 08–108; RM–11451]

Television Broadcasting Services; Casper, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Central Wyoming College, permittee of post-

transition station KPTW–DT, to substitute DTV channel *8 for post-transition DTV channel *6 at Casper, Wyoming.

DATES: The channel substitution is effective December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Commission's Report and Order*, MB Docket No. 08–108, adopted October 7, 2008, and released October 17, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Wyoming, is amended by adding DTV channel *8 and removing DTV channel *6 at Casper.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–27092 Filed 11–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2302; MB Docket No. 08–105; RM–11444]

Television Broadcasting Services; Huntsville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by WAFF License Subsidiary, LCC, licensee of WAFF–DT, to substitute DTV channel 48 for post-transition DTV channel 49 at Huntsville, Alabama.

DATES: Effective December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–105, adopted October 7, 2008, and released October 17, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alabama, is amended by adding DTV channel 48 and removing DTV channel 49 at Huntsville.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–27116 Filed 11–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2304; MB Docket No. 08–109; RM–11452]

Television Broadcasting Services; Sioux City, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by KPTH License, LLC, the licensee of station KPTH–DT, pre-transition DTV channel 49 and assignee of post-transition DTV channel 44, Sioux City, Iowa, requesting the substitution of DTV channel 49 for post-transition DTV channel 44 at Sioux City.

DATES: Effective December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 08–109, adopted October 7, 2008, and released October 17, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail, *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Iowa, is amended by adding DTV channel 49 and removing DTV channel 44 at Sioux City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–27114 Filed 11–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2303; MB Docket No. 08–111; RM–11454]

Television Broadcasting Services; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by KMBC Hearst-Argyle Television, Inc., permittee of station KMBC–DT, to substitute DTV channel 29 for post-transition DTV channel 9 at Kansas City, Missouri.

DATES: Effective December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–111, adopted October 7, 2008, and released October 17, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Missouri, is amended by adding DTV channel 29 and removing DTV channel 9 at Kansas City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–27112 Filed 11–13–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 221
Friday, November 14, 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.

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2008–0096]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Internal Affairs

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is giving concurrent notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security Internal Affairs system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before December 15, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0096, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues, please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern internal affairs records.

As part of its efforts to streamline and consolidate its Privacy Act record systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS internal affairs records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling internal affairs records. DHS will use this system to collect and maintain internal affairs records submitted by DHS personnel and others. In this notice of proposed rulemaking, DHS now is proposing to exempt Internal Affairs, in part, from certain provisions of the Privacy Act.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for Internal Affairs. Some information in Internal Affairs relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for Internal Affairs is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph ''12'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

12. The Department of Homeland Security Internal Affairs system of records consists of electronic and paper records and will be used by DHS and its components. Internal Affairs is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Internal Affairs contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(1), (2), (3), and (5), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training, and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: November 6, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–27093 Filed 11–13–08; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD35

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 7, 2008, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on revisions to 12 CFR part 327 (see 73 FR 61560). The rulemaking proposed effective January 1, 2009, to raise the current assessment rates uniformly by seven basis points for the first quarter 2009 assessment period only; effective April 1, 2009, alter the way in which the FDIC's risk-based assessment system differentiates for risk and again change

deposit insurance assessment rates; and also effective April 1, 2009, make technical and other changes to the rules governing the risk-based assessment system. The proposed rules were published for a 30-day comment period, which is scheduled to close on November 17, 2008. In order to afford interested parties additional time beyond the present 30-day comment period to review the proposals with an April 1, 2009 effective date, the FDIC is extending the period for public comment by 30 days, that is, until December 17, 2008. The present 30-day comment period for the proposed seven basis point rate increase for the first quarter of 2009 only, with its separate proposed effective date of January 1, 2009, is not extended and will expire on November 17, 2008.

DATES: Comments must be received on or before December 17, 2008.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; and Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION: In its notice of proposed rulemaking (73 FR 61560), the FDIC proposes to improve the way the assessment system differentiates risk among insured institutions by drawing upon measures of risk that were not included when the FDIC first revised its assessment system pursuant to the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (collectively, the Reform Act).[1] The proposal will make the assessment system more sensitive to risk and the risk-based assessment system fairer, by limiting the subsidization of riskier institutions by safer ones. In addition, the FDIC proposes to change assessment rates, including base assessment rates, and to raise assessment revenue as required under the FDIC's October 7, 2008 Restoration Plan (73 FR 61598).

In this rulemaking, the FDIC requested comment on proposed rules that would (1) effective January 1, 2009, raise current assessment rates uniformly by seven basis points for the first quarter 2009 assessment period only; (2) effective April 1, 2009, alter the way in which the risk-based assessment system differentiates for risk and again change deposit insurance assessment rates; and (3) also effective April 1, 2009, make technical and other changes to the rules governing the risk-based assessment system. The proposed rules were published on October 16, 2008, for a 30-day comment period, which is scheduled to close on November 17, 2008.

To afford interested parties additional time beyond the present 30-day comment period to review only those portions of the proposal that would become effective April 1, 2009 (items (2) and (3) above), the FDIC is extending the period for public comment by 30 days. In light of this determination, the FDIC is providing the public additional time to comment on these aspects of the proposal, and requests that you submit your comments by December 17, 2008.

The present 30-day comment period for the proposed seven basis point rate increase for the January 2009 assessment period only, which has a separate proposed effective date of January 1, 2009, is not extended and will expire as originally provided on November 17, 2008.

Dated at Washington DC, this 7th day of November 2008.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8–26972 Filed 11–13–08; 8:45 am]

BILLING CODE 6714–01–P

[1] Federal Deposit Insurance Reform Act of 2005, Public Law 109–171, 120 Stat. 9; Federal Deposit Insurance Conforming Amendments Act of 2005, Public Law 109–173, 119 Stat. 3601.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA08

Golden Parachute and Indemnification Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed amendment.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend the interim final Golden Parachute Payments regulation published in the **Federal Register** on September 16, 2008 (73 FR 53356), and as corrected on September 19, 2008 (73 FR 54309), and on September 23, 2008 (73 FR 54673). This proposed amendment addresses prohibited and permissible indemnification payments with regard to any administrative proceeding brought by the FHFA against an entity-affiliated party of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks in light of the statutory requirements set forth in 12 U.S.C. 4514(e), as amended by the Housing and Economic Recovery Act of 2008.

DATES: Written comments on the proposed amendment to the Interim Final Regulation must be received on or before December 29, 2008. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit your comments on the proposed amendment, identified by regulatory information number ''RIN 2590–AA08,'' by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel; Attention: Comments/RIN 2590–AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel; Attention: Comments/RIN 2590–AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, and Christopher Curtis, General Counsel, may be sent by e-mail at

RegComments@FHFA.gov. Please include ''RIN 2590–AA08'' in the subject line of the message.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, telephone (202) 414–3788; or Christopher Curtis, General Counsel, telephone (202) 408–2802 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The FHFA invites comments on all aspects of the proposed amendment and will take all comments into consideration before issuing the final regulation. The FHFA requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5″ disk or CD–ROM.

Copies of all comments will be posted on the internet Web site at *http://www.FHFA.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities), and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Act and rules, regulation, guidelines and orders issued under the Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.

III. Proposed Amendment to Interim Final Regulation

The FHFA published the Interim Final Regulation on Golden Parachute and Indemnification Payments in the **Federal Register** on September 16, 2008 (73 FR 53356). Subsequently, it published corrections rescinding that portion of the regulation that addressed indemnification payments on September 19, 2008 (73 FR 54309), and on September 23, 2008 (73 FR 54673).

Section 1114 of HERA amended 12 U.S.C. 4518 to provide additional authorities to FHFA in addressing certain compensation and benefits, including ''golden parachute'' and ''indemnification payments'' as those terms are defined therein. The proposed amendment would describe prohibited and permissible indemnification payments that a regulated entity may make to an entity-affiliated party in connection with administrative proceedings or civil actions instituted by FHFA. The provisions of the proposed amendment addressing indemnification payments are substantially similar to the regulation that limits indemnification by insured depository institutions to institution-affiliated parties.

In proposing the amendment, FHFA recognizes that prior to the enactment of HERA, the regulated entities may have entered into indemnification agreements that provide for indemnification beyond that which is proposed to be permissible under 12 U.S.C. 4518(e) and the proposed amendment. The FHFA intends that the proposed amendment would apply to agreements entered into by a regulated entity with an entity-affiliated party on or after the date the regulation is effective.

The FHFA is also of the view that the enactment of section 1114 of HERA makes clear that Congress has authorized FHFA to limit or prohibit a regulated entity from indemnifying an entity-affiliated party for any civil money penalty, notwithstanding the language of 12 U.S.C. 4636(g). Nevertheless, FHFA is of the view that it would be in the best interests of the regulated entities to permit indemnification of first and second tier civil money penalties where the administrative proceeding or civil action relates to conduct occurring while the regulated entity was in conservatorship. FHFA specifically requests comments on this point.

Section 1313(f) of the Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed amendment, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision of the proposed amendment as it relates to the Banks.

Regulatory Impact

Paperwork Reduction Act

The proposed amendment does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The FHFA has considered the impact of the proposed amendment under the Regulatory Flexibility Act. The FHFA certifies that the proposed amendment is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the regulated entities, which are not small entities for the purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1231

Golden Parachutes, Government-sponsored enterprises, Indemnification.

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' Title I, Section 1101 of HERA.

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4518(e) and 4526, the Federal Housing Finance Agency proposes to amend part 1231 of subchapter B of title 12 CFR Chapter XII by making the following amendments:

Subchapter B—Entity Regulations

PART 1231—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

1. The authority citation for part 1231 is revised to read as follows:

Authority: 12 U.S.C. 4518(e); 12 U.S.C. 4526.

2. Section 1231.1 is revised to read as follows:

§ 1231.1 Purpose and scope.

The purpose of this part is to implement section 1318(e) of the Act (12 U.S.C. 4518(e)) by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments and by setting forth prohibited and permissible indemnification payments that regulated entities may make to entity-affiliated parties.

3. Section 1231.2 is amended by:

a. Removing the paragraph designations before each definition.

b. Removing the reserved paragraphs (l) through (n).

b. Placing the definition for *FHFA* in alphabetical order.

c. Adding the definitions for ''Liability or legal expenses,'' ''Payment'' and ''Prohibited indemnification payment'' in alphabetical order.

The additions read as follows:

§ 1231.2 Definitions.

* * * * *

Liability or legal expense means—

(1) Any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(2) The amount of, and the cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

* * * * *

Payment, as set forth in the definition of the term ''prohibited indemnification payment,'' includes—

(1) Any direct or indirect transfer of any funds or any asset; and

(2) Any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

Prohibited indemnification payment. (1) The term *prohibited indemnification payment* means any payment (or any agreement to make any payment) by any regulated entity for the benefit of any person who is or was an entity-affiliated party, to pay or reimburse such person for any civil money penalty or judgment resulting from any administrative or civil action instituted by FHFA, or for any other liability or legal expense with regard to any administrative proceeding or civil action instituted by FHFA that results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the regulated entity; or

(iii) Is required to cease and desist from or take any affirmative action described in section 1371 of the Act (12 U.S.C. 4631) with respect to the regulated entity.

(2) *Exceptions.*

(i) The term *prohibited indemnification payment* shall not include any reasonable payment by a regulated entity that is used to purchase any commercial insurance policy or fidelity bond, provided that such insurance policy or fidelity bond shall not be used to pay or reimburse an entity-affiliated party for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by FHFA, but may pay any legal or professional expenses incurred in connection with such proceeding or action or the amount of any restitution to the regulated entity or receiver.

(ii) The term *prohibited indemnification payment* shall not include any reasonable payment by a regulated entity that represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the entity-affiliated party has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative proceeding or civil action has resulted in a final prohibition order against the entity-affiliated party.

(iii) The term *prohibited indemnification payment* shall not include a payment by a regulated entity for a civil money penalty under section 1376(b)(1) and (2) of the Act (12 U.S.C. 4636(b)(1) and (2)) where the regulated entity has been placed in conservatorship.

4. Section 1231.4 is added to read as follows:

§ 1231.4 Indemnification payments.

(a) *Scope.* (1) This section applies only after an administrative proceeding or civil action has been instituted by FHFA through issuance of a notice of charges under regulations issued by the Director.

(2) The provisions of this section shall remain in full force and effect with respect to a regulated entity that is in conservatorship.

(b) *Prohibited indemnification payments.* No regulated entity shall make or agree to make any prohibited indemnification payment, except as provided in this part.

(c) *Permissible indemnification payments.* (1) A regulated entity may make or agree to make reasonable indemnification payments to an entity-affiliated party with respect to an administrative proceeding or civil action initiated by the FHFA, including payment for a civil money penalty pursuant to § 1231.2(l)(2)(iii), if:

(i) The board of directors of the regulated entity, in good faith, determines in writing after due investigation and consideration that the entity-affiliated party acted in good faith and in a manner he or she believed to be in the best interests of the regulated entity;

(ii) The board of directors of the regulated entity, in good faith, determines in writing after due investigation and consideration that such payments will not materially adversely affect the safety and soundness of the regulated entity;

(iii) The indemnification payments do not constitute prohibited indemnification payments as that term is defined in § 1231.2(l); and

(iv) The entity-affiliated party agrees in writing to reimburse the regulated entity, to the extent not covered by payments from insurance or bonds purchased pursuant to § 1231.2(l)(2), for that portion of any advanced indemnification payments that subsequently become prohibited indemnification payments, as defined in § 1231.2(l).

(2) An entity-affiliated party requesting indemnification payments

shall not participate in any way in the board's discussion and approval of such payments; provided, however, that such entity-affiliated party may present his or her request to the board of directors and respond to any inquiries from the board of directors concerning his or her involvement in the circumstances giving rise to the administrative proceeding or civil action.

(3) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in paragraph (c)(1) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(4) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (c)(1) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

5. Section 1231.6 is added to read as follows:

§ 1231.6 Applicability in the event of receivership.

The provisions of this part, or any consent or approval granted under the provisions of this part by the FHFA, shall not in any way bind any receiver of a regulated entity in receivership. Any consent or approval granted under the provisions of this part by the FHFA shall not in any way obligate the FHFA or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification, or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when a receiver is appointed for any regulated entity, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of an entity-affiliated party contrary to section 1318(e)(3) of the Act (12 U.S.C. 4518(e)(3)).

Dated: November 5, 2008.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E8–26831 Filed 11–13–08; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1131; Directorate Identifier 2008–NE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) Models PW2037, PW2037(M), and PW2040 Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for PW models PW2037, PW2037(M), and PW2040 turbofan engines. This proposed AD would require inspecting all high-pressure turbine (HPT) 2nd stage hubs at the next HPT overhaul after the effective date of the proposed AD. The inspections of the hubs include fluorescent penetrant inspection (FPI) for cracks and an optical comparator inspection (OCI) of the blade retention slots to confirm the hubs are within dimensional tolerances before returning them to service. This proposed AD results from an uncontained release of HPT 2nd stage blades and blade retention lugs. We are proposing this AD to detect cracks and remove nonconforming HPT 2nd stage hubs, which could result in an uncontained release of turbine blades and blade retention lugs, and damage to the airplane.

DATES: We must receive any comments on this proposed AD by January 13, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108 for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov;* telephone (781) 238–7758, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–1131; Directorate Identifier 2008–NE–37–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On August 6, 2008, a PW2037 turbofan engine experienced an uncontained failure of multiple HPT 2nd stage blades. Although the root cause is still under investigation, we have determined that cracks in the blade retention lugs of the HPT 2nd stage hub resulted in fracture of multiple lugs, and release of 2nd stage blades. Optical comparator inspections (OCIs) performed on the blade retention slots of the HPT 2nd stage hub confirmed the slots were out of dimensional tolerances. HPT 2nd stage hubs with blade retention slots that are out of tolerance can cause cracks and fracture of multiple blade retention lugs and release of 2nd stage blades from the hub. This condition, if not corrected, could result in an uncontained release of turbine blades and blade retention lugs, and damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require performing an FPI of the hub for cracks and an OCI of the blade retention slots on the forward and aft sides of the HPT 2nd stage hub for conformance to dimensional tolerances at the next HPT overhaul after the effective date of this AD.

Interim Action

These actions are interim actions and we are requiring reporting inspection data, including negative findings, to determine if we need to take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 762 engines installed on airplanes of U.S. registry. We also estimate that it would take about 6 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. No parts are required. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $365,760.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. FAA–2008–1131; Directorate Identifier 2008–NE–37–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney models PW2037, PW2037(M), and PW2040 turbofan engines. These engines are installed on, but not limited to, Boeing 757–200 and 757–300 airplanes.

Unsafe Condition

(d) This AD results from an uncontained release of high-pressure turbine (HPT) 2nd stage blades and blade retention lugs. We are issuing this AD to detect cracks and remove nonconforming HPT 2nd stage hubs, which could result in an uncontained release of turbine blades and blade retention lugs, and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next HPT overhaul, unless the actions have already been done.

Performing Inspections on HPT 2nd Stage Hubs

(f) Perform a fluorescent penetrant inspection (FPI) of the hub for cracks. Pratt & Whitney Engine Manual part number 1A6231 (Chapter 72–52–00, Inspection/Check-02, (Subtask 72–52–16–230–007)) contains information on performing the FPI.

(g) Remove from service any cracked hubs.

(h) Any HPT 2nd stage hubs inspected as specified in paragraphs (f) of this AD, must pass an optical comparator inspection before the hubs are eligible for return to service. Pratt & Whitney Alert Service Bulletin, PW2000 A72–734, contains information about the inspection.

Reporting Requirements

(i) For 6 months from the effective date of the AD, and within 72 hours of completing the inspections required by this AD, report the following to the Engine Certification Office, ATTN: Mark Riley, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803:

(1) Inspection Date.

(2) Disk part number and serial number.

(3) Hours since new.

(4) Cycles since new.

(5) Hours since overhaul.

(6) Cycles since overhaul.

(7) Fluorescent penetrant inspection findings.

(8) Optical comparator inspection findings.

(j) Under the provisions of the Paperwork Reduction Act, the Office of Management and

Budget (OMB) have approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Definitions

(k) This AD defines an HPT overhaul as when the HPT is at its piece-part level.

Alternative Methods of Compliance

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

Related Information

(m) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov;* telephone (781) 238–7758, fax (781) 238–7199, for more information about this AD.

(n) Pratt & Whitney Alert Service Bulletin, PW2000 A72–734, contains information about the optical comparator inspection.

Issued in Burlington, Massachusetts, on November 6, 2008.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–26909 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1210; Directorate Identifier 2008–CE–047–AD]

RIN 2120–AA64

Airworthiness Directives; Avidyne Corporation Primary Flight Displays (Part Numbers 700–00006–000, –001, –002, –003, and –100)

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2008–06–28 R1, which applies to certain Avidyne Corporation (Avidyne) Primary Flight Displays (PFDs) (part numbers (P/Ns) 700–00006–000, –001, –002, –003, and –100) that are installed on airplanes. AD 2008–06–28 R1 currently requires you to do a check of the maintenance records and inspection of the PFD (if necessary) to determine if an affected serial number PFD is installed and incorporate (if necessary) operational limitations. Since we issued AD 2008–06–28 R1, Avidyne developed a factory service procedure that will correct the problems on these Avidyne PFDs and also factory serviced certain serial number PFDs. Consequently, this proposed AD would retain the actions from AD 2008–06–28 R1 until the affected PFD is factory serviced; add the actions of a label or marking check, an air data system performance verification test, and (if necessary) replacement of the PFD and factory servicing of the failed PFD; and reduce the serial number applicability from that of AD 2008–06–28 R1. We are proposing this AD to prevent certain conditions from existing when PFDs display incorrect attitude, altitude, and airspeed information. This could result in airspeed/altitude mismanagement or spatial disorientation of the pilot with consequent loss of airplane control, inadequate traffic separation, or controlled flight into terrain.

DATES: We must receive comments on this proposed AD by January 13, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773; telephone: (781) 402–7400; fax: (781) 402–7599.

FOR FURTHER INFORMATION CONTACT: Solomon Hecht, Aerospace Engineer, ANE–150, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, phone: (781) 238–7159, fax: (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2008–1210; Directorate Identifier 2008-CE–047-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

Several field reports of PFDs displaying incorrect altitude and airspeed information caused us to issue AD 2008–06–28, Amendment 39–15440 (73 FR 15862, March 26, 2008). AD 2008–06–28 required the following on Avidyne PFDs (P/Ns 700–00006–000, –001, –002, –003, and –100) that are installed on airplanes:

- Checking of the maintenance records and inspection of the PFD (if necessary) to determine if an affected serial number PFD is installed; and
- If an affected serial number PFD is installed, incorporating information that limits operation when certain conditions for the PFD or backup instruments exist.

An incorrect serial number (SN) listed in AD 2008–06–28 caused us to issue AD 2008–06–28 R1, Amendment 39–15468 (73 FR 19963, April 14, 2008). AD 2008–06–28 R1 corrects the incorrect SN and retains the actions of AD–2008–06–28.

Since we issued AD 2008–06–28 R1, Avidyne has prepared a factory service procedure that will correct the possible incorrect altitude and airspeed information displayed on these Avidyne PFDs and received approval for a corresponding alternative method of compliance (AMOC) to modify certain serial number PFDs at the factory, eliminating the unsafe condition in these units.

This proposed AD retains the actions from AD 2008–06–28 R1 until the factory servicing is done. This proposed AD would require you to inspect for a label marked ''Deviation 08–19A'' on the exterior of the PFD near the TSO label or a ''MOD 52'' marking; if the label or mark is not present, do the PFD air data system performance verification test; if the PFD passes the test, remove the operational limitations requirement; or if the PFD does not pass the test, remove the PFD, have the PFD factory serviced, install a PFD that has passed the air data system verification test or has been factory serviced (PFD bears a label marked ''Deviation 08–19A'' on the exterior of the PFD near the TSO label; or a ''MOD 52'' marking); and

remove the operational limitations requirement. This proposed AD also reduces the serial number applicability from that of AD 2008–06–28 R1 due to Avidyne modifying PFDs at the factory.

This condition, if not corrected, could result in airspeed/altitude mismanagement or spatial disorientation of the pilot with consequent loss of airplane control, inadequate traffic separation, or controlled flight into terrain.

Relevant Service Information

We have reviewed Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008.

The service information describes procedures for:

- Identifying possible Avidyne PFDs by serial number;
- Identifying PFDs that have already been serviced;
- Doing Avidyne PFD air data system performance verification test procedures; and
- Having any Avidyne PFD that has not passed the air data system verification test or has not been factory serviced (PFD does not bears a label marked ''Deviation 08–19A'' on the exterior of the PFD near the TSO label; or a ''MOD 52'' marking) serviced.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2008–06–28 R1 with a new AD that would retain the actions from AD 2008–06–28 R1 until the affected PFD is factory serviced; add the actions of a label or marking check, an air data system performance verification test, and (if necessary) replacement of the PFD and factory servicing of the failed PFD; and reduce the serial number applicability from that of AD 2008–06–28 R1. This proposed AD would require you to use the service information described previously to perform these actions.

Differences Between This Proposed AD and the Service Information

The proposed AD includes terminating action for the requirement of AD 2008–06–28 R1 to incorporate information that limits operation when certain conditions for the PFD or backup instruments exist. The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD would affect 384 airplanes in the U.S. registry.

We estimate the following costs to do the proposed serial number determination:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not applicable	$80	$30,720

We estimate the following costs to do any necessary test and replacement that would be required based on the results of the proposed test. We have no way of determining the number of airplanes that may need this test and replacement:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × $80 per hour = $320	Not applicable	$320

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–06–28 R1, Amendment 39–15468 (73 FR 19963, April 14, 2008), and adding the following new AD:

Avidyne Corporation: Docket No. FAA–2008–1210; Directorate Identifier 2008–CE–047–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by January 13, 2009.

Affected ADs

(b) This AD supersedes AD 2008–06–28 R1, Amendment 39–15440.

Applicability

(c) This AD applies to Avidyne Corporation (Avidyne) Primary Flight Displays (PFDs) (part numbers (P/Ns) 700–00006–000, 700–00006–001, 700–00006–002, 700–00006–003, and 700–00006–100 with any serial number listed in Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008) that are installed on, but not limited to the airplanes below that are certificated in any category. Paragraph (d) of this AD gives procedures to determine if an affected serial number is installed.

(1) Adam Aircraft Model A500;

(2) Cessna Aircraft Company Model 441 (STEC Alliant Supplemental Type Certificate (STC) No. SA09547AC–D incorporated);

(3) Cessna Aircraft Company Models LC42–550FG and LC41–550FG (Columbia Aircraft Manufacturing and The Lancair Company previously held the type certificate for these airplanes);

(4) Cirrus Design Corporation Models SR20 and SR22;

(5) Diamond Aircraft Industries GmbH Model DA 40;

(6) Hawker Beechcraft Corporation Model E90 (STEC Alliant STC No. SA09545AC–D incorporated);

(7) Hawker Beechcraft Corporation Model 200 series (STEC Alliant STC No. SA09543AC–D incorporated); and

(8) Piper Aircraft, Inc. Models PA–28–161, PA–28–181, PA–28R–201, PA–32R–301 (HP), PA–32R–301T, PA–32–301FT, PA–32–301XTC, PA–34–220T, PA–44–180, PA–46–350P, PA–46R–350T, and PA–46–500TP.

(d) If you have one of the affected part number PFDs installed on your airplane, you must be able to positively show that it is not one of the affected serial numbers or comply with paragraph (f), all subparagraphs, as applicable in this AD. You must follow the actions in the paragraphs below to determine what actions of paragraph (f) apply. Under 14 CFR 43.7, the owner/operator holding at least a private pilot certificate is allowed to do the check in paragraph (d)(1) of this AD. All other actions must be done by a certificated mechanic, unless noted differently.

(1) Do a logbook check of aircraft records (previously referred to in AD 2008–06–28 R1 as ''maintenance records'') to determine if any PFD (P/Ns 700–00006–000, 700–00006–001, 700–00006–002, 700–00006–003, or 700–00006–100) with any affected serial number listed in Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008, is installed.

(i) If, as a result of the logbook check, you positively identify that the PFD installed does not have a serial number affected by this AD, then only paragraph (f)(5) of this AD applies to you.

(ii) If, as a result of the logbook check, you cannot positively identify the serial number of the PFD, do the visual inspection required in paragraph (d)(2) of this AD.

(iii) If, as a result of the logbook check, you find any PFD installed with an affected serial number, do the actions required by paragraph (f) of this AD, including all subparagraphs as applicable.

(2) If, as a result of the above logbook check, you cannot positively identify the serial number of the PFD, visually inspect any PFD (P/Ns 700–00006–000, 700–00006–001, 700–00006–002, 700–00006–003, or 700–00006–100) for any affected serial number listed in Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008.

(i) If, as a result of this visual inspection, you positively identify that the PFD installed does not have a serial number affected by this AD, then only paragraph (f)(5) of this AD applies to you.

(ii) If, as a result of this visual inspection, you identify that the PDF installed does have a serial number affected by this AD, do the actions required in paragraph (f) of this AD, including all subparagraphs as applicable.

Unsafe Condition

(e) This AD results from several field reports of Avidyne PFDs displaying incorrect altitude and airspeed information and Avidyne preparing a factory service procedure that will correct the possible incorrect altitude and airspeed information displayed. We are issuing this AD to prevent certain conditions from existing when PFDs display incorrect attitude, altitude, and airspeed information. This could result in airspeed/altitude mismanagement or spatial disorientation of the pilot with consequent loss of airplane control, inadequate traffic separation, or controlled flight into terrain.

Compliance

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

Actions	Compliance	Procedures
(1) Incorporate the operational limitations below by doing whichever of the following applies: (i) For airplanes with an airplane flight manual (AFM), pilot's operating handbook (POH), or airplane flight manual supplement (AFMS), incorporate the language in the Appendix of this AD into the Limitations section of the AFM, POH, or AFMS (ii) For airplanes without an AFM, POH, or AFMS, do the following: (A) Incorporate the language in the Appendix of this AD into your aircraft maintenance records; and (B) Fabricate a placard (using at least 1/8-inch letters) with the following words and install the placard on the instrument panel within the pilot's clear view: ''THIS AD AND SUPERSEDED AD 2008–06–28 R1 CONTAIN LIMITATIONS REGARDING AVIDYNE PRIMARY FLIGHT DISPLAYS (PFD) AND REQUIRED INCORPORATION OF THESE LIMITATIONS INTO THE AIRCRAFT RECORDS. YOU MUST FOLLOW THESE LIMITATIONS.''	Prior to further flight after the effective date of this AD.	Under 14 CFR 43.7, the owner/operator holding at least a private pilot certificate is allowed to insert the information into the AFM, POH, AFMS, or maintenance records as required in paragraph (f)(1)(i) or (f)(1)(ii)(A) of this AD and fabricate the placard required in paragraph (f)(1)(ii)(B) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with 14 CFR 43.9.
(2) Inspect for a label marked ''Deviation 08–19A'' on the exterior of the PFD near the TSO label or a ''MOD 52'' marking. (i) If the label marked ''Deviation 08–19A'' or ''MOD 52'' marking is present, then the factory servicing required by paragraph (f)(4) of this AD is incorporated. Remove the limitations required by paragraph (f)(1) of this AD and AD 2008–06–28 R1. Except for the actions of paragraph (f)(5) of this AD, no further action is required by this AD. (ii) If the label or mark is not present, do the PFD air data system performance verification test in Section 3.3 of the referenced service bulletin.	Within the next 15 days after the effective date of this AD.	Follow Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008.
(3) If the PFD passes the test required in paragraph (f)(2)(ii) of this AD, remove the limitations required by paragraph (f)(1) of this AD and AD 2008–06–28 R1. Except for the actions of paragraph (f)(5) of this AD, no further action is required by this AD.	Within the next 15 days after the effective date of this AD.	Follow Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008.
(4) If the PFD does not pass the test required in paragraph (f)(1)(ii) of this AD, do the following: (i) Remove the PFD, have the PFD factory serviced, and install a PFD that has passed the air data system verification test or has been factory serviced (PFD bears a label marked ''Deviation 08–19A'' on the exterior of the PFD near the TSO label or a ''MOD 52'' marking); (ii) Remove the limitations required by paragraph (f)(1) of this AD and AD 2008–06–28 R1; and (iii) Except for the actions of paragraph (f)(5) of this AD, no further action is required by this AD.	Within the next 15 hours TIS after the effective date of this AD.	Follow Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008.

Actions	Compliance	Procedures
(5) Do not install any PFD (P/Ns 700–00006–000, 700–00006–001, 700–00006–002, 700–00006–003, or 700–00006–100) with any affected serial number listed in Avidyne Service Bulletin No. 601–00006–096, Revision 1, dated July 14, 2008, unless it has passed the air data system verification test or has been factory serviced (PFD bears a label marked ''Deviation 08–19A'' on the exterior of the PFD near the TSO label or a ''MOD 52'' marking).	As of the effective date of this AD	Not applicable.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Solomon Hecht, Aerospace Engineer, ANE–150, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, phone: (781) 238–7159, fax: (781) 238–7170. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) AMOCs approved for AD 2008–06–28 R1 are approved for this AD.

Related Information

(i) To get copies of the service information referenced in this AD, contact Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773; telephone: (781) 402–7400; fax: (781) 402–7599. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Appendix to Docket No. FAA–2008–1210 Limitations Regarding Avidyne Primary Flight Displays (PFDs)

Before conducting flight operations, pilots must review and be familiar with the Crosscheck Monitor section of the Avidyne Primary Flight Display Pilot's Guide and all limitations contained in the aircraft operating handbook.

As a normal practice, all pilots should be vigilant in conducting proper preflight and in-flight checks of instrument accuracy, including:

- Preflight check of the accuracy of both the primary and backup altimeter against known airfield elevation and against each other.
- Verification of airspeed indications consistent with prevailing conditions at startup, during taxi, and prior to takeoff.
- ''Airspeed alive'' check and reasonable indications during takeoff roll.
- Maintenance of current altimeter setting in both primary and backup altimeters.
- Cross-check of primary and backup altimeters at each change of altimeter setting and prior to entering instrument meteorological conditions (IMC).
- Cross-check of primary and backup altimeters and validation against other available data, such as glideslope intercept altitude, prior to conducting any instrument approach.
- Periodic cross-checks of primary and backup airspeed indicators, preferably in combination with altimeter cross-checks.

For flight operations under instrument flight rules (IFR) or in conditions in which visual reference to the horizon cannot be reliably maintained (that is IMC, night operations, flight operations over water, in haze or smoke) and the pilot has reasons to suspect that any source (PFD or back-up instruments) of attitude, airspeed, or altitude is not functioning properly, flight under IFR or in these conditions must not be initiated (when condition is determined on the ground) and further flight under IFR or in these conditions is prohibited until equipment is serviced and functioning properly.

Operation of aircraft not equipped with operating backup (or standby) attitude, altimeter, and airspeed indicators that are located where they are readily visible to the pilot is prohibited.

Pilots must frequently scan and crosscheck flight instruments to make sure the information depicted on the PFD correlates and agrees with the information depicted on the backup instruments.

Issued in Kansas City, Missouri, on November 7, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–27082 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1206; Directorate Identifier 2008–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Co. (GE) CF6–80A Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for GE CF6–80A series turbofan engines with a high-pressure turbine rotor (HPTR) stage 1 disk, part number (P/N) 9367M45G06, installed. This proposed AD would require removing any HPTR stage 1 disk, P/N 9367M45G06, before exceeding 2,075 cycles-since-new (CSN). This proposed AD results from an error by GE that incorrectly cited a cyclic life of 12,600 CSN for the HPTR stage 1 disk, P/N 9367M45G06. We are proposing this AD to prevent the HPTR stage 1 disk from exceeding its part life which could cause fatigue cracks to start and grow. These cracks could result in a possible uncontained disk failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by January 13, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–1206; Directorate Identifier 2008–NE–19–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

During a recent GE internal audit, comparing the life-limited parts certification documents to the part life limits specified in the Airworthiness Limitations Section of the Instructions for Continuing Airworthiness, GE found that the life limits for the CF6–80A series engines incorrectly specified a cyclic life of 12,600 CSN for the HPTR stage 1 disk, P/N 9367M45G06. GE has determined that the correct life limit for the HPTR stage 1 disk, P/N 9367M45G06, is 2,075 CSN. Failure to remove these disks from service before exceeding the new, reduced life limit of 2,075 CSN could result in fatigue cracks, leading to a possible uncontained disk failure and damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require removing from service any HPTR stage 1 disk, P/N 9367M45G06, before it exceeds 2,075 CSN.

Costs of Compliance

We estimate that this proposed AD would affect 10 engines installed on airplanes of U.S. registry. We also estimate that it would take about 110 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $437,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $4,462,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

General Electric Co. (GE): Docket No. FAA–2008–1206; Directorate Identifier 2008–NE–19–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to GE CF6–80A, CF6–80A1, CF6–80A2, and CF6–80A3 turbofan engines with a high-pressure turbine rotor (HPTR) stage 1 disk, part number (P/N) 9367M45G06, installed. These engines are installed on, but not limited to, Airbus A310 series and Boeing 767 series airplanes.

Unsafe Condition

(d) This AD results from an error by GE that incorrectly cited a cyclic life of 12,600 CSN in the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) for the HPTR, P/N 9367M45G06. We are issuing this AD to prevent the HPTR stage 1 disk from exceeding its part life which could cause fatigue cracks to start and grow. These cracks could result in a possible uncontained disk failure and damage to the airplane.

Compliance

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

New Reduced Life Limit for HPTR Stage 1 Disks, P/N 9367M45G06

(f) After the effective date of this AD, remove HPTR stage 1 disks, P/N 9367M45G06, from service before exceeding the new, reduced life limit of 2,075 cycles-since-new.

Alternative Methods of Compliance

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

Special Flight Permits

(h) Under 14 CFR part 39.23, we are prohibiting any special flight permits.

Related Information

(i) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *robert.green@faa.gov*; telephone (781) 238–7754; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on November 7, 2008.

Peter A. White,

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

[FR Doc. E8–27080 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 38

Execution of Transactions: Regulation 1.38 and Guidance on Core Principle 9

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On September 18, 2008, the Commission published in the **Federal Register** a notice of proposed rulemaking to amend its rules, guidance and acceptable practices concerning trading off the centralized market, including the addition of guidance on contract market block trading rules and exchanges of futures for commodities or derivatives positions. Comments on the proposal originally were due on November 17, 2008. The Commission is extending the comment period in order to give interested persons additional time to comment on the proposed amendments.

DATES: Comments must be received by January 5, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail/Hand Delivery:* David Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *E-mail: secretary@cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Gabrielle A. Sudik, Special Counsel, Division of Market Oversight; Telephone 202–418–5171; e-mail: *gsudik@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On September 18, 2008, the Commission published in the **Federal Register** a notice of proposed rulemaking to amend its rules, guidance and acceptable practices concerning trading off the centralized market, including the addition of guidance on contract market block trading rules and exchanges of futures for commodities or derivatives positions.

The comment period closes on November 17, 2008. By letter dated November 4, 2008, CME Group, Inc., requested an extension of the comment period until January 5, 2009. In order to encourage the submission of meaningful comments and to assure that all views are considered in its final determination, the Commission has determined to grant the request and to give full consideration to any comment received during the extension period. While the Commission has received some comment letters on the proposal, none yet have been from any designated contract markets, which have the responsibility of complying with Regulation 1.38 and Core Principle 9. Accordingly, the comment period for the Commission's proposed amendments to Regulation 1.38 and Part 38 is hereby extended to January 5, 2008.

Issued in Washington, DC, on November 10, 2008, by the Commission.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–27121 Filed 11–13–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 104]

RIN 1105–AB31

Application Procedures and Criteria for Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (''rule'') sets forth proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain an approved provider of a personal financial management instructional course satisfy all prerequisites of the United States Code, as implemented under this rule. Under the current law, individual debtors must participate in an instructional course concerning personal financial management before receiving a discharge of debts. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved providers of a personal financial management instructional course must meet. Under this rule, United States Trustees will approve applicants for inclusion on publicly available provider lists in one or more federal judicial districts if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such an approval, a provider shall be authorized to provide an instructional course in a federal judicial district during the time the provider remains approved.

DATES: Submit comments on or before January 13, 2009.

ADDRESSES: Comments on the rule may be submitted via *http://www.regulations.gov*, by telefax to (202) 305–8536, or by postal mail to Executive Office for United States Trustees (''EOUST''), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference ''Docket No. EOUST 104'' on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Doreen Solomon, Assistant Director for Review and Oversight at (202) 307–2829 (not a toll-free number), or Larry Wahlquist, Office of General Counsel at (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph. Comments filed after the end of the comment period may be considered to the extent feasible.

Discussion of Rule

This rule implements those sections of Public Law 109–8, 119 Stat. 23, 37, 38 (April 20, 2005) codified at 11 U.S.C. 111. Effective October 17, 2005, individual debtors under chapters 7, 13, and in some instances chapter 11, must receive from an approved provider an instructional course concerning personal financial management before they may receive a discharge of their debts. 11 U.S.C. 111, 727(a)(11), 1141(d)(3)(C), 1328(g)(1).

Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of providers of a personal financial management instructional course for inclusion under 11 U.S.C. 111(a)(1) on publicly available provider lists in one or more United States district courts. Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become a provider of an instructional course only after the United States Trustee has thoroughly reviewed the applicant's (a) qualifications, and (b) instructional course. 11 U.S.C. 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. 11 U.S.C. 111(b)(1).

After completing that thorough review, a United States Trustee may approve a provider of an instructional course only if the provider establishes that it fully satisfies all requisite standards. 11 U.S.C. 111(b). Among other things, an applicant must establish it will (a) provide trained personnel with adequate experience in providing effective instruction and services, (b) provide learning materials and teaching methodologies designed to assist debtors in understanding personal financial management, (c) if applicable, provide adequate facilities for providing an instructional course, (d) prepare and retain reasonable records to permit evaluation of the effectiveness of an instructional course, and (e) if a fee is charged, charge a reasonable fee, and provide services without regard to ability to pay the fee. 11 U.S.C. 111(d)(1).

This proposed rule will implement those statutory requirements. By accomplishing that, the rule will help debtors obtain effective instruction from competent providers. It also will provide an appropriate mechanism by which applicants can apply for approval under section 111 of title 11 to become providers of a personal financial management instructional course, and will enable such applicants to attempt to meet their burden of establishing they should be approved by United States Trustees under 11 U.S.C. 111.

This rule, once final, will supersede the provisions that address providers of a personal financial management instructional course in EOUST's Interim Final Rule published on July 5, 2006 (71 FR 38076) entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees* (''Interim Final Rule''). The instructional course provisions are currently codified at 28 CFR 58.25, 58.26, and 58.27. Due to the necessity of quickly establishing a regulation to govern the application process for providers of an instructional course following the passage of BAPCPA, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking. Based upon experience administering the Interim Final Rule, and upon consideration of comments received regarding the Interim Final Rule, EOUST promulgates this rule as a notice of proposed rulemaking rather than a final rule in an effort to maximize public input. EOUST will respond to the comments to the Interim Final Rule and this rule when it publishes the final rule. EOUST has already published a notice of proposed rulemaking that addressed credit counseling agencies with a RIN number of 1105–AB17. This rule parallels that credit counseling rule in many aspects. For instance, the application procedures are similar, as well as the procedures for denying or removing a provider from the approved list. Other similarities include the fee amount presumed to be reasonable, the debtor identification requirements, the requirement that providers use the United States Trustee's Certificate Generating System, the prohibition against limiting a debtor's ability to seek redress from the provider for any malfeasance, and many of the mandatory disclosures before providing services.

In an effort to make information more accessible and understandable, several changes to the Interim Final Rule are proposed in this rule, along with other changes to enhance consumer protections. Some of the more significant changes include the following: (1) Adding identification procedures for debtors when accessing Internet or telephone instructional courses; (2) establishing a limit for instructional course fees to be presumed reasonable; (3) providing guidance on providers' responsibilities to individuals with limited English proficiency; and (4) requiring appropriate disclosures be made before providing services to debtors, such as a provider's fee policy and the prohibition from receiving referral fees.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), The Principles of Regulation. The Department has determined that this rule is a

''significant regulatory action'' and, accordingly, this rule has been reviewed by the Office of Management and Budget (''OMB'').

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the required costs for the submission of an application. Costs considered also include the cost of establishing and maintaining the approved list in each federal judicial district. In an effort to minimize the burden on applicants, the application keeps the number of items on the application to a minimum.

The costs to an applicant will be minimal. The anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications. Based upon the available information, experience with the instructional course industry, and informal communications with providers, it is anticipated that this cost should equal approximately $500 per application for providers. This cost is not new; it is the same cost that providers incurred when applying under the Interim Final Rule. Public comments regarding the cost to applicants in completing the application are requested.

Although providers may charge a fee for providing the financial management instructional course, providers must provide the instructional course without regard to a client's ability to pay the fee in accordance with 11 U.S.C. 111(d)(1)(E). Based upon the available information, current practice of many providers, experience with the instructional course industry, and informal communications with providers, $50 is presumed to be a reasonable fee for an instructional course. Public comments as to the reasonableness of $50 for an instructional course are requested. This rule does not prevent providers from charging more than $50; it requires providers to notify EOUST of any additional charge prior to implementing the additional fee and to justify the additional cost.

The amount presumed to be reasonable for instructional course fees will be reviewed periodically, but not less than every four years, and the amount presumed to be reasonable will be published by notice in the **Federal Register** and identified on EOUST's Web site. In addition, all providers must waive the fee if the debtor demonstrates a lack of ability to pay the fee, which shall be presumed if the debtor's household current income is less than 150% of the income of the official poverty line as identified by the United States Department of Health and Human Services applicable to a household of the same size.

The number of applicants that will ultimately apply is unknown; EOUST currently has approved approximately 300 providers. The annual hour burden on providers is estimated to be 10 hours. This estimate is based on consultations with individuals in the instructional course industry, and experience with providers who completed the initial applications. Public comments regarding the annual hour burden on providers of an instructional course in completing the application are requested.

The EOUST consulted with the Federal Trade Commission (''FTC'') and with the Internal Revenue Service (''IRS'') in drafting this rule and the EOUST does not believe the rule has an adverse effect upon either agency.

The benefits of this rule include the development of standards that increase consumer protections, such as a limit on the presumption of reasonable fees, and the requirement that providers give adequate disclosures concerning providers' policies. These disclosures include notifying clients that they may qualify for reduced or free services in order to further the BAPCPA's requirement that services be provided without regard to ability to pay the fee. This rule also provides for greater supervision by the United States Trustee to ensure providers deliver effective instruction to debtors concerning personal financial management. Additionally, this rule assists in reducing fraud by requiring providers to identify debtors before providing an instructional course and corresponding certificate of completion. Another benefit of this rule is clarifying providers' responsibility to use their best efforts in assisting individuals with limited English proficiency by providing services in the client's language or referring them to providers who can provide services in the client's language. These benefits justify the rule's costs in complying with Congress' mandate that a list of approved providers be established. Public Law No. 109–8, section 106(e)(1).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 to 3520, and assigned OMB control number 1105–0085 for form EOUST–DE1, the ''*Application for Approval as a Provider of a Personal Financial Management Instructional Course.*'' The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process, and that the application and associated requirements were modified to take into account the concerns of those who commented in this process.

Regulatory Flexibility Act

In accordancewith the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that applicants should incur minimal costs in completing the application as discussed above in the Executive Order 12866 certification.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($100 million). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq*. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and

innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the United States Trustee to approve providers of a personal financial management instructional course. The United States Trustee will not share this information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. 71 FR 59818, 59827 (Oct. 11, 2006), JUSTICE/UST–005, Credit Counseling and Debtor Education Files and Associated Records.

Public Law 104–134 (April 26, 1996) requires that any person doing business with the Federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to section 7701 of title 31, United States Code. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, Part 58 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for Part 58 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3); 1202; 1302; 1328(g), 28 U.S.C. 509, 510, 586, 589b.

2. Sections 58.25 through 58.27 are revised to read as follows:

§ 58.25 Definitions

(a) The following definitions apply to sections 58.25 through and including 58.36 of this Part, as well as the applications and other materials providers submit in an effort to establish they meet the requirements necessary to become an approved provider of a personal financial management instructional course.

(b) These terms shall have these meanings:

(1) The term ''accreditation'' means the accreditation that an accrediting organization bestows upon a provider because the accrediting organization has determined the provider meets or exceeds all the accrediting organization's standards;

(2) The term ''accrediting organization'' means either an entity that provides accreditation to providers or provides certification to instructors, provided, however, that an accrediting organization shall:

(i) Not be a provider or affiliate of any provider; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term ''affiliate'' means:

(i) Every entity that is an affiliate of the provider, as the term ''affiliate'' is defined in 11 U.S.C. 101(2), except that the word ''provider'' shall be substituted for the word ''debtor'' in 11 U.S.C. 101(2);

(ii) Each of a provider's officers and each of a provider's directors; and

(iii) Every relative of a provider's officers and every relative of a provider's directors;

(4) The term ''application'' means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST–DE1, *Application for Approval as a Provider of a Personal Financial Management Instructional Course,* as it shall be amended from time to time;

(5) The term ''approved list'' means the list of providers currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program's Internet site on the United States Department of Justice's Internet site;

(6) The term ''approved provider'' means a provider currently approved by a United States Trustee under 11 U.S.C. 111 as an approved provider of a personal financial management instructional course eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(7) The term ''certificate'' means the document an approved provider shall provide to a debtor after the debtor completes an instructional course;

(8) The term ''debtor'' shall have the meaning given that term in 11 U.S.C. 101(13);

(9) The term ''Director'' means the person designated or acting as the Director of the Executive Office for United States Trustees;

(10) The term ''effective instruction'' means the actual receipt of an instructional course by a debtor from an approved provider, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 111; and

(ii) This rule;

(11) The term ''entity'' shall have the meaning given that term in 11 U.S.C. 101(15);

(12) The terms ''fee'' and ''fee policy'' each mean the aggregate of all fees an approved provider charges debtors for providing an instructional course; ''fee policy'' shall also mean the objective criteria the provider uses in determining whether to waive or reduce any fee;

(13) The term ''final decision'' means the determination issued by the Director based upon the review of the United States Trustee's decision either to deny a provider's application or to remove an approved provider from the approved list;

(14) The term ''financial benefit'' means any interest equated with money or its equivalent, including, but not limited to, stock, bonds, other investments, income, goods, services, or receivables;

(15) The term ''governmental unit'' shall have the meaning given that term in 11 U.S.C. 101(27);

(16) The term ''independent contractor'' means a person or entity who provides any goods or services to an approved provider other than as an employee and as to whom the approved provider does not:

(i) Direct or control the means or methods of delivery of the goods or services being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(17) The term ''instructional course'' means a course in personal financial management that is approved by the United States Trustee under 11 U.S.C. 111 and this rule, including the learning materials and methodologies in 28 CFR 58.33(f), which is to be taken and completed by the debtor after the filing of a bankruptcy petition and before receiving a discharge under 11 U.S.C. 727(a)(11), 1141(d)(3)(C) or 1328(g)(1);

(18) The term ''instructor'' means an individual who teaches, presents or explains substantive instructional course materials to debtors, whether provided in person, by telephone, or through the Internet;

(19) The term ''languages offered'' means every language other than English in which an approved provider offers an instructional course;

(20) The term ''legal advice'' shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(21) The term ''limited English proficiency'' means, alternatively:

(i) An inability to speak, read, write, or understand the English language; or

(ii) The use primarily of a language other than English in a person's daily affairs;

(22) The term ''locator'' means any entity that assists a prospective debtor in finding an approved provider for the purpose of receiving an instructional course, unless such entity is the approved provider proposing to provide an instructional course to the debtor;

(23) The term ''material change'' means, alternatively, any change:

(i) In the name, structure, principal contact, management, staffing, physical location, instructional course, fee policy, or method of delivery of an approved provider; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement a provider previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(24) The term ''method of delivery'' means one or more of the 3 methods by which an approved provider can provide some component of an instructional course to debtors, including:

(i) ''In person'' delivery, which applies when a debtor primarily receives an instructional course at a physical location with an instructor physically present in that location, and with the instructor providing oral and/or written communication to the debtor at the facility;

(ii) ''Telephone'' delivery, which applies when a debtor primarily receives an instructional course by telephone; and

(iii) ''Internet'' delivery, which applies when a debtor primarily receives an instructional course through an Internet Web site;

(25) The term ''notice'' in 28 CFR 58.36 means the written communication from the United States Trustee to a provider that its application to become an approved provider has been denied or to an approved provider that it is being removed from the approved list;

(26) The term ''provider''shall mean any entity that is applying under this rule for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved provider;

(27) The term ''referral fees'' means money or any other valuable consideration paid or transferred between an approved provider and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any debtor to receive an instructional course from the approved provider; provided, however, that ''referral fees'' shall not include fees paid to any locator;

(28) The term ''relative'' shall have the meaning given that term in 11 U.S.C. 101(45);

(29) The term ''request for review'' means the written communication from a provider to the Director seeking review of the United States Trustee's decision either to deny the provider's application or to remove the provider from the approved list;

(30) The term ''state'' means state, commonwealth, district, or territory of the United States;

(31) The term ''United States Trustee'' means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this rule.

§ 58.26 Procedures all providers shall follow when applying to become approved providers.

(a) A provider applying to become an approved provider shall obtain an application, including appendices, from the United States Trustee.

(b) The provider shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The provider shall submit the original of the completed application, including completed appendices and the required supporting documents, and one additional copy of those, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by a representative of the provider who is authorized under applicable law to sign on behalf of the applying provider.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the provider, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application that:

(1) Is incomplete;

(2) Fails to include the completed appendices or all of the required supporting documents; or

(3) Is not accompanied by the certification identified in the preceding subsection.

(g) The United States Trustee shall not consider an application on behalf of a provider, and it shall be returned via United States postal mail, if:

(1) It is submitted by any entity other than the provider; or

(2) Either the application or the accompanying certification is executed by any entity other than a representative of the provider who is authorized under applicable law to sign on behalf of the provider.

(h) By the act of submitting an application, a provider consents to the release and disclosure of its name and contact information on the approved list should its application be approved.

§ 58.27 Automatic expiration of providers' status as approved providers.

(a) Except as provided in 28 CFR 58.28(c), if an approved provider was not an approved provider immediately prior to the date it last obtained approval to be an approved provider, such an approved provider shall cease to be an approved provider 6 months from the date on which it was approved unless the United States Trustee approves an additional 1-year period.

(b) Except as provided in 28 CFR 58.28(c), if an approved provider was an approved provider immediately prior to the date it last obtained approval to be an approved provider, such a provider shall cease to be an approved provider 1 year from the date on which it was last approved to be an approved provider unless the United States Trustee approves an additional 1-year period.

3. Sections 58.28 through 58.36 are added and read as follows:

§ 58.28 Procedures all approved providers shall follow when applying for approval to act as an approved provider for an additional 1-year period.

(a) To be considered for approval to act as an approved provider for an additional 1-year term, an approved provider shall reapply by complying with all the requirements specified for providers under 11 U.S.C. 111, and under this rule.

(b) Such a provider shall apply no later than 45 days prior to the expiration of its 6-month probationary period or annual period in order to be considered

for approval for an additional 1-year period, unless a written extension is granted by the United States Trustee.

(c) An approved provider that has complied with all prerequisites for applying to act as an approved provider for an additional 1-year period may continue to operate as an approved provider while its application is under review by the United States Trustee, so long as either the application for an additional 1-year period was timely submitted, or a provider receives a written extension from the United States Trustee.

§ 58.29 Renewal for an additional 1-year period.

If an approved provider's application for an additional 1-year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

§ 58.30 Mandatory duty of approved providers to notify United States Trustees of material changes.

(a) An approved provider shall immediately notify the United States Trustee in writing of any material change.

(b) An approved provider shall immediately notify the United States Trustee in writing of any failure by the approved provider to comply with any standard or requirement specified in 11 U.S.C. 111, this rule, or the terms under which the United States Trustee approved it to act as an approved provider.

(c) An approved provider shall immediately notify the United States Trustee in writing of any of the following events:

(1) Cessation of business by the approved provider or by any office of the provider, or withdrawal from any federal judicial district(s) where the approved provider is approved;

(2) Any investigation of, or any administrative or judicial action brought against, the approved provider by any governmental unit;

(3) Any action by a governmental unit or a court to suspend or revoke the approved provider's articles of incorporation, or any license held by the approved provider, or any authorization necessary to engage in business; or

(4) A suspension, or action to suspend, any accreditation held by the approved provider, or any withdrawal by the approved provider of any application for accreditation, or any denial of any application of the approved provider for accreditation.

(d) A provider shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved provider is pending before the United States Trustee.

(e) An approved provider whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

§ 58.31 Mandatory duty of approved providers to obtain prior permission from the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved provider, a provider agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) The engagement of an independent contractor to provide an instructional course;

(2) Any increase in the fees received from debtors for an instructional course or a change in the provider's fee policy;

(3) Expansion into additional federal judicial districts;

(4) Any changes to the method of delivery the approved provider employs to provide an instructional course; or

(5) Any changes in the approved provider's instructional course.

(b) A provider applying to become an approved provider shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The provider's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in 28 CFR 58.26(e).

(c) An approved provider shall not transfer or assign its United States Trustee approval to act as an approved provider.

§ 58.32 Criteria providers shall satisfy to become and remain approved providers.

(a) To become an approved provider, a provider must affirmatively establish, to the satisfaction of the United States Trustee, that the provider at the time of approval:

(1) Satisfies every requirement of this rule; and

(2) Provides effective instruction to its debtors.

(b) To remain an approved provider, an approved provider shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved provider:

(1) Has satisfied every requirement of this rule;

(2) Has provided effective instruction to its debtors; and

(3) Will continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

§ 58.33 Minimum qualifications providers shall meet to become and remain approved providers.

To meet the minimum qualifications set forth in 28 CFR 58.32, and in addition to the other requirements set forth in this rule, providers and approved providers shall comply with paragraphs (a) through (n) of this section on a continuing basis:

(a) *Compliance with all laws.* A provider shall comply with all applicable laws and regulations of the United States and each state in which the provider provides an instructional course including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* A provider shall not provide legal advice.

(c) *Ethical standards.* A provider shall:

(1) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 11 U.S.C. 586(a)(1) or (b) for any federal judicial district where the provider is providing or is applying to provide an instructional course, a federal judge in any federal judicial district where the provider is providing or is applying to provide an instructional course, or a federal court employee in any federal judicial district where the provider is providing or is applying to provide an instructional course;

(2) Not enter into any referral agreement or receive any financial benefit that involves the provider paying to or receiving from any entity or person referral fees for the referral of debtors to or by the provider, except payments to any locator; and

(3) Not enter into agreements involving an instructional course that create a conflict of interest.

(d) *Instructor training, certification and experience.* A provider shall:

(1) Use only instructors who possess adequate experience providing an instructional course, which shall mean that each instructor either:

(i) Holds one of the certifications listed below and who has complied with all continuing education requirements necessary to maintain that certification:

(A) Certified as a Certified Financial Planner;

(B) Certified as a credit counselor by an accrediting organization;

(C) Registered as a Registered Financial Consultant; or

(D) Certified as a Certified Public Accountant; or

(ii) Has successfully completed a course of study or worked a minimum of 6 months in a related area such as personal finance, budgeting, or credit or debt management. A course of study must include training in personal finance, budgeting, or credit or debt management. An instructor shall also receive annual continuing education in the areas of personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing an instructional course, which shall mean that, at a minimum, the provider shall either:

(i) Have experience in providing an instructional course for the 2 years immediately preceding the relevant application date; or

(ii) For each office providing an instructional course, employ at least one supervisor who has met the qualifications in paragraph (d)(2)(i) of this section for no less than 2 of the 5 years preceding the relevant application date; and

(3) If offering any component of an instructional course by a telephone or Internet method of delivery, use only instructors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such an instructional course by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the instructional course is the debtor, and to determine whether the debtor has completely received an instructional course.

(e) *Use of the telephone and the Internet to deliver a component of an instructional course.* A provider shall:

(1) Not provide any debtor a diminished instructional course because the debtor receives any portion of the instructional course by telephone or Internet;

(2) Confirm the identity of the debtor before commencing an instructional course by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the debtor and assigning an individual access code, user ID, or password at the time of enrollment;

(ii) Requiring the debtor to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the instructional course; and

(iii) Employing adequate means to measure the time spent by the debtor to complete the instructional course.

(f) *Learning materials and methodologies.* A provider shall provide learning materials to assist debtors in understanding personal financial management and that are consistent with 11 U.S.C. 111, and this rule, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income; and

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance; and

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) Identifying the types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

(iii) Discussing appropriate use of credit and alternatives to credit use; and

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Identifying public and non-profit resources for consumer assistance; and

(ii) Identifying applicable consumer protection laws and regulations, such as those governing correction of a credit record and protection against consumer fraud; and

(5) Coping with unexpected financial crisis, which consists of the following:

(i) Identifying alternatives to additional borrowing in times of unanticipated events; and

(ii) Seeking advice from public and private service agencies for assistance.

(g) *Course procedures.*

(1) Generally, a provider shall:

(i) Ensure the instructional course contains sufficient learning materials and teaching methodologies so that the debtor receives a minimum of two hours of instruction, regardless of the method of delivery of the course;

(ii) Use its best efforts to collect from each debtor a completed course evaluation at the end of the instructional course. At a minimum, the course evaluation shall include the information contained in Appendix F of the application to evaluate the effectiveness of the instructional course;

(2) For an instructional course delivered in person, the provider shall:

(i) Ensure that an instructor is present to instruct and interact with debtors; and

(ii) Limit class size to ensure an effective presentation of the instructional course materials;

(3) For instructional courses delivered by the telephone, the provider shall:

(i) Ensure an instructor is telephonically present to instruct and interact with debtors;

(ii) Provide learning materials to debtors before the telephone instructional course session;

(iii) Incorporate tests into the curriculum that support the learning materials, ensure completion of the course, and measure comprehension;

(iv) Ensure review of tests prior to the completion of the instructional course; and

(v) Ensure direct oral communication from an instructor by telephone or in person with all debtors who fail to complete the test in a satisfactory manner or who receive less than a 70% score;

(5) For instructional courses delivered through the Internet, the provider shall:

(i) Comply with sections 58.33(g)(3)(iii), (iv), and (v); and

(ii) Respond to a debtor's questions or comments within one business day.

(h) *Services to hearing and hearing-impaired debtors.* A provider shall furnish toll-free telephone numbers for both hearing and hearing-impaired debtors whenever telephone communication is required. The provider shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired debtors.

(i) *Language services to debtors.* A provider shall communicate, in writing and orally, with debtors in the languages of the major population groups served by the provider. The provider shall provide or arrange for bilingual personnel, interpreters, or the use of communication technology, as needed, in such languages. The provider shall inform any debtor with limited English proficiency of the languages offered in providing an instructional course. Whenever a provider cannot provide an instructional course to a debtor due to the debtor's limited English proficiency, the provider should employ its best efforts to expeditiously direct such person to one or more

approved providers that can provide an instructional course in the language of the debtor's choice.

(j) *Services to debtors with special needs.* A provider that provides any portion of its instructional course in person shall comply with all federal, state and local laws governing facility accessibility. A provider shall also provide or arrange for communication assistance for debtors with special needs who have difficulty making their service needs known.

(k) *Mandatory disclosures to debtors.* Prior to providing any information to or obtaining any information from a debtor, and prior to delivering an instructional course, a provider shall disclose:

(1) The provider's fee policy;

(2) The provider's policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay;

(3) The instructors' qualifications;

(4) The provider's policy prohibiting it from paying or receiving referral fees for the referral of debtors, except to any locator;

(5) The provider's obligation to provide a certificate to the debtor promptly upon the completion of an instructional course;

(6) The fact that the provider might disclose debtor information to the United States Trustee in connection with the United States Trustee's oversight of the provider, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(7) The fact that the United States Trustee has reviewed only the provider's instructional course, and the fact that the United States Trustee has neither reviewed nor approved any other services the provider provides to debtors; and

(8) The fact that a debtor will only receive a certificate if the debtor completes an instructional course.

(l) *Complaint procedures.* A provider shall employ complaint procedures that adequately respond to debtors' concerns.

(m) *Provider records.* A provider shall prepare and retain records that enable the United States Trustee to evaluate whether the provider is providing effective instruction and acting in compliance with all applicable laws and this rule. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the provider shall prepare and retain for a minimum of two years, and permit review of by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the provider remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Records concerning the delivery of services to debtors with limited English proficiency and special needs, and to hearing-impaired debtors, including records:

(i) Of the number of such debtors;

(ii) Of which languages are offered;

(iii) Detailing the provider's best efforts to provide services to such debtors; and

(iv) Supporting any justification if the provider did not provide services to such debtors;

(4) Records concerning the delivery of an instructional course to debtors for free or at reduced rates based upon the debtor's lack of ability to pay, including records of the number of such debtors and the extent to which the provider voluntarily waived all or part of its fees under 28 CFR 58.34(c);

(5) Records of complaints and the provider's responses thereto;

(6) Records that enable the provider to verify the authenticity of certificates their debtors file in bankruptcy cases; and

(7) Records that enable the provider to issue replacement certificates.

(n) *Additional minimum requirements.* A provider shall:

(1) Provide records to the United States Trustee upon request;

(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the provider's qualifications to be an approved provider;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the instructional course or bankruptcy process;

(5) Take no action that would limit, inhibit, or prevent a debtor from bringing an action or claim for damages against a provider under any applicable law, including but not limited to 11 U.S.C. 111(g)(2);

(6) Refer debtors seeking an instructional course only to providers that have been approved by a United States Trustee to provide such services;

(7) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in appendix A to the application;

(8) Not disclose or provide to a credit reporting agency any information concerning whether a debtor has received or sought instruction concerning personal financial management from a provider;

(9) Not expose the debtor to commercial advertising as part of or during the debtor's receipt of an instructional course, and never market or sell financial products or services during the instructional course; provided, however, this provision does not prohibit a provider from generally discussing all available financial products and services; and

(10) Not sell information about any debtor to any third party without the debtor's prior written permission.

§ 58.34 Additional minimum requirements to become and remain approved providers relating to fees.

(a) If a fee for an instructional course is charged by a provider, such fee must be reasonable:

(1) A fee of $50 or less for an instructional course is presumed to be reasonable and a provider need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding $50 for an instructional course is not presumed to be reasonable and a provider must obtain prior approval from the United States Trustee to charge such a fee. The provider bears the burden of establishing that its proposed fee is reasonable. At a minimum, the provider must demonstrate that its cost for delivering the instructional course justifies the fee; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section periodically, but not less than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto

shall be published in the **Federal Register**.

(b) A provider shall waive the fee whenever a debtor demonstrates a lack of ability to pay the fee. A debtor shall be deemed to have demonstrated a lack of ability to pay the fee if the debtor's household current income is less than 150% of the income of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) as identified in the Poverty Guidelines updated periodically in the **Federal Register** by the United States Department of Health and Human Services applicable to a family or household of the size involved in the fee decision.

(c) Notwithstanding the requirements of paragraph (b) of this section, a provider may also waive fees based upon other considerations, including, but not limited to:

(1) The debtor's net worth;

(2) The percentage of the debtor's income from government assistance programs;

(3) Whether the debtor is receiving pro bono legal services in connection with a bankruptcy case; or

(4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the debtor and his or her spouse, when multiplied times 12, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) A provider shall not link a debtor's purchase of an instructional course to the purchase of any other service offered by the provider.

(e) A provider who is also a chapter 13 standing trustee may only provide the instructional course to debtors in cases in which the trustee is appointed to serve and may not charge any fee to those debtors for the instructional course. A standing chapter 13 trustee may not require debtors in cases administered by the trustee to obtain the instructional course from the trustee. Employees and affiliates of the standing trustee are also bound by the restrictions in this subsection.

§ 58.35 Additional minimum requirements to become and remain approved providers relating to certificates.

(a) An approved provider shall deliver a certificate only to the debtor who took and completed the instructional course, except that an approved provider shall instead deliver a certificate to the attorney of a debtor who took and completed an instructional course if the debtor specifically requests that in writing.

(b) An approved provider shall deliver a certificate to a debtor no later than three business days after the debtor completed an instructional course and after completion of a debtor course evaluation form that evaluates the effectiveness of the instructional course; however, the approved provider shall not withhold the issuance of a certificate because of a debtor's failure to submit an evaluation form, though the provider should make reasonable effort to ensure that debtors complete and submit course evaluation forms.

(c) An approved provider shall not withhold the issuance of a certificate because of a debtor's failure to obtain a passing grade on a quiz, examination, or test. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the approved provider cannot deny a certificate to a debtor if the debtor has completed the course as designed.

(d) An approved provider shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee.

(e) An approved provider shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(f) An approved provider shall not charge a separate fee for the issuance of a certificate or replacement certificate, unless:

(1) The approved provider has disclosed such fee in writing before an instructional course is provided and before any payment is made by the debtor;

(2) The approved provider obtains the written consent of the debtor before the debtor commences receiving an instructional course; and

(3) Such fee is reasonable and otherwise complies with the waiver requirements of 28 CFR 58.34.

(g) An approved provider shall issue a certificate to each debtor who completes an instructional course. Spouses receiving an instructional course jointly shall each receive a certificate.

(h) An approved provider shall issue a replacement certificate to a debtor who requests one.

(i) An approved provider shall not file certificates with the court.

(j) Only an authorized officer, supervisor or employee of an approved provider shall issue a certificate, and an approved provider shall not transfer or delegate authority to issue certificates to any other entity.

(k) An approved provider shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(l) An approved provider shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (j) of this section, which signature shall be either:

(1) An original signature; or

(2) An electronic signature (in the form /s/ name of instructor); however, whenever a certificate is prepared for filing electronically with the court, a certificate with the instructor's original signature shall also be provided to the debtor.

(m) An approved provider shall affix to the certificate the exact name under which the approved provider is incorporated or organized.

(n) An approved provider shall identify on the certificate:

(1) The specific federal judicial district requested by the debtor;

(2) Whether an instructional course was provided in person, by telephone or via the Internet;

(3) The date on which an instructional course was completed by the debtor; and

(4) The name of the instructor that provided the instructional course.

(o) An approved provider shall affix the debtor's full, accurate name to the certificate. If the instructional course is obtained by a debtor through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

§ 58.36 Procedures for obtaining final agency action on United States Trustees' decisions to deny providers' applications and to remove approved providers from the approved list.

(a) The United States Trustee shall remove an approved provider from the approved list whenever an approved provider requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved provider from the approved list, and thereby terminate the approved provider's authorization to provide an instructional course, at any time.

(c) The United States Trustee may issue a decision to deny a provider's application or remove a provider from the approved list whenever the United States Trustee determines that the provider has failed to comply with the standards or requirements specified in 11 U.S.C. 111, this rule, or the terms under which the United States Trustee designated it to act as an approved

provider, including, but not limited to, finding any of the following:

(1) If any entity has suspended or revoked the provider's license to do business in any jurisdiction; or

(2) Any United States district court has removed the provider under 11 U.S.C. 111(e).

(d) The United States Trustee shall provide to the provider in writing a notice of any decision either to:

(1) Deny the provider's application; or

(2) Remove the provider from the approved list.

(e) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the provider copies of any such documents that were not supplied to the United States Trustee by the provider. The notice shall be sent to the provider by overnight courier, for delivery the next business day.

(f) Except as provided in paragraph (h) of this section, the notice shall advise the provider that the denial or removal decision shall become final agency action, and unreviewable, unless the provider submits in writing a request for review by the Director no later than 20 calendar days from the date of the notice to the provider.

(g) Except as provided in paragraph (h) of this section, the decision to deny a provider's application or to remove a provider from the approved list shall take effect upon:

(1) The expiration of the provider's time to seek review from the Director, if the provider fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final written decision, if the provider timely seeks such review.

(h) The United States Trustee may provide that a decision to remove a provider from the approved list is effective immediately and deny the provider the right to provide an instructional course whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) or (2) of this section.

(i) A provider's request for review shall be in writing and shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the provider wants the Director to consider in reviewing the denial or removal decision. The provider shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 20 calendar days from the date of the notice to the provider.

(j) The United States Trustee shall have 30 calendar days from the date of the provider's request for review to submit to the Director a written response regarding the matters raised in the provider's request for review. The United States Trustee shall provide a copy of this response to the provider by overnight courier, for delivery the next business day.

(k) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(l) In reviewing the decision to deny a provider's application or to remove a provider from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(m) Except as provided in paragraph (n) of this section, the Director shall issue a written final decision no later than 60 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the provider's request for review shall constitute final agency action.

(n) Whenever the United States Trustee provides under paragraph (h) of this section that a decision to remove a provider from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calender days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time, which decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the provider should be removed from the approved list; after issuing the decision, the Director shall issue a written final decision in accordance with the requirements of paragraph (m) of this section.

(o) In reaching a decision under paragraphs (m) or (n) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(p) A provider that files a request for review shall bear its own costs and expenses, including counsel fees.

(q) When a decision to remove a provider from the approved list takes effect, the provider shall:

(1) Immediately cease providing an instructional course to debtors and shall not agree to provide an instructional course to debtors;

(2) No later than 3 business days after the date of removal, issue all certificates to all debtors who completed an instructional course prior to the provider's removal from the approved list; and

(3) No later than 3 business days after the date of removal, return all fees to debtors who had paid for an instructional course, but had not completely received them.

(r) A provider must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: October 30, 2008.

Clifford J. White, III,

Director, Executive Office for United States Trustees.

[FR Doc. E8–26550 Filed 11–13–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0189]

RIN 1625–AA00

Safety Zones; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action is a supplemental notice of proposed rulemaking (SNPRM) to Coast Guard's April 15, 2008, notice of proposed rulemaking (NPRM) which proposed the revision of the list of permanent safety zones established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District (73 FR 20223). In the April 2008 NPRM, the

Coast Guard proposed the addition of 22 new safety zones, and the modification 4 existing zones for fireworks display launch platforms and fallout areas. This supplemental proposal includes three additional safety zones and removes one previously proposed zone for a total of 24 new safety zones for fireworks displays. This action also proposes modification to one existing safety zone for a total of five modifications to preexisting zones established for fireworks displays. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within these proposed zones during the enforcement periods will be prohibited without approval of the appropriate Captain of the Port.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before December 15, 2008 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2008–0189 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, Inspections and Investigations Branch, at (757) 398–6204. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0189), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–0189'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–0189 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In this supplemental proposal, the Coast Guard proposes to revise the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. For a description of the geographical area of the Fifth District and subordinate Coast Guard Sectors—Captain of the Port Zones, please see 33 CFR 3.25. Currently there are 49 permanent safety zones established that are enforced for fireworks displays occurring throughout the year that are held on an annual basis and normally in one of these 49 locations.

The Coast Guard proposes to revise the list of permanent safety zones at 33 CFR 165.506, established for fireworks displays, by adding 24 new locations and modifying 5 previously established locations within the geographic boundary of the Fifth Coast Guard District. This rule will increase the total number of permanent safety zones to 73 locations for fireworks displays within the boundary of the Fifth Coast Guard District.

The 24 newly proposed permanent safety zones are as follows:

TABLE OF PROPOSED FIREWORKS SAFETY ZONES

1	Delaware River, Chester, PA.
2	North Atlantic Ocean Avalon, NJ.
3	Barnegat Bay, Barnegat Township, NJ.
4	North Atlantic Ocean, Cape May, NJ.
5	Great Egg Harbor Inlet, Margate City, NJ.
6	Metedeconk River, Brick Township, NJ.
7	North Atlantic Ocean, Ocean City, NJ.

TABLE OF PROPOSED FIREWORKS SAFETY ZONES—Continued

8	North Atlantic Ocean, Bethany Beach, DE.
9	Baltimore Inner Harbor, Patapsco River, MD.
10	Anacostia River, Washington, DC.
11	Potomac River, Charles County, MD.
12	Potomac River, National Harbor, MD.
13	Patuxent River, Calvert County, MD.
14	Patuxent River, Solomons Island, Calvert County, MD.
15	Appomattox River, Hopewell, VA.
16	John H. Kerr Reservoir, Clarksville, VA.
17	Chesapeake Bay, Hampton, VA.
18	Atlantic Ocean, Virginia Beach, VA, Safety Zone. B.
19	Atlantic Ocean, Virginia Beach, VA, Safety Zone. C.
20	Nansemond River, Suffolk, VA.
21	James River, Williamsburg, VA.
22	Edenton Bay, Edenton, NC.
23	Motts Channel, Banks Channel, Wrightsville Beach, NC.
24	New River, Jacksonville, NC.

The safety zone locations previously proposed for modification by this rule are: Potomac River, Charles County, MD; Northwest Harbor (West Channel) Patapsco River, MD; Delaware River, Essington, PA; and Atlantic Ocean, Virginia Beach, VA, safety zone A. This supplemental proposal adds one additional location; Cape Fear River, Wilmington, NC.

The Coast Guard typically receives numerous applications in these areas for fireworks displays. Previously a temporary safety zone was usually established on an emergency basis for each display. Emergency activation of safety zones limited the opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provides the public the opportunity to comment on the zone locations, size and length of time the zones will be enforced.

Each year organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene could allow persons within the safety zone if conditions permit.

The Coast Guard would publish notices in the **Federal Register** if an event sponsor reported a change to the listed event venue or date. In the case of inclement weather the event usually will be conducted on the day following the date listed in the Table to § 165.506. Coast Guard Captains of the Port would give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This would include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. Fireworks barges or launch sites on land used in the locations stated in this rulemaking would also display a sign. The sign would be affixed to the port and starboard side of the barge or mounted on a post 3 foot above ground level when on land and in close proximity to the shoreline facing the water labeled ''FIREWORKS—DANGER—STAY AWAY''. This would provide on scene notice that the safety zone is or will be enforced on that day. This notice will consist of a diamond shaped sign 4 foot by 4 foot with a 3-inch orange retro-reflective border. The word ''DANGER'' shall be 10 inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background. There would also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 30 minutes after its completion to enforce the safety zone.

The enforcement period for these proposed safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this timeframe if authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23.

This rule is being proposed to provide for the safety of life on navigable waters during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

Discussion of Proposed Rule

(a) The Coast Guard proposes to revise the regulations at 33 CFR 165.506 by adding the following 24 permanent safety zone locations. All coordinates listed for the following safety zones reference Datum NAD 1983.

Delaware River, Chester, PA, Safety Zone

All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yards radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N, longitude 075°22′42″ W.

North Atlantic Ocean, Avalon, NJ, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°05′31″ N, longitude 074°43′00″ W, in the vicinity of the shoreline at Avalon, NJ.

Barnegat Bay, Barnegat Township, NJ, Safety Zone

The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.

North Atlantic Ocean, Cape May, NJ, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.

Great Egg Harbor Inlet, Margate City, NJ, Safety Zone

All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ.

Metedeconk River, Brick Township, NJ, Safety Zone

The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, near the shoreline at Brick Township, NJ.

North Atlantic Ocean, Ocean City, NJ, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.

North Atlantic Ocean, Bethany Beach, DE, Safety Zone

The waters of the North Atlantic Ocean within a 500 yard radius of the launch platform in approximate position latitude 38°32′08″ N, longitude

075°03′15″ W, adjacent to shoreline of Bethany Beach, DE.

Baltimore Inner Harbor, Patapsco River, MD, Safety Zone

The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′03″ N, longitude 076°36′36″ W, located in Baltimore Inner Harbor, approximately 150 yards southeast of pier 1.

Anacostia River, Washington, DC, Safety Zone

All waters of the Anacostia River within a 150 yard radius of the Fireworks discharge site located near the shoreline at Washington Nationals Ball Park in approximate position latitude 38°52′18″ N, longitude 077°00′20″ W.

Potomac River, Charles County, MD,—Mount Vernon, Safety Zone

All waters of the Potomac River within a 300 yard radius of the fireworks launch site near the Mount Vernon Estate, in Fairfax County, Virginia, located at latitude 38°42′24″ N, longitude 077°04′56″ W.

Potomac River, National Harbor, MD, Safety Zone

All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′18″ N, longitude 077°01′01″ W; thence to latitude 38°47′11″ N, longitude 077°01′26″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland.

Patuxent River, Calvert County, MD, Safety Zone

All waters of the Patuxent River within a 280 yard radius of the fireworks barge in approximate position latitude 38°19′06.6″ N, longitude 076°26′10.1″ W, approximately 1450 yards west of Drum Point, MD.

Patuxent River, Solomons Island, Calvert County, MD, Safety Zone

All waters of the Patuxent River within a 400 yard radius of the fireworks barge located at latitude 38°19′03″ N, longitude 076°26′07.6″ W.

Appomattox River, Hopewell, VA, Safety Zone

All waters of the Appomattox River within a 400 yard radius of the fireworks barge in approximate position latitude 37°19′11″ N, longitude 077°16′55″ W.

John H. Kerr Reservoir, Clarksville, VA, Safety Zone

All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N, longitude 078°32′50″ W, located near the south end of the State Route 15 Highway Bridge.

Chesapeake Bay, Hampton, VA, Safety Zone

All waters of the Chesapeake Bay within a 350 yard radius of approximate position latitude 37°02′23″ N, longitude 076°17′22″ W, located near Buckroe Beach.

Atlantic Ocean, VA Beach, VA, Safety Zone

All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N, longitude 075°58′09″ W, located on the 14th Street Fishing Pier.

Atlantic Ocean, VA Beach, VA, Safety Zone

All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N, longitude 075°58′00″ W, located off the beach between 2nd and 6th streets.

Nansemond River, Suffolk, VA, Safety Zone

All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N, longitude 076°34′42″ W, located near Constant's Wharf in Suffolk, VA.

James River, Williamsburg, VA, Safety Zone

All waters of the James River within a 350 yard radius of approximate position latitude 37°13′23.3″ N, longitude 076°40′11.8″ W, located near Kingsmill Resort.

Edenton Bay, Edenton, NC, Safety Zone

All waters within a 300 yard radius of position latitude 36°03′04″ N, longitude 076°36′18″ W, approximately 150 yards east of the entrance to Queen Anne Creek, Edenton, NC.

Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone

All waters of Motts Channel within a 300 yard radius of the fireworks barge in approximate position latitude 34°12′29″ N, longitude 077°48′27″ W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.

New River, Jacksonville, NC, Safety Zone

All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N, longitude 077°26′18″ W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina.

(b) The Coast Guard proposes to revise regulations at 33 CFR 165.506 by modifying 5 existing permanent safety zone locations as follows. All coordinates listed for the following safety zones reference Datum NAD 1983.

Potomac River, Charles County, MD, Safety Zone

All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°20′18″ N, longitude 077°15′00″ W, approximately 700 yards north of the shoreline at Fairview Beach, Virginia.

Northwest Harbor (West Channel) Patapsco River, MD, Safety Zone

All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N, longitude 076°34′38″ W, located adjacent to the West Channel of Northwest Harbor.

Delaware River, Essington, PA, Safety Zone

All the waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yards radius of the fireworks barge located in the approximate position latitude 39°51′18″ N, longitude 075°18′57″ W.

Atlantic Ocean, Virginia Beach, VA, Safety Zone

All waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N, longitude 075°58′06″ W, a safety zone located off the beach between 17th and 31st streets.

Cape Fear River, Wilmington, NC, Safety Zone

All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N, longitude 077°57′06″ W; thence northeast to latitude 34°13′57″ N, longitude 077°57′05″ W; thence north to latitude 34°14′11″ N, longitude 077°57′07″ W; thence northwest to latitude 34°14′22″ N, longitude 077°57′19″ W; thence west to latitude 34°14′22″ N, longitude 077°57′06″ W; thence southeast to latitude 34°14′07″ N, longitude 077°57′00″ W; thence south to latitude 34°13′54″ N, longitude 077°56′58″ W; thence to the point of

origin, located approximately 500 yards north of Cape Fear Memorial Bridge.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the short amount of time that vessels would be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by issuing Local Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly. Notifications to the public for most events will usually be made by local newspapers, radio and TV stations. The Coast Guard anticipates that each safety zone will only be enforced 2 to 3 times per year.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the proposed safety zones during the times these zones are enforced.

These proposed safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The enforcement period will be short in duration and in many of the zones vessels may transit safely around the safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.506 to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

(a) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) The following regulations apply to the fireworks safety zones listed in the Table to § 165.506. These regulations will be effective annually, for the duration of each fireworks event listed in the Table to § 165.506. In the case of inclement weather the event may be conducted on the day following the date listed in the Table to § 165.506. Annual notice of the exact dates and times of the effective period of the regulation with respect to each safety zone, the geographical area, and other details concerning the nature of the fireworks event will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. Those personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(b) *Notification.* (1) Fireworks barges and launch sites on land that operate within the regulated areas contained in the Table to § 165.506 will have a sign affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land immediately adjacent to the shoreline and facing the water labeled ''FIREWORKS—DANGER—STAY AWAY''. This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 foot by 4 foot with a 3-inch orange retro reflective border. The word ''DANGER'' shall be 10 inch black block letters centered on the sign with the words ''FIREWORKS'' and ''STAY AWAY'' in 6 inch black block letters placed above and below the word ''DANGER'' respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to effect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(c) *Contact information.* Questions about safety zones and related events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Atlantic Beach, North Carolina: (252) 247–4545.

(d) *Enforcement period.* The safety zones in the Table to § 165.506 will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a ''FIREWORKS—DANGER—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—DANGER—STAY AWAY'' sign is posted on land adjacent to the shoreline, in a location listed in the Table to § 165.506. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
(a) Coast Guard Sector Delaware Bay—COTP Zone			
(1)	July 4th	North Atlantic Ocean, Bethany Beach, DE, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks launch platform in approximate position latitude 38°32′08″ N, longitude 075°03′15″ W, adjacent to shoreline of Bethany Beach, DE.
(2)	Labor Day	Indian River Bay, DE, Safety Zone.	All waters of the Indian River Bay within a 360 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N, longitude 075°08′18″ W, about 700 yards east of Pots Net Point, DE.
(3)	July 4th	Atlantic Ocean, Rehoboth Beach, DE, Safety Zone.	All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N, longitude 075°04′21″ W, approximately 400 yards east of Rehoboth Beach, DE.
(4)	July 4th	North Atlantic Ocean, Avalon, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°05′31″ N, longitude 074°43′00″ W, in the vicinity of the shoreline at Avalon, NJ.
(5)	July 4th, September—2nd Saturday.	Barnegat Bay, Barnegat Township, NJ, Safety Zone.	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.
(6)	July 4th	North Atlantic Ocean, Cape May, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N, longitude 074°55′26″ W, immediately adjacent to the shoreline at Cape May, NJ.
(7)	July 3rd	Delaware Bay, North Cape May, NJ, Safety Zone.	All waters of the Delaware Bay within a 500 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N, longitude 074°58′30″ W.
(8)	August—3rd Sunday	Great Egg Harbor Inlet, Margate City, NJ, Safety Zone.	All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N, longitude 074°31′28″ W, on the Intracoastal Waterway near Margate City, NJ.
(9)	July 4th, August every Thursday September 1st Thursday.	Metedeconk River, Brick Township, NJ, Safety Zone.	The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N, longitude 074°06′42″ W, near the shoreline at Brick Township, NJ.
(10)	July 4th	North Atlantic Ocean, Ocean City, NJ, Safety Zone.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.
(11)	May—4th Saturday	Barnegat Bay, Ocean Township, NJ, Safety Zone.	All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N, longitude 074°10′46″ W.
(12)	July 4th	Little Egg Harbor, Parker Island, NJ, Safety Zone.	All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N, longitude 074°14′43″ W, approximately 100 yards north of Parkers Island.
(13)	September—3rd Saturday	Delaware River, Chester, PA, Safety Zone.	All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yards radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N, longitude 075°22′42″ W.
(14)	September—3rd Saturday	Delaware River, Essington, PA, Safety Zone.	All the waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yards radius of the fireworks barge located in the approximate position latitude 39°51′18″ N, longitude 075°18′57″ W.
(15)	July 4th, Columbus Day, December 31st, January 1st.	Delaware River, Philadelphia, PA, Safety Zone.	All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N, longitude 075°08′28.1″ W; thence to latitude 39°56′29.1″ N, longitude 075°07′56.5″ W, and bounded on the north by the Benjamin Franklin Bridge.
(b) Coast Guard Sector Baltimore—COTP Zone			
(1)	April—1st Saturday	Washington Channel, Upper Potomac River, Washington, DC, Safety Zone.	All waters of the Upper Potomac River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′09″ N, longitude 077°01′13″ W, located within the Washington Channel in Washington Harbor, DC.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
(2)	July 4th, December—1st and 2nd Saturday, December 31st.	Severn River and Spa Creek, Annapolis, MD, Safety Zone.	All waters of the Severn River and Spa Creek within an area bounded by a line drawn from latitude 38°58′39.6″ N, longitude 076°28′49″ W; thence to latitude 38°58′41″ N, longitude 076°28′14″ W; thence to latitude 38°59′01″ N, longitude 076°28′37″ W; thence to latitude 38°58′57″ N, longitude 076°28′40″ W, located near the entrance to Spa Creek in Annapolis, Maryland.
(3)	Saturday before Independence Day holiday.	Middle River, Baltimore County, MD, Safety Zone.	All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N, longitude 076°23′49″ W, approximately 300 yards east of Rockaway Beach, near Turkey Point.
(4)	July 4th. December 31st	Patapsco River (Middle Branch), Baltimore, MD, Safety Zone.	All waters of the Patapsco River, Middle Branch, within an area bound by a line drawn from the following points: latitude 39°15′22″ N, longitude 076°36′36″ W; thence to latitude 39°15′10″ N, longitude 076°36′00″ W; thence to latitude 39°15′40″ N, longitude 076°35′23″ W; thence to latitude 39°15′49″ N, longitude 076°35′47″ W; thence to the point of origin, located approximately 600 yards east of Hanover Street (SR–2) Bridge.
(5)	June 14th, July 4th, September—2nd Saturday, December 31st.	Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N, 076°34′35″ W, located adjacent to the East Channel of Northwest Harbor.
(6)	May—3rd Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 150 yard radius of the fireworks barge in approximate position latitude 39°16′55″ N, longitude 076°36′17″ W, located at the entrance to Baltimore Inner Harbor, approximately 150 yards southwest of pier 6.
(7)	May—3rd Friday, July 4th, December 31st.	Baltimore Inner Harbor, Patapsco River, MD, Safety Zone.	The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′03″ N, longitude 076°36′36″ W, located in Baltimore Inner Harbor, approximately 150 yards southeast of pier 1.
(8)	July 4th, December 31st	Northwest Harbor (West Channel) Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N, longitude 076°34′38″ W, located adjacent to the West Channel of Northwest Harbor.
(9)	July 4th	Patuxent River, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 280 yard radius of the fireworks barge in approximate position latitude 38°19′06.6″ N, longitude 076°26′10.1″ W, approximately 1450 yards west of Drum Point, MD.
(10)	July 4th	Patuxent River, Solomons Island, Calvert County, MD, Safety Zone.	All waters of the Patuxent River within a 400 yard radius of the fireworks barge located at latitude 38°19′03″ N, longitude 076°26′07.6″ W.
(11)	July 4th	Patuxent River, Solomons Island, MD, Safety Zone.	All waters of Patuxent River within a 300 yard radius of the fireworks barge in an area bound by the following points: latitude 38°19′42″ N, longitude 076°28′02″ W; thence to latitude 38°19′26″ N, longitude 076°28′18″ W; thence to latitude 38°18′48″ N, longitude 076°27′42″ W; thence to latitude 38°19′06″ N, longitude 076°27′25″ W; thence to the point of origin, located near Solomons Island, MD.
(12)	July 4th	Chester River, Kent Island Narrows, MD, Safety Zone.	All waters of the Chester River, within an area bound by a line drawn from the following points: latitude 38°58′50″ N, longitude 076°15′00″ W; thence north to latitude 38°59′00″ N, longitude 076°15′00″ W; thence east to latitude 38°59′00″ N, longitude 076°14′46″ W; thence southeast to latitude 38°58′50″ N, longitude 076°14′28″ W; thence southwest to latitude 38°58′37″ N, longitude 076°14′36″ W, thence northwest to latitude 38°58′42″ N, longitude 076°14′55″ W, thence to the point of origin, located approximately 900 yards north of Kent Island Narrows (US–50/301) Bridge.
(13)	July 3rd	Chesapeake Bay, Chesapeake Beach, MD, Safety Zone.	All waters of the Chesapeake Bay within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′33″ N, longitude 076°31′48″ W, located near Chesapeake Beach, Maryland.
(14)	July 4th	Choptank River, Cambridge, MD, Safety Zone.	All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N, longitude 076°04′46″ W.
(15)	July—2nd and last Saturday	Potomac River, Charles County, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°20′18″ N, longitude 077°15′00″ W, approximately 700 yards north of the shoreline at Fairview Beach, Virginia.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
(16)	May—last Saturday, July 4th ...	Potomac River, Charles County, MD—Mount Vernon, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks launch site near the Mount Vernon Estate, in Fairfax County, Virginia, located at latitude 38°42′24″ N, longitude 077°04′56″ W.
(17)	October—1st Saturday	Dukeharts Channel, Potomac River, MD, Safety Zone.	All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′48″ N, longitude 076°44′37″ W, located adjacent to Dukeharts Channel near Coltons Point, Maryland.
(18)	July—Day before Independence Day holiday, November—last Friday.	Potomac River, National Harbor, MD, Safety Zone.	All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′18″ N, longitude 077°01′01″ W; thence to latitude 38°47′11″ N, longitude 077°01′26″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland.
(19)	July 4th, September—last Saturday.	Susquehanna River, Havre de Grace, MD, Safety Zone.	All waters of the Susquehanna River within a 150 yard radius of the fireworks barge in approximate position latitude 39°32′42″ N, longitude 076°04′30″ W, approximately 800 yards east of the waterfront at Havre de Grace, MD.
(20)	June and July—Saturday before Independence Day holiday.	Miles River, St. Michaels, MD, Safety Zone.	All waters of the Miles River within a 200 yard radius of the fireworks barge in approximate position latitude 38°47′42″ N, longitude 076°12′23″ W, located near the waterfront of St. Michaels, Maryland.
(21)	June and July—Saturday or Sunday before Independence Day holiday.	Tred Avon River, Oxford, MD, Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′48″ N, longitude 076°10′38″ W, approximately 500 yards northwest of the waterfront at Oxford, MD.
(22)	July 3rd	Northeast River, North East, MD, Safety Zone.	All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N, longitude 075°57′00″ W, approximately 400 yards south of North East Community Park.
(23)	June—2nd or 3rd Saturday, July—1st or 2nd Saturday, September—1st or 2nd Saturday.	Upper Potomac River, Alexandria, VA, Safety Zone.	All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′37″ N, 077°02′02″ W, located near the waterfront of Alexandria, Virginia.
(24)	March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park.	Anacostia River, Washington, DC, Safety Zone.	All waters of the Anacostia River within a 150 yard radius of the Fireworks discharge site located near the shoreline at Washington Nationals Ball Park in approximate position latitude 38°52′18″ N, longitude 077°00′20″ W,
(25)	June—last Saturday	Potomac River, Prince William County, VA, Safety Zone.	All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′08″ N, longitude 077°15′34″ W, located near Cherry Hill, Virginia.
(c) Coast Guard Sector Hampton Roads—COTP Zone			
(1)	July 4th	Atlantic Ocean, Ocean City, MD, Safety Zone.	All waters of the Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N, longitude 075°05′03.2″ W; thence to latitude 38°19′36.7″ N, longitude 075°04′53.5″ W; thence to latitude 38°19′45.6″ N, longitude 075°04′49.3″ W; thence to latitude 38°19′49.1″ N, longitude 075°05′00.5″ W; thence to point of origin. The size of the proposed zone extends approximately 300 yards offshore from the fireworks launch area located at the High Water mark on the beach.
(2)	May—4th Sunday, June—3rd Monday, July 4th, August—1st and 4th Sunday, September—1st and 4th Sunday.	Isle of Wight Bay, Ocean City, MD, Safety Zone.	All waters of Isle of Wight Bay within a 350 yard radius of the fireworks barge in approximate position latitude 38°22′32″ N, longitude 075°04′30″ W.
(3)	July 4th	Assawoman Bay, Fenwick Island—Ocean City, MD, Safety Zone.	All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′57.6″ N, longitude 075°03′55.8″ W.
(4)	July 4th	Broad Bay, Virginia Beach, VA, Safety Zone.	All waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′08″ N, longitude 076°00′46″ W, located on the shoreline near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia.
(5)	October—1st Friday	York River, West Point, VA, Safety Zone.	All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N, longitude 076°47′19″ W.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
(6)	July 4th	York River, Yorktown, VA, Safety Zone.	All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N, longitude 076°30′02″ W, located near Yorktown, Virginia.
(7)	July 4th	Chincoteague Channel, Chincoteague, VA, Safety Zone.	All waters of the Chincoteague Channel within a 360 yard radius of the fireworks launch location at the Chincoteague carnival waterfront in approximate position latitude 37°55′40.3″ N, longitude 075°23′10.7″ W, approximately 900 yards southwest of Chincoteague Swing Bridge.
(8)	May—1st Friday, July 4th	James River, Newport News, VA, Safety Zone.	All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N, longitude 076°26′19″ W, located in the vicinity of the Newport News Shipyard, Newport News, Virginia.
(9)	July 9th	Chesapeake Bay, Hampton, VA, Safety Zone.	All waters of the Chesapeake Bay within a 350 yard radius of approximate position latitude 37°02′23″ N, longitude 076°17′22″ W, located near Buckroe Beach.
(10)	June—4th Friday	Chesapeake Bay, Norfolk, VA, Safety Zone.	All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N, longitude 076°15′00″ W, located near Ocean View Fishing Pier.
(11)	July 4th	Chesapeake Bay, Virginia Beach, VA, Safety Zone.	All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N, longitude 076°03′27″ W, located at the First Landing State Park at Virginia Beach, Virginia.
(12)	Memorial Day, June—1st and 2nd Friday, Saturday and Sunday, July 4th, November—4th Saturday, December—1st Saturday and December 31st, January—1st.	Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone.	All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N, longitude 076°18′10.7″ W; thence to latitude 36°51′7.9″ N, longitude 076°18′01″ W; thence to latitude 36°50′45.6″ N, longitude 076°17′44.2″ W; thence to latitude 36°50′29.6″ N, longitude 076°17′23.2″ W; thence to latitude 36°50′7.7″ N, longitude 076°17′32.3″ W; thence to latitude 36°49′58″ N, longitude 076°17′28.6″ W; thence to latitude 36°49′52.6″ N, longitude 076°17′43.8″ W; thence to latitude 36°50′27.2″ N, longitude 076°17′45.3″ W thence to the point of origin.
(13)	May—2nd Saturday, September—1st Saturday and Sunday, December—1st Saturday.	Appomattox River, Hopewell, VA, Safety Zone.	All waters of the Appomattox River within a 400 yard radius of the fireworks barge in approximate position latitude 37°19′11″ N, longitude 077°16′55″ W.
(14)	July—3rd Saturday	John H. Kerr Reservoir, Clarksville, VA, Safety Zone.	All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N, longitude 078°32′50″ W, located near the south end of the State Route 15 Highway Bridge.
(15)	May, June, July, August, September, October—every Wednesday, Friday, Saturday and Sunday, July 4th.	Atlantic Ocean, Virginia Beach, VA, Safety Zone. A.	All waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N, longitude 075°58′06″ W, located off the beach between 17th and 31st streets.
(16)	September—4th Saturday	Atlantic Ocean, VA Beach, VA, Safety Zone. B.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N, longitude 075°58′09″ W, located on the 14th Street Fishing Pier.
(17)	August—4th Friday and Saturday.	Atlantic Ocean, VA Beach, VA, Safety Zone. C.	All waters of the Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N, longitude 075°58′00″ W, located off the beach between 2nd and 6th streets.
(18)	July 4th	Nansemond River, Suffolk, VA, Safety Zone.	All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N, longitude 076°34′42″ W, located near Constant's Wharf in Suffolk, VA.
(19)	February—4th Saturday, July 4th.	Chickahominy River, Williamsburg, VA, Safety Zone.	All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N, longitude 076°52′17″ W, near Barrets Point, Virginia.
(20)	July 4th	James River, Williamsburg, VA, Safety Zone.	All waters of the James River within a 350 yard radius of approximate position latitude 37°13′23.3″ N, longitude 076°40′11.8″ W, located near Kingsmill Resort.
(d) Coast Guard Sector North Carolina—COTP Zone			
(1)	July 4th, October—1st Friday	Morehead City Harbor Channel, NC, Safety Zone.	All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N, longitude 076°42′59.6″ W, a position located at the west end of Sugar Loaf Island, NC.

TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

Number	Date	Location	Regulated area
(2)	April—2nd Saturday, July 4th, August—3rd Monday, October—1st Friday.	Cape Fear River, Wilmington, NC, Safety Zone.	All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N, longitude 077°57′06″ W; thence northeast to latitude 34°13′57″ N, longitude 077°57′05″ W; thence north to latitude 34°14′11″ N, longitude 077°57′07″ W; thence northwest to latitude 34°14′22″ N, longitude 077°57′19″ W; thence west to latitude 34°14′22″ N, longitude 077°57′06″ W; thence southeast to latitude 34°14′07″ N, longitude 077°57′00″ W; thence south to latitude 34°13′54″ N, longitude 077°56′58″ W; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge.
(3)	July 4th	Green Creek and Smith Creek, Oriental, NC, Safety Zone.	All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N, longitude 076°42′10.4″ W, located near the entrance to the Neuse River in the vicinity of Oriental, NC.
(4)	July 4th	Pasquotank River, Elizabeth City, NC, Safety Zone.	All waters of the Pasquotank River within a 300 yard radius of the fireworks launch site in approximate position latitude 36°18′00″ N, longitude 076°13′00″ W, approximately 200 yards south of the east end of the Elizabeth City Bascule Bridges.
(5)	July 4th	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks barge in approximate position latitude 36°22′48″ N, longitude 075°51′15″ W.
(6)	July 4th, November—3rd Saturday.	Middle Sound, Figure Eight Island, NC, Safety Zone.	All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N, longitude 077°45′32″ W, thence east along the marsh to a position located at latitude 34°16′19″ N, longitude 077°44′55″ W, thence south to the causeway at position latitude 34°16′16″ N, longitude 077°44′58″ W, thence west along the shoreline to position latitude 34°16′29″ N, longitude 077°45′34″ W, thence back to the point of origin.
(7)	June—2nd Saturday, July—1st Saturday after July 4th.	Pamlico River, Washington, NC, Safety Zone.	All waters of the Pamlico River that fall within a 300 yard radius of the fireworks launch site at latitude 35°32′19″ N, longitude 077°03′20.5″ W, located 500 yards north of Washington railroad trestle bridge.
(8)	July 4th	Neuse River, New Bern, NC, Safety Zone.	All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N, longitude 077°01′35.8″ W, located 420 yards north of the New Bern, Twin Span, high rise bridge.
(9)	July 4th	Edenton Bay, Edenton, NC, Safety Zone.	All waters within a 300 yard radius of position latitude 36°03′04″ N, longitude 076°36′18″ W, approximately 150 yards east of the entrance to Queen Anne Creek, Edenton, NC.
(10)	July 4th, November—4th Monday.	Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	All waters of Motts Channel within a 300 yard radius of the fireworks barge in approximate position latitude 34°12′29″ N, longitude 077°48′27″ W, approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC.
(11)	July 4th	Cape Fear River, Southport, NC, Safety Zone.	All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N, longitude 078°01′18″ W, approximately 700 yards south of the waterfront at Southport, NC.
(12)	July 4th	Big Foot Slough, Ocracoke, NC, Safety Zone.	All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N, longitude 075°59′24″ W, approximately 100 yards west of the Silver Lake Entrance Channel at Orcacoke, NC.
(13)	August—1st Tuesday	New River, Jacksonville, NC, Safety Zone.	All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N, longitude 077°26′18″ W, approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina.

Dated: October 23, 2008.

Fred M. Rosa, Jr.,

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

[FR Doc. E8–27007 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2009–1; Order No. 130]

Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule; availability of rulemaking petition.

SUMMARY: Under a new law, the Postal Service must file an annual compliance report with the Postal Regulatory Commission on costs, revenues, rates, and quality of service associated with its products. It has filed documents with the Commission to change some of the methods it uses to compile the fiscal year 2008 report. In the Commission's view, these documents constitute a rulemaking petition. Therefore, this document provides an opportunity for the public to comment on potential changes in periodic reporting rules.

DATES: 1. Reserved for technical conference: November 21, 2008.

2. Initial comments: December 1, 2008.

3. Reply comments: December 10, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History

73 FR 51983 (September 8, 2008).

73 FR 55464 (September 25, 2008).

On November 4, 2008, the Postal Service filed a petition to initiate an informal rulemaking proceeding to change accepted costing methods for purposes of periodic reporting.[1] The informal rulemaking procedures proposed would be comparable to those followed in Docket Nos. RM2008–2 and RM2008–6. In Docket No. RM2008–2, nine numbered proposals were the subject of notice and comment rulemaking procedures. In Docket No. RM2008–6, the Postal Service proposed two additional proposals to change costing methods, numbered ten and eleven. The costing proposals in these dockets were evaluated in Order No. 115 (October 10, 2008), and Order No. 118 (October 22, 2008), respectively. The Postal Service refers to the change in accepted cost methods that it proposes in this docket as Proposal Twelve. Labeling it Proposal Twelve indicates that the proposal is sequential to, but distinguishable from, the proposals in the two earlier dockets. *See* Petition at 1.

Substance of the Postal Service's proposal. Proposal Twelve is a proposal to use data recently gathered in the field to update inputs used in the cost avoidance models for flats generally, and for Periodicals flats, in particular. Some new parameters for these models are proposed as well. Proposal Twelve continues the work of updating the Periodicals cost avoidance models that were first presented by the Postal Service in the FY 2007 Annual Compliance Report (ACR) and evaluated by the Commission in the FY 2007 Annual Compliance Determination (ACD). The petition explains that the Postal Service will soon provide similar updates of the First-Class and Standard Mail flats cost avoidance models.

The petition is accompanied by electronic attachments that contain the new input data, the sample designs used in their collection, and the instructions to the data collectors. The petition explains the background, objectives, and rationale for Proposal Twelve, and how the impact in FY 2008 of each proposed change in input data or parameters can be identified from the attachments provided.

Procedural expedition. The same factors that led the Commission to expedite review of the eleven proposals disposed of in Docket Nos. RM2008–2 and RM2008–6 apply here. The set of changes that make up Proposal Twelve, however, appears to be more substantial and more complex than many of those evaluated in Docket Nos. RM2008–2 and RM2008–6. A countervailing consideration is that the time remaining before the FY 2008 ACR is due is much shorter than in those earlier dockets. Balancing these conflicting considerations will be difficult, given the rapidly approaching holidays and year-end convergence of numerous regulatory deadlines.

The Postal Service explains that any technical conference deemed necessary to further explain Proposal Twelve would require it to bring consultants in from out of town. Therefore, it requests that a technical conference not be scheduled ahead of time until the need for it is confirmed. *Id.* at 2. The Postal Service should reserve November 21, 2008, for a technical conference to take place if the Commission is ultimately persuaded that a technical conference is needed to expedite evaluation of Proposal Twelve. To allow for the possibility of a technical conference and, if held, to provide time for the information gained at such a conference to be reflected in public comments, comments on Proposal Twelve are due on or before December 1, 2008. Reply comments are due on December 10, 2008. This schedule may make it difficult to issue a final order in time to have these proposals reflected in the FY 2008 ACR, which is due on December 29, 2008, but at least that goal would remain a possibility.

It is Ordered:

1. The Commission establishes Docket No. RM2009–1 to consider the Petition of the United States Postal Service Requesting Initiation of a Proceeding To Consider Further Proposed Methodology Changes for the FY 2008 ACR (Proposal Twelve), filed November 4, 2008.

2. Interested persons may submit initial comments on or before December 1, 2008.

3. Reply comments may be submitted on or before December 10, 2008.

4. William C. Miller is designated as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

Authority: 39 U.S.C. 3652.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–27055 Filed 11–13–08; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Further Proposed Methodology Changes for the FY 2008 ACR (Proposal Twelve), November 4, 2008 (Petition).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–93; FRL–8740–3]

Removing the Federal Antidegradation Policy Applicable to Waters of the United States Within the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Re-opening of the public comment period for the proposed rule.

SUMMARY: EPA is re-opening the comment period of a proposed rule that the Agency published on September 15, 2008. The proposed rule solicited public comment on the Agency's proposal to remove from the Code of Federal Regulations a rule that EPA promulgated in 1996 making provisions of the federal antidegradation policy directly applicable for all waters of the United States within the Commonwealth of Pennsylvania. EPA is re-opening the comment period for the proposed rule to ensure all parties have adequate opportunity to express their views to the Agency prior to taking final action on the proposed rule. The original comment period for the proposed rule closed on October 15, 2008. In a separate action published in today's final rule section of the **Federal Register**, EPA is withdrawing a direct final rule that EPA also published on September 15, 2008, removing the federal regulation that made provisions of EPA's antidegradation policy directly applicable to waters in Pennsylvania.

DATES: The comment period for the proposed rule published at 73 FR 53178, on September 15, 2008 is now re-opened and will close on December 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2007–0093. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed on the Web site, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the OW docket Center. This docket Facility is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, and 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Caroline Whitehead at U.S. EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave, NW., Washington, DC 20460 (telephone: 202–566–2907, fax: 202–566–0409 or e-mail: *whitehead.caroline@epa.gov*) or Denise Hakowski at U.S. EPA Region 3, (3WP30) 1650 Arch Street, Philadelphia, Pennsylvania 19103 (telephone: 215–814–5726, fax: 215–814–2318 or e-mail: *hakowski.denise@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Entities

Citizens concerned with water quality in Pennsylvania may be interested in this rulemaking. Entities discharging pollutants to the surface waters of Pennsylvania could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits.

Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Pennsylvania.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Pennsylvania.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

II. Today's Action

As EPA explained in its September 15, 2008 notices (73 FR 53140 and 73 FR 53178), EPA proposed to remove the federal regulation that made provisions of the federal antidegradation policy directly applicable in Pennsylvania. EPA proposed to remove the federal rule because Pennsylvania now has an EPA-approved antidegradation policy meeting the federal requirements at 40 CFR 131.12. Therefore, the federal antidegradation regulation promulgated by EPA for Pennsylvania is no longer needed. On September 15, EPA published a direct final rule to remove the federal regulation at 40 CFR 131.32. EPA has determined that additional opportunity for public comment would be beneficial. Therefore, EPA is re-opening the comment period of the proposed rule (73 FR 53178; September 15, 2008) to ensure all parties have adequate opportunity to express their views to the Agency prior to EPA taking final action regarding removal of the federal regulation at 40 CFR 131.32. In a separate action today, EPA is withdrawing the direct final rule (73 FR 53140; September 15, 2008).

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: November 6, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–27209 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[EPA–HQ–OW–2008–0644; FRL–8740–5]

RIN 2040–AF00

National Primary Drinking Water Regulations: Minor Correction to Stage 2 Disinfectants and Disinfection Byproducts Rule and Changes in References to Analytical Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to make a minor correction to the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) and make minor, unrelated, changes in references to expedited, alternative methods and other analytical methods in the regulations. EPA promulgated the Stage 2 Disinfectants and Disinfectant Byproducts Rule on January 4, 2006. A requirement for ground water systems serving 500–9,999 people was unintentionally excluded from the final rule. As a result, the rule allowed for less routine compliance monitoring than intended for this category of Public Water Systems (PWSs). These PWSs should have been required to monitor for both total trihalomethanes (TTHM) and haloacetic acids (HAA5) concentrations at two locations. Due to the error, they were only required to monitor for either TTHM or HAA5 at two locations. EPA is also proposing to make minor, unrelated changes in the CFR by adding references to the list of methods approved under the Expedited Approval Process, removing references to outdated methods, and specifying a new source for the publication titled *Technical Notes on Drinking Water Methods.*

DATES: Comments must be received on or before January 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2008–0644, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA Headquarters, West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0644. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Unit I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For information concerning the Stage 2 DBPR minor correction contact Thomas Grubbs, Standards and Risk Management Division, Office of Ground Water and Drinking Water, M/C 4607M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 564–5262; e-mail address *grubbs.thomas@epa.gov.* For information concerning the methods reference update in the CFR contact Patricia Fair, Standards and Risk Management Division, Technical Support Center, Office of Ground Water and Drinking Water, M/C 140, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; telephone number (513) 569–7937; e-mail address *fair.pat@epa.gov.* For general information, contact the Safe Drinking Water Hotline, telephone number: (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by this regulation are public water systems (PWSs). A public water system, as defined by section 1401 of the Safe Drinking Water Act (SDWA), is ''a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.'' EPA defines ''regularly served'' as receiving water from the system 60 or more days per year. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities
State, Tribal and Local Government	State, Tribal or local government-owned/operated water supply systems using ground water, surface water or mixed ground water and surface water.
Federal Government	Federally owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.
Industry	Privately owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.

This table is not intended to be an exhaustive list, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of ''public water system'' in § 141.2, the section entitled ''Coverage'' (§ 141.3), and the sections entitled ''General requirements'' (§§ 141.600 and 141.620) in Title 40 of the *Code of Federal Regulations* and applicable criteria in §§ 141.605, and 141.621 of today's proposal. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Comments Will Be Considered?

The public is invited to submit comments on the proposed changes to the regulations discussed in this notice, namely, the minor correction to the Stage 2 DBPR, the addition of cross references (to expedited methods) to Appendix A to subpart C of part 141 in the CFR, and the specific deletion of references to outdated methods in the CFR. EPA does not solicit and will not respond in this rulemaking to any comments on any other issues. In

particular, comments will not be responded to regarding the Stage 2 DBPR itself, the expedited method approval process, specific methods approved in the expedited process, or the outdated methods or any specific regulations regarding the outdated methods.

C. Proposed Minor Correction to the Stage 2 Disinfection and Disinfectant Byproduct Rule (DBPR)

Today's proposal corrects the monitoring frequency for one category of public water systems (community water systems (CWSs) and nontransient noncommunity (NTNCWSs) serving 500–9,999 people) to correct an error introduced when the tables were modified prior to publication of the final rule. EPA had modified the tables (in 40 CFR 141.605 and 141.621) in order to move all footnotes into the column headers and out of the individual cells. In combining and rewriting the footnote, EPA inadvertently modified the monitoring requirements for ground water systems serving 500–9,999 people. As discussed in the preamble to the final rule (page 429, USEPA 2006), ''EPA also believes that more samples are necessary to characterize larger systems (as defined by population) than for smaller systems.'' EPA intended for those systems to monitor at a frequency that was twice the frequency required for ground water systems serving fewer than 500 people, taking two dual sample sets (each consisting of TTHM and HAA5 samples) rather than single TTHM and HAA5 samples. However, the footnotes to the monitoring tables in the preamble as well as the regulatory language are incorrect as they do not reflect EPA's intended monitoring requirement for these ground water systems (page 427, USEPA 2006). EPA is proposing to correct the regulatory footnotes. The monitoring for these small systems is not required to begin until the year 2012 or 2013 (page 415, USEPA 2006).

In the Stage 2 DBPR Economic Analysis (USEPA, 2005a) and in the Information Correction Rule Supporting Statement (Page 52, USEPA 2005b), EPA based the estimate of burden for these systems using the intended monitoring frequency. Population-based monitoring is discussed at length in the final Stage 2 DBPR (page 429, USEPA, 2006a) and the additional costs for monitoring by ground water systems serving 500–9,999 people are included (page 456, USEPA, 2006a). EPA is not developing a new economic analysis for this proposal because the existing economic analysis accounts for all costs associated with this proposal.

D. Changes Related to Analytical Methods

1. Cross-References to Appendix A to Subpart C of Part 141

When EPA determines that an alternative analytical method is ''equally effective'' (*i.e.*, as effective as a method that has already been promulgated in the regulations), the Safe Drinking Water Act (SDWA) allows EPA to approve the use of the alternative method through publication in the **Federal Register**. Section 1401(1) of SDWA states that the newly approved methods ''shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.'' EPA approved the first set of alternative methods using this authority in a **Federal Register** action published on June 3, 2008 (73 FR 31616) (USEPA 2008). As part of that action, EPA added an appendix (Appendix A) to the regulations at 40 CFR Part 141, which lists the newly approved methods.

The current Part 141 drinking water regulations do not indicate that additional approved methods are available and are listed in an appendix. Therefore, EPA is proposing to amend the regulations at each section that lists approved analytical methods to add cross references to Appendix A to subpart C of part 141. This will make public water systems, laboratories, and States more aware of the alternative methods. References to the appendix are proposed to be added at the following places:

—Section 141.21(f)(3) and (f)(6)
—Section 141.23(k)(1)
—Section 141.24(e)
—Section 141.25(a)
—Section 141.74(a)(1) and (a)(2)
—Section 141.131(b)(1), (c)(1), and (d)
—Section 141.402(c)(2)
—Section 141.704(a) and (b)
—Section 143.4(b)

2. Removal of Methods That Are No Longer Approved

When the arsenic maximum contaminant level (MCL) was revised to 0.010 mg/L, some of the analytical methods that were previously approved for analyzing samples for arsenic were no longer sensitive enough to determine compliance. EPA added footnote 15 to the table at 40 CFR 141.23(k)(1) to indicate that use of these methods would not be allowed after January 23, 2006. EPA is now proposing to update the listing of approved arsenic methods to remove methods that are no longer allowed (EPA 200.7, SM 3120 B and SM 3120 B–99). EPA is also proposing to revise footnotes 13 and 14 to the table to paragraph (k)(1) to remove references to methods that are no longer approved to determine arsenic. EPA also proposes that Footnote 15 be removed and the number reserved for future use.

Paragraph (e)(2) of 40 CFR 141.24 lists methods that were approved for use until June 1, 2001. Since these methods are no longer approved, EPA proposes to remove the paragraph. EPA is also proposing to remove footnote 1 to the table at 40 CFR 141.24(e)(1) because it refers to 40 CFR 141.24(e)(2). Footnote 1 would be reserved for future use. The header to the table would be revised to remove the reference to footnote 1.

3. Source for Obtaining Copies of *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994

This document is now available at no cost from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/*. EPA is proposing to update the following regulations to reflect this new information:

—Section 141.23(k)(1)
—Section 141.74(a)(1)
—Section 143.4(b)

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction

This action does not impose any new information collection burden. In this action, EPA is proposing to make a minor correction to the Stage 2 DBPR, add references in the *Code of Federal Regulations* (CFR) to the list of methods approved under the Expedited Approval Process, remove references to outdated methods in the CFR and specify a new source for the publication titled *Technical Notes on Drinking Water Methods.* However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the Stage 2 DBPR existing regulations at 40 CFR 141 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number (number 2040–0265). The OMB control numbers for EPA's

regulations in 40 CFR are listed in 40 CFR part 9. There is no burden associated with regard to the minor, editorial changes in references to analytical methods in the CFR. This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems (PWS) serving 10,000 or fewer persons. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed correction does not impose any new costs or burdens on PWSs. The ground water system monitoring costs were accounted for and detailed in the Stage 2 DBPR Economic Analysis and summarized in the preamble of the Stage 2 DBPR (USEPA, 2006a). A copy of Stage 2 DBPR and the final rule's Economic Analysis can be found in the Docket for this proposed rule.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This rule proposes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations*. Therefore, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As previously stated, this rule proposes a minor correction to the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations;* actions that will not significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule proposes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations*. The Stage 2 DBPR (USEPA 2006) states that the final rule will not have federalism implications and, with regard to the minor, editorial changes to references of analytical methods in the *Code of Federal Regulations*, those changes when finalized will not impose 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. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule proposes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations*, actions that will not have tribal implications. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not propose technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule proposes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations*. These proposed actions will not have a disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

References

USEPA. 2005a. Economic Analysis for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule. Washington, DC. EPA 815–R–05–010.

USEPA. 2005b. Information Collection Request for National Primary Drinking Water Regulations: Final Stage 2 Disinfectants and Disinfection Byproducts Rule. Washington, DC. EPA 815–Z–05–002.

USEPA. 2006. National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule. EPA 815–Z–06–002. 71 FR 4644. January 4, 2006.

USEPA. 2008. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures. 73 FR 17902. June 3, 2008.

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Chemicals, Indians—lands, Water-supply.

Dated: November 6, 2008.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, Title 40 chapter I of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended by revising the introductory text preceding the table in paragraph (f)(3) and paragraph (f)(6) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) Public water systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table or one of the alternative methods listed in Appendix A to subpart C of this part.

* * * * *

(6) Public water systems must conduct analysis of *Escherichia coli* in accordance with one of the following analytical methods or one of the alternative methods listed in Appendix A to subpart C of this part.

* * * * *

3. Section 141.23 is amended as follows by:

a. Revising the text preceding the table in paragraph (k)(1);

b. Revising entry 3 in the table to paragraph (k)(1);

c. Revising footnotes 13 and 14 to the table to paragraph (k)(1); and

d. Removing and reserving footnote 15 to the table to paragraph (k)(1).

§ 141.23 Inorganic chemical sampling and analytical requirements.

(k) * * *

(1) Analysis for the following contaminants shall be conducted in accordance with the methods in the following table, or the alternative methods listed in Appendix A to subpart C of part 141, or their equivalent as determined by EPA. Criteria for analyzing arsenic, barium, beryllium, cadmium, calcium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/*.

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
*	* *	*	*	*	*	*	
3. Arsenic [14]	ICP-Mass Spectrometry	[2] 200.8					
	Atomic Absorption; Platform	[2] 200.9					
	Atomic Absorption; Furnace	.....	D2972–97, 03 C.	3113 B	3113 B–99.		
	Hydride Atomic Absorption	.....	D1972–97, 03 B.	3114 B	3114 B–97.		

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM Online [22]	Other
*	*	*	*	*	*	*	
*	*	*	*	*	*	*	

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, 1999, or 2003, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous version of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the Annual Book of ASTM Standards, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

* * * * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2xpreconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.*, no sample digestion) will be higher. For direct analysis of cadmium by Method 200.7, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D, unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Method 200.8, the arsenic must be in the pentavalent state to provide uniform signal response. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain 1 mg/L of sodium hypochlorite.

[15] [Reserved].

* * * * * * *

[22] Standard Methods Online are available at *http://www.standardmethods.org*. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

* * * * *

4. Section 141.24 is amended by:

a. Revising paragraph (e) introductory text;

b. Removing and reserving footnote 1 to the table to paragraph (e)(1); and

c. Removing and reserving paragraph (e)(2).

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) Analyses for the contaminants in this section shall be conducted using the methods listed in the following table, or the alternative methods listed in Appendix A to subpart C of this part, or their equivalent as determined by EPA.

(1) * * *

Contaminant	EPA method	Standard methods	ASTM	Other
*	*	*	*	*

[1] [Reserved].

* * * * *

5. Section 141.25 is amended by revising the introductory text preceding the table to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with § 141.66 (radioactivity) in accordance with the methods in the following table, or the alternative methods listed in Appendix A to subpart C this part, or their equivalent determined by EPA in accordance with § 141.27.

* * * * *

§ 141.74 [Amended]

6. Section 141.74 is amended by revising the introductory text preceding the tables in paragraphs (a)(1) and (a)(2) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) Public water systems must conduct analysis of pH and temperature in accordance with one of the methods listed at § 141.23(k)(1). Public water systems must conduct analysis of total coliforms, fecal coliforms, heterotrophic bacteria, and turbidity in accordance with one of the following analytical methods or one of the alternative methods listed in Appendix A to subpart C of this part and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/.*

* * * * *

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table or one of the alternative methods listed in Appendix A to subpart C of this part. If approved by the State, residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. In addition States

may approve the use of the ITS free chlorine test strip for the determination of free chlorine. Use of the test strips is described in Method D99–003, ''Free Chlorine Species ($HOCl^-$ and OCl^-) by Test Strip,'' Revision 3.0, November 21, 2003, available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill, SC 29730. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State.

* * * * *

7. Section 141.131 is amended by revising the introductory text preceding the tables in paragraphs (b)(1), (c)(1), and paragraph (d) introductory text to read as follows:

§ 141.131 Analytical requirements.

(a) * * *

(b) Disinfection byproducts. (1) Systems must measure disinfection byproducts by the methods (as modified by the footnotes) listed in the following table or one of the alternative methods listed in Appendix A to subpart C of this part:

* * * * *

(c) Disinfectant residuals. (1) Systems must measure residual disinfectant concentration for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in the following table or one of the alternative methods listed in Appendix A to subpart C of this part:

* * * * *

(d) Additional analytical methods. Systems required to analyze parameters not included in paragraphs (b) and (c) of this section must use the following methods or one of the alternative methods listed in Appendix A to subpart C of this part. A party approved by EPA or the State must measure these parameters.

* * * * *

8. Section 141.402 is amended by revising paragraph (c)(2) introductory text preceding the table to read as follows:

§ 141.402 Ground water source microbial monitoring and analytical methods.

* * * * *

(c) * * *

(2) A ground water system must analyze all ground water source samples collected under paragraph (a) of this section using one of the analytical methods listed in the following table in paragraph (c)(2) of this section or one of the alternative methods listed in Appendix A to subpart C of this part for the presence of *E. coli*, enterococci, or coliphage:

* * * * *

9. Section 141.605 is amended by revising footnote 2 to the table in paragraph (b) to read as follows:

§ 141.605 Subpart V compliance monitoring location recommendations.

* * * * *

(b) * * *

[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500–3,300. Ground water systems serving 500–9,999 on annual monitoring must take dual sample sets at each monitoring location. All other systems on annual monitoring and subpart H systems serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location, and month.

* * * * *

10. Section 141.621 is amended by revising footnote 2. to the table in paragraph (a)(2) to read as follows:

§ 141.621 Routine monitoring.

(a) * * *

(2) * * *

[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500–3,300. Ground water systems serving 500–9,999 on annual monitoring must take dual sample sets at each monitoring location. All other systems on annual monitoring and subpart H systems serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location, and month.

* * * * *

11. Section 141.704 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 141.704 Analytic methods.

(a) *Cryptosporidium.* Systems must analyze for *Cryptosporidium* using *Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA*, 2005, United States Environmental Protection Agency, EPA–815–R–05–002 or *Method 1622: Cryptosporidium in Water by Filtration/IMS/FA*, 2005, United States Environmental Protection Agency, EPA–815–R–05–001, which are incorporated by reference, or alternative methods listed in Appendix A to Subpart C of this part. The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these methods online from *http://www.epa.gov/safewater/disinfection/lt2* or from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave., NW., Washington, DC 20460 (Telephone: 800–426–4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW., Washington, DC, (Telephone: 202–566–2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* .

* * * * *

(b) *E. coli.* System must use methods for enumeration of *E. coli* in source water approved in § 136.3(a) of this chapter or alternative methods listed in Appendix A to subpart C of this part.

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

12. The authority citation for part 143 continues to read as follows:

Authority: U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

13. Section 143.4 is amended by revising the text preceding the table in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) Measurement of pH, copper and fluoride to determine compliance under § 143.3 may be conducted with one of the methods in § 141.23(k)(1). Analyses of aluminum, chloride, foaming agents, iron, manganese, odor, silver, sulfate, total dissolved solids (TDS) and zinc to determine compliance under § 143.3 may be conducted with the methods in

the following table or alternative methods listed in Appendix A to subpart C of this part. Criteria for analyzing aluminum, copper, iron, manganese, silver and zinc samples with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/.*

* * * * *

[FR Doc. E8–26959 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1018]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 12, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1018, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
Township of Columbia, Michigan					
Michigan	Township of Columbia.	Goose Creek	Approximately 0.6 mile upstream of M 50 ..	None	+945
			Approximately 0.7 mile upstream of M 50 ..	None	+945

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Columbia

Maps are available for inspection at Township Offices, 8500 Jefferson Road, Brooklyn, MI 49230.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Hamilton County, Florida, and Incorporated Areas				
Little Alapaha River	At the confluence with Unnamed Tributary	+79	+81	Unincorporated Areas of Hamilton County.
	At the confluence with Little Alapaha River Unnamed Tributary.	None	+85	
Little Alapaha River Unnamed Tributary.	At the confluence with Little Alapaha River	None	+85	Unincorporated Areas of Hamilton County.
	Approximately 950 feet upstream of U.S. Highway 129.	None	+125	
Suwannee River Unnamed Tributary.	Just upstream of Jewett Street	None	+88	Town of White Springs.
	Approximately 600 feet upstream of 1st Street	None	+109	
Timber Lake	Entire shoreline	None	+135	Unincorporated Areas of Hamilton County.
Turket Creek	Just upstream of the confluence with the Alapahoochee River.	None	+92	Unincorporated Areas of Hamilton County, Town of Jennings.
	Approximately 1,000 feet upstream of Hamilton Avenue.	None	+138	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Jennings

Maps are available for inspection at Jennings Town Hall, 1199 Hamilton Avenue, Jennings, FL.

Town of White Springs

Maps are available for inspection at White Springs Town Hall, 10363 Bridge Street, White Springs, FL.

Unincorporated Areas of Hamilton County

Maps are available for inspection at Hamilton County Clerk's Office, 207 NE 1st Street, Room 106, Jasper, FL.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Lamar County, Mississippi, and Incorporated Areas				
Gordons Creek	Approximately 1,984 feet upstream of Interstate 59	None	+252	Unincorporated Areas of Lamar County.
	At Interstate 59	None	+252	
Little Beaver Creek	Approximately 0.8 miles downstream of Browns Bridge Road.	None	+227	Unincorporated Areas of Lamar County.
	Approximately 210 feet upstream of Browns Bridge Road.	None	+237	
Mill Creek No. 1	Approximately 1,800 feet downstream of Hardie Road	None	+260	Unincorporated Areas of Lamar County, Town of Sumrall.
	Approximately 1.6 miles upstream of State Highway 42.	None	+313	
Mixons Creek Tributary 3	Approximately 935 feet upstream of the confluence of Mixons Creek.	None	+187	Unincorporated Areas of Lamar County.
	Approximately 1.5 miles upstream of the confluence of Mixons Creek.	None	+235	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Sumrall

Maps are available for inspection at Town Hall, 4880 Highway 589, Sumrall, MS 39482.

Unincorporated Areas of Lamar County

Maps are available for inspection at County Administrator's Office, 403 Main Street, Purvis, MS 39475.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Lauderdale County, Mississippi, and Incorporated Areas				
McLemore Branch	Approximately 2,427 feet upstream of the confluence of Newell Branch.	None	+357	City of Meridian, Unincorporated Areas of Lauderdale County.
	Approximately 3,375 feet upstream of Windmill Drive	None	+403	
Sowashee Creek Tributary 10.	Approximately 700 feet downstream of Dale Drive	None	+360	Town of Marion, Unincorporated Areas of Lauderdale County.
	Approximately 710 feet upstream of Cotton Gin Road	None	+399	
Sowashee Creek Tributary 8	Approximately 990 feet upstream of the confluence of Sowashee Creek Tributary 10.	None	+388	Town of Marion, Unincorporated Areas of Lauderdale County.
	Approximately 2,475 feet upstream of State Highway 39.	None	+464	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Meridian

Maps are available for inspection at Meridian City Hall, 601 24th Avenue, Meridian, MS 39302.

Town of Marion

Maps are available for inspection at Marion Town Hall, 6021 Dale Drive, 39342, MS.

Unincorporated Areas of Lauderdale County

Maps are available for inspection at Tax Assessor's Office, 500 Constitution Avenue, Meridian, MS 39301.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Clark County, Ohio, and Incorporated Areas				
Chapman Creek	3300 feet upstream from confluence of Chapman Creek and Mad River.	None	+950	Unincorporated Areas of Clark County
	5200 feet upstream from confluence of Chapman Creek and Mad River.	None	+959	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Clark County

Maps are available for inspection at Springview Government Center, 3130 East Main Street, Springfield, OH 45505.

Preble County, Ohio, and Incorporated Areas				
Periwinkle Run	Confluence with Sevenmile Creek	None	+1049	Unincorporated Areas of Preble County.
	2,270 feet upstream of confluence with Sevenmile Creek.	None	+1057	
Sevenmile Creek	Upstream of Eaton-New Hope Road bridge	None	+1049	Unincorporated Areas of Preble County.
	3,175 feet Upstream of Eaton-New Hope Road bridge	None	+1059	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Preble County

Maps are available for inspection at Preble County Courthouse, 101 East Main Street, Eaton, OH 45320.

Sauk County, Wisconsin, and Incorporated Areas				
Baraboo River	Columbia County boundary	+806	+802	City of Baraboo, City of Reedsburg, Unincorporated Areas of Sauk County, Village of Lavalle, Village of North Freedom, Village of Rock Springs, Village of West Baraboo.
	3.7 miles downstream of Juneau County boundary	+904	+905	
Baraboo River Tributary	64 ft upstream of State Hwy 33	None	+849	Unincorporated Areas of Sauk County.
	350 ft upstream of Berkley Boulevard	None	+880	
Clark Creek	Confluence with Baraboo River	None	+818	Unincorporated Areas of Sauk County.
	0.37 mi upstream from bridge at Tower Road	None	+1234	
Devil's Lake Tributary	Confluence with Baraboo River	None	+819	City of Baraboo, Unincorporated Areas of Sauk County.
	0.57 mi upstream from County Highway DL	None	+979	
Hay Creek	0.56 mi upstream of County Highway F	None	+909	Unincorporated Areas of Sauk County.
	161 ft upstream of County Highway F	None	+909	
Hulbert Creek	0.32 mi upstream of U.S. Highway 12	+826	+827	City of Wisconsin Dells.
	0.51 mi upstream of Trout Road (Wisconsin Dells)	+829	+831	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Pine Creek	874 ft downstream of Hatchery Road	None	+858	Unincorporated Areas of Sauk County.
	Confluence with Skillet Creek	None	+869	
Skillet Creek	Confluence with Pine Creek	None	+869	Unincorporated Areas of Sauk County.
	28 ft upstream of bridge at State Highway 159	None	+981	
Tributary to Devil's Lake Tributary.	Confluence with Devil's Lake Tributary	None	+871	Unincorporated Areas of Sauk County.
	0.67 mi upstream from bridge at State Highway 159	None	+1117	
Wisconsin River	6.9 miles upstream of Richland County boundary	+710	+711	Village of Merrimac, Unincorporated Areas of Sauk County, Village of Prairie Du Sac, Village of Sauk City, Village of Spring Green.
	12.5 miles downstream of Kilbourn Dam	+807	+808	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Baraboo
Maps are available for inspection at 135 4th Street, Barboo, WI 53913.

City of Reedsburg
Maps are available for inspection at 134 South Locust Street, Reedsburg, WI 53959.

City of Wisconsin Dells
Maps are available for inspection at 300 La Crosse Street, Wisconsin Dells, WI 53965.

Unincorporated Areas of Sauk County
Maps are available for inspection at 505 Broadway, Baraboo, WI 53913.

Village of Lake Delton
Maps are available for inspection at 50 Wisconsin Dells Parkway South, Lake Delton, WI 53940.

Village of Lavalle
Maps are available for inspection at 103 West Main Street, La Valle, WI 53941.

Village of Merrimac
Maps are available for inspection at 100 Cook Street, Merrimac, WI 53561.

Village of North Freedom
Maps are available for inspection at 103 North Maple Street, North Freedom, WI 53951.

Village of Prairie Du Sac
Maps are available for inspection at 335 Galena Street, Prairie du Sac, WI 53578.

Village of Rock Springs
Maps are available for inspection at 201 West Broadway Avenue, Rock Springs, WI 53961.

Village of Sauk City
Maps are available for inspection at 726 Water Street, Sauk City, WI 53583.

Village of Spring Green
Maps are available for inspection at 154 North Lexington Street, Spring Green, WI 53588.

Village of West Baraboo
Maps are available for inspection at 500 Cedar Street, Baraboo, WI 53913.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 3, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–27038 Filed 11–13–08; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 73, No. 221
Friday, November 14, 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

Agricultural Marketing Service

[Docket #AMS–LS–07–0055; LS–07–06]

Pork Promotion, Research, and Consumer Information Program: Request for Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Notice of Request for Referendum.

SUMMARY: This Notice announces that the United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) will conduct a Request for Referendum among eligible pork producers and importers of hogs, pigs, pork, and pork products to determine if those persons want a referendum on the Pork Promotion, Research, and Consumer Information Order (Order), commonly known as the Pork Checkoff Program. The Request for Referendum will be conducted on December 8, 2008 through January 2, 2009. Participation is voluntary. Only those persons who want a referendum on the Pork Checkoff Program will participate. The Request for Referendum is being conducted as a result of a settlement of a lawsuit entered into February 28, 2001, with USDA and the Michigan Pork Producers Association, Inc., *et al.* (Plaintiffs). Under the settlement agreement, USDA agreed to conduct a Request for Referendum among eligible pork producers and importers to determine whether producers and importers favor holding a referendum on the Pork Checkoff Program. If the results of the the Request for Referendum show that 15 percent of the total number of eligible producers and importers want a referendum on the Pork Checkoff Program, the referendum will be conducted within 1 year after the results of the Request for Referendum are announced. If results of the Request for Referendum indicate that a referendum is not supported, a referendum would not be conducted.

DATES: *Effective Date:* November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, at (202) 720–1115, by fax at (202) 720–1125, or by e-mail at *Kenneth.Payne@usda.gov* or Rick Pinkston, USDA, FSA, DAFO, at (202) 720–1857, by fax at (202) 720–1096, or by e-mail at *Rick.Pinkston@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) (7 U.S.C. 4801–4819) provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for pork and pork products. The program is financed by an assessment of 0.40 percent of the market value of domestic and imported hogs and pigs and an equivalent amount on imported pork and pork products. Pursuant to the Act, an Order was made effective September 5, 1986, and the collection of assessments began on November 1, 1986.

The Request for Referendum is being conducted as a result of a settlement of a lawsuit entered into February 28, 2001, with USDA and the Plaintiffs. On February 28, 2001, USDA entered into a settlement agreement with the Plaintiffs that was based on the guiding principle that the National Pork Board which administers the Pork Checkoff Program should operate independently of the National Pork Producers Council, and any successor or similar organization, while the Pork Checkoff Program is in effect. Under the settlement agreement, USDA agreed to conduct a Request for Referendum among eligible pork producers and importers to determine whether 15 percent of those eligible producers and importers want a referendum on the Pork Checkoff Program.

For the purposes of determining the total number of pork producers for the Request for Referendum, AMS utilized the most recent data published by USDA's National Agricultural Statistics Service (NASS) in its February 2008, ''Farms, Land in Farms, and Livestock Operations'' report. The report shows that, for the year of 2007, the total number of farm operations with hogs and pigs, including those in Puerto Rico, was 67,140. Also, according to the U.S. Customs and Border Protection (Customs) data, there are approximately 2,306 importers who imported hogs, pigs, pork, or pork products during calendar year 2007. Based upon this data, the number of producers and importers eligible to participate in the Request for Referendum is approximately 69,446. Therefore, at least 10,417 eligible producers and importers must request a referendum on the Pork Checkoff Program.

Producers engaged in pork production and importers engaged in the importation of hogs, pigs, pork, or pork products between January 1, 2007, and December 31, 2007, and were at least 18 years of age on or before December 31, 2007, are eligible to participate.

Producers will participate at county FSA offices. Producers may obtain Form LS–54–1: *Pork Promotion, Research, and Consumer Information Request for Referendum* form by mail, fax, or in person from county FSA offices or on USDA's Web site at *http://www.ams.usda.gov/LSMarketingPrograms.* Producers must return Form LS 54–1 and supporting documentation, such as sales receipts, feed bills, veterinary bills, copies of grower contracts, and cancelled check or proof of payment where applicable, etc * * *, to the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. A person engaged in the production of hogs or pigs in the United States for sale in commerce who operates in more than one county must participate in the county FSA office where the person does most of his or her business. Completed Form LS 54–1 and supporting documentation, such as sales receipts, feed bills, veterinary bills, copies of grower contracts, and cancelled check or proof of payment where applicable, etc * * *, must be returned to the appropriate county FSA office by fax or in person no later than the last day of the Request for Referendum period, January 2, 2009, or, if returned by mail, LS 54–1 and supporting documentation must be postmarked by January 2, 2009. Eligible producers can determine the location of

county FSA offices by contacting the nearest county FSA office, the State FSA office, or on FSA's Web site at *http://www.fsa.usda.gov/pas/default.asp.* From the options available on this Web page select ''Contact Us'' and locate the service center closest to you. Some county FSA offices service multiple counties. FSA will coordinate State and county FSA roles in conducting the Request for Referendum by (1) confirming producer eligibility, (2) canvassing and counting requests, and (3) reporting the results to AMS. Contract growers, who do not own, but do raise, provide care, and feed hogs and pigs for an owner, including a parent company, are allowed to participate in the Request for Referendum. For the producer not participating in FSA programs, the opportunity to participate will be provided at the County FSA office where the person owns or rents land.

Importers will participate through USDA's AMS headquarters office in Washington, DC. Importers may obtain Form LS–54–1 via mail, facsimile, or telephone from Kenneth R. Payne, Chief, Marketing Programs, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone: 202–720–1115; Fax: (202) 720–1125; via e-mail at *Kenneth.Payne@usda.gov;* or on USDA's Web site via the Internet at *http://www.ams.usda.gov/LSMarketingPrograms.* Importers must return Form LS 54–1 and supporting documentation such as Customs Form 7501, or any other supporting documentation to AMS by fax at (202) 720–1125, or in person no later than January 2, 2009. If returned by mail, form LS 54–1 and supporting documentation such as Customs Form 7501 must be postmarked by January 2, 2009. AMS strongly recommends that importers use a form of express mail service if returning forms via mail. AMS will determine importer eligibility.

Comments: USDA received three comments in response to the Request for Referendum Notice published on May 23, 2008. As previously mentioned, the purpose of the Notice was to receive comments on the information collection of the described action. One comment supported the collection of information AMS will use in the Request for Referendum, specifically using sales receipts as proof of eligibility. However, one commenter supported this action but suggested that contract growers provide copies of their grower contracts and a cancelled check as proof of payment. AMS believes that this has merit. Thus, contract growers will be required to provide their grower contract or cancelled check as proof of eligibility. This commenter also recommended that the only proof of eligibility that should be accepted for non-contract growers is a market sales receipt and opposed the use of feed and veterinary bills as proof of eligibility. One commenter supported this comment while noting that proof of the checkoff deduction is not always present on the bill of sale. However, AMS still concludes that copies of feed and veterinary bills dated during the representative period are adequate proof of producer eligibility. Consequently, AMS does not accept these comments. Several other comments provided by these commenters did not specifically address the information collection that was under consideration by AMS, and were therefore, not considered. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection request for the Request for Referendum has been approved by the Office of Management and Budget (OMB) and assigned OMB control number OMB 0581–0249.

Authority: 7 U.S.C. 4801–4811 and 7 U.S.C. 7401.

Dated: November 7, 2008.

James E. Link,

Administrator.

[FR Doc. E8–27016 Filed 11–13–08; 8:45 am]

BILLING CODE 3410–02–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* 12/14/2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Emily A. Covey, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 8/29/2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 50931) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: BSC, Base Supply Center, Ft Sam Houston, 2101 7th St Bldg 4197, Ft Sam Houston, TX.
NPA: San Antonio Lighthouse for the Blind, San Antonio, TX.
Contracting Activity: DEPT OF THE ARMY, XR W6BB ACA SAM HOUSTON.

Deletions

On 8/1/2008 and 9/12/2008 respectively, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (73 FR 44961 and 73 FR 52947) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and/or service(s) listed below are no longer suitable for procurement by the Federal

Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Pad, Folio
NSN: 7510–01–484–4590—Pad, Folio.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.

Pad, Scouring
NSN: 7920–01–499–1617—Pad, Scouring, 2002.
NPA: Beacon Lighthouse, Inc., Wichita Falls, TX.
Contracting Activity: GSA/FAS SOUTHWEST SUPPLY CENTER (QSDAC), FORT WORTH, TX.

Tape, Electronic Data Processing
NSN: 7045–01–364–2466—Tape, Electronic Data Processing.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: DEFENSE SUPPLY CENTER PHILADELPHIA, PHILADELPHIA, PA.

Emily A. Covey,

Acting Director, Program Operations.

[FR Doc. E8–27089 Filed 11–13–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number: 071227905–81306–02]

American Indian Areas (AIAs) Program for the 2010 Census—Notice of Final Criteria and Guidelines

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of final criteria, guidelines, and program implementation.

SUMMARY: The Bureau of the Census (Census Bureau) is providing notification of final criteria and guidelines for American Indian Areas (AIAs) for the 2010 Census. Criteria are those rules and conditions that must be met when defining a geographic entity; guidelines are procedures and measures suggested by the Census Bureau to enhance the utility of statistical geographic areas for presentation and analysis of statistical data. AIAs are geographic entities within the United States defined for the collection, tabulation, and presentation of decennial census data for federally and/or state-recognized American Indian tribes. AIAs will be used to collect, tabulate, and present data for the 2010 Census, period estimates from the American Community Survey (ACS), and potentially other Census Bureau statistical data. More specifically, for the 2010 Census, AIAs consist of the following types of geographic entities:

- American Indian reservations (AIRs).
- Off-reservation trust lands (ORTLs).
- Oklahoma tribal statistical areas (OTSAs).
- Tribal-designated statistical areas (TDSAs).
- State-designated tribal statistical areas (SDTSAs).
- Tribal census tracts (tribal tracts).
- Tribal block groups.
- Tribal subdivisions on AIRs, ORTLs, and OTSAs.
- Census designated places (CDPs) on AIRs, ORTLs, and OTSAs.

The geographic entities listed above include both legal and statistical geographic entities (see ''Definitions of Key Terms'' section). The Census Bureau is not proposing any new types of AIAs for the 2010 Census. In these final criteria, the Census Bureau announces the following changes for the 2010 Census:

- Change the term ''State-Designated American Indian Statistical Areas'' (SDAISAs) to ''State-Designated Tribal Statistical Areas'' or SDTSAs.
- Clarify the definition and purpose of OTSAs. In addition, because all former AIRs in Oklahoma were delineated as OTSAs for Census 2000, the Census Bureau is providing notification that no new OTSAs may be delineated for the 2010 Census, and to the extent possible, OTSA boundaries for the 2010 Census should be consistent with those defined for Census 2000. The Census Bureau also seeks to avoid defining joint use area OTSAs for the 2010 Census.
- Clarify the definition, purpose, and the criteria and guidelines for TDSAs and SDTSAs.
- Identify tribal tracts and tribal block groups as separate statistical geographic entities distinct from, and in addition to, ''standard'' county-based census tracts and block groups.

The Census Bureau has three geographic partnership programs through which it collects updates to the inventory, boundaries, and attributes of AIAs for the 2010 Census: The annual Boundary and Annexation Survey (BAS), the State Reservation Program, and the Tribal Statistical Areas Program (TSAP). Both the BAS and the State Reservation Program provide the process for reviewing and updating those AIAs that are legal geographic entities: AIRs and ORTLs under the governmental authority of federally recognized American Indian tribes, tribal subdivisions within these federally recognized AIRs and ORTLs, and AIRs for state-recognized American Indian tribes. The TSAP provides the process for reviewing and updating those AIAs that are statistical geographic entities: OTSAs, tribal subdivisions within OTSAs, TDSAs, SDTSAs, tribal tracts, tribal block groups, and CDPs. Each of these programs is discussed in more detail within the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** Notice.

This Notice announces the Census Bureau's final criteria and guidelines for AIAs for the 2010 Census. In addition, this Notice contains a summary of comments received in response to the April 1, 2008, **Federal Register** (73 FR 17303), as well as the Census Bureau's responses to these comments. The Census Bureau has considered all comments received regarding the new criteria and guidelines and will enact the proposed criteria and guidelines, unaltered from those presented in the **Federal Register** (73 FR 17303).

For information regarding similar programs for Alaska Native Areas (ANAs), please refer to the **Federal Register** Notice titled ''Alaska Native Areas (ANAs) for the 2010 Census—Final Criteria and Guidelines''.

DATES: *Effective Date:* This Notice's final criteria and guidelines will be effective on November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on these criteria and guidelines should be directed to the Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *geo.tsap.list@census.gov,* or telephone at 301–763–3056.

SUPPLEMENTARY INFORMATION: Pursuant to Title 13 of the United States Code (U.S.C.), Section 141(a), the Secretary of Commerce, as delegated to the Census

Bureau, undertakes the decennial census every ten years ''in such form and content as he may determine.'' This language gives wide discretion to the Census Bureau in taking the census.

The Census Bureau portrays the boundaries of both legal and statistical geographic entities for the purpose of collecting, tabulating, and presenting meaningful, relevant, and reliable statistical data from the decennial census, the ACS, and potentially other censuses and surveys. The Census Bureau attempts to develop objective criteria to establish geographic entities that meet this purpose.

Although the Census Bureau is committed to delineating geographic entity boundaries in partnership with tribal, state, and local officials using criteria developed through an open process, it is the responsibility of the Census Bureau to ensure that geographic entity criteria can achieve the goal of providing meaningful, relevant, and reliable statistical data, and that the final criteria for geographic entities are met. While aware that there are secondary uses of geographic entities and the data tabulated for them, the Census Bureau will not modify geographic entity boundaries or attributes specifically to meet these secondary uses, including any attempt to meet the specific program requirements of other government agencies. If a change is made to a geographic entity to meet one specific purpose, there may be detrimental effects for other programs that use the same geographic entities. The Census Bureau also makes no attempt to specifically link the establishment of statistical geographic entities to federal, tribal, or state laws.

The development of the AIAs has been an evolutionary process. The variety of legal, cultural, and social contexts in which American Indian tribes reside creates challenges to the development of geographic entities for nationwide implementation. There are both federally recognized and state-recognized tribes, and each has a particular history and legal context affecting identification of geographic entities and boundaries. Some tribes have legally established AIRs and/or ORTLs. Others do not have geographic entities that are currently recognized under federal and/or state law, but do reside and conduct tribal activities within a clearly defined, compact geographic area.

I. History of American Indian Areas in the Decennial Census

The first constitutionally mandated population census in the United States was conducted in 1790. During the period 1790 through 1850, American Indians were enumerated during the decennial censuses only if living among the general population. It was not until 1860 that American Indians living on tribal lands in the western half of the United States were enumerated as a unique population group, but tabulations were not made available for tribal territories or geographic entities. An effort was made for the 1880 Census to enumerate and present data for American Indians living on specific, federally recognized AIRs, but this effort was not completed, and data were available only for tribes in the state of California, as well as parts of Dakota Territory and Washington Territory. The 1890 Census was the first in which American Indian data were collected and presented for individual AIRs, including the now-former AIRs in Indian Territory (now part of Oklahoma); this practice continued through the 1910 Census. American Indian geographic entities were not recognized for the 1920 through 1960 censuses; thus, while American Indians were identified and enumerated, data were not available for the AIRs in which many lived. This decision was reversed with the 1970 Census for which the Census Bureau presented data for 115 AIRs. Still, there was no systematic program for the collection and reporting of all AIR boundaries.

The Census Bureau began to report data systematically for a variety of AIAs starting with the 1980 Census, when it identified and presented data for a more complete inventory of AIRs. The Census Bureau worked with the Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior (DOI) to identify boundaries for AIRs for federally recognized tribes, and with state government officials to identify boundaries for AIRs for state-recognized tribes, by obtaining maps depicting their legally established boundaries. Tribal ORTLs and American Indian sub-reservation areas (the latter now called tribal subdivisions) were both identified for the first time as geographic entities for the decennial census. To provide data for federally recognized tribes in Oklahoma that formerly had AIRs, the Census Bureau identified a single geographic entity called the Historic Areas of Oklahoma.

The American Indian geographic programs implemented for the 1980 Census were continued with some improvements and additions for the 1990 Census. The Census Bureau began collecting boundaries and reporting data for individual ORTLs (i.e., allotments) in addition to tribal ORTLs, as long as the lands were under a tribe or tribes' governmental authority, or were clearly identified with a particular tribe, tribal government, and/or AIR. The Census Bureau introduced the Tribal Review Program prior to the 1990 Census, which gave the affected federally recognized tribes the opportunity to review, and update if needed, the boundaries of their AIRs and/or ORTLs. The Census Bureau also replaced the single entity Historic Areas of Oklahoma with tribal jurisdiction statistical areas (TJSAs—now called OTSAs) whose boundaries were intended to correspond with those of the individual former AIRs in Oklahoma. In addition, as part of the continuing effort to improve the presentation of data for American Indians, the Census Bureau adopted the TDSA concept to identify lands associated with federally or state-recognized tribes that did not have an AIR or ORTL. American Indian sub-reservation areas (now called tribal subdivisions) were not defined for the 1990 Census. The Census Bureau also offered tribal officials with an AIR and/or ORTL the opportunity to provide suggestions for 1990 Census tabulation block boundaries on their AIR and ORTL through the Block Definition Project (BDP), similar to the Block Boundary Suggestion Project portion of the Redistricting Data Program.

In preparation for Census 2000, the Census Bureau continued to work with tribal governments and federal and state agencies, as well as the Census Race and Ethnic Advisory Committee (REAC) of the American Indian and Alaska Native (AIAN) populations (referred to hereafter as AIAN REAC), to improve the identification of AIAs. For federally recognized tribes, the Census Bureau offered programs to collect updated AIR and ORTL boundaries directly from the tribal governments using the 1990 Census boundaries as a baseline. The Tribal Review Program was offered a second time in 1997 and again enabled officials of all federally recognized American Indian tribes with an AIR or ORTL to review and, if necessary, update the Census Bureau's maps of their AIRs and/or ORTLs before Census 2000. The Tribal Review Program also included updating and correcting the roads and other geographic features shown on the Census Bureau's maps, and providing suggestions for Census 2000 block boundaries in the BDP. The Tribal Review Program, prior to Census 2000, also gave tribes in Oklahoma the opportunity to review the delineation of their 1990 Census TJSAs. Census 2000 was the first decennial census for which census tracts were defined throughout

the United States. American Indian tribes benefited from this change as the Census Bureau allowed tribal governments of federally recognized American Indian tribes with an AIR or ORTL to delineate census tracts without regard to state or county boundaries, provided the AIR/ORTL had a 1990 Census population of at least 1,000.

Beginning in 1998, the Census Bureau included federally recognized American Indian tribes with an AIR and/or ORTL in its annual BAS, thus replacing the once a decade Tribal Review Program. All AIRs and ORTLs included in the 2000 BAS were also included in the Census 2000 Boundary Validation Program (BVP). The BVP offered a final opportunity for tribal leaders to review the Census Bureau's depiction of their AIR/ORTL boundaries prior to Census 2000 and provide any updates to ensure those boundaries were shown correctly as of January 1, 2000 (the reference date of the boundaries used for Census 2000 data tabulations). To support tribal requests for data by administrative subdivisions, the Census Bureau again offered tribal officials the opportunity to delineate American Indian tribal subdivisions (similar to the 1980 Census sub-reservation areas).

For Census 2000, on the recommendation of the AIAN REAC, the Census Bureau adopted the state-designated American Indian statistical area (SDAISA) to represent geographic areas for state-designated tribes that lacked AIRs and ORTLs, thus distinguishing these areas from TDSAs, which continued to represent geographic areas associated with federally recognized tribes that lacked AIRs and ORTLs. The designation TJSA was changed to OTSA to more accurately reflect that these entities were defined solely to present statistical information, and did not represent areas in which legal jurisdiction was conferred or inferred by the federal government.

The 2010 Census provides an opportunity to further enhance the Census Bureau's ability to provide meaningful, statistically relevant data about federal and state-recognized tribes. Two statistical entities, tribal tracts and tribal block groups, will be redefined to provide federally recognized tribes with AIRs greater control and flexibility in delineating such areas. The final criteria and guidelines for TDSAs and SDTSAs (formerly known as SDAISAs) encourage tribes without an AIR and/or ORTL to delineate geographic areas that more effectively present the important data for their populations. SDAISAs have been renamed to SDTSAs to create a more consistent naming convention for Census Bureau tribal entities. SDTSAs, TDSAs, OTSAs, tribal subdivisions defined within OTSAs, tribal block groups, and tribal tracts are referred to collectively as ''tribal statistical areas'' as they are not legally defined geographic entities. These entities are included in the new TSAP, a more inclusive term to refer to the delineation process for all the tribal statistical areas for the decennial census. This program facilitates the definition and delineation of tribal statistical areas, and enhances the ability of tribes to acquire meaningful data about their tribal members.

II. Federal and State Recognition of American Indian Tribes

For an American Indian tribe to delineate an AIA for the 2010 Census, they first must be either federally recognized or state-recognized. Federal recognition of an American Indian tribe for the purpose of these criteria and guidelines specifically means that the tribe is recognized by and eligible to receive services from the BIA.

BIA recognition is determined by inclusion of a tribe on the BIA's list of recognized tribes [1] or by addenda to the list as published by the BIA. The list of eligible American Indian tribes will change if new tribes are recognized by the BIA on or before January 1, 2010.

Whereas, there is a single source for determining which American Indian tribes are federally recognized state recognition of a tribe is not always clear. Prior to the decennial census and before implementing either the State Reservation Program or TSAP, the Census Bureau sends letters to each state requesting a list of any state-recognized tribes that are not also federally recognized, and requests the appointment of a liaison by each state governor to work with the state-recognized tribes and the Census Bureau on these geographic programs. State recognition of a tribe is determined by each respective state government, and conveyed to the Census Bureau by the governor's appointed liaison. The Census Bureau will work with the state liaison to ascertain a tribe's status if contacted directly by a tribe claiming state recognition, but not included on the state's list of recognized tribes. The Census Bureau will provide a list of state-recognized tribes within each state based on information obtained from each state's liaison. The list of eligible state-recognized tribes for each individual state will change if new tribes are recognized and reported to the Census Bureau by that state's liaison on or before January 1, 2010.

[1] Published regularly in the **Federal Register** pursuant to the Federally Recognized Indian Tribe Act of 1994 (Pub. L. 103–454; 25 U.S.C. 479a–1). Last published in the **Federal Register** on Friday, April 4, 2008, (73 FR 18553).

III. Summary of Comments Received in Response to the Proposed Criteria for American Indian Areas (AIAs) for the 2010 Census

The April 1, 2008, **Federal Register** (73 FR 17303) requested comment on the proposed criteria and guidelines for identification of AIAs for the 2010 Census, which contained the following changes to the criteria and guidelines used in the 2000 Census: (1) Change the term ''State-Designated American Indian Statistical Areas'' (SDAISAs) to ''State-Designated Tribal Statistical Areas'' or SDTSAs; (2) clarify the definition and purpose of OTSAs; to not allow delineation of new OTSAs; and to avoid defining joint use OTSAs for the 2010 Census; (3) clarify the definition, purpose, and the criteria and guidelines for defining TDSAs and SDTSAs; and (4) identify tribal tracts and tribal block groups as separate statistical geographic entities distinct from, and in addition to, ''standard'' county-based census tracts and block groups.

The Census Bureau received comments from sixteen organizations and individuals on the proposed criteria, all pertaining to the proposal to define tribal tracts and tribal block groups as a geographic framework completely separate from standard census tracts and standard block groups. All comments received are summarized below, as well as the Census Bureau's responses to these comments.

The Census Bureau received thirteen comments favoring identification of tribal tracts and tribal block groups as a geographic framework completely separate from standard census tracts and standard block groups. The commenters stated that distinct tribal tracts and tribal blocks will improve the meaningfulness and relevance of statistical data for American Indian communities within federally recognized AIRs. Given the support for the proposal to define tribal tracts and tribal block groups as a geographic framework separate from, and in addition to, standard census tracts and block groups, the Census Bureau will retain the concept in the final criteria and guidelines for the 2010 Census.

These thirteen commenters also noted that identification of tribal tracts and tribal block groups as a separate geographic framework will provide more accurate income data for American Indian populations, which would potentially increase Qualifying Census

Tract designation for the U.S. Department of Housing and Urban Development's Low Income Housing Tax Credit Program. Although aware that there are secondary uses of geographic entities and the data tabulated for them, the Census Bureau did not propose this change specifically to meet secondary uses, nor was there any intent to modify criteria or guidelines to meet specific program requirements of any other government agencies. The Census Bureau, however, will attempt to inform other agencies of the decision to identify tribal tracts and tribal block groups as a separate geographic framework for tabulation and presentation of statistical data for communities within AIRs and/or ORTLs.

Three commenters erroneously stated that the identification of tribal tracts and tribal block groups would result in duplication of population counts for communities within AIRs, and would result in the misrepresentation of statistical data and demographic characteristics for these communities. Two of these commenters also expressed concern that separate tribal tracts would lead to unnecessary spending of federal taxpayer dollars. Enumeration and data collection activities and processes are distinct from data tabulation and presentation processes, and are designed to collect data only once from individual households. Those households may reside in a variety of distinct and sometimes overlapping geographic entities, such as county subdivisions, places, counties, urban areas, and school districts. The Census Bureau routinely presents data for a wide variety of geographic entities without duplicating data for particular households or communities. With regard to the comment pertaining to unnecessary spending of federal taxpayer dollars, the Census Bureau's identification and maintenance of tribal tracts and tribal block groups as a separate geographic framework is consistent with its mission to provide statistical data for geographic entities that allow for meaningful analysis of demographic characteristics. The Census Bureau, however, does not comment on whether another agency's use of geographic areas defined for statistical purposes constitutes an appropriate use of funds.

Changes to Proposed Criteria and Guidelines for American Indian Areas (AIAs) for the 2010 Census

Changes made to the final criteria (from the proposed criteria) in ''Section V, American Indian Areas for the 2010 Census—Geographic Programs and Statistical Geographic Entities'' are as follows:

1. Section V.A.1, ''Final OTSA Criteria,'' changed the criterion stating that OTSAs must follow the last legal boundaries for the former AIR to a guideline. We made this change to recognize that the Census 2000 boundaries for some individual OTSAs may not necessarily follow the last legal boundary of the former AIR, and that in some instances it may not be possible for a 2010 Census OTSA boundary to follow the last legal former AIR boundary.

2. Section V.A.1, ''Final OTSA Guidelines,'' added the guideline that tribes should strive to avoid defining OTSAs with overlapping boundaries, which result in the identification of joint use area OTSAs. This is consistent with the statement made earlier in the OTSA section that the Census Bureau seeks to avoid identification of joint use area OTSAs for the 2010 Census.

3. Section V.A.2, ''Tribal-Designated Statistical Areas (TDSAs) and State-Designated Tribal Statistical Areas (SDTSAs),'' added text at the end of the fifth paragraph clarifying the importance of striking an appropriate balance between TDSA and SDTSA definitions that are too small to obtain meaning statistical data, and those that are so large that data for the American Indian population are masked by the presence of a large number of non-American Indian households.

4. Section V.B, Final Criteria and Guidelines for Tribal Census Tracts and Tribal Block Groups for the 2010 Census,'' added text in the sixth paragraph clarifying that the determination of eligibility to define multiple tribal tracts and multiple tribal block groups within a federally recognized American Indian reservation will be based on total population or total number of housing units.

IV. American Indian Areas for the 2010 Census—Geographic Programs and Legal Geographic Entities

The Census Bureau collects, tabulates, and presents statistical data for four types of AIAs with current legally established boundaries: AIRs for federally recognized American Indian tribes (federal AIRs); ORTLs for federally recognized American Indian tribes; tribal subdivisions on federal AIRs and ORTLs; and AIRs for state-recognized American Indian tribes (state AIRs). The annual BAS is the Census Bureau's mechanism for collecting updates to the boundaries of federal AIRs and ORTLs, and the inventory and boundaries of tribal subdivisions. More details on the BAS can be found in Section IV.A below. The State Reservation Program is the mechanism through which the Census Bureau collects updates to the inventory and boundaries of state AIRs. State AIRs may not include territory within federal AIRs or ORTLs.

The Census Bureau will tabulate 2010 Census data for all AIRs, ORTLs, and tribal subdivisions that exist as of January 1, 2010, with boundaries as of that date, if they have been reported to the Census Bureau. After the 2010 Census, the Census Bureau will continue to update the inventory and boundaries of federal AIRs, ORTLs, and their tribal subdivisions on an annual basis through the BAS to support collection, tabulation, and presentation of data from the ACS and potentially other Census Bureau censuses and surveys. State AIRs currently are updated only once prior to each decennial census.

A. Boundary and Annexation Survey (BAS)

The BAS is an annual Census Bureau survey of legal geographic entities that includes federal AIRs, ORTLs, and any associated tribal subdivisions. Its purpose is to determine, solely for data collection and tabulation by the Census Bureau, the complete and current inventory and the correct names, legal descriptions, official status, and official, legal boundaries of the legal geographic entities with governmental authority over certain areas within the United States, as of January 1 of the survey year. The BAS also collects specific information to document the legal actions that established a boundary or imposed a boundary change. In support of the government-to-government relationship with federally recognized American Indian tribes, the Census Bureau works directly with tribal officials. All issues that relate to treaty interpretation or legal actions that are disputed by an adjacent or enclosed governmental unit as part of the BAS are referred to the DOI Office of the Solicitor and/or the BIA for an official opinion. Through the BAS, the Census Bureau also accepts updates to features such as roads or rivers, and address range break information at the boundaries.

For more information about the BAS, see the Census Bureau's Web site at *http://www.census.gov/geo/www/bas/bashome.html.*

The BAS User's Guide for federally recognized tribes is available at *http://www.census.gov/geo/www/bas/bas08/bas08_rg_paper_trib.pdf.*

Federal AIRs, ORTLs, and tribal subdivisions within them may be delineated without regard to state or county boundaries.

Federal American Indian Reservations

AIRs represent geographic areas governed and administered by an American Indian tribe or tribes, and held as territory over which the tribe or tribes have governmental authority. Federal AIRs and their legal boundaries are established through final tribal treaty, agreement, Executive Order, federal statute (including 25 U.S.C., 467), Secretarial Order, and/or judicial determination. AIR status of land does not necessarily correspond to ownership or occupancy by American Indians; land does not have to be held in trust before it may be declared as an AIR, or land may lose trust status, but still retain AIR status. The Census Bureau solicits changes to the boundaries of federal AIRs directly from the tribes through the annual BAS. Acceptance of boundary changes requires clear legal documentation supporting any and all changes, as well as the absence of any unresolved litigation involving these boundaries. Any changes to federal AIR boundaries that are not clearly documented require legal interpretation of documentation, and/or are based on legal documentation from before 1990, are referred to the DOI Office of the Solicitor and/or the BIA for an official opinion. Any changes to the inventory of federal AIRs also require clear, supporting legal documentation. Corrections to the name of each federal AIR are also solicited from each tribal government through the BAS.

Off-Reservation Trust Lands

Unlike AIR status, the trust status of land directly corresponds to American Indian ownership, and to date only applies to federally recognized tribes. American Indian trust lands are parcels of land for which the United States holds the title in trust for the benefit of a tribe or specific group of tribes (tribal trust land) or for an individual tribal member or family (individual trust land). A tribe extends its primary governmental authority over a parcel of land when it is placed in trust for that tribe or an individual member of that tribe. Land is taken into trust pursuant to a specific federal law, usually 25 U.S.C., 465, and/or 25 Code of Federal Regulations, Part 151. Individual trust land, also known outside the Census Bureau as allotments, must clearly be associated with one specific AIR and/or currently federally recognized tribe for the Census Bureau to specifically identify and tabulate data for it.

Trust lands always are associated with a specific federally recognized tribe and usually with a particular AIR. Trust lands may be located on or off an AIR. The Census Bureau tabulates data separately for AIRs and for ORTLs because the tribe has governmental authority over these lands. Tribal governmental authority generally is not attached to lands located off an AIR until the lands are placed in trust. All on-reservation trust land is included within the larger geographic entity of the AIR, and the Census Bureau does not specifically distinguish or tabulate data for on-reservation trust land. For the Census Bureau to map or specifically tabulate data for ORTLs, the Census Bureau requires either a copy of the deed clearly placing the land in trust with the federal government for a tribe or individual American Indian, or recent documentation from BIA or DOI indicating that the land is held in trust. The Census Bureau does not identify or tabulate data specifically for any other types of American Indian owned lands located on or off of an AIR, including restricted fee land or fee simple land. The specific compilation of land ownership information is not within the mission of the Census Bureau. The Census Bureau collects the boundaries of ORTLs only where the surface estate is held in trust, and does not collect the boundaries of parcels of land for which only the subsurface estate has been placed in trust. The Census Bureau does not collect the boundaries for, or specifically tabulate data for ORTLs, for tribes in either Alaska or Oklahoma.

The ORTL name used for Census Bureau products will correspond with the name of the AIR with which it is associated or, if there is no associated AIR, with the name of the tribe for which the land is held in trust. Individual ORTLs will also use the name of either the associated AIR or the individual member's federally recognized tribe. The Census Bureau will not depict the name of any individual or family owning or associated with any ORTL.

Tribal Subdivisions

Tribal subdivisions are units of self-government and/or administration within an AIR and/or ORTL for a federally recognized tribe or an OTSA, that serve social, cultural, and/or legal purposes for the tribal government. Tribal subdivisions delineated within an AIR or ORTL are considered ''legal geographic entities'' by the Census Bureau and, thus, are specifically termed ''legal tribal subdivisions'' and are delineated or updated through the annual BAS. Legal tribal subdivisions are further distinguished as being either an active government, defined as a functioning government with elected officials that provides governmental services for only that area, or inactive, defined as having no functioning government of its own and is used only for administrative purposes and/or the election of representatives to a tribal-wide government.

Tribal subdivisions delineated within OTSAs are considered ''statistical geographic entities'' by the Census Bureau and are specifically termed ''statistical tribal subdivisions'' because the larger OTSA is also considered a statistical geographic entity. They are delineated or updated with the OTSAs through the TSAP. Tribal subdivisions are intended to completely cover all of an AIR and/or ORTL, or OTSA, or at least the major contiguous portion thereof. Separate, discrete communities whose boundaries encompass a concentration of population and housing should be defined as CDPs rather than as tribal subdivisions.

The Census Bureau tabulates data for only one level of tribal subdivision within an AIR, ORTL, or OTSA. Tribes that have multiple hierarchical levels of administrative units covering the same area should consider submitting the lowest level—those with the smallest geographic area—so that their data can be aggregated for the larger geographic areas. If an AIR, ORTL, or OTSA consists of multiple, noncontiguous parts, the tribal subdivisions within them will be noncontiguous. The Census Bureau will identify each tribal subdivision in its data products with the name and administrative unit type (chapter, district, etc.) submitted by the tribal government providing the boundary for the geographic area. The name of each tribal subdivision must reflect its name, as cited in recent legal documentation and/or used by the tribal government, for administrative purposes.

B. State Reservation Program

The State Reservation Program occurs once before each decennial census, and is a survey of state AIRs for those states with state-recognized tribes that are not also federally recognized. Its purpose is to determine, solely for data collection and tabulation by the Census Bureau, the complete and current inventory and the correct attributes (names, legal descriptions, official status) and official, legal boundaries of the state AIRs in each state. Through the State Reservation Program, the Census Bureau also accepts additions and updates to features such as roads or rivers on or near the state AIR, as well as address

range break information at the boundaries.

The Census Bureau requests that the governor for each affected state appoint a liaison to work with officials of state-recognized tribes to review the boundaries and other attributes of any currently existing state AIRs and, if applicable, provide the boundaries and other attributes for any new state AIRs. As part of the State Reservation Program, the Census Bureau will provide spatial data for state AIRs for use when reviewing the accuracy of any AIR boundary delineated for a previous decennial census or for delineating any new state AIRs. Acceptance of boundary changes to state AIRs requires clear legal documentation supporting any, and all, changes involving these boundaries.

The Census Bureau will identify each state AIR with the name submitted by the state liaison providing the boundary for the area. The state AIR name should reflect the specific name cited in the legal records establishing the state AIR. The liaison also works on the TSAP with any state-recognized tribes that do not have state AIRs to determine if and how they should delineate a SDTSA for the 2010 Census (see Section V.A.2.).

State American Indian Reservations

State AIRs and their legal boundaries are established pursuant to state law. States with state-recognized tribes that are not also federally recognized each have their own unique laws that recognize specific tribes or establish a formal process by which tribes apply for state recognition. A subset of states also have a process whereby state-recognized tribes may obtain a state AIR; have established a state AIR, specifically through state legislation; or have continued to recognize under state law an AIR established through laws, often treaties, of one of the original thirteen colonial assemblies and/or Great Britain during the Colonial Era.

The Census Bureau solicits changes to the boundaries of state AIRs from the state government through the State Reservation Program. By definition, state AIR boundaries cannot cross state lines unless the AIR and tribe is separately recognized in each state. State AIRs may not include territory within federally recognized AIRs or ORTLs.

V. American Indian Areas for the 2010 Census—Geographic Programs and Statistical Geographic Entities

The Census Bureau has developed a variety of American Indian statistical geographic entities for those federally and state-recognized tribes that do not have an AIR or ORTL. Their shared purpose is to provide a meaningful and relevant geographic framework for tabulating data from the 2010 Census, the ACS, and potentially other Census Bureau censuses and surveys that is comparable to the AIRs and ORTLs for tribes of similar size within the same state and/or region. Representation of statistical AIA boundaries in Census Bureau products is solely for the purpose of data tabulation and presentation, and does not convey or confer any rights to land ownership, governmental authority, or jurisdictional status. The TSAP is the mechanism for the 2010 Census through which the Census Bureau works with tribal governments to delineate the boundaries and other attribute information of the various American Indian statistical geographic entities. The TSAP is only offered once prior to each decennial census.

Tribal tracts, tribal block groups, and CDPs also are statistical geographic entities defined as part of the TSAP. Criteria for these statistical geographic entities are provided in sections V.B. and V.C. below. Throughout the following section, the term ''statistical AIA'' refers to OTSAs, tribal subdivisions within OTSAs, TDSAs, and SDTSAs.

A. Final Criteria and Guidelines for Statistical AIAs (OTSAs, TDSAs, and SDTSAs) for the 2010 Census

The Census Bureau has received comments from data users and tribal officials over the past 20 or more years regarding the purpose of statistical AIAs (OTSAs, TDSAs, and SDTSAs) and how they should be defined to facilitate tabulation and presentation of meaningful data. In response, the Census Bureau announces the following criteria and guidelines to help ensure that the statistical AIAs delineated for the 2010 Census and beyond support their intended purpose, provide useful and meaningful data for the respective tribe, and enhance the ability for data users to make meaningful comparisons between data for the various types of AIAs. Criteria are rules that must be followed by all officials delineating statistical AIAs for the 2010 Census, while guidelines are suggestions for improving the relevance and utility of statistical AIAs.

The following criteria apply to all statistical AIAs (OTSAs, TDSAs, and SDTSAs) delineated for the 2010 Census. Criteria and guidelines specific to the individual type of statistical AIA are provided in their respective sections below.

1. A statistical AIA must contain some American Indian population and housing.

2. A statistical AIA may not overlap with any other AIA at the same level of the geographic hierarchy. For example, an OTSA may not overlap an AIR; a TDSA may not overlap an AIR; a SDTSA may not overlap a TDSA.

3. A statistical AIA may not completely surround another legal or statistical AIA at the same level of the geographic hierarchy.

4. A statistical AIA may not include more water area than land area.

5. Officials delineating statistical AIAs may only add nonvisible lines as a boundary only if other acceptable boundary features are not available and they aid in a statistical AIA meeting other specific delineation criteria and/or guidelines.

6. The Census Bureau will evaluate the submitted name to ensure that each statistical AIA's name is clearly distinguishable from the name of any other legal or statistical AIA.

1. Oklahoma Tribal Statistical Areas (OTSAs)

OTSAs are statistical AIAs identified and delineated by the Census Bureau with federally recognized tribes based in Oklahoma that had a former AIR in Oklahoma. OTSAs are intended to represent the former AIRs that existed in the Indian and Oklahoma territories prior to Oklahoma statehood in 1907, to provide comparable geographic entities for analyzing data over time, and to provide a way to obtain data comparable to that provided to federally recognized tribes that currently have an AIR. Because all former AIRs in Oklahoma were delineated for Census 2000, no new OTSAs may be delineated for the 2010 Census. Federally recognized tribes with an OTSA and those without may have ORTLs. A tribe may choose to have the Census Bureau tabulate data for its ORTL for the 2010 Census rather than for an OTSA, if the tribe can supply an acceptable Geographic Information System (GIS) file or map(s) and the required supporting legal documentation. If a tribe chooses to submit their ORTL to the Census Bureau, the tribe's ORTL will become part of the annual BAS (see the sections on the ''Boundary and Annexation Survey'' and ''Off-Reservation Trust Land'' above).

For previous censuses, the Census Bureau allowed the boundaries of OTSAs to deviate somewhat from the corresponding former AIR boundaries when requested by a tribe and supported by available demographic data. Such deviations may affect the

delineation and identification of other tribes' OTSAs, resulting in areas being associated with multiple OTSAs. These areas with multiple relationships were defined as separate geographic entities and identified as ''joint use area OTSAs'' for Census 2000. In response to comments received from data users, especially with regard to federal laws and programs requiring the use of the former AIR boundaries rather than OTSA boundaries, the Census Bureau seeks to avoid identification of joint use area OTSAs for the 2010 Census. The Census Bureau will not create any new joint use area OTSAs for the 2010 Census and will work with the tribes involved to eliminate those that existed for Census 2000. Four joint use area OTSAs were created for Census 2000: Kiowa-Comanche-Apache-Ft. Sill Apache-Caddo-Wichita-Delaware; Creek-Seminole; Kaw-Ponca; and Miami-Peoria.

Final OTSA Criteria:

1. OTSAs must be located completely within the current boundaries of the State of Oklahoma.
2. The name for each OTSA is determined by the tribe or tribes (in conjunction with the Census Bureau) that are responsible for delineating each OTSA. The Census Bureau shall revise any name submitted for a geographic entity if it is determined that the criteria listed below were not applied properly. The name of an OTSA must reflect one or more of the following conditions:
a. The tribe or tribes associated with the former AIR represented by the OTSA;
b. Tribes that have historically resided within the area of the OTSA;
c. Tribes that have significant population currently residing within the OTSA; and/or
d. The name(s) of the tribe(s) commonly associated with the area encompassed by the OTSA.

Final OTSA Guidelines:

1. To the extent possible, OTSA boundaries identified for the 2010 Census should be the same as those delineated for Census 2000.
2. OTSAs should follow the last legal boundaries established for their former AIR.
3. Tribes should strive to eliminate overlapping OTSA boundaries that resulted in the Census 2000 joint use area OTSAs.
4. Tribes may delineate tribal subdivisions within their own OTSAs.
5. Tribes may delineate CDPs representing unincorporated communities located within their own OTSAs (see section V.C. below).

2. Tribal-Designated Statistical Areas (TDSAs) and State-Designated Tribal Statistical Areas (SDTSAs)

TDSAs are statistical AIAs identified and delineated by the Census Bureau with federally recognized tribes that do not have an AIR or ORTL, and are based outside of Alaska, Hawaii, and Oklahoma. SDTSAs are conceptually similar to TDSAs but defined for state-recognized tribes that are not also federally recognized. A TDSA may cross state lines. A SDTSA, however, is limited to the state in which the respective tribe is officially recognized. For example, if the area with which a tribe is associated is located in two states, the tribe must be officially recognized by each state in order for the tribe's SDTSA to be delineated in each of those states.

The primary purpose for delineating either a TDSA or a SDTSA is to obtain meaningful statistical data for a recognized tribe within a specific geographic area encompassing a substantial concentration of tribal members. Both TDSAs and SDTSAs are intended to provide comparable geographic entities for analyzing data over time and to provide a way to obtain data comparable to that provided for tribes of a similar size that have AIRs or ORTLs in the same state and/or region. The definition of a TDSA or SDTSA may not necessarily include all tribal members; nor is it intended to depict land ownership, represent an area over which a tribe has any form of governmental authority or jurisdiction, or represent all of the traditional or historical areas associated with the tribe, including areas used for subsistence activities. Representation of TDSA and SDTSA boundaries in Census Bureau products is solely for the purpose of data tabulation and presentation, and does not convey or confer any rights to land ownership, governmental authority, or jurisdictional status.

TDSAs and SDTSAs will be used to tabulate and present data from both the 2010 Census, as well as to tabulate and present period estimates from the ACS. Thus, if a TDSA or SDTSA has a small amount and/or proportion of American Indian population, the quality, reliability, and availability of data, particularly ACS period estimates, may be adversely affected for that area.

Defining officials should take into consideration that tribal affiliation data, as collected by the Census Bureau, are generally not released for geographic entities that have small amounts of population, including TDSAs and SDTSAs, due to data disclosure concerns. TDSAs and SDTSAs enable meaningful demographic and housing data to be tabulated for a specific population and geographic area. If a TDSA or SDTSA is defined in accordance with the final program criteria and guidelines, data tabulated for the TDSA or SDTSA may provide an alternative to tribal affiliation data for a specific, small geographic area. Tribal affiliation data are available for larger geographic entities, such as whole states or the entire United States.

Since TDSAs and SDTSAs also will be used to tabulate and present period estimates from the ACS, defining officials also should consider that, as a general rule, period estimates of demographic characteristics for geographic entities with small populations will be subject to higher variances than comparable estimates for geographic entities with larger populations. In addition, the Census Bureau's disclosure rules may have the effect of restricting the availability and amount of data for geographic entities with small populations. The more closely a TDSA or SDTSA boundary relates to the distribution of tribal members and American Indians receiving governmental services from the tribe, and does not include large numbers of people and households not affiliated with the tribe, the more likely that data presented for the TDSA or SDTSA will accurately reflect the characteristics of the intended tribal population. Therefore, when delineating TDSAs or SDTSAs, it is important to strike an appropriate balance; avoiding a definition that is too small to obtain meaningful sample data, and one that is so large that data for the American Indian population are masked by the presence of a high percentage of non-American Indian households. The Census Bureau took these concerns into consideration when developing the delineation criteria and guidelines below.

Although eligible, officials may elect not to delineate a TDSA or SDTSA if it will not provide meaningful, relevant, or reliable statistical data because the member population now resides in numerous other locations or has been largely subsumed by non-member and/or non-American Indian populations. In such instances, defining a TDSA or SDTSA will not improve the presentation of statistical data relating to tribal members. These tribes may still be able to receive meaningful, relevant, and reliable statistical data for their tribal membership at higher levels of census geography, such as through the characteristic of tribal affiliation, but a geographic solution to their data issues,

such as a TDSA or SDTSA, may not be possible.

In response to comments from data users since the 1990 Census, regarding the purpose of statistical AIAs, and best practices to follow when defining a statistical geographic entity to obtain meaningful data, the Census Bureau announces the following criteria and guidelines to help ensure that the TDSAs and SDTSAs that are delineated for the 2010 Census meet their definition, support the intended purpose of the program, provide useful, relevant, and meaningful data for the tribe they represent, and enhance the ability for data users to make more meaningful comparisons between data for both legal and statistical AIAs.

Final TDSA and SDTSA Criteria:

1. TDSAs and SDTSAs shall not include military areas.

2. TDSAs shall not be delineated in Hawaii or Oklahoma.

3. TDSAs shall no longer be recognized or delineated in Alaska because all federally recognized tribes in Alaska, without an AIR, may now consider defining Alaska Native village statistical areas.

4. A SDTSA for a specific tribe may be delineated in a state only if the tribe is officially recognized by the state.

5. The name for each TDSA or SDTSA is determined by the tribe or tribes (in conjunction with the Census Bureau, and the state liaison for SDTSAs) that are responsible for its delineation. The name of a TDSA or SDTSA must reflect one or both of the following conditions:

a. The tribe that has the largest population currently residing within the TDSA or SDTSA; and/or

b. The name of the tribe most commonly associated with the area encompassed by the TDSA or SDTSA.

Final TDSA and SDTSA Guidelines:

1. TDSAs and SDTSAs should be comparable in area to the AIRs and/or ORTLs of other tribes with similar numbers of members in the same state and/or region.

2. American Indians should constitute a substantial proportion of the population within a TDSA or SDTSA, and of the American Indian population, the majority should be members of the delineating tribe.

3. A minimum population of at least 1,200 individuals or 480 housing units is suggested to help enhance reliability and availability of sample-based data.

4. TDSAs and SDTSAs should include an area where there is structured and organized tribal activity, including tribal headquarters, tribal service centers, meeting areas and buildings, ceremonial grounds, tribally owned businesses, etc.

5. TDSAs and SDTSAs should not contain large areas without housing or population. A housing unit density of at least three housing units per square mile is suggested.

6. TDSAs and SDTSAs should be contiguous.

7. Water area should be included only to maintain contiguity, to provide a generalized version of the shoreline, or if the water area is completely surrounded by land area included in the TDSA or SDTSA.

8. TDSA and SDTSA boundaries should follow visible, physical features, such as rivers, streams, shorelines, roads, and ridgelines.

9. TDSA and SDTSA boundaries may follow the nonvisible, legally defined boundaries of AIRs, ORTLs, states, counties, or incorporated places.

3. OTSA, TDSA, and SDTSA Review Process

As with all of the Census Bureau's statistical geographic entities, the Census Bureau reserves the right to modify, create, or reject any boundary or attribute as needed to meet the final program criteria and guidelines, or to maintain geographic relationships before the tabulation geography is finalized for the 2010 Census.

The Census Bureau will review each statistical AIA and accept it only if it meets the final program criteria. Any decision to reject a particular statistical AIA delineation will be conveyed to the delineating official, and the Census Bureau will work with the delineating official to reach a satisfactory solution.

Interested parties will be able to review and comment on delineated statistical AIA boundaries and names. If a dispute between two or more parties occurs over the boundary delineated for a specific statistical AIA, the Census Bureau encourages the respective parties to reach a mutually acceptable agreement that complies with the final program criteria and follows the final program guidelines. There may be instances in which a mutually acceptable boundary for a statistical AIA cannot be delineated, or the mutually acceptable boundary does not follow the final program criteria. In such instances, when only one of the parties is a tribe, the Census Bureau gives priority to the boundary submitted by the tribal delineating official, in recognition of the government-to-government relationship with the tribe, provided that the delineated statistical AIA meets the final program criteria. If a mutually acceptable statistical AIA that meets the final program criteria is not delineated by the program's deadline, the Census Bureau may, if time and resources allow, independently delineate a statistical AIA.

B. Final Criteria and Guidelines for Tribal Census Tracts and Tribal Block Groups for the 2010 Census

Census tracts are the oldest and one of the most utilized statistical geographic entities for which the Census Bureau tabulates data. The primary purpose of the census tract program is to provide a set of nationally consistent small, statistical geographic units, with stable boundaries that facilitate analysis of data across time. ''Standard'' census tracts always nest hierarchically within states and counties. ''Standard'' block groups are subdivisions of standard census tracts. Since there is less concern about the use of block groups for analyzing data across time, block group boundaries may change from one decennial census to another. Block groups always nest hierarchically within standard census tracts, and are the smallest geographic area for which decennial census sample data were provided and for which ACS data will be provided. Standard block groups provide the geographic framework within which the Census Bureau defines and numbers census blocks, with the block group code derived from the first digit in the census block number. For example, block group 1 would contain blocks in the 1000 range; block group 2, blocks within the 2000 range; and so on.

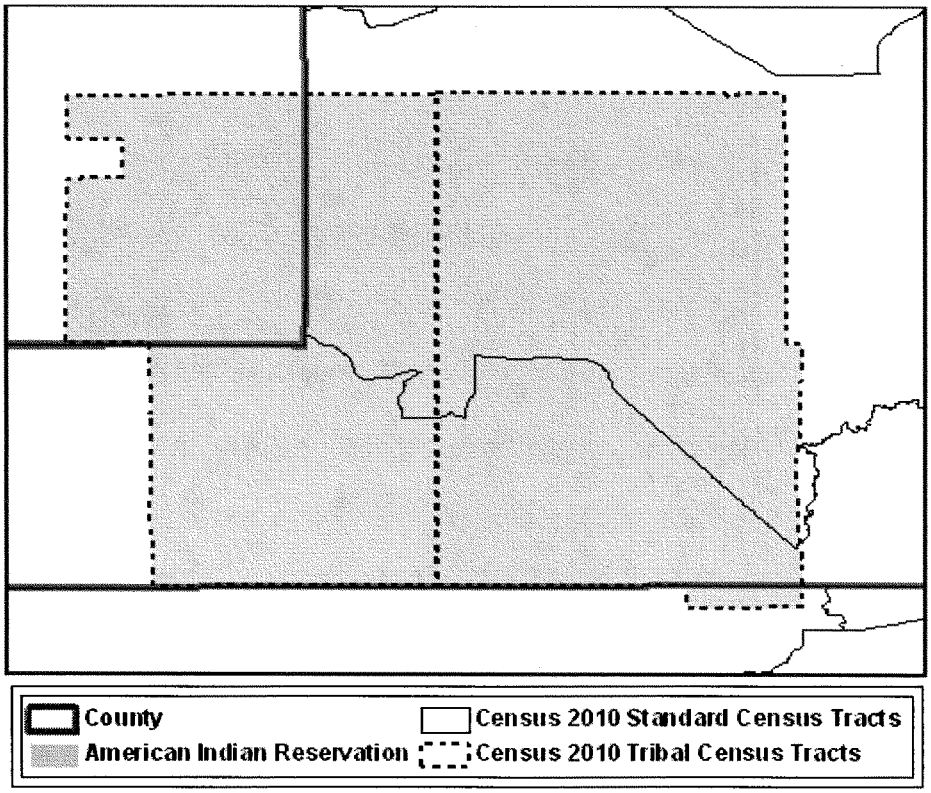
Tribal tracts and tribal block groups are conceptually similar and equivalent to standard census tracts and block groups. They were first defined for Census 2000 to provide meaningful, relevant, and reliable data for small geographic areas within the boundaries of federally recognized AIRs and/or ORTLs. The delineation of tribal tracts and tribal block groups recognizes the unique statistical data needs of federally recognized American Indian tribes. The delineation of tribal tracts and tribal block groups allows for an unambiguous presentation of census tract- and block group-level data specific to an AIR and/or ORTL, without the standard imposition of state or county boundaries, which may artificially separate American Indian populations located within a single AIR and/or ORTL. To this end, tribal tracts and tribal block groups may cross county or state boundaries, or both.

For Census 2000 products in which data were presented by state and county, the standard state/county/census tract hierarchy was maintained, even for territory contained within an AIR and/or ORTL. In such instances, the

state/county portions of a tribal census tract were identified as individual census tracts. These standard census tracts may not have met the minimum population or housing unit thresholds, therefore, potentially limiting sample data reliability or availability for both the tribal census tract and the derived standard tracts.

For the 2010 Census, the Census Bureau will identify tribal tracts and tribal block groups as a geographic framework completely separate from, and in addition to, standard census tracts and standard block groups (Figure 1). This change for tribal tracts and tribal block groups for the 2010 Census seeks to eliminate, in part, the data reliability or availability issues associated with the Census 2000 approach, so that for the 2010 Census more census tracts and block groups, both tribal and standard, will meet the population and housing unit thresholds. The separation of these two geographic frameworks will apply to data tabulation products, as well as to geographic information products.

Figure 1. Tribal Census Tracts and Standard Census Tracts.



The primary operational benefit of this change for the tribes is that they do not have to work with any other governments or data users in delineating their tribal tracts and tribal block groups. Standard census tracts and standard block groups are delineated by a primary participant in the Participant Statistical Areas Program (PSAP) (usually a regional planning organization or county government agency) for all of the area within their county or counties, with input from a large variety of data users who may represent competing interests. Tribes are encouraged to work with the other PSAP participants for any areas in which they are interested, on and off their AIRs and/or ORTLs, to help define standard census tracts and standard block groups; but the tribal census tract and tribal block group concept allows tribes to receive meaningful data for specific geographic areas within their AIRs and/or ORTLs. The Census Bureau regards tribal tracts and standard census tracts as equivalent in all aspects, and strongly suggests that any programs utilizing census tracts and/or any data tabulated for them should allow for the use of tribal tracts in their programs as well.

For federally recognized American Indian tribes with an AIR and/or ORTL that has more than 2,400 residents or more than 960 housing units, the Census Bureau will offer the tribal government the opportunity to delineate more than one tribal tract and tribal block group on their AIR and/or ORTL. For federally recognized tribes with an AIR and/or ORTL that has fewer than 2,400 residents or 960 housing units, the Census Bureau will define one tribal census tract coextensive with each AIR and/or ORTL. However, federally recognized tribes with an AIR and/or ORTL that has at least 1,200 residents or 480 housing units may still define multiple tribal block groups on their AIR and/or ORTL. For federally recognized tribes with an AIR and/or ORTL that has fewer than 1,200 residents or 480 housing units, the Census Bureau will define one tribal block group coextensive with each AIR and/or ORTL. Tables 1 and 2 provide population and housing unit thresholds for both standard and tribal tracts and block groups.

TABLE 1—STANDARD AND TRIBAL CENSUS TRACT THRESHOLDS

Tract type	Threshold type	Optimum	Minimum	Maximum
Standard and tribal census tracts	Population threshold	4,000	1,200	8,000
	Housing Unit threshold	1,600	480	3,200

TABLE 2—STANDARD AND TRIBAL BLOCK GROUP THRESHOLDS

Block group type	Threshold type	Minimum	Maximum
Standard and tribal block groups	Population threshold	600	3,000
	Housing Unit threshold	240	1,200

All tribal tracts and tribal block groups must follow all of the final criteria and guidelines published in the **Federal Register** for standard census tracts (73 FR 13836–13844) and standard block groups (73 FR 13829–13836), except that they do not have to nest within states or counties. They must instead nest within an individual AIR and/or ORTL, and must be identified uniquely so as to clearly distinguish them from standard census tracts and block groups (see the section on the ''Identification of Tribal Census Tracts and Tribal Block Groups for the 2010 Census'' below). Because census blocks will be coded within standard block groups, and tribal block groups will be identified uniquely from standard block groups, there will not be a relationship between tribal block group identifiers and census block numbers (although census block numbers will not be duplicated within a tribal block group). Thus, tribal block group ''A'' might contain census blocks numbered in different ''thousand'' ranges (e.g., blocks 1001, 2001, and 3001).

Tribal tracts and tribal block groups defined for the 2010 Census will also be used to tabulate data from the ACS. As a general rule, estimates from programs providing sample data, including the ACS, for geographic areas with smaller populations will be subject to higher sampling variances than comparable estimates for areas with larger populations. In addition, the availability and amount of data published for geographic areas with small populations may be reduced compared to that for geographic areas with larger populations. Aiming to create tribal tracts that meet the optimal population of 4,000, and at least maintaining the minimum population threshold of 1,200, will improve the reliability and availability of sample data. PSAP and TSAP participants should consider these factors when defining both tribal and standard census tracts. A similar relationship between the size of population, and reliability and availability of data, applies to tribal block groups and standard block groups. The Census Bureau uses Census 2000 population and housing unit counts to verify that a tribal census tract or tribal block group meets the thresholds; and if the thresholds are not met, the Census Bureau asks for other supporting information, such as tribal or local estimates for the same area.

All tribal tracts and tribal block groups, like all statistical geographic entities, are reviewed by the Census Bureau, compared against the final published criteria and guidelines, and accepted on a case-by-case basis. Population counts should be used in reviewing tribal tracts and tribal block groups. Housing unit counts should be used for seasonal and other unique communities that may have no or low population on Census Day (April 1). Tribal and/or locally produced population and housing unit estimates can be used when reviewing and updating census tracts. The housing unit thresholds are based on a national average of 2.5 persons per housing unit. The Census Bureau recognizes that there are regional variations to this average, and will take this into consideration when reviewing all tribal census tract and tribal block group proposals, if notified. On a case-by-case basis, the Census Bureau may waive the maximum population and housing thresholds, if acceptable, and explanations are submitted.

Identification of Tribal Census Tracts and Tribal Block Groups for the 2010 Census:

a. A tribal census tract code will always begin with a ''T'' followed by three digits. For example, tribal census tract one on an AIR and/or ORTL will have a code of ''T001'' for the 2010 Census. Standard census tracts that have the majority of their population, housing units, and/or area included in AIRs and/or ORTLs, will be coded between 9401 and 9499 for the 2010 Census. All other standard census tracts that had a census tract code between 9400 and 9499, for Census 2000, shall be recoded outside of this range for the 2010 Census. Both tribal and standard census tract codes must be unique within each AIR and/or ORTL.

b. A tribal block group will always be designated with a single capital letter from ''A'' through ''K'' (except for the letter ''I'') for the 2010 Census. Tribal block group identifiers must be unique within each tribal census tract. Census blocks will be numbered uniquely within standard block group, and no relationship will exist between the tribal block group identifier and the number of census blocks contained within. A tribal block group might contain census blocks numbered in different ''thousand'' ranges (e.g., blocks 1001, 2001, and 3001).

C. Final Criteria and Guidelines for Census Designated Places (CDPs) Defined Within Federally Recognized AIRs, ORTLs, and OTSAs for the 2010 Census

CDPs are statistical geographic entities representing closely settled, unincorporated communities, which are locally recognized and identified by name. They are the statistical equivalents of incorporated places, with the primary differences being the lack of both a legally defined boundary and an active, functioning governmental structure chartered by the state and administered by elected officials. CDPs encompass a concentration of population, housing, and commercial structures that is clearly identifiable by a single name, but is not within an incorporated place. A CDP should have population during at least one entire season (at least three consecutive months) of the year, and have a higher housing unit and/or population density than surrounding areas. A CDP must have some population and/or housing units included, and the Census Bureau asks TSAP and PSAP participants for an explanation if a CDP has less than ten

housing units. CDPs cannot be coextensive with an entire AIR, ORTL, OTSA, or any other AIA. CDPs may extend off AIRs, ORTLs, or OTSAs.

CDPs are delineated through both the TSAP and the PSAP for the 2010 Census. Federally recognized tribes with AIRs, ORTLs, or OTSAs may update or delineate new CDPs on those geographic entities through the TSAP. Tribes that would like to delineate CDPs for communities completely off AIRs, ORTLs, and/or OTSAs should work through the PSAP with the primary participants for the areas in which they are interested. Tribes are urged to contact the Regional Census Center responsible for their area of interest, as well as the TSAP and PSAP e-mail lists at *geo.tsap.list@census.gov* and *geo.psap.list@census.gov,* respectively, to ensure full participation in the PSAP.

VI. Definitions of Key Terms

Alaska Native area (ANA)—A geographic entity within the State of Alaska that is defined for the collection and tabulation of decennial census data for Alaska Natives. For the 2010 Census, ANAs include Alaska Native Regional Corporations (ANRCs) and Alaska Native Village statistical areas (ANVSAs).

Alaska Native Claims Settlement Act (ANCSA)—Federal legislation (Pub. L. 92–203, 85 Stat. 688 (1971); 43 U.S.C. 1602 *et seq.* (2000)) enacted in 1971 that recognized Native villages and Native groups, and established ANRCs and their regional boundaries.

Alaska Native Regional Corporation (ANRC)—A corporation created pursuant to the ANCSA as a ''Regional Corporation'' and organized under the laws of the State of Alaska to conduct both the for-profit and non-profit affairs of Alaska Natives within a defined region of Alaska. For the Census Bureau, ANRCs are considered legal geographic entities. Twelve ANRCs cover the entire State of Alaska except for the area within the Annette Island Reserve (an AIR under the governmental authority of the Metlakatla Indian Community).

Alaska Native village (ANV)—A local governmental unit in Alaska that constitutes an association, band, clan, community, group, tribe, or village recognized by and eligible to receive services from the BIA and/or in accordance with the ANCSA as a Native village or Native group.

Alaska Native village statistical area (ANVSA)—A statistical geographic entity that represents the residences, permanent and/or seasonal, for Alaska Natives who are members of or receiving governmental services from the defining ANV that are located within the region and vicinity of the ANV's historic and/or traditional location. ANVSAs are intended to represent the relatively densely settled portion of each ANV and should include only an area where Alaska Natives, especially members of the defining ANV, represent a significant proportion of the population during at least one season of the year (at least three consecutive months). ANVSAs also should not contain large areas that are primarily unpopulated or do not include concentrations of Alaska Natives, especially members of the defining ANV.

Allotment—Land in the United States allotted to American Indian or Alaska Native adults primarily pursuant to the Dawes Act in the coterminous 48 states or the Native Allotment Act of 1906 (34 Stat. 197, Chapter 2469) in Alaska. A Native allotment can be up to 160 acres in area (.25 of a square mile), and its title is held in either trust (*see ''Trust land''*) or restricted fee status (*see ''Restricted fee land''*). Allotments were either provided from the lands that are or were part of an AIR or from public lands at large, and generally required each applicant to demonstrate use and occupancy of the allotment for at least a five-year period. The Census Bureau only maps and tabulates data specifically for those allotments that are located off an AIR, currently held in trust, associated with a specific tribe and/or AIR, and which have been provided to the Census Bureau with clear, supporting legal documentation.

American Indian—For the purposes of this Notice, any individual who self-identifies as an American Indian and/or an Alaska Native (AIAN) alone or in combination with one or more other races.

American Indian reservation (AIR)—A type of legal geographic entity that is a recognized American Indian land area with a boundary established by final treaty, statute, executive order, and/or court order and over which the tribal government of a federally recognized American Indian tribe (federal AIR) or a state-recognized American Indian tribe (state AIR) has governmental authority. Along with reservation, designations such as colony, pueblo, rancheria, and reserve may apply to AIRs.

Block group—A combination of census blocks that is a subdivision of a census tract. The block group is the lowest level of geography for which the Census Bureau tabulates sample data.

Boundary and Annexation Survey (BAS)—A Census Bureau survey of legal geographic entities that includes counties, incorporated places, micro civil divisions, ANRCs, and federally AIRs and ORTLs. Its purpose is to determine, solely for data collection and tabulation by the Census Bureau, the complete and current inventory and the correct names, legal descriptions, official status, and official boundaries of the legal geographic entities with primary governmental authority over certain lands within the United States as of January 1 of the survey year. The BAS also collects specific information to document the legal actions that established a boundary or imposed a boundary change.

Boundary Validation Program (BVP)—The Census Bureau geographic area program providing tribal leaders a final opportunity to review the Census Bureau's depiction of their AIR and/or ORTL boundaries and provide any corrections to ensure those boundaries are shown correctly as of January 1 of the decennial census year. The BVP occurs after the BAS and prior to tabulation of decennial census data.

Bureau of Indian Affairs (BIA)—The primary agency of the federal government, located within the DOI, charged with the trust responsibility between the federal government and federally recognized AIAN tribal governments and communities, including BIA recognized ANVs.

Bureau of Land Management—The primary agency of the federal government, located within the DOI, charged with carrying out the ANCSA.

Census designated place (CDP)—A statistical geographic entity encompassing a concentration of population, housing, and commercial structures that is clearly identifiable by a single name, but is not within an incorporated place. CDPs are the statistical counterparts of incorporated places for distinct unincorporated communities.

Census tract—a combination of census block groups that is a subdivision of a county or AIR.

Contiguous—A description of a geographic entity having an uninterrupted outer boundary such that it forms a single, connected piece of territory. Noncontiguous areas form separate, disconnected pieces.

Federal AIR—A type of legal geographic entity that is a recognized American Indian land area with a boundary established by final treaty, statute, executive order, and/or court order, and over which the tribal government of a federally recognized American Indian tribe has governmental authority. Along with reservation, designations such as colony, pueblo, rancheria, and reserve may apply to AIRs.

Federal recognition or federally recognized—refers to the recognition by the Secretary of the Interior that an American Indian tribe has a government-to-government relationship with the United States, and is eligible for the special programs and services provided by the United States to American Indians because of their status as American Indians, and evidenced by inclusion of the tribe on the list of recognized tribes published by the Secretary under 25 U.S.C. 479a–1 (last published in the **Federal Register** on Friday, April 4, 2008 (73 FR 18553—18557)).

Fee land—Area owned in fee simple status (total ownership, not in trust) by a tribe recognized by the federal government or individual members of a tribe. A tribe or an individual holds the title to such land. Tracts and/or parcels of such land can be alienated or encumbered by the owner without the approval of the Secretary of the Interior or his/her authorized representative. This type of land may be located on or off a federally recognized AIR. The Census Bureau does not identify fee land (or land in fee simple status) as a specific geographic category.

Fee simple land (or land in fee simple status)—Area owned in fee simple status (total ownership, not in trust or restricted) by a tribe or AIAN individuals. A tribe or an individual holds the title to such land. Tracts and/or parcels of such land can be alienated or encumbered by the owner without the approval of the Secretary of the Interior or his/her authorized representative. This type of land may be located on or off an AIR. The Census Bureau does not identify fee land as a specific geographic category.

Geographic entity—Once a geographic area is recognized and incorporated into the Census Bureau geographic universe as a discrete areal unit, it is be referred to as a ''geographic entity.''

Geographic Names Information System (GNIS)—The GNIS is the federal standard for geographic nomenclature. The U.S. Geological Survey developed the GNIS for the U.S. Board on Geographic Names as the official repository of domestic geographic names data; the official vehicle for geographic names used by all departments of the federal government; and the source for applying geographic names to federal electronic and printed products. The GNIS is available online at *http://geonames.usgs.gov/domestic/index.html.*

Historic Areas of Oklahoma—A geographic area established by the Census Bureau for the 1980 Census that encompassed the former AIRs that had legally established boundaries during the period 1890 through 1907, but whose lands were divided by allotment agreements during the period preceding the establishment of Oklahoma as a state in 1907. The Historic Areas of Oklahoma excluded all territory that was in the Census Bureau's 1980 urbanized areas. The 1980 Census tabulated data for this single entity, which was replaced for the 1990 Census by the designation TJSAs, reflecting, in general, a presentation of the data by individual former AIRs. The TJSAs defined for the 1990 Census included territory without regard to urbanized areas.

Incorporated place—A legal geographic entity that is a governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, to provide governmental services for a concentration of people within a legally defined boundary.

Joint use area—The term, as applied to any AIA by the Census Bureau, means that the area is administered jointly and/or claimed by two or more American Indian tribes. The Census Bureau designates both legal and statistical joint use areas as unique geographic entities for the purpose of presenting statistical data. In no way does this designation confer or imply any legal ownership or authority in the area, but merely describes the relationship between the tribes and the area.

Legal geographic entity—A geographically defined governmental, administrative, or corporate entity whose origin, boundary, name, and description result from charters, laws, treaties, or other governmental action. Examples are: the United States; states and statistically equivalent entities; counties and statistically equivalent entities; minor civil divisions; incorporated places; congressional districts; AIRs and ORTLs; school districts; and ANRCs. The legal geographic entities that will be recognized for the 2010 Census are those in existence on January 1, 2010.

Nonvisible feature—A map feature that is not visible from the ground, such as an incorporated place, county, AIR, ORTL, or ANRC boundary through space, a property line, or line-of-sight extension of a road.

Off-Reservation Trust Land (ORTL)—A type of legal geographic entity that is a recognized American Indian land area for which the United States federal government holds fee title in trust for the benefit of a tribe (tribal trust land) or for an individual American Indian (individual trust land). Trust lands can be alienated or encumbered only by the owner with the approval of the Secretary of the Interior or his/her authorized representative. Trust lands may be located on (on-reservation trust land) or off an AIR. The Census Bureau recognizes and tabulates data for AIRs and ORTLs because the tribe has governmental authority over these lands. Primary tribal governmental authority generally is not attached to tribal lands located off the AIR until the lands are placed in trust. In Census Bureau data tabulations, ORTLs are always associated with a specific federal AIR and/or tribal government.

Oklahoma tribal statistical area (OTSA)—A statistical entity identified and delineated by the Census Bureau in consultation with federally recognized American Indian tribes that have no current AIR, but that had a former AIR in Oklahoma. The boundary of an OTSA will be that of the former AIR in Oklahoma, except where modified by agreements with neighboring tribes for statistical data presentation purposes. For Census 2000, the term OTSA replaced the 1990 Census term—tribal jurisdiction statistical area (TJSA).

Restricted fee land—A land area for which an individual American Indian or a tribe holds fee simple title subject to limitations or restrictions against alienation or encumbrances as set forth in the title and/or by operation of law. Restricted fee lands may be located on or off a federally recognized reservation. The majority of restricted fee land is located in Oklahoma or Alaska. The Census Bureau does not identify restricted fee lands as a specific geographic category.

State AIR—A type of legal geographic entity that is a recognized American Indian land area with a boundary established by final treaty, statute, executive order, and/or court order, and over which the tribal government of a state-recognized American Indian tribe has governmental authority. A governor-appointed state liaison provides the name and boundary for each state-recognized AIR to the Census Bureau.

State-designated American Indian statistical area (SDAISA)—A statistical geographic entity developed for Census 2000, now called SDTSAs (see SDTSAs for more information).

State-designated tribal statistical area (SDTSA)—A statistical geographic entity identified and delineated for the Census Bureau by a governor-appointed state liaison, working in conjunction with tribal officials for a state-recognized tribe that does not currently have an AIR and/or ORTL. A SDTSA is intended to be comparable to the AIRs

within the same state or region, especially those for tribes that are of similar size. A SDTSA encompasses a compact and contiguous area that contains a concentration of individuals who identify with the state-recognized tribe and within which there is structured and organized tribal activity. Referred to as state-designated American Indian statistical areas (SDAISAs) in Census 2000.

State recognition or state-recognized—Refers to American Indian tribes and associated geographic areas that are specifically recognized by a state government through treaty (generally with one of the original thirteen colonial assemblies and/or Great Britain), state legislation, or other formal process. State recognition of a tribe is determined by each respective state government, and conveyed to the Census Bureau by the governor's appointed liaison.

Statistical geographic entity or statistical area—A geographic entity specifically defined for the collection and/or tabulation of statistical data from the Census Bureau. Statistical entities are not generally established by law and their designation by the Census Bureau neither conveys nor confers legal ownership, entitlement, jurisdiction, or governmental authority. Tribal statistical geographic entities include ANVSAs, OTSAs, TDSAs, and SDTSAs, among others.

Surface estate—That portion of the interest, ownership, or property in land that resides on the earth's surface, as distinguished from the subsurface estate (for example, mineral rights). The Census Bureau collects the boundaries of ORTLs where the surface estate is held in trust; it does not collect the boundaries where only the subsurface estate is held in trust.

Tribal block group—Block groups defined on AIRs and ORTL that are separate from, and in addition to, standard state/county/census tract hierarchy block groups, maintained and presented within the Census Bureau's American Indian geographic hierarchy, and are defined through the TSAP by tribal primary participants. These are in all respects the functional and programmatic equivalent to standard block groups and should be treated as such. They were developed to further enhance the data available for federally recognized American Indian tribes with an AIR or ORTL. (See also Block group)

Tribal census tracts (tribal tracts)—Census tracts defined on AIRs and ORTL that are separate from, and in addition to, standard state/county hierarchy census tracts, maintained and presented within the Census Bureau's American Indian geographic hierarchy, and are defined through the TSAP by tribal primary participants. These are in all respects the functional and programmatic equivalent to standard census tracts and should be treated as such. They were developed to further enhance the data available for federally recognized American Indian tribes with an AIR or ORTL. (See also Census tract)

Tribal-designated statistical area (TDSA)—A statistical geographic entity identified and delineated for the Census Bureau by a federally recognized American Indian tribe that does not currently have an AIR and/or ORTL. A TDSA is intended to be comparable to the AIRs within the same state or region, especially those for tribes that are of similar size. A TDSA encompasses a compact and contiguous area that contains a concentration of individuals who identify with the delineating federally recognized American Indian tribe, and within which there is structured and organized tribal activity. Although two TDSAs were delineated within Alaska for Census 2000, TDSAs will not be delineated within Alaska for the 2010 Census. All ANVs eligible to delineate TDSAs within Alaska for Census 2000 are eligible consider delineating an ANVSA within Alaska for the 2010 Census.

Tribal jurisdiction statistical area (TJSA)—A statistical entity identified and delineated for the 1990 Census to provide a geographic frame of reference for the presentation of statistical data. TJSA boundaries were required to follow census block boundaries and were based upon the boundaries of the former AIRs of federally recognized tribes in Oklahoma. The 1990 Census TJSAs essentially were defined in the same manner as planned for the OTSAs in Census 2000; the descriptive designation is being changed for Census 2000 to correct the impression that these statistical entities conveyed or conferred any jurisdictional authority.

Tribal Statistical Areas Program (TSAP)—New for the 2010 Census, the TSAP is intended to consolidate the various AIAN statistical geographic entities into one program. New delineations, updates, and re-delineations of the various tribal statistical geographic entities, including ANVSAs, tribal tracts, and tribal block groups, will all be processed through the TSAP.

Tribal subdivision—An administrative subdivision of a federally recognized AIR, ORTs, or OTSA; variously known as chapters, communities, or districts. These entities are internal units of self-government or administration that serve social, cultural, and/or economic purposes for the American Indians on the AIR, ORTLs, or OTSAs.

Visible feature—A map feature that can be seen on the ground such as a road, railroad track, major aboveground transmission line or pipeline, river, stream, shoreline, fence, sharply defined mountain ridge, or cliff. Nonstandard visible features are a subset of visible features that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that a nonstandard visible feature used as a boundary for a statistical geographic entity poses no problem for census enumerators in locating it during fieldwork.

Executive Order 12866

This Notice has been determined to be not significant under Executive Order 12866.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the Census Bureau requested, and the OMB granted its clearance for the information collection requirements for geographic partnership programs on September 24, 2008 (OMB Control Number 0607–0795, expires on March 31, 2009). The Census Bureau's request for an extension of this clearance until March 31, 2009, was sent to the OMB on September 9, 2008.

Dated: November 7, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–27119 Filed 11–13–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a joint meeting, followed by separate and

concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 Census, including the Integrated Communications Campaign, 2010 Partnerships, and other decennial activities. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on December 10–12. Last-minute changes to the schedule are possible, which could prevent advance notification.

DATES: December 10–12, 2008. On December 10, the meeting will begin at approximately 9 a.m. and end at approximately 5 p.m. On December 11, the meeting will begin at approximately 8:30 a.m. and end at approximately 4:45 p.m. On December 12, the meeting will begin at approximately 8:30 a.m. and end at approximately 3:45 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H153, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations comprise nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective and advice on research and design plans for the 2010 Census, the American Community Survey, and other related programs, particularly as they pertain to an accurate count of these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: November 7, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–27123 Filed 11–13–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK60

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Chartering Permits; Letters of Acknowledgment

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

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Chartering Permits for the collection of Atlantic Highly Migratory Species (HMS) in 2009. In general, EFPs and related permits would authorize collections of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Chartering permits allow the collection of HMS in the high seas or in the Exclusive Economic Zone of other nations. Generally, these permits will be valid from the date of issuance through December 31, 2009, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before December 15, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

- Email: *HMSEFP.2009@noaa.gov*. Include in the subject line the following identifier: 0648– XK60.
- Mail: Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East–West Highway, Silver Spring, MD 20910.
- Fax: (301) 713–1917.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 713–2347, fax: (301) 713–1917 or Jackie Wilson, phone: (240) 338–3936.

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary for the collection of HMS for public display and scientific research because regulations (e.g., seasons, prohibited species, authorized gear, and minimum sizes) may prohibit the collection of live animals or biological samples for these purposes. Collection for scientific research and display represents a small portion of the overall fishing mortality for HMS, and this mortality will be counted against the quota of the species harvested, as appropriate. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson–Stevens Fishery Conservation and Management Reauthorization Act (Magnuson–Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted educational activities with respect to Atlantic HMS. Since the Magnuson–Stevens Act does not consider scientific research to be ''fishing,'' scientific research is exempt from this statute, and NMFS does not issue EFPs for bona fide research activities (e.g., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson–Stevens Act (i.e., sharks) and not under ATCA. NMFS requests copies of scientific research plans for these activities and

indicates concurrence by issuing an LOA to researchers to indicate that the proposed activity meets the definition of research and is therefore exempt from regulation. Examples of research conducted under LOAs consist of the tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species and collecting and sampling sharks caught during trawl surveys for life history studies.

Scientific research is not exempt under ATCA. NMFS issues SRPs for collection of species managed under this statute (e.g., tunas, swordfish, and billfish), which authorize researchers to collect HMS from bona fide research vessels. One example of research conducted under SRPs consists of scientific surveys of HMS conducted from the National Oceanic and Atmospheric Administration's (NOAA) research vessels. EFPs are issued to researchers collecting ATCA–managed species and conducting research from commercial or recreational fishing vessels. NMFS regulations concerning the implantation or attachment of archival tags in Atlantic HMS require scientists to report their activities associated with implantation of these tags. Some examples of research conducted under EFPs consist of deploying pop–up satellite archival tags on billfish, sharks, and tunas to determine migration patterns of these species, conducting billfish larval tows to determine billfish habitat use, life history, and population structure, and determining catch rates and gear characteristics of the swordfish buoy gear fishery.

NMFS also seeks public comment on its intent to issue EFPs for the purpose of collecting biological samples under at–sea fisheries observer programs. NMFS intends to issue EFPs to any NMFS employee or NMFS–approved contractor/observer to bring onboard and possess (for scientific research purposes, biological sampling, measurement, etc.) Atlantic tuna, swordfish, shark, or billfish provided the fish is a tagged and recaptured fish, dead prior to being brought onboard, and specifically authorized for sampling by the Director of NMFS' Office of Sustainable Fisheries at the request of the Southeast or Northeast Fisheries Science Centers. On average, several hundred swordfish, tunas, and sharks are collected by at–sea observers under such EFPs in any given year. Issuing these permits allows observers to utilize fish for scientific information that would have been otherwise discarded dead. In 2008, NMFS issued three exempted fishing permits authorizing observers to collect HMS while observing commercial fishing activities.

NMFS is also seeking public comment on its intent to issue Display Permits for the collection of sharks and other HMS for public display in 2009. Collection of sharks and other HMS sought for public display in aquariums often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species, and collection of fish below the minimum size for recreational permit holders. NMFS established a 60–metric ton (mt) whole weight (ww) (approximately 3,000 sharks) quota for the public display and research of sharks (combined) in the final Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The quotas available for scientific research and public display of sandbar and dusky sharks was modified in Amendment 2 to the 2006 Consolidated HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008 73 FR 40658) in light of the results of recent stock assessments. The public display and scientific research quotas for sandbar sharks are now limited to 2.78 metric tons (mt) whole weight (ww) (2 mt dressed weight (dw)): 1.39 mt ww for public display and 1.39 mt ww for scientific research. Furthermore, Amendment 2 limited dusky shark collection to bona fide scientific research and prohibits dusky shark collection for public display. The rule did not modify the overall 60 mt ww quota, rather; it adjusted the proportion of that quota allocated for sandbar and dusky sharks. These quotas have been analyzed in conjunction with other sources of mortality under Amendment 2 to the 2006 Consolidated HMS FMP, and NMFS has determined that harvesting this amount for public display will not have a significant impact on the stocks. The number of sharks actually harvested for display and research has remained under the annual 60 mt ww quota every year since inception of the quota. In 2007, approximately 32 percent of the sharks authorized for public display and scientific research purposes were actually harvested or discarded dead.

NMFS may also consider applications for bycatch reduction research in closed regions of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea to test gear modifications and fishing techniques aimed to avoid incidental capture of non–target species. These permits may require further National Environmental Policy Act (NEPA) analyses. NMFS will seek additional public comment on these applications, as necessary, unless the research is being conducted from bona fide scientific research vessels. On January 3, 2008, NMFS announced a final decision to issue EFPs to conduct research in portions of the East Florida Coast (EFC) and Charleston Bump closed areas using a limited number of pelagic longline (PLL) vessels. The goals of the research are to collect baseline data in closed areas under current PLL fishery conditions; evaluate existing PLL bycatch reduction measures; and, collect data to examine the effectiveness of existing PLL area closures to meet current conservation and harvesting goals. As part of this research, NMFS issued EFPs to three PLL vessels, only two of which may fish at any one time, to conduct 289 PLL sets consisting of 500, 18/0 non–offset circle hooks each, over a 12 month period. One–half of the sets will be made inside the closed areas and one–half of the sets will be made outside of the closed areas. All participating vessels are required to carry NMFS–certified observers. The EFPs expire on February 28, 2009; however, since only approximately 18 percent of the research sets have been completed thus far, NMFS will likely re–issue or extend the permits in 2009.

Between February and October 2008, 13 research trips occurred. During these trips, 53 PLL sets were made, with 13 sets deployed inside the closed areas, 40 sets deployed outside of the closed areas. Inside the closed areas, 178 swordfish were kept, 59 swordfish were released alive, and 62 swordfish were discarded dead. One yellowfin tuna was kept, and one yellowfin tuna was discarded dead. No other tunas were caught in the closed areas. Additionally, one blue marlin, one white marlin, and four sailfish were captured. The blue and white marlin were released alive and three of the four sailfish were discarded dead.

Outside of the closed areas, 168 swordfish were kept; 20 swordfish were released alive; 51 swordfish were discarded dead; 189 bigeye tuna were kept; two bigeye tuna were released alive; eight bigeye tuna were discarded dead; 31 yellowfin tuna were kept; two yellowfin tuna were released alive; one yellowfin tuna was discarded dead; 19 albacore tuna were kept; and two albacore tuna were discarded dead. Additionally, 14 blue marlin were released alive and five discarded dead; four white marlin were released alive and three discarded dead; 13 sailfish were released alive and seven discarded dead; and five roundscale spearfish/white marlin were released alive and one discarded dead. No bluefin tuna were caught during any of the 53 PLL research sets. Additionally, three sea turtles were captured in the research

fishery. Two leatherback sea turtles were captured on PLL gear deployed inside the closed areas, and one loggerhead sea turtle was captured on PLL gear deployed outside of the closed areas. All of the sea turtles were released alive with no trailing gear attached. There were no marine mammal interactions during any of the 53 PLL research sets. The research is ongoing and updates will be provided as data become available.

NMFS is considering a request from the Principal Investigator to extend the area authorized to conduct PLL research in the EFC closed area. The area originally authorized is described in the Final Environmental Assessment (EA) to Conduct Scientific Research Experiments Using Pelagic Longline Gear in Portions of the EFC and Charleston Bump Closed Areas of the Atlantic Ocean, and in the Notice of Availability of the Final EA that published in the **Federal Register** on January 3, 2008 (73 FR 450). The requested change would form a new western boundary line along 79°50′ West Longitude, which is 10 nautical miles (nmi) west of points six (6) and seven (7) of the authorized research area shown in Alternative 3 of the Final EA.

The requested extension of the boundary 10 nmi to the west of the currently authorized research area would enable setting of the gear to mirror historical fishing patterns in the EFC and to fulfill the scientific objectives of the research by providing PLL vessels with sufficient space to conduct the authorized PLL research. The primary fishing technique for the PLL fleet that historically fished the U.S. waters of the Florida Straits prior to the 2001 closure was to use the water moving more slowly inshore of the faster Gulf Stream current as a western ''anchor'' that would enable the rest of the gear to the east of the anchor point to expand and swing to the northeast during the overnight fishing period. This type of anchor would serve as a means to help prevent the gear set in the center of the current from drifting into the prohibited Bahamian waters to the east within and immediately northward of the Florida Straits.

The additional 10 nmi westward extension of the experimental research area of the EFC closed area would not be a large enough area to allow for a full PLL set to occur in the area. No more than two full sections of gear on any given set would be authorized to be set in the expanded area. The current gear configurations used under the EFPs for this research results in each section having 70 hooks total, or 140 hooks for two sections of gear. There would be no change to the overall number of authorized vessels, fishing effort, or number of sets described in the Final EA, although the location/area for research within the EFC would be expanded.

Based on an analysis of historical data from the PLL logbook and PLL observer program from 1995–2000, NMFS has determined that the potential increase in catch of target and non–target species in the proposed area would be minimal. Specifically, there were no reported interactions of sea turtles or marine mammals in the expanded area from 1995–2000, and on average, one white marlin, four blue marlin, five sailfish, and one spearfish were reported caught annually. There were an average of 90 swordfish kept and 45 discarded annually in the area. NMFS will consider authorizing the requested closed area boundary extension after conducting any necessary environmental analyses.

Comments are also requested on the issuance of Chartering Permits to U.S. vessels fishing for HMS while operating under chartering arrangements. The vessel chartering regulations can be found at 50 CFR 635.5(a)(5) and 635.32 (e).

In addition, Amendment 2 to the Consolidated HMS FMP implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing program. Research fishery permit holders assist NMFS in collecting valuable shark life history data and data for future shark stock assessments. Fishermen must fill out an application for a shark research permit under the exempted fishing program to participate in the shark research fishery. Shark research fishery participants are subject to 100 percent observer coverage in addition to other terms and conditions. A **Federal Register** notice describing the objectives for the shark research fishery in 2009 and requesting applications from potential participants published on November 3, 2008 (73 FR 65294).

The authorized number of species for 2008, as well as the number of specimens collected in 2007, is summarized in Table 1. The number of specimens collected in 2008 will be available when 2008 interim and annual reports are submitted to NMFS. In 2007, the number of specimens collected was less than the number of authorized specimens for most permit types, with the exception of the number of larvae collected under billfish exempted fishing permits. It is difficult to control the quantity of larvae that may be collected when sampling fish larvae. However, the impacts of these collections on fish populations are not expected to be significant given the high level of natural mortality of fish larvae. In all cases, mortality associated with an EFP, SRP, Display, or LOA (except for larvae) is counted against the appropriate quota. A total of 41 EFPs and related permits were issued by NMFS in 2007 for the collection of HMS. As of September 2008, there have been a total of 31 EFPs issued.

TABLE 1. SUMMARY OF HMS EXEMPTED PERMITS ISSUED IN 2007 AND 2008.

''HMS'' refers to multiple species being collected under a given permit type.

	2007					2008		
	Number of Permits Issued	Number of Authorized Fish	Number of Authorized Larvae	Number of Fish Kept/ Discarded Dead	Number of Larvae Kept	Number of Permits Issued	Number of Authorized Fish	Number of Authorized Larvae
EFP								
HMS	9	875	0	88	0	7	1,703	0
Shark	4	224	0	243	0	4	410	0
Tuna	4	425	0	7	0	4	825	0
Billfish	3	73	1,000	17	6,129	3	95	1,000
SRP								
HMS	1	18	1,200	2	0	1	685	0
Shark	2	670	0	60	0	0	0	0

TABLE 1. SUMMARY OF HMS EXEMPTED PERMITS ISSUED IN 2007 AND 2008.—Continued

"HMS" refers to multiple species being collected under a given permit type.

	2007					2008		
	Number of Permits Issued	Number of Authorized Fish	Number of Authorized Larvae	Number of Fish Kept/ Discarded Dead	Number of Larvae Kept	Number of Permits Issued	Number of Authorized Fish	Number of Authorized Larvae
Billfish	0	0	0	0	0	0	0	0
Tuna	1	12	0	23	0	0	0	0
Display								
HMS	3	90	0	0	0	1	36	0
Shark	6	276	0	71	0	5	239	0
Total	33	2,663	2,200	511	6,129	25	3,993	1,000
LOA*								
Shark	8	3,140	0	87	0	6	2,625	0

*LOAs are issued for bonafide scientific research activities involved non–ATCA managed species (i.e., sharks). Collections made under an LOAs are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permitees are encouraged to report all fishing activities in a timely manner.

Final decisions on the issuance of any EFPs, SRPs, Display, and Chartering Permits will depend on the submission of all required information about the proposed activities, NMFS's review of public comments received on this notice, an applicant's reporting history on past permits issued, past law enforcement violations, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP and Amendment 2 to the Consolidated HMS FMP.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: November 7, 2008.

Emily H. Menashes

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

[FR Doc. E8–27135 Filed 11–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XL72

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Florida/Alabama Habitat Protection Advisory Panel (AP).

DATES: The meeting will convene at 8:30 a.m. on Wednesday, December 3, 2008 and conclude no later than 4 p.m.

ADDRESSES: This meeting will be held at the Embassy Suites Hotel, 555 N. Westshore Blvd., Tampa, FL 33609.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: At this meeting the AP will tentatively discuss living shorelines, expansion of the Large Area Artificial Reef Sites off Florida, movement and growth of red snapper, reeffish utilization of natural and artificial habitats, the Port Dolphin liquified natural gas (LNG) facility, seagrass scarring penalties, and Florida freshwater inflow issues.

The Florida/Alabama group is part of a three unit Habitat Protection Advisory Panel (AP) of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–27031 Filed 11–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XL70

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Scientific and Statistical Committee, Law Enforcement Advisory Panel, Limited Access Privilege Program (LAPP) Committee, Personnel Committee (Closed Session), Advisory Panel Selection Committee (Closed Session), a meeting of its Standard Operating, Policy and Procedure (SOPPs) Committee, Joint Executive and Finance Committees, Spiny Lobster Committee, Mackerel Committee, Ecosystem-based Management Committee, Snapper Grouper Committee, Southeast Data, Assessment, and Review (SEDAR) Steering Committee, and a meeting of the full Council.

The Council will also hold a an informal public question and answer session and may hold a public comment session regarding Interim Rule measures to address overfishing of red snapper if the Council considers an Interim Rule request. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The meeting will be held November 30–December 5, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton Wilmington Riverside, 301 N. Water Street, Wilmington, NC 28401; telephone: (888) 324–8170 or (910) 763–5900. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates:

1. Scientific and Statistical Committee Meeting: November 30, 2008, 3 p.m. until 5 p.m.; December 1, 2008, 8 a.m.–6 p.m.; December 2, 2008, 8 a.m.–6 p.m., and December 3, 2008, 8 a.m.–5 p.m. (Concurrent Sessions)

The SSC will receive reports from the National SSC meeting, SEDAR Methods Workshops, the Tilefish LAPP Workgroup, and the Council's Fishery Ecosystem Plan. The Committee will review administrative needs for the SEDAR 19 (black grouper and red grouper) stock assessment, the SEDAR schedule, a Gag Natural Mortality Document, the Comprehensive Annual Catch Limit (ACL) Amendment, landings data issues, and report actions and assignments. The Committee will receive presentations on Project FishSmart regarding king mackerel, fishing level recommendations, and characterizing uncertainty for Allowable Biological Catch (ABC).

In addition, the SSC will review and provide recommendations to the Council for SEDAR 16 (king mackerel stock assessment), SEDAR 17 (vermilion snapper and Spanish mackerel stock assessments), and Snapper Grouper Amendment 17 addressing overfishing and updates to stock status determination criteria for red snapper, the establishment Annual Catch Limits (ACLs) and Accountability Measures (AMs) for 10 species currently undergoing overfishing, allocations for those 10 species, and the extension of the management area for some snapper grouper species.

2. Law Enforcement Advisory Panel Meeting: December 1, 2008, 1:30 p.m. until 4:30 p.m.

The Law Enforcement Advisory Panel will meet to review Amendment 17 to the Snapper Grouper Fishery Management Plan (FMP), develop recommendations on enforcement of proposed time/area closures, and other issues relevant to law enforcement. The AP will also receive updates on state and federal enforcement activities, a presentation on the Council's Comprehensive Ecosystem-based Amendment, and discuss Vessel Monitoring Issues.

3. LAPP Committee Meeting: December 1, 2008, 4:30 p.m. until 6 p.m.

The LAPP Committee will receive a summary of the Golden Tilefish LAPP Exploratory Workgroup meeting, discuss the potential of a LAPP for the golden tilefish fishery and the golden crab fishery, consider modifications to the Wreckfish Individual Fishing Quota (IFQ) program, and discuss other items for public scoping.

NOTE: There will be an informal public question and answer session with NOAA Fisheries Services' Regional Administrator and Council members on December 1, 2008 beginning at 6:15 p.m.

4. Personnel Committee Meeting (Closed Session): December 2, 2008, 8 a.m. until 9 a.m.

The Personnel Committee will meet to discuss personnel matters.

5. Advisory Panel Selection Committee Meeting (Closed Session): December 2, 2008, 9 a.m. until 10 a.m.

The Advisory Panel Selection Committee will meet in Closed Session to review applications and develop recommendations for Council consideration.

6. SOPPs Committee Meeting: December 2, 2008, 10 a.m. until 11 a.m.

The SOPPs Committee will receive an update on the Secretarial review of the Council's SOPPs and develop changes as necessary.

7. Joint Executive and Finance Committees Meeting: December 2, 2008, 11 a.m. until 12 noon

The Executive and Finance Committees will meet jointly to review the status of the Calendar Year (CY) 2008 budget, the status of the Fiscal Year 2009 budget, review the 2009–10 FMP/Amendment/Framework timelines and modify as appropriate, and develop and approve the CY 2009 activities schedule and budget.

8. Spiny Lobster Committee Meeting: December 2, 2008, 1:30 p.m. until 2:30 p.m.

The Spiny Lobster Committee will receive an update on three-Council Generic Import Amendment (GIA) regarding the import of spiny lobster, discuss the Gulf of Mexico Fishery Management Council's timing for Amendment 5 to the Joint Gulf and South Atlantic Spiny Lobster FMP, and discuss items to be included in the Comprehensive Annual Catch Limit (ACL) Amendment for public scoping.

9. Mackerel Committee Meeting: December 2, 2008, 2:30 p.m. until 6 p.m.

The Mackerel Committee will review the result of the SEDAR stock assessments for king mackerel and Spanish mackerel and develop recommendations. The Committee will also discuss items to include in the Comprehensive ACL Amendment for public scoping.

10. Ecosystem-based Committee Meeting: December 3, 2008, 8 a.m. until 12 noon

The Ecosystem-based Committee will review and revise the Fishery Ecosystem Plan (FEP) and the Comprehensive Ecosystem-based Amendment as necessary and approve both documents for a second round of public hearings. The Committee will also discuss habitat issues as appropriate.

11. Snapper Grouper Committee Meeting: December 3, 2008, 1:30 p.m. until 6 p.m. and December 4, 2008, 8 a.m.–3 p.m.

The Snapper Grouper Committee will receive an update on Oculina Bank monitoring activities and Gray's Reef Research Area. The Committee will also

receive a report from the SSC regarding the SEDAR stock assessment for vermilion snapper and Snapper Grouper Amendment 17. The Committee will review actions regarding vermilion snapper contained in Amendment 16 to the Snapper Grouper FMP and Law Enforcement Advisory Panel recommendations on Snapper Grouper Amendment 17. The Committee will then review draft Amendment 17, modify as appropriate, and is scheduled to approve the document for public hearings. In addition, the Committee will discuss a possible request for an interim rule to address overfishing for red snapper, and items to go to public scoping for the Comprehensive ACL Amendment.

12. SEDAR Committee Meeting: December 4, 2008, 3 p.m. until 4 p.m.

The SEDAR Steering Committee will develop recommendations for SEDAR 19 appointments, review the SEDAR Planning Schedule, receive updates on SEDAR Methods Workshops and SEDAR 17 addressing stock assessments for Spanish mackerel and vermilion snapper. The Committee will also discuss how to address research and data needs outlined in SEDAR 16, and develop recommendations for the next SEDAR Steering Committee meeting.

13. Council Session: December 4, 2008, 4 p.m. until 6 p.m. and December 5, 2008, 8 a.m. until 12 noon

Council Session: December 4, 2008, 4 p.m. until 6 p.m.

From 4 p.m.–4:15 p.m., the Council will call the meeting to order, adopt the agenda, and approve the September 2008 meeting minutes.

From 4:15 p.m.–5:30 p.m., the Council will hear a report from the Snapper Grouper Committee. The Council will provide its decision on submitting a Red Snapper Interim Rule request to the Secretary of Commerce. The Council will also consider Committee recommendations relative to vermilion snapper actions in Snapper Grouper Amendment 16 and take action as appropriate, approve Snapper Grouper Amendment 17 for public hearings, and consider other Committee recommendations and take action as appropriate.

NOTE: A public comment session will be held at 4:15 p.m. regarding an Interim Rule for addressing overfishing of red snapper if the Council considers an Interim Rule request.

From 5:30 p.m.–6 p.m., the Council will receive a presentation by FishSmart regarding the interactive process with stakeholders in the Atlantic king mackerel fishery.

Council Session: December 5, 2008, 8 a.m. until 12 noon

From 8 a.m.–8:15 a.m., the Council will receive a report from the SOPPs Committee and take action as appropriate.

From 8:15 a.m.–8:30 a.m., the Council will receive recommendations from the AP Selection Committee and take actions as appropriate.

From 8:30 a.m.–8:45 a.m., the Council will receive a report from the Ecosystem-based Management Committee and take action as appropriate.

From 8:45 a.m.–9 a.m., the Council will receive a report from the Joint Executive and Finance Committees, approve the CY 2009 Timelines, Activities Schedule, and budget, and take other actions as appropriate.

From 9 a.m.–9:15 a.m., the Council will receive a report from the Spiny Lobster Committee, consider recommendations, and take action as appropriate.

From 9:15 a.m.–9:30 a.m., the Council will receive a report from the LAPP Committee, consider recommendations, and take action as appropriate.

From 9:30 a.m.–9:45 a.m., the Council will receive a report from the Mackerel Committee, consider recommendations and take action as appropriate.

From 9:45 a.m.–10 a.m., the Council will receive a report from the SEDAR Committee, consider recommendations, and take action as appropriate.

From 10 a.m.–12 noon, the Council will receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, review Experimental Fishing Permit applications as necessary, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 24, 2008.

Dated: November 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–27030 Filed 11–13–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0154]

Federal Acquisition Regulation; Information Collection; Davis Bacon Act—Price Adjustment (Actual Method)

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.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory 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 the Davis-Bacon Act price adjustment (actual method). The clearance currently expires on March 31, 2009

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 January 13, 2009.

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, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Mr. Ernest Woodson, Contract Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at 52.222–32, Davis-Bacon Act—Price Adjustment (Actual Method), requires that a contractor must submit at the exercise of each option to extend the term of the contract, a statement of the amount claimed for incorporation of the most current wage determination by the Department of Labor, and any relevant supporting data, including payroll records, that the contracting officer may reasonably require.

The contracting officer may include this clause in fixed-price solicitations and contracts, subject to the Davis-Bacon Act, that will contain option provisions to extend the term of the contract and the Contracting Officer determines the most appropriate method to establish contract price is the method at 22.404–12(c)(3).

B. Annual Reporting Burden

Respondents: 900.

Responses Per Respondent: 1.

Annual Responses: 900.

Hours Per Response: 90.

Total Burden Hours: 81,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0154, Davis-Bacon Act—Price Adjustment (Actual Method), in all correspondence.

Dated: October 30, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–27098 Filed 11–13–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142]

Federal Acquisition Regulation; Submission for OMB Review; Past Performance Information

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.

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 past performance information. A request for public comments was published in the **Federal Register** at 73 FR 45427, August 5, 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 December 15, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Ms. Jeritta Parnell, Contract Policy Division, GSA, (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

B. Annual Reporting Burden

Respondents: 150,000.
Responses Per Respondent: 4.
Annual Responses: 600,000.
Hours Per Response: 2.
Total Burden Hours: 1,200,000.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: October 29, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–27099 Filed 11–13–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Notice; Establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of section 581 of Public Law 110–181, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is establishing the Department of Defense Military Family Readiness Council (hereafter referred to as the Council).

The Council is a non-discretionary federal advisory committee established under the authority of section 581 of Public Law 110–181 and 41 CFR 102–3.50(a) to: (a) Review and make recommendations to the Secretary of Defense regarding the policy and plans required under 10 U.S.C. 1781b; (b) monitor requirements for the support of military family readiness by the

Department of Defense; and (c) evaluate and assess the effectiveness of the military family readiness programs and activities of the Department of Defense.

The Department of Defense Military Family Readiness Council is required by statute to submit an annual report to the Secretary of Defense and the congressional oversight committees on military family readiness. This report must be submitted no later than February 1st of each year.

The Department of Defense Military Family Readiness Council shall be composed of a chairperson and no more than eleven additional members. Pursuant to federal statute, the membership shall be:

1. The Under Secretary of Defense for Personnel and Readiness, who shall serve as the chair of the Council;

2. One representative of each Military Service;

3. Three individuals appoint by the Secretary of Defense from among representatives of military family organizations; and

4. The senior enlisted advisors of each Military Service.

With regard to the representatives from each Military Service, the Secretary of Defense has appointed the deputies of each Military Service to serve on the Council; their appointment will be based upon their ex-officio position in the Department of Defense. As for the representatives of the military family organizations, these individuals will be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and they will serve as special government employees. With the exception of travel and per diem for official travel, the special government employees shall serve without compensation.

The Department of Defense intends to authorize the Department of Defense Military Family Readiness Council to establish and use subcommittees, and the Council, to include any subcommittees, will operate under the provisions of the Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR, Parts 102–3 through 102–3.185.

Such subcommittees or workgroups shall not work independently of the chartered Council, and shall report all their recommendations and advice to the Council for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Council nor can they report directly to the Department of Defense or any federal officers or employees who are not Council Members.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Council shall meet at the call of the Council's Designated Federal Officer, in consultation with the Council's chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Department of Defense Military Family Readiness Council membership about the Council's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Department of Defense Military Family Readiness Council.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Military Family Readiness Council, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Military Family Readiness Council's Designated Federal Officer, once appointed, may be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Military Family Readiness Council. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: November 6, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–27086 Filed 11–13–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers; Notice of Availability for an Addendum to the Final Environmental Impact Statement and a Draft General Conformity Determination for the Berths 136–147 [TraPac] Container Terminal Project, Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In November 2007, the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps) in coordination with the Los Angeles Harbor Department (LAHD) completed and published a joint Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Berths 136–147 [TraPac] Container Terminal Project (Project) in the Port of Los Angeles. The Corps is currently processing a permit application submitted by the LAHD to undertake various activities and construct structures in and over navigable waters and waters of the United States associated with the Project. Issuance of a Corps permit is a Federal action, which must comply with the air quality conformity requirements specified in section 176(c) of the Clean Air Act.

An addendum to the Final EIS (Addendum) has been prepared that revises the conformity statement included in section 3.2 of the Final EIS and incorporates the Draft General Conformity Determination, as Appendix O to the Final EIS, for the Federal action associated with the Project. The general conformity regulations (40 CFR Part 93 Subpart B) allow general conformity determinations to be included in an EIS, but inclusion of these determinations is not required and can be separately noticed. The Addendum and General Conformity Determination are available for public review during the next 30 days at the Los Angeles Harbor Department, 425 South Palos Verdes Street, San Pedro, California, on the Port's Web site: *http://www.portoflosangeles.org,* and on the Corps' Web site: *http://www.spl.usace.army.mil/regulatory/POLA.htm* (scroll down to the links under TraPac Project). In addition, they are available at the following libraries: L.A. Public Library, Central Branch, 630 West 5th Street, Los Angeles, California; L.A. Public Library, San Pedro Branch, 921 South Gaffey Street, San Pedro,

California; and L.A. Public Library, Wilmington Branch, 1300 North Avalon, Wilmington, California.

Any comments received by the Corps on the Addendum and Draft General Conformity Determination during the next 30 days will be considered fully before the Corps makes a Final General Conformity Determination and finalizes the Record of Decision (ROD) for the Federal action associated with the Project. The Corps will publish a notice of a Final General Conformity Determination in the **Federal Register** within 30 days of rendering a final decision. The public can request from the Corps copies of the ROD, which includes responses to comments on the Final EIS, Addendum, and Draft General Conformity Determination, following publication of a Final General Conformity Determination and upon execution of the ROD.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Addendum or the Draft General Conformity Determination should be directed to Dr. Spencer D. MacNeil, Senior Project Manager, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2152.

SUPPLEMENTARY INFORMATION: None.

Aaron O. Allen,

Acting Chief, Regulatory Division, Los Angeles District.

[FR Doc. E8–26977 Filed 11–13–08; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Final Environmental Impact Statement/ Section 404 Permit Application for the Southern Beltway Transportation Project from I–79 to the Mon/Fayette Expressway, Washington County, PA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps), in cooperation with the Pennsylvania Turnpike Commission and the U.S. Environmental Protection Agency, as a Cooperating Agency, have prepared a Final Environmental Impact Statement (FEIS)/Section 404 Permit Application for the Southern Beltway Transportation Project from I–79 to the Mon/Fayette Expressway in Washington County, PA. The overall purpose of the project is to provide transportation mobility safety improvements, to relieve congestion, and to support economic development plans in southwestern Pennsylvania. The FEIS assesses the environmental effects of the various alternatives developed to address the project needs.

DATES: Comments concerning this FEIS should be submitted by December 15, 2008.

ADDRESSES: Submit written comments to: Scott A. Hans, Chief, Regulatory Branch, U.S. Army Corps of Engineers, Pittsburgh District, Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186 or to: David P. Willis, Environmental Manager, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, PA 17106.

FOR FURTHER INFORMATION CONTACT: Questions regarding the FEIS should be directed to: Mr. John S. Weres, Project Manager, at SAI Consulting Engineers, Inc., 1350 Penn Avenue, Pittsburgh, PA 15222 (412–392–8750).

SUPPLEMENTARY INFORMATION:

1. *Authorization:* The U.S. Army Corps of Engineers, Pittsburgh District, Regulatory Branch is considering an application from the Pennsylvania Turnpike Commission, 700 South Eisenhower Boulevard, P.O. Box 67676, Harrisburg, PA 17106–7676 under Section 404 of the Clean Water Act to construct the proposed action. The primary Federal concern is the discharge of fill materials (including permanent inundation) within Federal jurisdictional waters of the United States, and potential impacts on the human environment from such activities. The Corps' decision will be to either issue or deny a Department of the Army permit for the proposed action.

The FEIS has been prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), pursuant to 42 U.S.C. 4332(2)(c) and Executive Order 11990, and with other appropriate federal laws and regulations, policies, and procedures of the Corps for compliance with those regulations.

2. *Scoping Process:* The Pennsylvania Turnpike Commission has held a series of Public Plans Displays and Public Meetings in the project area during the past several years, including a series of three meetings in August 2005 to present the alternatives developed in detail in the Draft Environmental Impact Statement (DEIS). To initiate the public scoping process for the DEIS in accordance with the Council on Environmental Quality (CEQ) and NEPA guidelines, the Corps published a Notice of Intent (NOI) in the **Federal Register** on October 23, 2007 (FR Doc. E7–20812).

3. *Availability of the DEIS:* Notice of Availability for the DEIS was published in the **Federal Register** on December 14, 2007. The DEIS was available for comment until February 8, 2008. A total of 48 comments were submitted to the Corps and the Pennsylvania Turnpike Commission. The Corps and the Pennsylvania Turnpike Commission considered public comments and concerns on the DEIS and incorporated into the FEIS as appropriate.

4. *Public Hearing:* A formal public hearing to receive comments on the DEIS was held by the Corps and the Pennsylvania Turnpike Commission on January 24, 2008, at the Canon-McMillan Senior High School in Canonsburg, PA. Both an open house plans display and a formal presentation was conducted, and a total of 10 individuals provided testimony regarding the project. The Corps and the Pennsylvania Turnpike Commission considered public comments and concerns and incorporated them into the FEIS as appropriate.

5. *Availability of the FEIS:* Individuals and agencies may offer comments on the FEIS by mailing the information to Mr. Scott A. Hans or to Mr. David P. Willis at the addresses provided in this notice prior to December 15, 2008. The Corps will finalize the Record of Decision no sooner than 30 days after the Notice of Availability of the FEIS. The FEIS and appendices are available for review and downloading from the Pennsylvania Turnpike Commission's project Web site at the following address: *http://www.paturnpike.com/monfaySB/.* Copies of the FEIS are available for public review at local municipal offices and public libraries in the project area. Copies of the technical support data and all documents referenced in the FEIS are available for public review by appointment at the Pittsburgh Office of SAI Consulting Engineers, Inc. 1350 Penn Avenue, Pittsburgh, PA 15222. Please contact Mr. John Weres at (412) 392–8750 to set up an appointment. Please note that only qualified individuals will be allowed to review the confidential cultural resources appendices. Copies of the FEIS and appendices are also available for public review at the locations noted below:

Scott A. Hans,

Chief, Regulatory Branch, Pittsburgh District—U.S. Army Corps of Engineers.

[FR Doc. E8–26970 Filed 11–13–08; 8:45 am]

BILLING CODE 3710–85–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 7, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Report on Appeals Process (RSA–722).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 160.

Abstract: The RSA–722 is needed to meet specific data collection requirements in Subsections 102(c)(8)(A) and (B) of the Rehab Act of 1973, as amended on the number of requests for mediation, hearings and reviews filed. The information collected is used to evaluate the types of complaints made by applicants for and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3815. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–27027 Filed 11–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g. , ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 7, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Teacher Education Assistance for College and Higher Education

(TEACH) Grant Program Agreement to Serve.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 55,800.

Burden Hours: 27,900.

Abstract: The TEACH Grant Program Agreement to Serve must be signed by a student each year before receiving a TEACH Grant. By signing the Agreement to Serve, the student promises to meet the teaching service requirements of the TEACH Grant Program as described in the Agreement, and to repay with interest the full amount of any TEACH Grant as a Direct Unsubsidized Loan if the student does not complete the required teaching service or otherwise fails to meet the requirements of the TEACH Grant Program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3747. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–27028 Filed 11–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–157]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 7, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 349–157.

c. *Date Filed:* October 24, 2008.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* The proposal would be located on the Kowaliga Creek, in Elmore County, Alabama. The project does not contain any Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Keith Bryant, APC Hydro Services, 600 18th Street North, Birmingham, AL; (205) 257–1403.

i. *FERC Contact:* Gina Krump, Telephone (202) 502–6704, and e-mail: *Gina.Krump@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* December 8, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alabama Power Company is seeking Commission approval to issue a permit to Russell Lands, Inc. (Russell) to modify existing facilities at Kowaliga Marina, an existing commercial marina. The existing facilities include three floating dock structures, with a total of 104 boat rental slips; two floating dock structures with 26 courtesy slips, a floating gas dock with eight slips and four personal watercraft berths, a fork lift ramp/dock and a boat ramp. Russell proposes to remove the courtesy dock structure with six slips located at the boat ramp, and move an existing dock with 20 slips beside the existing boat ramp. Russell also proposes to add one double boat slip to its fuel dock providing a total of 10 boat slips, extend the existing forklift ramp by 40 feet, and install four new floating dock structures totaling 47 boat slips and 28 personal watercraft slips. Russell proposes to dredge approximately 34 cubic yards of material in order to allow access for the two shoreline slips at the proposed new courtesy dock.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call (866) 208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27067 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 400–051]

Public Service Company of Colorado; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

November 6, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–400–051.

c. *Date Filed:* June 26, 2008.

d. *Applicant:* Public Service Company of Colorado (d/b/a Xcel Energy).

e. *Name of Project:* Ames Hydroelectric Project.

f. *Location:* The existing project is located on Lake Fork, Howard Fork, and South Fork of the San Miguel River, in San Miguel County, about 6 miles north of Telluride, Colorado. The Ames Project occupies 99 acres of the Uncompahgre National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Randy Rhodes, Public Service Company of Colorado, 4653 Table Mountain Drive, Golden, Colorado 80403; telephone (720) 497–2123.

i. *FERC Contact:* David Turner (202) 502–6091 or via e-mail at *david.turner@ferc.gov.*

j. The deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is January 5, 2009; reply comments are due February 19, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is ready for environmental analysis.

l. The existing project uses water that originates in two separate subbasins (Lake Fork and Howard's Fork) of the South Fork San Miguel River. The existing project, from upstream to downstream along Lake Fork and Howard's Fork, respectively, consists of the following: (1) A 44-acre reservoir (Hope Lake) that has 2,000 acre-feet of active storage capacity at a normal maximum water surface elevation of 11,910 feet; (2) a 150-foot-long, 20-foot high rock-filled, timber dam (Hope Lake dam), with a 816-foot-long, 5-foot-wide, and 6-foot-high rock tunnel that releases water from Hope Lake to Lake Fork Creek; (3) a 138-acre reservoir (Trout Lake) with 2,500 acre-feet of active storage capacity at a normal maximum water surface elevation of 9,700 feet; (4) a 570-foot-long, 30-foot-high earth-filled dam (Trout Lake dam) with a 42-inch-diameter, concrete encased steel pipe outlet that extends through the embankment; (5) a 12,650-foot-long, 42-inch to 26-inch-diameter steel pipe penstock that conveys water from Trout Lake to the Ames powerhouse; (6) a 260-foot-long, 6-foot-high earth-filled and timber crib diversion dam on the Howards Fork, with a concrete inlet structure, which diverts water from a sluiceway constructed through the embankment via a manually-operated 9-foot-wide steel slide gate at the downstream end of the sluiceway; (7) a 4,500-foot-long, 36-inch-diameter welded steel penstock; (8) a 2,000-foot-long, 18-inch-diameter steel penstock; (9) the 44-foot-long, 54-foot-wide, stone masonry Ames powerhouse that contains one 3.6 megawatt (MW) generating unit; and (10) appurtenant facilities. The project is operated both as a base-load plant and a peaking plant depending on the time of the year; the applicant does not propose any changes to project operations. The applicant is proposing new recreation facilities at Trout Lake, along with additions and deletions to the project boundary due to new land surveys and easements.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210,.211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis.

o. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of interventions, recommendations, preliminary terms and conditions, and fishway prescriptions	January 5, 2009.
Reply comments due	February 19, 2009.
Issue draft EA	May 4, 2009.
Comments on draft EA due	June 3, 2009.
Filing of modified mandatory terms and conditions	August 3, 2009.
Issue final EA	October 14, 2009.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27058 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–16–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 6, 2008.

Take notice that on October 29, 2008, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP09–16–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon by sale to HESCO Gathering Company, L.L.C. (HESCO) the Alta Mesa Laterals, located in Brooks County, Texas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Tennessee proposes to abandon the Alta Mesa Laterals, which are comprised of approximately 15.5 miles of small diameter pipelines, which includes (i) Line No. 405A–100, consisting of 10.12 miles of 6-inch pipeline; (ii) Line No. 405A–400, consisting of 2.63 miles of 5-inch pipeline; (iii) Line No. 405A–500, consisting of 2.84 miles of 6-inch pipeline; (iv) two receipt taps, designated as Meter Nos. 01–0147 and 01–2051; and (v) various valves and appurtenances thereto. Tennessee states that once Tennessee is authorized to abandon the facilities and completes the purchase and sale transaction with HESCO, the facilities will be owned and operated by HESCO in conjunction with its existing gas gathering activities. Tennessee avers that the Alta Mesa Laterals are inactive for more than twelve months. Tennessee asserts that the proposed abandonment will not affect service to any Tennessee shipper.

Any questions regarding the application should be directed to Jacquelyne M. Rocan, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, at (713) 420–4544 or (713) 420–1601 (facsimile) or Juan Eligio, Analyst, Certificates & Regulatory Compliance, at (713) 420–3294 or (713) 420–1605 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27054 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 5, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–13–000.

Applicants: Reliant Energy, Inc., FR Reliant Holding LP.

Description: Joint application of Reliant Energy, Inc. and FR Reliant Holdings LP for authorization for the indirect disposition of jurisdictional facilities.

Filed Date: 10/31/2008.

Accession Number: 20081104–0098.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: EC09–15–000.

Applicants: Fox Energy Company LLC, Fox Energy OP, L.P., Fox River Power, LLC.

Description: Application for Authorization of Disposition of Jurisdictional Facilities and Requests for Expedited Consideration and Confidential Treatment of Fox Energy Company LLC, *et al.*

Filed Date: 11/04/2008.

Accession Number: 20081104–5092.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 25, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3502–008.

Applicants: Berkshire Power Company, LLC.

Description: Berkshire Power Company, LLC submits modifications to Compliance Filing under ER99–3502.

Filed Date: 10/31/2008.

Accession Number: 20081105–0080.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER08–100–005; ER07–265–005; ER07–1215–006.

Applicants: Sempra Energy Trading LLC; Sempra Energy Solutions LLC; The Royal Bank of Scotland plc.

Description: Notice of Change in Status Sempra Energy Trading LLC, *et al.* under ER08–100, *et al.*

Filed Date: 11/03/2008.

Accession Number: 20081103–5151.

Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: ER09–47–001.

Applicants: Alberta Power, LLC.

Description: Alberta Power, LLC submits an amended Petition for Acceptance of Initial Tariff (FERC Electric Tariff, Original Volume 1) and Waivers under ER09–47.

Filed Date: 10/31/2008.

Accession Number: 20081104–0031.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–138–000.

Applicants: FPL Energy Oliver Wind I, LLC.

Description: FPL Energy Oliver Wind I, LLC submits request for authorization to sell energy and capacity at market based rates and request for expedited action under ER09–138.

Filed Date: 10/28/2008.

Accession Number: 20081030–0119.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–173–000.

Applicants: Canandaigua Power Partners II, LLC.

Description: Cananadaigua Power Partners II, LLC's application for order accepting initial Market-Based Rate Tariff, Waiving Regulations, and granting blanket approvals under ER09–173.

Filed Date: 10/31/2008.

Accession Number: 20081104–0099.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–188–000.

Applicants: California Independent System Operator C.

Description: California Independent System Operator Corp submits an executed Amended and Restated Metered Subsystem Agreement under ER09–188.

Filed Date: 10/31/2008.

Accession Number: 20081103–0163.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–190–000.

Applicants: Dynegy Oakland, LLC.

Description: Dynegy Oakland, LLC submits Appendix A *et al.*, revisions to certain Must-Run Rate Schedules of its Reliability Must Run Agreement with the California Independent System Operator Corporation under ER09–190.

Filed Date: 10/31/2008.

Accession Number: 20081104–0131.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–191–000.

Applicants: Dynegy South Bay, LLC.

Description: Dynegy South Bay, LLC submits Appendix A *et al.*, revisions to certain Must-Run Rate Schedules of its Reliability Must Run Agreement with the California Independent System Operator Corporation under ER09–191.

Filed Date: 10/31/2008.

Accession Number: 20081104–0132.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–192–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits Informational Filing of Contract with its Independent Market Monitoring Unit, Potomac Economics, Ltd under ER09–192.

Filed Date: 10/31/2008.

Accession Number: 20081104–0133.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–194–000.

Applicants: Mirant Potrero, LLC.

Description: Mirant Potrero, LLC submits revisions to its Must-Run Service Agreement with the California Independent System Operator Corporation under ER09–194.

Filed Date: 10/31/2008.

Accession Number: 20081104–0135.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–195–000.

Applicants: Xcel Energy Services, Inc.

Description: Public Service Company of Colorado submits Fourth Revised Sheet 7 *et al.* effective under ER09–195.

Filed Date: 10/31/2008.

Accession Number: 20081104–0136.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–196–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company's CD'S containing a Notice of Cancellation a revised rate sheet to the Firm Transmission Service Agreement between SCE and the Imperial Irrigation District under ER09–196.

Filed Date: 10/31/2008.

Accession Number: 20081031–4011.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–197–000.

Applicants: ISO New England, Inc.

Description: ISO New England, Inc. submits administrative costs for calendar year 2009 under ER09–197.

Filed Date: 10/31/2008.

Accession Number: 20081104–0143.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–198–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff sheets supplementing its 10/31/08 filing, request for shortened notice and comments periods, and request for expedited commission action etc. under ER09–198.

Filed Date: 11/04/2008.

Accession Number: 20081105–0103.

Comment Date: 5 p.m. Eastern Time on Monday, November 10, 2008.

Docket Numbers: ER09–201–000.

Applicants: Gilroy Energy Center, LLC.

Description: Gilroy Energy Center, LLC submits Exhibit C, annual revisions to certain Rate Schedules of its Reliability Must-Run Agreement with California Independent System Operator Corporation under ER09–201.

Filed Date: 10/31/2008.

Accession Number: 20081104–0137.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–202–000.

Applicants: Los Medanos Energy Center, LLC.

Description: Los Medanos Energy Center, LLC submits Exhibit C, annual revisions to certain Rate Schedules of its Reliability Must-Run Agreement with California Independent System Operator Corporation under ER09–202.

Filed Date: 10/31/2008.

Accession Number: 20081104–0138.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–203–000.

Applicants: New England Power Pool.

Description: The New England Power Pool submits transmittal letter along with the counterpart signature page of the NEPOOL Agreement, dated as of 9/1/71 as amended executed by the GenPower Trading, LLC *et al.* under ER09–203.

Filed Date: 10/31/2008.

Accession Number: 20081104–0139.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–204–000.

Applicants: Virginia Electric & Power Company.

Description: Dominion Virginia Power submits revised tariff sheets in Schedule 12–Appendix to the open-access transmission tariff administered by PJM Interconnection, LLC under ER09–204.

Filed Date: 10/31/2008.

Accession Number: 20081104–0140.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–205–000.
Applicants: National Grid Generation LLC.
Description: National Grid Generation LLC submits Original Sheet 86 *et al.* to FERC Electric Rate Schedule No. 1, to be effective 1/1/09 under ER09–205.
Filed Date: 10/31/2008.
Accession Number: 20081104–0045.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–206–000.
Applicants: Pasco Cogen, Ltd.
Description: Application of Pasco Cogen, Ltd. for market-based rate authority, expeditted action, associated waivers, blanket approvals etc. under ER09–206.
Filed Date: 10/31/2008.
Accession Number: 20081104–0044.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–207–000.
Applicants: NSTAR Electric Company.
Description: NSTAR Electric Co. submits a Transfer Agreement with H.Q. Energy Services (US) Inc. under ER09–207.
Filed Date: 10/31/2008.
Accession Number: 20081104–0043.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–208–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed Service Agreement for Network Intergration Transmission Service under ER09–208.
Filed Date: 10/31/2008.
Accession Number: 20081104–0042.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–209–000.
Applicants: ISO New England Inc. and New England Power.
Description: ISO New England Inc *et al.* submits Second Revised Sheet 7317R *et al.* to FERC Electric Tariff No. 1, to be effective 12/31/08 under ER09–209.
Filed Date: 10/31/2008.
Accession Number: 20081104–0041.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–210–000.
Applicants: CalPeak Power—El Cajon, LLC.
Description: CalPeak Power LLC (CalPeak Entities) submits modifications to certain schedules contained in the Reliability Must-Run Service Agreement between each of the CalPeak Entities and the California Independent System Operator Corporation under ER09–210.
Filed Date: 10/31/2008.
Accession Number: 20081104–0040.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–211–000.
Applicants: Calpeak Power-Border, LLC.
Description: CalPeak Power LLC (CalPeak Entities) submits modifications to certain schedules contained in the Reliability Must-Run Service Agreement between each of the CalPeak Entities and the California Independent System Operator Corporation under ER09–210.
Filed Date: 10/31/2008.
Accession Number: 20081104–0040.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–212–000.
Applicants: CalPeak Power—Enterprise, LLC.
Description: CalPeak Power LLC (CalPeak Entities) submits modifications to certain schedules contained in the Reliability Must-Run Service Agreement between each of the CalPeak Entities and the California Independent System Operator Corporation under ER09–210.
Filed Date: 10/31/2008.
Accession Number: 20081104–0040.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–213–000.
Applicants: California Independent System Operator Corp.
Description: California Independent System Operator Corp submits an amendment to the CAISO Market Redesign and Technology Upgrade Tariff under ER09–213.
Filed Date: 10/31/2008.
Accession Number: 20081104–0039.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–215–000.
Applicants: Pittsfield Generating Company, L.P.
Description: Pittsfield Generating Co, LP submits First Revised Sheet 1 *et al.* to FERC Electric Tariff, Original Volume No. 1, to be effective 1/1/09 under ER09–215.
Filed Date: 10/31/2008.
Accession Number: 20081104–0038.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–216–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Co. submits an amendment to the 8/4/00 Interconnection Agreement with ONEOK Power Marketing Co. under ER09–216.
Filed Date: 10/31/2008
Accession Number: 20081104–0037.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–217–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Co. submits a substitute non-confirming service agreement for retail network integration transmission service etc under ER09–217.
Filed Date: 10/31/2008.
Accession Number: 20081104–0036.
Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–218–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. First Revised Sheet 2 *et al.* to FERC Electric Tariff, First Revised Volume No. 5, to be effective 1/3/09 under ER09–218.
Filed Date: 11/03/2008.
Accession Number: 20081104–0035.
Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: ER09–219–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits Sixth Revised Service Agreement No. 208 Intergration Service Agreement etc under ER09–219 *et al.*
Filed Date: 11/03/2008.
Accession Number: 20081104–0027.
Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: ER09–220–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits Sixth Revised Service Agreement No. 208 Intergration Service Agreement etc under ER09–219 *et al.*
Filed Date: 11/03/2008.
Accession Number: 20081104–0027.
Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: ER09–221–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits Sixth Revised Service Agreement No. 208 Intergration Service Agreement etc under ER09–219 *et al.*
Filed Date: 11/03/2008.
Accession Number: 20081104–0027.
Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: ER09–222–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Co. submits a Network Integration Transmission Service Agreement and Network Operating Agreement with Interstate Power and Light Co. under ER09–222.
Filed Date: 11/03/2008.
Accession Number: 20081104–0033.
Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: ER09–223–000.
Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Co. submits an executed Mutual Operating Agreement with Northern Virginia Electric Cooperative under ER09–223.

Filed Date: 10/31/2008.

Accession Number: 20081104–0034.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–224–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revised pages to its Open Access Transmission Tariff intended to implement a rate update for Westar Energy, Inc etc. under ER09–224.

Filed Date: 10/31/2008.

Accession Number: 20081104–0032.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–225–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits Rate Schedule No. 335, the Requirements Power Purchase Agreement with Haywood Electric Membership Corp dated as of 10/10/08 under ER09–225.

Filed Date: 10/31/2008.

Accession Number: 20081104–0046.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–82–002.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits Attachment C Compliance Filing under OA07–82.

Filed Date: 11/05/2008.

Accession Number: 20081105–5070.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 26, 2008.

Docket Numbers: OA08–62–003.

Applicants: California Independent System Operator C.

Description: The California Independent System Operator Corporation submits the Commission's 6/19/08 Order on Compliance under OA08–62.

Filed Date: 10/31/2008

Accession Number: 20081104–0026.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: OA09–10–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits their Notification Filing pursuant to PJM Open Access Transmission Tariff and FERC's 6/25/08 Order under OA09–10.

Filed Date: 10/30/2008.

Accession Number: 20081103–0199.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: OA09–11–000.

Applicants: Black Hills Power, Inc., *et al.*

Description: Black Hills Power, Inc *et al.* submits a revised version of Attachment K to the OATT in compliance with FERC's Order 890 under OA09–11.

Filed Date: 10/31/2008.

Accession Number: 20081103–0162.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27021 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 3, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–12–000.

Applicants: MACH Gen, LLC, New Covert Generating Company, LLC,TPF II Convert Holdings, LLC.

Description: MACH Gen, LLC *et al.* submits an application for approvals of the transfer from MACH Gen to buyer of all of the membership interests in New Covert.

Filed Date: 10/30/2008.

Accession Number: 20081103–0067.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–9–000.

Applicants: Pasco Cogen Ltd.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/31/2008.

Accession Number: 20081031–5117.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–3561–006; ER98–3771–002; ER00–1737–012; ER00–2839–006; ER04–834–005; ER96–2869–014; ER02–1342–004; ER97–30–007; ER99–1432–010; ER99–1695–012; ER01–2763–002; ER00–3621–010; ER01–468–009; ER05–34–006; ER05–35–006; ER05–36–006; ER05–37–006; ER04–318–005; ER04–249–006; ER02–23–012; ER07–1306–005.

Applicants: Virginia Electric and Power Company; State Line Energy, L.L.C.; Kincaid Generation, L.L.C.; Elwood Energy, LLC; Dominion Nuclear Connecticut, Inc.; Dominion Energy Marketing, Inc.; Dominion Energy New England, Inc.; Dominion Energy Salem

Harbor, LLC; Dominion Energy Brayton Point, LLC; Dominion Energy Manchester Street, Inc.; Dominion Energy Kewaunee, Inc.; Dominion Retail, Inc.; Fairless Energy, LLC; NedPower Mount Storm, LLC.

Description: Amended Notice of Change in Status under Order No. 697–A of Virginia Electric and Power Company, *et al.*

Filed Date: 10/31/2008.

Accession Number: 20081031–5154.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER01–316–030.

Applicants: ISO New England Inc.

Description: ISO New England submits its Index of Customers for the third quarter of 2008 under the ISO's Tariff for Transmission Dispatch and Power Administration Services.

Filed Date: 10/30/2008.

Accession Number: 20081031–0054.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER05–168–010; ER06–274–015; EL05–19–011.

Applicants: Southwestern Public Service Company.

Description: Amendment No. 5 to Offer of Settlement & Settlement Agreement With Southwestern Public Service Company, Golden Spread Electric Cooperative, Inc. & Lyntegar Electric Cooperative, Inc. & Occidental Permian Ltd. & Occidental Power Marketing, L.P.

Filed Date: 10/31/2008.

Accession Number: 20081031–5146.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008

Docket Numbers: ER09–239–000.

Applicants: California Independent System Operator Corp.

Description: California Independent System Operator Corp submits proposed tariff revisions, in compliance with FERC's 9/21/06 Order.

Filed Date: 10/31/2008.

Accession Number: 20081103–0188.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER07–188–006.

Applicants: Duke Energy Carolinas, LLC.

Description: Change in Status re Duke Energy Carolinas, LLC.

Filed Date: 10/30/2008.

Accession Number: 20081030–5112.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER08–1233–001.

Applicants: Public Service Electric and Gas Company.

Description: Public Service Electric and Gas Company submits revised tariff sheets in Attachment H–10B to PJM Interconnection, LLC open access transmission tariff etc.

Filed Date: 10/30/2008.

Accession Number: 20081031–0055.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER08–1336–001.

Applicants: Energy Systems North East, LLC.

Description: Refund Report of Energy Systems North East, LLC.

Filed Date: 10/31/2008.

Accession Number: 20081031–5107.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER08–1339–002.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits revised service agreements with Duquesne Light Company et al. concerning the payment arrangements for capacity previously committed etc.

Filed Date: 10/30/2008.

Accession Number: 20081103–0070.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER08–1345–002.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revised service agreements with the Midwest ISO concerning the use of capacity committed to serve the needs of loads in the transmission zone of the Duquesne etc.

Filed Date: 10/30/2008.

Accession Number: 20081103–0072.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER08–1436–001.

Applicants: Northeast Utilities Service Company.

Description: The Connecticut Light and Power Company informs FERC that they submitted for filing with the FERC an Amended Interconnection Agreement between CL&P and Capital District Energy Center Cogeneration Associates etc.

Filed Date: 10/30/2008.

Accession Number: 20081031–0056.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–146–001.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits a corrected version of page 5 of the 2009 Capital Budget transmittal letter, a corrected version of page 7 of Vamsi Chadalavada's testimony and an updated affirmation supporting the accuracy etc.

Filed Date: 10/30/2008.

Accession Number: 20081103–0071.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–163–000.

Applicants: California Power Exchange Corporation.

Description: California Power Exchange Corporation submits the rate case settlement agreement along with the testimony of David K. Gottlieb, etc for rate period 1/1/09 through 6/30/09.

Filed Date: 10/30/2008.

Accession Number: 20081031–0050.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–164–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits revised service agreements between WPSC and Manitowoc Public Utilities and WPSC and Upper Peninsula Power Company.

Filed Date: 10/30/2008.

Accession Number: 20081031–0051.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–165–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits a revised rate schedule sheet in Exhibit G to its Rate Schedule 51 with the City of Marshfield.

Filed Date: 10/30/2008.

Accession Number: 20081031–0052.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–167–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co's annual update filing of the Transmission Revenue Balancing Account Adjustment.

Filed Date: 10/30/2008.

Accession Number: 20081031–0057.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–170–000.

Applicants: American Transmission Company LLC.

Description: American Transmission Co., LLC submits an executed Distribution-Transmission Interconnection Agreement.

Filed Date: 10/30/2008.

Accession Number: 20081031–0169.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–171–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revised pages to its OATT to implement a rate change for the pricing zone.

Filed Date: 10/30/2008.

Accession Number: 20081031–0170.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–175–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revised pages to its OATT to implement a rate change for the pricing zone.

Filed Date: 10/30/2008.

Accession Number: 20081031–0171.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–176–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Co., LLC submits a request for authorization to make wholesale power sales to an affiliate.

Filed Date: 10/30/2008.

Accession Number: 20081031–0175.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER09–177–000.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits Third Revised Sheet 16 *et al.* to FERC Electric Tariff, First Revised Volume 1, to be effective 1/1/09.

Filed Date: 10/31/2008.

Accession Number: 20081031–0172.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–178–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc. *et al.* submit 2009 Annual Informational Filing under Southern Companies Open Access Transmission Tariff.

Filed Date: 10/31/2008.

Accession Number: 20081103–0079.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–179–000.

Applicants: Carolina Power & Light Company.

Description: Progress Energy Carolinas, Inc. submits a cost-based power purchaser agreement with The City of Camden, South Carolina.

Filed Date: 10/31/2008.

Accession Number: 20081103–0073.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–180–000.

Applicants: Southern Indiana Gas & Electric Company.

Description: Vectran Energy Delivery of Indiana, Inc. *et al.* submits revised tariff sheets with proposed revisions to Midwest ISO's Open Access Transmission and Energy Market Tariff, FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 10/31/2008.

Accession Number: 20081103–0074.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–181–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits the budget funding the operation of the New England States Committee on Electricity for calendar year 2009 etc.

Filed Date: 10/31/2008.

Accession Number: 20081103–0075.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–182–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits First Revised Sheet 54 *et al.* to Rate Schedule 424 to the Amended & Restated Eldorado System Conveyance and Co-Tenancy Agreement with Nevada Power Company *et al.*

Filed Date: 10/31/2008.

Accession Number: 20081103–0076.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–183–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. *et al.* submit the EAI–EGSL, EGS–ETI and EAI–EMI 2009 Bridge Contracts in pursuant to Service Schedule MSS–4 pursuant to the Commission approved formula rate in Service Schedule MSS–4.

Filed Date: 10/31/2008.

Accession Number: 20081103–0077.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–184–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. submits an executed Rate Schedule providing for cost-based power sales for partial requirements service to Municipal Energy Agency of Mississippi *et al.*

Filed Date: 10/31/2008.

Accession Number: 20081103–0078.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–186–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co. submits their Twenty-Third Quarterly Filing of Facilities Agreement.

Filed Date: 10/31/2008.

Accession Number: 20081103–0085.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Docket Numbers: ER09–187–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume 6 which reflect proposed changes to its transmission revenue requirement etc.

Filed Date: 10/31/2008.

Accession Number: 20081103–0189.

Comment Date: 5 p.m. Eastern Time on Friday, November 21, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–8–000.

Applicants: MDU Resources Group, Inc.

Description: MDU Resources Group, Inc submits the application for authority to issue short-term securities in the form of unsecured promissory notes and/or commercial paper, etc.

Filed Date: 10/30/2008.

Accession Number: 20081031–0063.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ES09–9–000.

Applicants: Potomac Edison Company.

Description: Potomac Edison Company Application Under Section 204 to Issue Short-Term Debt Securities.

Filed Date: 10/30/2008.

Accession Number: 20081030–5102.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ES09–10–000.

Applicants: Baltimore Gas and Electric Company.

Description: Application of Baltimore Gas and Electric Company for Short-Term Borrowing Authority.

Filed Date: 10/30/2008.

Accession Number: 20081030–5119.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27022 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–420–000]

Algonquin Gas Transmission, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Hubline/East to West Project

November 7, 2008.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared the draft Environmental Impact Statement (draft EIS) to address Algonquin Gas Transmission, LLC's (Algonquin) proposed expansion of its natural gas pipeline system in the above-referenced docket. The HubLine/East to West Project (E2W Project or Project) would be located in various counties in Massachusetts, Connecticut, Rhode Island, and New Jersey.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). We [1] have concluded that if the Project is constructed and operated in accordance with applicable laws and regulations, Algonquin's proposed mitigation, and our additional mitigation measures, it would have limited adverse environmental impact.

The FERC is the lead agency for the preparation of the EIS. The U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) are cooperating agencies. A cooperating agency has jurisdiction by law or special expertise with respect to environmental impacts involved with the proposal and is involved in the NEPA analysis.

The E2W Project would provide 746,500 dekatherms per day of east to west natural gas transportation service for delivery to high growth markets in the Northeast. The Project would increase the diversity of supply by accessing natural gas from liquefied natural gas projects recently constructed or under construction offshore of Massachusetts and in New Brunswick, Canada and add natural gas supply reliability and security to Algonquin's existing system by eliminating current delivery bottlenecks.

The draft EIS addresses the potential environmental effects of the construction and operation of the following facilities proposed by Algonquin:

- I–10 Extension—construction of approximately 12.9 miles of new 36-inch-diameter pipeline in Norfolk County, Massachusetts;
- Q–1 System Replacement—installation of approximately 7.5 miles of 36-inch-diameter pipeline that would replace a segment of an existing 24-inch-diameter pipeline in Norfolk County, Massachusetts;
- E–3 System Replacement—installation of approximately 11.0 miles of 12-inch-diameter pipeline that would replace a segment of an existing 6- and 4-inch-diameter pipeline in New London County, Connecticut;
- Rehoboth Compressor Station—a new 10,310-horsepower compressor station in Bristol County, Massachusetts;
- Modifications to three existing compressor stations to accommodate bidirectional flow along Algonquin's system including:
  - Burrillville Compressor Station in Providence County, Rhode Island;
  - Cromwell Compressor Station in Middlesex County, Connecticut; and
  - Hanover Compressor Station in Morris County, New Jersey;
- Aboveground over-pressure protection regulation at two existing meter stations (Fore River and Sharon Meter Stations) and at two new regulator stations (beginning and end of the Q–1 System Replacement) along the Algonquin system in Massachusetts; and
- Installation of appurtenant ancillary facilities including four mainline valves, two taps, and two remote blow-off valves; five pig [2] launchers; and three pig receivers in Massachusetts and Connecticut.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS is encouraged to do so. To ensure consideration prior to a Commission decision on the proposal, it is important that your comments be received before December 29, 2008. Please carefully follow the instructions below so that your comments are properly recorded.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP08–420–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ–11.3.

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Federal Energy Regulatory Commission's Office of Energy Projects.

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

Mail your comments promptly, so that they will be received in Washington, DC on or before December 29, 2008.

In addition to or in lieu of sending written comments, we invite you to attend the public comment meetings we will conduct in the Project area. Both meetings will begin at 7 p.m. (*Est*), and are scheduled as follows:

Date	Location
Wednesday, December 10, 2008	Stoughton High School Cafeteria, 232 Pearl Street, Stoughton, MA 02072, (781) 344–7001
Thursday, December 11, 2008	Norwich City Hall Council Chambers, 100 Broadway, Norwich, CT 06360 (860) 823–3732.

These public meetings will be posted on the FERC's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx*. Interested groups and individuals are encouraged to attend and present written or oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and necessary modifications are made to the draft EIS, a final EIS will be published and distributed. The final EIS will contain our responses to timely comments filed on the draft EIS that are related to environmental issues.

Comments will be considered by the Commission and the cooperating agencies but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (Title 18 CFR Part 385.214). Only intervenors have the right to seek rehearing of the Commission's decision. Further instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site *(http://www.ferc.gov).* You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Regulatory Energy Commission, Public Reference Room, 888 First St., NE.; Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the FERC's Public Reference Room identified above. These copies may be requested in hard copy or as .pdf files on a CD that can be read by a computer with a CD–ROM drive. The draft EIS is also available for viewing on the FERC Internet Web site at *http://www.ferc.gov.* In addition, copies of the document have been mailed to federal, state, and local government agencies; elected officials; Native American tribes and regional organizations; local libraries and newspapers; intervenors in the FERC's proceeding; and other interested parties (*i.e.*, affected landowners, other interested individuals, and environmental and public interest groups who provided scoping comments or asked to remain on the mailing list). All parties on the mailing list were sent a CD of the draft EIS. A hard copy was also mailed to those who specifically requested one. Hard copies of the draft EIS can be viewed at the libraries in the Project area that are listed in Appendix B of the draft EIS.

Additional information about the Project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372) or on the FERC Internet Web site *(http://www.ferc.gov)* using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP08–420). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Information concerning the involvement of the COE is available from Ted Lento at (978) 318–8863. Information concerning the involvement of the EPA is available from Timothy Timmermann at (617) 918–1025.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27069 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2088–068]

South Feather Water and Power Agency, California; Notice of Availability of the Draft Environmental Impact Statement for the South Feather Power Project and Intention To Hold Public Meetings

November 7, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the South Feather Water and Power Agency's 104-megawatt South Feather Power Project (Project No. 2088), located on the South Fork Feather River (SFFR), Lost Creek, and Slate Creek, in Butte, Yuba, and Plumas counties, California and has prepared a draft Environmental Impact Statement (draft EIS) for the project. The project occupies about 1,977 acres of federal lands administered by the Plumas National Forest and 11 acres of federal lands administered by the U.S. Bureau of Land Management.

South Feather's existing project includes two storage reservoirs, three smaller reservoirs, two diversion dams, four powerhouses and various conveyance facilities and electrical transmission lines. South Feather proposes no major changes in project facilities or operations, but proposes numerous measures including increased minimum flows and improvements to recreation facilities. The project generates an average of about 498,972 megawatt-hours of energy annually.

The draft EIS contains staff's evaluations of the applicant's proposal and alternatives for relicensing the South Feather Power Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the draft EIS is available for review in the Commission's Public

Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The draft EIS also may be viewed on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

We invite your comments on staff's analysis contained in the draft EIS. Comments should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by January 6, 2009 and should reference Project No. 2088–068. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend one or both of two public meetings that will be held to receive comments on the draft EIS. The time and location of the meeting is as follows:

Date: December 9, 2008.

Time: 7 p.m.

Place: South Feather Water and Power Agency Boardroom.

Address: 2310 Oro-Quincy Highway, Oroville, California.

Date: December 10, 2008.

Time: 10 a.m.

Place: South Feather Water and Power Agency Boardroom.

Address: 2310 Oro-Quincy Highway, Oroville, California.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx*, along with other related information.

For further information, contact John Mudre at (202) 502–8902 or at *john.mudre@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27066 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–25–001]

Kinder Morgan Texas Pipeline LLC; Notice of Compliance Filing

November 7, 2008.

Take notice that on October 31, 2008, Kinder Morgan Texas Pipeline LLC filed a Statement of Operating Conditions pursuant to section 284.123(e) of the Commission's regulations and to comply with the Commission's letter order issued on October 3, 2008, in Docket No. PR08–25–000.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27068 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC09–1–000]

North American Electric Reliability Corporation; Notice of Filing

November 6, 2008.

Take notice that on October 31, 2008, the North American Electric Reliability Corporation tendered for filing a 2008 Long-Term Reliability Assessment report dated October 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27053 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ08–6–001]

Orlando Utilities Commission; Notice of Filing

November 6, 2008.

Take notice that on October 31, 2008, Orlando Utilities Commission filed revised tariff sheets to Attachment K of its Open Access Transmission Tariff in compliance with the Commission's July 9, 2008 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27057 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–206–000]

Pasco Cogen, Ltd.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 6, 2008.

This is a supplemental notice in the above-referenced proceeding of Pasco Cogen, Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 26, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27056 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at North American Electric Reliability Corporation Meetings

November 7, 2008.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following NERC related meeting:

- Member Representative Committee (11 a.m.–12:30 a.m. EST)
  - Friday, November 14th, 2008.

The meeting above will be held at: North American Electric Reliability Corporation, 116–390 Village Blvd., Princeton, NJ 08540, 609–452–8060.

Further information may be found at *http://www.nerc.com.*

The above-referenced meeting is open to the public. The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. RR08–6, RR07–14, *North American Electric Reliability Corporation, et al.*

Docket No. RR06–3, *North American Electric Reliability Corporation, et al.*

For more information, contact Mary Agnes Nimis, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–8235 or *maryagnes.nimis@ferc.gov* or Daniel

Phillips, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–6387 or *daniel.phillips@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27065 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–2–000]

Ohio Valley Hub, LLC; Notice of Petition for Approval of Rates

November 7, 2008.

Take notice that on October 30, 2008, Ohio Valley Hub, LLC (Ohio Valley) filed a petition for approval of rates pursuant to section 284.123 of the Commission's regulations. Ohio Valley states that it does not request a change in its rates at this time.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27063 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

November 7, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. EL08–34–000	10–29–08	Derek Bandera.
EL08–47–000		
2. ER08–1209–000	10–30–08	Michael G. Henry.[1]
Exempt:		
1. Project No. 2210–169	10–28–08	John and Kimberly Puterio.
2. Docket No. 2677–000	10–27–08	Arie DeWaal.

[1] Slide presentation from ISO New England, Inc.—only brought to SOC from Michael G. Henry for entry into the non-decisional record for referenced dockets.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27044 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–15–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 6, 2008.

Take notice that on October 29, 2008, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP09–15–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon by sale to HESCO Gathering Company, L.L.C. (HESCO) the Colete Creek Laterals, located in Victoria County, Texas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Tennessee proposes to abandon the Coleto Creek Laterals, which are comprised of approximately 10 miles of 12-inch and 4-inch diameter pipelines, six receipt taps, and one meter, as well as all appurtenances thereto. Tennessee states that once Tennessee is authorized to abandon the facilities and completes the purchase and sale transaction with HESCO, the facilities will be owned and operated by HESCO. Tennessee asserts that HESCO has represented to Tennessee that it will continue to operate the facilities in natural gas service.

Any questions regarding the application should be directed to Jacquelyne M. Rocan, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, at (713) 420–4544 or (713) 420–1601 (facsimile) or Debbie Kalisek, Analyst, Certificates & Regulatory Compliance, at (713) 420–3292 or (713) 420–1605 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27059 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1329–000]

American Electric Power Service Corporation; Notice of Settlement Conference

November 7, 2008.

Take notice that a settlement conference will be convened in this proceeding commencing at 10 a.m. (EST) on Thursday, December 4, 2008, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Bob Keegan at (202) 502–8158, *James.Keegan@FERC.GOV.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27064 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–173–000]

Canandaigua Power Partners II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 7, 2008.

This is a supplemental notice in the above-referenced proceeding of Canandaigua Power Partners II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 28, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27043 Filed 11–13–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0191; FRL–8740–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application for New and Amended Pesticide Registration; EPA ICR No. 0277.15, OMB Control No. 2070–0060

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 15, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2008–0191, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by mail Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 2, 2008 (73 FR 17973), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2008–0191, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Application for New and Amended Pesticide Registration.

ICR numbers: EPA ICR No. 0277.15, OMB Control No. 2070–0060.

ICR Status: This ICR is scheduled to expire on November 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This data collection program is designed to provide EPA with necessary data to evaluate an application of a pesticide product as required under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Food, Drug, and Cosmetic Act (FFDCA), as amended. Under FIFRA, EPA must evaluate pesticides thoroughly before they can be marketed and used in the United States to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test are granted a license or ''registration'' which permits their distribution, sale, and use according to requirements set by EPA to protect human health and the environment. An individual or entity wanting to obtain a registration for a pesticide product must submit an application package consisting of information relating to the identity and composition of the product, proposed labeling, and supporting data (or compensation for others' data) for the product as outlined in 40 CFR part 158. EPA bases registration decisions for pesticides on its evaluation of a battery of test data provided primarily by applicants for registration. Required studies include testing to show whether a pesticide has the potential to cause unreasonable adverse human health or environmental effects. If EPA's evaluation of the data shows that the statutory requirements of FIFRA are met, then a registration is approved. Under FIFRA all pesticides must be registered by EPA before they may be sold or distributed in U.S. commerce.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information will vary and is expected to range from 14 to 646 hours per response, depending on the type of response submitted. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed

to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals or entities engaged in activities related to the registration of a pesticide product.

Estimated Number of Respondents: 1,725.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 76,180.

Estimated Total Annual Cost: $5,528,541.

Changes in the Estimates: There is a decrease of 76,794 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects a substantial decline in the number of estimated responses. This change is an adjustment.

Dated: November 7, 2008.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E8–27109 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0466; FRL–8740–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; State Review Framework; EPA ICR Number 2185.03, OMB Control No. 2020–0031

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 15, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2007–0466 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *carbone.chad@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Chad Carbone, Office of Enforcement and Compliance Assurance, Office of Compliance, MC: 2221A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2523; fax number: 202–564–0027; e-mail address: *carbone.chad@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 14, 2008 (73 FR 40336), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OECA–2007–0466, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket. Docket is 202–566–1927. Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: State Review Framework.

ICR numbers: EPA ICR No. 2185.03, OMB Control No. 2020–0031.

ICR Status: This ICR is scheduled to expire on November 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The State Review Framework (''Framework'') is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA Regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results. This amendment will allow EPA to collect information from enforcement and compliance files reviewed during routine on-site visits of state or local agency offices that will assist in the evaluation of the State Review Framework implementation from FY 2009 to the end of FY 2011. Also, this request will allow EPA to make inquiries to assess the State Review Framework process, including

the consistency achieved among the EPA Regions and states, the resources required to conduct the reviews, and the overall effectiveness of the program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 612 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 50 states and 4 territories.

Estimated Number of Respondents: 54.

Frequency of Response: Once every four years.

Estimated Total Annual Hour Burden: 11,016.

Estimated Total Annual Cost: $357,684, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 5,894 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is based on EPA's recent experience with administering the program, an estimated increase in the number of respondents during the next cycle, and its work with the states to try to improve the value and utilization of the elements and metrics by which state environmental programs are measured.

Dated: November 6, 2008.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E8–27111 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–8740–9]

California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines—In-Use Fleets; Authorization Request; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Extension of Comment Period.

SUMMARY: EPA previously announced the opportunity for public hearing and written comment on the California Air Resources Board's request for an authorization of its regulations for fleets that operate nonroad, diesel fueled equipment with engines 25 horsepower (hp) and greater and that require such fleets to meet fleet average emissions standards for oxides of nitrogen and particulate matter, or, alternatively, to comply with best available control technology requirements for the vehicles in those fleets. This previous announcement occurred on October 7, 2008, at 72 FR 58385. By this notice EPA is announcing an extension of the written comment period from November 28, 2008 to December 19, 2008.

DATES: The written comment period is extended to December 19, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0691, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2008–0691, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0691. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, e-mail address: *Dickinson.David@EPA.GOV.*

Dated: November 7, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. E8–27103 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8587–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared Pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for

copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080336, ERP No. D–AFS–L65557–OR, Farley Vegetation Management Project, To Conduct Timber Harvest Commercial and Non-Commercial Thinning, Fuels Treatment Prescribed Burning and Reforestation, Desolation Creek, North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR.

Summary: EPA expressed environmental concerns about wildfire analysis, potential unauthorized public vehicle use, and water quality impacts from grazing. EPA recommends that the final EIS include assurances that appropriate subsequent treatments will be conducted to maintain the decreases in fire risk. Also, the final EIS should consider increasing riparian plantings and enclosures and modifying project design elements for road closure/decommissioning enforcement and monitoring. Rating EC2.

EIS No. 20080344, ERP No. D–COE–F39042–MN, Mississippi River Headwaters Reservoir Operating Plan Evaluation (ROPE), Proposed Revision to the Operating Plan for the Reservoirs, Upper Mississippi River Headwaters, Bemidji to St. Paul, MN.

Summary: EPA expressed concerns about impacts to water quality, migratory bird populations and tribal harvests of wild rice. EPA also recommended that the Final EIS include additional detailed and quantitative information and analyses regarding the potential environmental impacts, as well as more information regarding the project purpose and need. Rating EC2.

EIS No. 20080345, ERP No. D–USN–E11067–NC, Navy Cherry Point Range Complex, Proposed Action is to Support and Conduct Current and Emerging Training and Research, Development, Testing and Evaluation (RDT&E) Activities, South Atlantic Bight, Cape Hatteras, NC.

Summary: EPA expressed environmental concerns about the deposition of expended training materials and their potential impacts over time to reef complexes and hard bottom habitat. Rating EC2.

EIS No. 20080348, ERP No. D–USN–E11068–00, Undersea Warfare Training Range Project, Installation and Operation, Preferred Site Jacksonville Operating Area, FL and Alternative Sites (within the Charleston, SC; Cherry Point, NC; and VACAPES Operating Areas, VA.

Summary: EPA expressed environmental concerns about the deposition of expended training materials and their potential impacts over time to reef complexes and hard bottom habitat. Rating EC2.

EIS No. 20080395, ERP No. D–AFS–J65523–00, Sioux Ranger District Travel Management Project, To Designate the Road and Trail and Areas Suitable for Public Motorized Travel, Sioux Ranger District, Custer National Forest, Carter County of MT and Harding County of South Dakota.

Summary: EPA expressed environmental concerns about potential effects to water quality, aquatic habitat, wildlife and other resources from roads and motorized uses. EPA supports the preferred alternative (B) and recommends further reductions in motorized routes in areas with high hazard (erosive) soils and in high risk watersheds. Rating EC2.

EIS No. 20080396, ERP No. D–AFS–J65524–MT, Ashland Ranger District Travel Management Project, Proposing to Designate Routes for Public Motorized Use, Ashland Ranger District, Custer National Forest, Rosebud and Power River Counties, MT.

Summary: EPA expressed environmental concerns about potential adverse impacts to water quality, aquatic habitat, wildlife and other resources from roads and motorized uses. EPA supports the preferred alternative (B), but recommends further reductions in motorized routes in areas with high hazard (erosive) soils and in high risk watersheds. Rating EC2.

EIS No. 20080356, ERP No. DS–AFS–K65298–CA, Kings River Project, New Information regarding Pacific Fisher (Martes pennanti), Proposal to Restore Historical Pre-1850 Forest Conditions, Implementation, High Sierra Ranger District, Sierra National Forest, Fresno County, CA.

Summary: EPA expressed environmental concerns about the Proposed Action that would result in a more intensive level of logging than is currently allowed. As a result, the project increases the risk of short-term and cumulative impacts to aquatic and late successional forest species. Rating EC2.

Final EISs

EIS No. 20080337, ERP No. F–BLM–J65502–00, PROGRAMMATIC EIS—Oil Shale and Tar Sands Resource Management (RMP) Amendments to Address Land Use Allocations in Colorado, Utah and Wyoming.

Summary: EPA continues to have environmental concerns about impacts to surface water and groundwater; air quality; and the adequacy of the cumulative impacts analysis.

EIS No. 20080379, ERP No. F–AFS–G65100–NM, Santa Fe National Forest Plan Amendment for Oil & Gas Leasing and Roads Management, Implementation, San Juan Basin, Cuba Ranger District, NM.

Summary: No formal comments were sent to the preparing agency.

EIS No. 20080382, ERP No. F–AFS–G65104–NM, Surface Management of Gas Leasing and Development, Proposes to Amend the Forest Plan include Standard and Guidelines Related to Gas Leasing and Development in the Jicarilla Ranger District, Carson National Forest, Rio Arriba County, NM.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080390, ERP No. F–BLM–J67034–MT, Montana Tunnels Mine Project, Proposed M-Pit Mine Expansion to Existing Mine Pit to Access and Mine Additional Ore Resources, Jefferson County, MT.

Summary: EPA continues to have environmental concerns about potential geochemical, hydrological and long-term water quality uncertainties and adequacy of financial assurances to address potential closure/post-closure environmental contamination.

EIS No. 20080402, ERP No. F–AFS–J65459–MT, Whitetail-Pipestone Travel Management, Develop Site-Specific Travel Management Plan, Jefferson and Butte Ranger Districts, Beaverhead-Deerlodge National Forest, Jefferson and Silver Bow Counties, MT.

Summary: EPA continues to express environmental concerns about potential effects to water quality, aquatic habitat, and other resources from roads and motorized uses.

Dated: November 10, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–27108 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8587–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http: //www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 11/03/2008 through 11/07/2008.

Pursuant to 40 CFR 1506.9.

EIS No. 20080455, Final EIS, AFS, 00, Southern Rockies Canada Lynx Amendment, Preferred Alternative is Alternative F, Incorporating Management Direction for Canada Lynx Habitat by Amending Land and Resource Management Plans, for Arapaho-Roosevelt, Pike-San Isabel, Grand Mesa-Uncompahgre-Gunnison, San Juan, Rio Grande and Medicine Bow-Routt National Forests, Implementation, CO and WY, Wait Period Ends: 12/15/2008, Contact: Martha Delporte 303–275–5381.

EIS No. 20080456, Final EIS, COE, PA, Southern Beltway Transportation Project, Transportation Improvement between I–79 to Mon/Fayette Expressway (PA Turnpike43), Application for U.S. Army COE Section 404 Permit, Washington County, PA, Wait Period Ends: 12/15/2008, Contact: Scott A Hams 412–395–7154.

EIS No. 20080457, Final EIS, APH, 00, PROGRAMMATIC—Use of Genetically Engineered Fruit Fly and Pink Bollworm in APHIS Plant Pest Control Programs, Implementation, Wait Period Ends: 12/15/2008, Contact: David A. Bergsten 301–734–6103.

EIS No. 20080458, Final EIS, COE, CA, Natomas Levee Improvement Project, Issuing of 408 Permission and 404 Permit, Sacramento Area Flood Control Agency, Sutter and Sacramento, CA, Wait Period Ends: 12/15/2008, Contact: Elizabeth G. Holland 916–557–6763.

EIS No. 20080459, Final Supplement, COE, CA, Berth 136–147 [TraPac] Container Terminal Project, Updated Information on the Draft General Conformity Determination, Upgrade Existing Wharf Facilities, Install a Buffer Area between the Terminal and Community, U.S. Army COE Section 10 and 404 Permit, West Basin Portion of the Port of Los Angeles, CA, Wait Period Ends: 12/15/2008, Contact: Dr. Spencer D. MacNeil 805–585–2152.

EIS No. 20080460, Draft EIS, FHW, CO, I–70 East Project, Transportation Improvement from I–70 East from 1–25 to Tower Road, Funding, City and County Denver, CO, Comment Period Ends: 12/31/2008, Contact: Chris Horn 720–963–3017.

EIS No. 20080461, Draft EIS, FRC, 00, Hubline/East to West Project, Proposes to Modify its Existing Natural Gas Transmission Pipeline System in MA, CT, RI and NJ, Comment Period Ends: 12/29/2008, Contact: Patricia Schaub 1–866–208–3372.

EIS No. 20080462, Draft EIS, FRC, CA, South Feather Power Project, (Project No. 2088–068), Application to Relicense its 104-megawatt, South Fork Feather River, Lost Creek and Slate Creek, Butte, Yuba and Plumas Counties, CA, Comment Period Ends: 01/06/2009, Contact: John Mudre 202–502–8902.

EIS No. 20080463, Final EIS, FAA, NM, Spaceport America Commercial Launch Site, Proposal to Develop and Operate, Issuance of License, Sierra County, NM, Wait Period Ends: 12/15/2008, Contact: Stacey M. Zee 202–267–9305.

Amended Notices

EIS No. 20080072, Draft EIS, IBR, CO, Southern Delivery System Project, Water Supply Development, Execution of up to 40-year Contracts for Use of Fryingpan-Arkansas Project Facilities, Special Use Permit, El Paso County, CO, Comment Period Ends: 11/24/2008, Contact: Kara Lamb 970–663–3212.

EIS No. 20080450, Final EIS, NOA, 00, Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery, Address Overfishing, Bycatch, Management Reference Points, and Allocations for Snapper Grouper Species, Implementation, South Atlantic Region, Wait Period Ends: 12/08/2008, Contact: Roy E. Crabtree 727–824–5305.

Revision to FR Notice Published 11/07/2008: Correction to Title.

Dated: November 10, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–27107 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0343; FRL–8389–3]

Naphthalene Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide naphthalene. The Agency's risk assessments and other related documents also are available in the naphthalene Docket. Naphthalene is an insecticide used primarily as a moth repellant. EPA has reviewed naphthalene through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Molly Clayton, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0522; fax number: (703) 308–7070; e-mail address: *clayton.molly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0343. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only

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

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, naphthalene under section 4(g)(2)(A) of FIFRA. Naphthalene is an insecticide used as a moth repellant for the protection of wool clothing and as an animal repellant against nuisance vertebrate pests. Naphthalene products are formulated as moth balls, flakes, dusts, and granules. All pesticidal uses of naphthalene are residential; no food or occupational uses are registered.

EPA has determined that the database to support reregistration is substantially complete and that products containing naphthalene are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing naphthalene.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, naphthalene was reviewed through the modified 4–Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for naphthalene.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Few comments were received during the earlier comment period for this pesticide, and all issues related to this pesticide were resolved through consultations with stakeholders. The Agency therefore is issuing the naphthalene RED without a comment period.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 5, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–26966 Filed 11–13–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0046; FRL–8388–3]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before December 15, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in either 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Exemption from a Tolerance

1. *PP 7E7231.* (EPA–HQ–OPP–2008–0763). Interregional Research Project Number 4 (IR–4), Rutgers University, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540, for United States Department of Agriculture-Agricultural Research Service-Appalachian Fruit Research Station, 2217 Wiltshire Rd., Kearneysville, WV 25430, proposes to establish an exemption from the requirement of a tolerance for residues of the plant-incorporated protectant, coat protein of plum pox virus, in or on stone fruit and almond. Because EPA expects that no protein will be expressed, and that even if a protein is expressed it will not pose a human health concern, no analytical method is required. Contact: Denise Greenway, (703) 308–8263, *greenway.denise@epa.gov*.

2. *PP 7F7269.* (EPA–HQ–OPP–2008–0760). Botry-Zen, Ltd., 21 Willis St., P.O. Box 5664, Dunedin, New Zealand, proposes to establish an exemption from the requirement of a tolerance for

residues of the biofungicide, *Ulocladium oudemansii* (U3 Strain), when applied or used pre-harvest only, in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Denise Greenway, (703) 308–8263, *greenway.denise@epa.gov*.

Amendment to an Existing Tolerance Exemption

3. *PP 8F7368*. (EPA–HQ–OPP–2008–0762). Becker Underwood Inc., 801 Dayton Ave., P.O. Box 667, Ames, IA 50010, proposes to amend the tolerance exemption in 40 CFR 180.1128 for residues of the biofungicide, *Bacillus subtilis* MBI 600, applied or used in or on all food commodities, including post-harvest uses. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Denise Greenway, (703) 308–8263, *greenway.denise@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 3, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–26969 Filed 11–13–08; 8:45 am]

Billing Code 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Extension Being Reviewed by the Federal Communications Commission, Comments Requested

November 7, 2008.

SUMMARY: The Federal Communications Commission (Commission or FCC), 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 extension, as required by the Paperwork Reduction Act of 1995, 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 Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information extension 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 January 13, 2009. 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: Submit your comments by e-mail to *PRA@fcc.gov*. Include in the e-mail the OMB control number of the collection or, if there is no OMB control number, the Title shown in the **SUPPLEMENTARY INFORMATION** section below. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below (or the title of the collection if there is no OMB control number), or call Jerry Cowden at 202–418–0447.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0813.

Title: Enhanced 911 Emergency Calling Services (47 CFR 20.18).

Form No.: Not applicable.

Type of Review: Extension of a previously approved collection.

Respondents: Business or other for-profit; and state, local or tribal government.

Number of Respondents and Responses: 47,031 respondents; 47,031 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 198,200 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The notification requirement on Public Safety Answering Points (PSAPs) will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTY and dispatch requirements will be used to avoid customer confusion as to the capabilities of their handsets in reaching help in emergency situations, thus minimizing the possibility of critical delays in response time. The annual TTY reports will be used to monitor the progress of TTY technology and thus capability. Consultations on the specific meaning assigned to pseudo-Automatic Location Identification (ALI) are appropriate to ensure that all parties are working with the same information. Coordination between carriers and state and local entities to determine the appropriate PSAPs to receive and respond to E911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the wireless caller. The deployment schedule that must be submitted by carriers seeking a waiver of Phase I or Phase II deployment schedule will be used by the Commission to guarantee that the rules are enforced in as timely a manner as possible within technological constraints. In addition, a wireless carrier must implement E911 service within the six-month period following the date of the PSAP's request. If the carrier challenges the validity of the request, the request will be deemed valid if the PSAP making the request provides the following information:

A. *Cost Recovery.* The PSAP must demonstrate that a mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements;

B. *Necessary Equipment.* The PSAP must provide evidence that it has ordered the equipment necessary to receive and utilize the E911 data elements; and

C. *Necessary Facilities.* The PSAP must demonstrate that it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities to enable E911 data to be transmitted to the PSAP.

In the alternative, the PSAP may demonstrate that a funding mechanism is in place, that it is E911 capable using a Non-Call Associated Signaling technology, and that it has made a

timely request to the appropriate LEC for the necessary ALI database upgrade.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–27101 Filed 11–13–08; 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

November 6, 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 December 15, 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://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 or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1070.

Title: Section 101.1523, Allocation and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz.

Report No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 103 respondents; 103 responses.

Estimated Time per Response: 0.5–4.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154(i), 303(f), and (r), 309, 316, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,500 hours.

Total Annual Cost: $810,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: This collection does not address information of a confidential nature. Respondents may request confidential treatment of materials submitted to the Commission which they believe should be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension during this comment period to obtain the full three-year clearance from them. The Commission is reporting a −10,500 hourly burden reduction and a −$1,020,000 annual cost reduction (adjustment). This adjustment is due to a decrease in the estimated number of respondents/responses (from 1,000 to 103) that was submitted to the OMB in 2005. The annual cost estimate has also decreased due to a decrease in the capital/start up costs. Thus the Commission is now reporting a total of 1,500 burden hours and $810,000 in annual operations and maintenance costs.

Section 101.1523, Sharing and Coordination among Non-Government Licensees and Between Non-Government and Government Services, requires registration of each link in the 71–76 GHz 81–86 GHz, and 92–95 GHz bands. Registration of each link will be completed in the Commission's Universal Licensing System (ULS) until the Wireless Telecommunications Bureau announces by public notice the implementation of a third party database. The licensee or applicant shall:

(1) Complete coordination with Federal Government links according to the coordination standards and procedures adopted in Report and Order, FCC 03–248, and as further detailed in subsequent implementation public notices issued consistent with that order;

(2) Provide an electronic copy of an interference analysis to a third-party database manager which demonstrates that the potential for harmful interference to or from all previously registered non-government links has been analyzed according to the standards of section 101.105 and generally accepted good engineering practice, and that the proposed non-government link will neither cause harmful interference to, nor receive harmful interference from, any previously registered non-government link, and

(3) Provide upon request any information related to the interference analysis and the corresponding link. The third-party database managers shall receive and retain the interference analyses electronically and make them available to the public. Protection of individual links against harmful interference from other links shall be granted on a first-in-time registered links. Successful completion of coordination via the National Telecommunications and Information Administration (NTIA) automated mechanism shall constitute successful non-Federal Government to Federal Government coordination for that individual link.

In addition, the following types of non-Federal Government links require the filing with the Commission an FCC Form 601 (OMB Control Number 3060–0798) for each link for the purpose of coordination and registration, in addition to registering each link in the third-party database:

(1) Facilities requiring the submission of an Environmental Assessment,

(2) Facilities requiring international coordination, and

(3) Operation in quiet zones.

The Commission believes the licensee is in the best position to determine the nature of its operations and whether those operations impact these settings, and is required to submit to a database manager, as part of the registration package, documentation that an FCC Form 601 has been filed.

The recordkeeping, reporting and third party disclosure requirements will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information has been used in the past and 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. E8–27104 Filed 11–13–08; 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 December 8, 2008.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Carpenter Fund Manager GP, LLC, Carpenter Fund Management, LLC, Carpenter Community Bancfund, L.P., Carpenter Community Bancfund–A,L.P., Carpenter Community Bancfund–CA, L.P., CCFW, Inc. (dba Carpenter and Company), and SCJ, Inc., all of Irvine, California, to acquire up to 37 percent of the voting shares of Manhattan Bancorp, and thereby its subsidiary, Bank of Manhattan, N.A., both of El Segundo, California.

Board of Governors of the Federal Reserve System, November 10, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–27071 Filed 11–13–08; 8:45 am]

BILLING CODE 6210–01–S

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 December 8, 2008.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Carpenter Fund Manager GP, LLC, Carpenter Fund Management, LLC, Carpenter Community Bancfund, L.P., Carpenter Community Bancfund–A,L.P., Carpenter Community Bancfund–CA, L.P., CCFW, Inc. (dba Carpenter and Company), and SCJ, Inc., all of Irvine, California, to acquire up to 37 percent of the voting shares of Manhattan Bancorp, and thereby its subsidiary, Bank of Manhattan, N.A., both of El Segundo, California.

Board of Governors of the Federal Reserve System, November 10, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–27074 Filed 11–13–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), November 24, 2008.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 20, 2008 Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.
a. Monthly Participant Activity Report.
b. Legislative Report.
c. Investment Performance Review.
3. Securities Lending Activity.
4. 2008 Participant Survey.
5. Internal Controls Update.
6. Vendor Financials Follow-up.
7. 2009 FRTIB Meeting Calendar.

Parts Closed to the Public

8. Security.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 7, 2008.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E8–27020 Filed 11–12–08; 11:15 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–07AA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call Maryam I. Daneshvar, the CDC Reports Clearance Officer, at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Pilot Project for a National Monitoring System for Major Adverse Effects of Medication Use During Pregnancy and Lactation—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This data collection is based on the following components of the Public Health Service Act: (1) Act 42 U.S.C. 241, section 301, which authorizes ''research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man.'' (2) 42 U.S.C. 247b–4, section 317 C, which authorizes the activities of the National Center on Birth Defects and Developmental Disabilities. This section was created by Public Law 106–310, also known as ''the Children's Health Act of 2000.'' This portion of the code has also been amended by Public Law 108–154, which is also known as the ''Birth Defects and Developmental Disabilities Prevention Act of 2003''.

The use of a number of medications during pregnancy is known to be associated with serious adverse effects in children. However, because pregnant and lactating women are traditionally excluded from clinical trials, and because premarketing animal studies do not necessarily predict the experience of humans, little information is available about the safety of most prescription medications during pregnancy and lactation at the time they are marketed. Nevertheless, many women inadvertently use medications early in gestation before realizing they are pregnant, and many maternal conditions require treatment during pregnancy and breastfeeding to safeguard the health of both mother and infant. Currently, the United States does not have a comprehensive early warning system for major adverse pregnancy or infant outcomes related to medication exposures.

Teratology Information Services (TIS) utilize trained specialists to provide free phone consultation, risk assessment, and counseling about exposures during pregnancy and breastfeeding—including medications—to women and healthcare providers. Altogether, they respond to approximately 70,000–100,000 inquiries each year in the United States and Canada. Because they have direct contact with pregnant and breastfeeding women, TIS are in a unique position to monitor the adverse effects of medication exposures during pregnancy and lactation. The objective of this project is to conduct a pilot study to assess whether TIS in the United States can serve as an effective monitoring and early warning system for major adverse effects on (1) pregnancy outcomes (e.g., live birth, stillbirth, premature birth, low birth weight, etc.) and (2) maternal and infant health. The project will assess the willingness of pregnant and breastfeeding women who contact a TIS about medication exposure to participate in and complete a follow-up study; whether these women are similar in demographic characteristics to the U.S. population of child-bearing age women; the specificity and completeness of the information obtained from such a study about adverse pregnancy outcomes, and maternal and infant health; and the amount of time required to conduct the follow-up.

Within a continuous six-month period, three individual TIS will recruit all women who contact their service (up to a maximum of 250 enrollees per TIS) who have used any prescription or over-the-counter medication, vitamin, herbal, or other dietary supplement during pregnancy or while breastfeeding to participate in a follow-up study. Informed consent to participate will be obtained from each woman by telephone. For each pregnant woman who agrees to participate, the TIS will then conduct 4 telephone interviews: (1) At enrollment; (2) during the third trimester of pregnancy; (3) approximately one month after delivery; and (4) when the infant is about 3 months old. For each breastfeeding woman who agrees to participate, the TIS will then conduct 3 telephone interviews: (1) At enrollment; (2) approximately one month after enrollment; and (3) 3 months after enrollment, if the woman is still taking medication and still breastfeeding. The interviews will assess maternal and fetal health throughout pregnancy, and maternal and infant health at delivery, during the newborn and early infancy period, and while breastfeeding, and correlate these outcomes with medication exposure during pregnancy and while breastfeeding. There is no cost to respondents other than their time. The total estimated annualized burden is 516 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)
All Respondents	Telephone script for permission to seek consent (C1a or C1b).	294	1	3/60
Screened Eligible Respondents—	Tracking Form (C1c)	250	1	5/60
Pregnancy Exposure (group 1)	Consent (C2a or C2b)	250	1	20/60
Lactation Exposure (group 2)				
Pregnancy and Lactation Exposure (group 3).				
Groups 1, 2 and 3	Enrollment (D1)	250	1	10/60
Group 1 and 3	Initial pregnancy Questionnaire (D2)	200	1	30/60
	Follow-up pregnancy questionnaire (D3)	200	1	20/60
	Initial infant questionnaire (D4)	200	1	20/60
	Follow-up infant questionnaire (D5)	200	1	15/60
Groups 2 and 3	Initial breastfeeding questionnaire (D6)	100	1	20/60
	Follow-up breastfeeding questionnaire (D7).	100	1.5	15/60

Dated: November 6, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–27084 Filed 11–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 8:30 a.m.–3:30 p.m., December 4, 2008.

Place: Marriott Crystal City at Reagan National, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. Teleconference available toll-free; please dial (866) 700–6634, Participant Pass Code 3756066.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters To Be Discussed: Agenda items include a Report by the Acting Director of NIOSH; National Academies (NA) Recommendations for NIOSH Programs; Implementation of NA Recommendations in Agriculture, Forestry and Fishing; Occupational Safety and Health Surveillance Needs; NIOSH Nanotechnology Research Strategic Plan; National Occupational Research Agenda; Future Meetings and Closing Remarks.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 395 E Street, SW., Suite 9200, Patriots Plaza Building, Washington, DC 20201, telephone (202) 245–0655, fax (202) 245–0664.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 6, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–27052 Filed 11–13–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R–74, CMS–R–107, CMS–2786U, CMS–R–285 and CMS–R–245]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System; *Use:* This collection is necessary to verify income and eligibility requirements for Medicaid beneficiaries, as required by Section 1137 of the Social Security Act. *Form Number:* CMS–R–74 (OMB#

0938–0467); *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 54; *Total Annual Responses:* 54; Total Annual Hours: 124,054.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid-Determining Third Party Liability (TPL) State Plan Preprint and Supporting Regulations in 42 CFR 433.138; *Use:* The information collected from Medicaid applicants and beneficiaries as well as from State and local agencies is necessary to determine the legal liability of third parties to pay for medical services in lieu of Medicaid payment. *Form Number:* CMS–R–107 (OMB# 0938–0502); *Frequency:* On occasion; *Affected Public:* Individuals or households and State, Local or Tribal Government; *Number of Respondents:* 2,900,000; *Total Annual Responses:* 2,900,000; *Total Annual Hours:* 510,968.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Fire Safety Survey Reports; *Use:* The Life Safety Code (LSC) is a compilation of fire safety requirements for new and existing buildings and is updated and published every 3 years by the National Fire Protection Association (NFPA), a private, non-profit organization dedicated to reducing loss of life due to fire. The Medicare regulations have historically incorporated by reference these requirements along with Secretarial waiver authority. The statutory basis for incorporating NFPA's LSC for our providers is under the Secretary's general rulemaking authority at Sections 1102 and 1871 of the Social Security Act. These forms are used by the State Agencies to record data collected to determine compliance with standards specified in 416.44(b) for ambulatory surgical centers (ASCs), and 494.60(e) for End-Stage Renal Disease (ESRD) facilities. The Medicare Health Insurance Program is authorized by Title XVIII of the Social Security Act. The CMS–2786U form is being revised to include ESRD information. Form Number: 2786U (OMB# 0938–0242); *Frequency:* Weekly; *Affected Public:* Individuals or households and State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 2442; *Total Annual Hours:* 4884.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request For Retirement Benefit Information; *Use:* Section 1818 of the Social Security Act provides that former State and local government employees who are age 65 or older, that have been entitled to Premium Part A for at least 7 years, and did not have the premium paid for by a State or a political subdivision of a State, may have the Part A premium reduced to zero. This collection will assist in determining whether individuals currently paying a monthly premium for Medicare Part A coverage are eligible to have their premium reduced to zero. *Form Number:* CMS–R–285 (OMB# 0938–0769); *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 375.

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs OASIS Collection Requirements as Part of the CoPs for HHAs and Supporting Regulations in 42 CFR, Sections 484.55, 484.205, 484.245, 484.250; *Use:* The Centers for Medicare and Medicaid Services is requesting OMB approval to modify the Outcome and Assessment Information Set (OASIS) data set that home health agencies (HHAs) are required to collect in order to participate in the Medicare program. Proposed revisions to the OASIS data set include: (1) Issues raised by stakeholders, including removing items that are not currently used by CMS for payment or quality, adding items to address clinical domains not currently covered, and modifying item wording or response categories for selected items; and (2) the addition of process items that support measurement of evidence-based practices. Proposed revisions to OASIS items address issues raised by stakeholders, including removing items that are not currently used by CMS for payment or quality, adding items to address clinical domains not currently covered, and modifying item wording or response categories for selected items. These changes and item deletions are and considered to be high priority by CMS and have implications for outcome measurement, risk adjustment of outcome reports, case mix adjustment for prospective payment, data submission procedures and specifications, reporting systems, and provider paperwork burden.

In addition, adopting measures of efficient and high-quality care is central to the direction that CMS would like to take in its Quality Initiative. In concordance with long-standing federal objectives, CMS ultimately plans to create a standard patient assessment instrument that can be used across all post-acute care settings. The revision of the OASIS instrument is an opportunity to consider various components of quality care and how patients might be better served as they (and information about them and their care) move among health care settings. For this reason, the OASIS C includes process items that support measurement of evidence-based practices across the post-acute care spectrum that have been shown to prevent exacerbation of serious conditions, can improve care received by individual patients, and can provide guidance to agencies on how to improve care and avoid adverse events. *Form Number:* CMS–R–245 (OMB# 0938–0760); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 10,170; *Total Annual Responses:* 14,960,070; *Total Annual Hours:* 15,590,610.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *January 13, 2009*:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number_____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 6, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–27060 Filed 11–13–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10151 and CMS–10152]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Data Collection for Medicare Beneficiaries Receiving Implantable Cardioverter-defibrillator for Primary Prevention of Sudden Cardiac Death; *Use:* The Centers for Medicare and Medicaid Services (CMS) provides coverage for implantable cardioverter-defibrillators (ICDs) for secondary prevention of sudden cardiac death based on extensive evidence showing that use of ICDs among patients with a certain set of physiologic conditions are effective. Accordingly, CMS considers coverage for ICDs reasonable and necessary under Section 1862 (a)(1)(A) of the Social Security Act. However, evidence for use of ICDs for primary prevention of sudden cardiac death is less compelling for certain patients.

To encourage responsible and appropriate use of ICDs, CMS issued a Decision Memo for Implantable Defibrillators on January 27, 2005, indicating that ICDs will be covered for primary prevention of sudden cardiac death if the beneficiary is enrolled in either an FDA-approved category B IDE clinical trial (42 DFR § 405.201), a trial under the CMS Clinical Trial Policy (NCD Manual § 310.1) or a qualifying prospective data collection system (either a practical clinical trial or prospective systematic data collection, which is sometimes referred to as a registry). *Form Number:* CMS–10151 (OMB# 0938–0967); *Frequency:* Reporting—Quarterly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 1,217; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data collection for Medicare Beneficiaries Receiving FDG Positron Emission Tomography (PET) for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, and All Other Cancers; *Use:* In the Decision Memo #CAG–00181N issued on January 27, 2005, CMS determined that the evidence is sufficient to conclude that for Medicare beneficiaries receiving FDG positron emission tomography (PET) for brain, cervical, ovarian, pancreatic, small cell lung, and testicular cancers is reasonable and necessary only when the provider is participating in and patients are enrolled in a systematic data collection project. CMS will consider prospective data collection systems to be qualified if they provide assurance that specific hypotheses are addressed and they collect appropriate data elements. The data collection should include baseline patient characteristics; indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; cancer type, grade, and stage; long-term patient outcomes; disease management changes; and anti-cancer treatment received. *Form Number:* CMS–10152 (OMB# 0938–0968); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 2,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 4,167.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on December 15, 2008: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: November 6, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–27061 Filed 11–13–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2897–FN]

Medicare and Medicaid Programs; Approval of the Accreditation Association for Ambulatory Health Care for Continued Deeming Authority for Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services, (CMS), HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Accreditation Association for Ambulatory Health Care (AAAHC) for continued recognition as a national accreditation program for ambulatory surgical centers (ASCs) seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective December 20, 2008 through December 20, 2012.

FOR FURTHER INFORMATION CONTACT: Aviva Walker-Sicard, (410)–786–8648. Patricia Chmielewski (410)–786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive selected covered services in an ASC provided certain requirements are met. Sections 1832(a)(2)(f)(i) of the Social Security Act (the Act) authorizes the Secretary to establish distinct criteria for facilities seeking designation as an ASC. Under this authority, the minimum requirements that an ASC must meet to participate in Medicare are set forth in regulations at 42 CFR part 416 which determines the basis and scope of ASC covered services, and the conditions for

Medicare payment for facility services. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, to enter into an agreement, an ASC must first be certified by a State survey agency as complying with conditions or requirements set forth in part 416 of our regulations. Then, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet those requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act (as redesignated under section 125(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275)) provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we may ''deem'' those provider entities as having met the Medicare requirements. (We note that section 125 of MIPPA redesignated subsections (b) through (e) of section 1865 of the Act as (a) through (d), respectively.) Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, a provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years, or sooner as we determine. The AAAHC's current term of approval as a recognized accreditation program for ASCs expires December 20, 2008.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act (formerly section 1865(b)(3)(A) of the Act) provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Provisions of the Proposed Notice

In the June 27, 2008 **Federal Register** (73 FR 36520), we published a proposed notice announcing the AAAHC's request for reapproval as a deeming organization for ASCs. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act (formerly section 1865(b)(2) of the Act) and our regulations at § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of the AAAHC application in accordance with the criteria specified by our regulation, which include, but are not limited to the following:

- An onsite administrative review of AAAHC's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of AAAHC's ASC accreditation standards to our current Medicare ASC conditions for coverage.
- A documentation review of AAAHC's survey processes to—

++ Determine the composition of the survey team, survey or qualifications, and the ability of AAAHC to provide continuing surveyor training;

++ Compare AAAHC's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities;

++ Evaluate AAAHC's procedures for monitoring providers or suppliers found to be out of compliance with AAAHC program requirements. The monitoring procedures are used only when AAAHC identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d);

++ Assess AAAHC's ability to report deficiencies to a surveyed facility and respond to the facility's plan of correction in a timely manner;

++ Establish AAAHC's ability to provide us with electronic data and reports necessary for effective validation and assessment of AAAHC's survey process;

++ Determine the adequacy of staff and other resources;

++ Review AAAHC's ability to provide adequate funding for performing required surveys;

++ Confirm AAAHC's policies with respect to whether surveys are announced or unannounced; and,

++ Obtain AAAHC's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act (formerly 1865(b)(3)(A) of the Act), the June 27, 2008 proposed notice, also solicited public comments regarding whether AAAHC's requirements met or exceeded the Medicare conditions of coverage for ASCs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between the AAAHC's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the standards contained in AAAHC's accreditation requirements for ASCs and its survey process in AAAHC's application for renewal of deeming authority for ASCs with the Medicare ASC conditions for coverage and our State Operations Manual (SOM). Our review and evaluation of AAAHC's deeming application, which were conducted as described in section III. of this final notice, yielded the following:

- To meet the requirements at § 416.41, AAAHC added language to its standards to ensure that the governing body will provide contracted services in a safe and effective manner.
- To meet the requirements at § 416.42, AAAHC modified its standards to require surgical procedures be performed only by qualified physicians in a safe manner.
- AAAHC modified its standards to ensure the administration of anesthesia meets the requirements at § 416.42.
- To meet the requirements at § 416.44(a)(3), AAAHC amended its standards to ensure that ASC's establish programs for identifying and preventing infections, maintain sanitary environments, and report the results to appropriate authorities.

• To meet the requirements at § 416.44, AAAHC updated the requirements on its Physical Environment Checklist (PEC) and modified its policies to clearly reflect that life safety code (LSC) waivers may only be granted by a CMS regional office.

• To meet the requirements at § 416.44(d), AAAHC revised its standards to require that ASCs train personnel in the use of all types of emergency equipment, not just cardiopulmonary and cardiac emergency equipment.

• To meet the requirements at § 416.45(b), AAAHC revised its standards to require that the scope of procedures performed in the ASC be periodically reviewed and amended as appropriate.

• To meet the requirements at § 416.46(a), AAAHC revised its standards to require a registered nurse be available for emergency treatment whenever there is a patient in the ASC.

• To meet the requirements at § 416.47(b), AAAHC revised its survey procedures to ensure that surveyors use a random selection of medical records for review during an onsite survey.

• To meet the requirements at § 488.4(a)(4), AAAHC revised its policies related to surveyor credentialing and privileging to ensure that surveyor's were appropriately privileged, credentialed and trained.

• AAAHC modified its surveyor training program to strengthen the Physical Environment and Life Safety Code training to ensure that surveyors thoroughly understand Physical Environment and Life Safety Code and can translate the teachings into practice on survey.

• CMS will conduct a survey observation, in 1 year, to validate the implementation of AAAHC's revised surveyor training program for Physical Environment and Life Safety Code and assess the competency of the surveyor's ability to conduct Physical Environment and Life Safety Code surveys in accordance with Medicare requirements.

• AAAHC amended its policies and procedures to address any real or perceived conflict of interest issues between AAAHC's accreditation activities and AAAHC's consultative services.

• To meet the requirements at § 488.4(a)(6) AAAHC amended its policies and procedures for complaints to comply with the Medicare requirements in Chapter 5 of the SOM.

• AAAHC revised its accreditation decision letters to ensure they are accurate and contain all of the required elements necessary for the CMS Regional Office to render a decision regarding deemed status of a provider.

• AAAHC modified its policies regarding condition-level noncompliance identified during an initial certification survey for participation in Medicare in accordance with section 2005A of the SOM.

• To meet the Medicare requirements at § 488.20(a) and § 488.28(a), AAAHC developed a policy regarding CMS requirements for submission of a plan of correction by the ASC and the completion of an onsite follow-up survey to determine compliance with the Medicare conditions for coverage (CFCs) after citing condition level noncompliance during a recertification survey.

• AAAHC modified its policies regarding timeframes for sending and receiving a required plan of correction in accordance with section 2728 of the SOM.

• To meet the Medicare requirements related to unannounced surveys at 2700A of the SOM, AAAHC expanded its survey window in which organizations could receive an accreditation survey for deemed status.

• AAAHC modified the language related to deferred decisions and early survey option in its accreditation handbook to provide clarification and consistency between its policies and the Medicare requirements.

• AAAHC amended its policies regarding subsequent revisions of its Accreditation Handbook and surveyor tools to ensure all documents are consistent in language and reflect CMS's requested changes.

B. Term of Approval

Based on the review and observations described in section III. of this final notice, we have determined that AAAHC's requirements for ASCs meet or exceed our requirements. Therefore, we approve AAAHC as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2008 through December 20, 2012.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 2, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–27122 Filed 11–13–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2898–FN]

Medicare and Medicaid Programs; Approval of the Joint Commission for Continued Deeming Authority for Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Joint Commission for continued recognition as a national accreditation program for ambulatory surgical centers (ASCs) seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective December 20, 2008, through December 20, 2014.

FOR FURTHER INFORMATION CONTACT: Laura Weber, (410) 786–0227. Patricia Chmielewski (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive selected covered services in an ASC provided certain requirements are met. Sections 1832(a)(2)(f)(i) of the Social Security Act (the Act) authorizes the Secretary to establish distinct criteria for facilities seeking designation as an ASC. Under this authority, the minimum requirements that an ASC must meet to participate in Medicare are set forth in regulations at 42 CFR part 416, which determine the basis and scope of ASC covered services, and the conditions for Medicare payment for facility services. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, to enter into an agreement, an ASC must first be certified by a State

survey agency as complying with conditions or requirements set forth in part 416 of our regulations. Then, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet those requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act (as redesignated under section 125 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275)) provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we may ''deem'' those provider entities as having met Medicare requirements. (We note that section 125 of MIPPA redesignated subsections (b) through (e) of subsection 1865 of the Act as (a) through (d) respectively.) Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, a provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A, must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years, or sooner as we determine. The Joint Commission's term of approval as a recognized accreditation program for ASCs expires December 20, 2008.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act (formerly section 1865(b)(3)(A) of the Act) provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less that a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Provisions of the Proposed Notice

In the June 27, 2008, **Federal Register** (73 FR 36518), we published a proposed notice announcing the Joint Commission's request for reapproval as a deeming organization for ASCs. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act (formerly section 1865(b)(2)) of the Act and our regulations at § 488.4 (Application and reapplication procedures for accreditation organizations), we conducted a review of the Joint Commission application in accordance with the criteria specified by our regulation, which include but are not limited to the following:

- An onsite administrative review of the Joint Commission's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of the Joint Commission's ASC accreditation standards to our current Medicare ASC conditions for coverage.
- A documentation review of the Joint Commission's survey processes to—

++ Determine the composition of the survey team, surveyor qualifications, and the ability of the Joint Commission to provide continuing surveyor training;

++ Compare the Joint Commission's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities;

++ Evaluate the Joint Commission's procedures for monitoring providers or suppliers found to be out of compliance with the Joint Commission program requirements. The monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d);

++ Assess the Joint Commission's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner;

++ Establish the Joint Commission's ability to provide us with electronic data and reports necessary for effective validation and assessment of the Joint Commission's survey process;

++ Determine the adequacy of staff and other resources;

++ Review the Joint Commission's ability to provide adequate funding for performing required surveys;

++ Confirm the Joint Commission's policies with respect to whether surveys are announced or unannounced; and,

++ Obtain the Joint Commission's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act (formerly section 1865(b)(3)(A) of the Act), the June 27, 2008 proposed notice also solicited public comments regarding whether the Joint Commission's requirements met or exceeded the Medicare conditions of coverage for ASCs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between the Joint Commission's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the standards contained in the Joint Commission's accreditation requirements for ASCs and its survey process in the Joint Commission's application for renewal of deeming authority for ASCs with the Medicare ASC conditions for participation and our State Operations Manual (SOM). Our review and evaluation of the Joint Commission's deeming application, which were conducted as described in section III. of this final notice, yielded the following:

- The Joint Commission amended their policies to eliminate the use of supplemental findings. All survey findings will be identified as a requirement for improvement, and will, therefore, require resolution through the evidence of standards compliance process.
- The Joint Commission modified its evidence of standards compliance process (ESC) to ensure that accepted ESCs contain the critical information necessary to provide assurance that an identified deficiency had been adequately corrected.
- The Joint Commission modified its survey report to clearly identify whether an identified deficient practice represented condition level- or standard-level noncompliance.

• The Joint Commission developed and conducted surveyor training on CMS documentation requirements to ensure that issues cited provide a clear and detailed description of the deficient practice and relevant finding.

• The Joint Commission modified its policies regarding complaint investigation activities to comply with the requirements at § 488.4(a)(6) and Chapter 5 of the SOM.

• To meet the Medicare requirements related to unannounced surveys at 2700A of the SOM, the Joint Commission modified its electronic application process to no longer allow an ASC to indicate ''avoid dates'' or ''a ready month'' in which organizations could receive an accreditation survey for deemed status.

• The Joint Commission revised its accreditation decision letters to ensure they are accurate and contain all the required elements necessary for the CMS Regional Office to render a decision regarding deemed status of a provider.

• The Joint Commission modified its policies regarding condition-level noncompliance identified during an initial certification survey for participation in Medicare in accordance with section 2005A of the SOM.

• To meet the requirements at § 416.41, the Joint Commission revised its standards to require that patients in Medicare-certified ASC that require emergency treatment beyond the capability of the ASC be transferred to local hospitals that meet requirements for payment of emergency services.

• To meet the requirements at § 416.44(a)(2), the Joint Commission revised its standards to require Medicare certified ASCs to provide a separate waiting area and post-anesthesia room.

• To meet the requirements at § 416.44(b)(1) and § 416.44(b)(5), § 416.45(a), and § 416.48(a), the Joint Commission amended its Medicare crosswalk to reflect current regulatory language.

• To meet the requirements at § 416.45, the Joint Commission added a standard requiring Medicare-certified ASCs to ensure that licensed independent practitioners are accountable to the governing body.

• To meet the requirements at § 416.45(b), the Joint Commission added a standard requiring Medicare-certified ASCs to periodically review and amend the scope of procedures performed.

• To meet the requirements at § 416.48, the Joint Commission added a new standard requiring Medicare-certified ASCs to designate one individual responsible for pharmaceutical services.

• To meet the requirements at § 416.49, the Joint Commission added a standard requiring Medicare-certified ASCs to comply with 42 CFR part 493 which requires organizations who perform laboratory testing to maintain compliance with Clinical Laboratory Improvement Amendments of 1988 (CLIA '88).

B. Term of Approval

Based on the review and observations described in section III. of this final notice, we have determined that the Joint Commission's requirements for ASCs meet or exceed our requirements. Therefore, we approve the Joint Commission as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2008 through December 20, 2014.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 2, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–27120 Filed 11–13–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0578]

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of Health and Human Services under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services (DHHS), when that research is also regulated by the FDA.

Date and Time: The meeting will be held on Tuesday, December 9, 2008, from 3:30 p.m. to 6 p.m.

Location: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, or by e-mail: *carlos.peña@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up to date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 9, 2008, the Pediatric Advisory Committee will hear and discuss the recommendation of the Pediatric Ethics Subcommittee from its meeting on December 9, 2008, regarding a referral by an Institutional Review Board of a clinical investigation that involves both an FDA-regulated product and research involving children as subjects that is conducted or supported by DHHS.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the

year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 2, 2008. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. on December 9, 2008. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 24, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 25, 2008.

Electronic comments should be submitted to *http://www.regulations.gov*. Select Docket No. FDA–2008–N–0578 entitled ''G–CSF Stimulated Bone Marrow IRB Referral'' and follow the prompts to submit your statement. Written comments should be submitted to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please submit comments by 4:30 p.m. on December 2, 2008. Received comments may be viewed at *http://www.regulations.gov*, or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–27117 Filed 11–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0578]

Pediatric Ethics Subcommittee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Ethics Subcommittee of the Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Pediatric Advisory Committee on FDA, and certain Department of Health and Human Services (DHHS) regulatory issues.

Date and Time: The meeting will be held on Tuesday, December 9, 2008, from 9 a.m. to 3 p.m.

Location: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, or by e-mail: *carlos.peña@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up to date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 9, 2008, the Pediatric Ethics Subcommittee (subcommittee) of the Pediatric Advisory Committee will meet to discuss a referral by an Institutional Review Board (IRB) of a clinical investigation that involves both an FDA regulated product and research involving children as subjects that is conducted or supported by DHHS. The clinical investigation is entitled ''Children's Oncology Group Protocol ASCT0631: A Phase III Randomized Trial of Granulocyte Colony Stimulating Factor (G–CSF) Stimulated Bone Marrow vs. Conventional Bone Marrow as a Stem Cell Source in Matched Sibling Donor Transplantation.'' Because the clinical investigation would be regulated by FDA, and conducted or supported by the DHHS, both FDA and the Office for Human Research Protections, DHHS, will participate in the meeting.

After presentation of an overview of the IRB referral process, background information on the use of G–CSF stimulated bone marrow in stem cell transplantation, an overview of the protocol and the referring IRB's deliberations on the protocol, and a summary of public comments received concerning whether the protocol should proceed, the subcommittee will discuss the proposed protocol and develop a recommendation regarding whether the protocol should proceed. The subcommittee's recommendation will then be presented to the FDA Pediatric Advisory Committee on December 9, 2008; the announcement of the December 9, 2008, Pediatric Advisory Committee meeting can be found elsewhere in this issue of the **Federal Register**.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person on or before December 2, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on December 9, 2008. Those desiring to make formal oral presentations should notify the contact

person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 24, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 25, 2008.

Electronic comments should be submited to *http://www.regulations.gov*. Select Docket No. FDA–2008–N–0578 entitled ''G–CSF Stimulated Bone Marrow IRB Referral'' and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please submit comments by 4:30 p.m. on December 2, 2008. Received comments may be viewed at *http://www.regulations.gov*or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–27118 Filed 11–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Nursing Scholarship Program (NSP): Extension—(OMB No. 0915–0301)

The Nursing Scholarship Program (NSP) or ''Nursing Scholarship'' is a competitive Federal program which awards scholarships to individuals for attendance at schools of nursing. The program is administered by the Bureau of Clinician Recruitment and Service (BCRS) in HRSA. The scholarship consists of payment of tuition, fees, other reasonable educational costs, and a monthly support stipend. In return, the students agree to provide a minimum of 2 years of full-time clinical service (or an equivalent part-time commitment, as approved by the NSP) at a health care facility with a critical shortage of nurses as defined by the program.

Nursing scholarship recipients must be willing and are required to fulfill their NSP service commitment at a health care facility with a critical shortage of nurses in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Marianas, the U.S. Virgin Islands, the Territory of America Samoa, the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia. Students who are uncertain of their commitment to provide nursing in a health care facility with a critical shortage of nurses in the United States and its Territories are advised not to participate in this program.

The NSP needs to collect data to determine an applicant's eligibility for the program, to monitor a participant's continued enrollment in a school of nursing, to monitor the participant's compliance with the NSP service obligation, and to obtain data on its program to ensure compliance with legislative mandates and prepare annual reports to Congress. The following information will be collected: (1) From the applicants and/or the schools, general applicant and nursing school data such as full name, location, tuition/fees, and enrollment status; (2) from the schools, on an annual basis, data concerning tuition/fees and student enrollment status; and (3) from the participants and their health care facilities with a critical shortage of nurses, on a biannual basis, data concerning the participant's employment status, work schedule and leave usage. The BCRS enters the cost information into its computerized data system, along with the projected amount for the monthly stipend, to determine the amount of each scholarship award.

The estimated annual burden is as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	4,000	1	4,000	2	8,000
In-school monitoring	500	1	500	2	1,000

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
In-service monitoring	600	2	1,200	1	1,200
Total	5,100		10,200		10,200

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 6, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–27113 Filed 11–13–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White HIV/AIDS Program: Client-Level Data Reporting System: New

The Client-Level Data Reporting System (CLDRS), created in 2008 by the Health Resources and Services Administration (HRSA), was designed to collect information from grantees, as well as their subcontracted service providers, funded under Parts A, B, C, D, and F of the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Ryan White HIV/AIDS Program). The Ryan White HIV/AIDS Program provides Federal HIV/AIDS Programs under Title XXVI of the Public Health Service (PHS) Act with the flexibility to respond effectively to the changing HIV epidemic, with an emphasis on providing life-saving and life-extending services for people living with HIV/AIDS, and with targeting resources to areas that have the greatest needs.

All Program Parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quality of care. Accurate records of the providers receiving Ryan White HIV/AIDS Program funding, the services provided, and the clients served continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

Currently, the HIV/AIDS Bureau (HAB) requires that all Ryan White HIV/AIDS Program funded grantees and their contracted service providers report aggregate data annually using the Ryan White Data Report (RDR). Agencies report data related to the service provider, clients, service visits provided/clients served, client demographics, and health insurance payments. Aggregate data by definition cannot be merged and unduplicated across service providers within a given geographic area. As a result, grantees, and ultimately HAB, cannot obtain accurate counts of the number of individuals served by the Ryan White HIV/AIDS Program. Additionally, aggregate data cannot be analyzed with the detail that is required to assess quality of care or to sufficiently account for the use of Ryan White HIV/AIDS Program funds.

A well-designed and supported client level data reporting system, using a unique identifier that will be encrypted before transfer, would provide the grantee and HRSA with the requisite information to assess quality of care and unmet needs, and the ability to more accurately and efficiently report these figures to HAB and other funding agencies. These de-identified data will be able to accurately characterize the number of clients served by the Ryan White HIV/AIDS Program and the outcomes of the program services on a national scale.

The CLDRS provides data on the characteristics of Ryan White HIV/AIDS Program-funded grantees, their contracted service providers, and the clients being served with program funds. It is intended to support clinical quality management, performance measurement, service delivery, and client monitoring at both the system and client levels. The reporting system consists of two online data forms, the Grantee Information Form, the Service Provider Form and a data file containing the client-level data elements. Data will be submitted twice in the first year. The first submission will contain data for January through June, and the second submission will contain data for the entire calendar year. In subsequent years data will be collected on an annual basis.

The new legislation specifies increased grantee accountability and linking performance to budget. The CLDRS will be used to ensure compliance with the requirements of the reauthorized legislation, evaluate the progress of programs, to monitor grantee and provider performance, measure the Government Performance and Result Act (GPRA) and the Performance Assessment Rating Tool (PART) goals, and meet reporting responsibilities to the Department, Congress, and OMB.

In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected through the CLDRS is critical for HRSA, State and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems to investigate trends in service utilization, and to identify areas of greatest need.

Discussions were conducted with volunteer grantee agencies representing Parts A, B, C, D, and Minority AIDS Initiatives, Parts A and B, as a basis for the burden estimates for the CLDRS components that follow. These burden estimates are broken out by burden to grantee respondents and burden to provider respondents, and are presented in two tables. The first table represents the estimated burden for the first year data submission. The second table represents the estimated burden for years two and three.

The number of total burden hours for the CLD Collection System is estimated differently in year 1 than in years 2 and 3. The estimate for the first year

submission is based on providers that reported outpatient/ambulatory medical care, medical case management, and/or non-medical case management services in the 2007 Ryan White Data Report. These providers will be required to report client level data beginning in 2009. This first year estimate excludes providers of other direct client services (services other than those listed above) because these providers will not be required to report client level data until 2010. The estimate for years 2 and 3 include all providers that reported direct client services in the 2007 Ryan White Data Report. The mean of the total burden hours for years 1, 2, and 3 is 88,191 hours per year.

The total burden hours for the Client Report is estimated two ways. The first estimate is based on the number of providers that do not have and will not develop an electronic data system (approximately 3% of providers). The second estimate is based on the number of providers that will submit their Client Report using an electronic data system.

The estimated response burden for the first reporting period CLDRS submission is as follows:

TABLE 1—ESTIMATES OF AVERAGE ANNUALIZED HOUR BURDEN TO RESPONDENTS FOR THE FIRST YEAR

[Two 6-month reporting periods]

Component	Source of funding	Number of respondents	Responses per grantee	Total responses	Hours to complete/coordinate receipt of data reports	Total burden hours
Grantee Response Burden						
Grantee Report	Part A	56	2	112	1.27	142
	Part B	57	2	114	6.00	684
	Part C	357	2	714	0.39	278
	Part D	90	2	180	0.67	121
	Part A MAI	56	2	112	1.27	142
	Part B MAI	30	2	60	10.00	600
	Subtotal		646			1,967
Component		Number of respondents	Responses per provider	Total responses	Hours to develop/adjust CLD system	Total burden hours
Service Provider Response Burden						
CLD Collection System		†1,466	1	1,466	92.80	136,045
Component		Number of respondents	Responses per provider	Total responses	Hours per response	Total burden hours
Provider report		*†2,253	2	4,506	2.35	10,589
Component	Providers' Electronic Data Systems Capability	Number of respondents	Responses per provider	Total responses	Hours to collect/report data per response	Total burden hours
Client Report (client-level data).	No	45	2	90	106.25	9,563
	Yes	†1,466	2	2,932	3.75	10,995
	Subtotal	**1,511				20,558
TOTAL BURDEN, YEAR 1						169,159

**All providers, including direct service providers and administrative support service-only providers.*

***Outpatient/ambulatory medical care, medical case management, and/or nonmedical case management providers that will submit a Client Report in 2009.*

† *These numbers are not duplications.*

TABLE 2—ESTIMATES OF AVERAGE ANNUALIZED HOUR BURDEN TO RESPONDENTS FOR THE SECOND AND THIRD YEARS

[One reporting period per year]

Component	Source of funding	Number of respondents	Responses per grantee	Total responses	Hours to complete/coordinate receipt of data reports	Total burden hours
Grantee Response Burden						
Grantee Report	Part A	56	1	56	1.27	71
	Part B	57	1	57	6.00	342
	Part C	357	1	357	0.39	139
	Part D	90	1	90	0.67	60
	Part A MAI	56	1	56	1.27	71
	Part B MAI	30	1	30	10.00	300

TABLE 2—ESTIMATES OF AVERAGE ANNUALIZED HOUR BURDEN TO RESPONDENTS FOR THE SECOND AND THIRD YEARS—Continued

[One reporting period per year]

Component	Source of funding	Number of respondents	Responses per grantee	Total responses	Hours to complete/coordinate receipt of data reports	Total burden hours
	Subtotal		646			983
Component		Number of respondents	Responses per provider	Total responses	Hours to develop/adjust CLD system	Total burden hours
Service Provider Response Burden						
CLD Collection System		583	1	583	92.80	54,102
Component		Number of respondents	Responses per provider	Total responses	Hours per response	Total burden hours
Provider Report		2,253*	1	2,253	2.35	5,295
Component	Providers' electronic data systems capability	Number of respondents	Responses per provider	Total responses	Hours to collect/report data per response	Total burden hours
Client Report (client-level data).	No	63	1	63	106.25	6,694
	Yes	2,049	1	2,049	3.75	7,684
	Subtotal		**2,112			14,378
TOTAL BURDEN, YEAR 2						74,758
TOTAL BURDEN, YEAR 3						20,656

† *All providers, including direct service providers and administrative support service-only providers.*

†† *All direct service providers, including those outpatient/ambulatory medical care, medical case management, and/or nonmedical case management providers that will submit a Client Report in 2009 as well as other direct service providers that will submit a Client Report in 2010.*

[a] *There is no CLD Collection system adjustment in Year 3, so the total burden is less.*

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: November 7, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–27115 Filed 11–13–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0084]

Privacy Act of 1974; Department of Homeland Security Internal Affairs System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of records notices, the Department of Homeland Security proposes to consolidate two legacy record systems titled, Treasury/CS.127 Internal Affairs Records System, and Justice/INS.002 INS Office of Internal Audit Investigations Index and Records into one Department of Homeland Security-wide system of records notice titled Internal Affairs. This system will allow the Department of Homeland Security to collect and maintain records on applicants, past and present employees, contractors, and contractor applicants relating to investigations conducted by Department of Homeland Security Headquarters or its components with the exception of investigations conducted by the Office of the Inspector General, which are covered by DHS/OIG–002 Investigations Data Management System. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's internal affairs record systems. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this SORN elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed. This consolidated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 15, 2008. This new system will be effective December 15, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0084 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at

http://www.regulations.gov, including any personal information provided.

• *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern internal affairs records.

As part of its efforts to streamline and consolidate its Privacy Act record systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS internal affairs records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling internal affairs records. DHS will use this system to collect and maintain internal affairs records submitted by DHS personnel and others.

In accordance with the Privacy Act of 1974, and as part of DHS's ongoing effort to review and update legacy system of records notices, DHS proposes to consolidate two legacy record systems titled, Treasury/CS.127 Internal Affairs Records System (66 FR 52984 October 18, 2001) and Justice/INS.002 INS Office of Internal Audit Investigations Index and Records (67 FR 64136 January 3, 2002), into one DHS-wide system of records notice titled Internal Affairs. This system will allow DHS to collect and maintain records on applicants, past and present employees, contractors, and contractor applicants relating to investigations conducted by DHS Headquarters or its components with the exception of investigations conducted by the Office of the Inspector General (OIG), which are covered by DHS/OIG–002 Investigations Data Management System. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's internal affairs record systems. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this SORN elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed. This consolidated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the Internal Affairs System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS:

DHS/ALL–020.

SYSTEM NAME:

Department of Homeland Security Internal Affairs Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in component offices of DHS, in both Washington, DC, and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any applicants for Federal employment, past and present employees, contractors, and contractor applicants, or any other individual who is subject to, or involved in, an integrity or disciplinary inquiry or investigation not handled by OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

• Individual identifying data, which may include some or all of the following: full name, date of birth, social security number, addresses, duty station, grade, job series, and entrance on duty date;

• Allegations received and method received;

• Relevant information from background investigations;

• Integrity investigations;

• Investigation files;

• Incident location;

• Case agent/officer or supervisor;

• Case/prosecution status;

• Photographic images, videotapes, voiceprints, DVDs;

• Letters, e-mails, memoranda and reports;

• Exhibits, evidence, statements and affidavits; and

• Any other information gathered in the course of an integrity or disciplinary inquiry or investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; Executive Order 9397.

PURPOSE(S):

The purpose of this system is to collect and maintain records on applicants, past and present employees, contractors, and contractor applicants relating to integrity or disciplinary inquiries or investigations conducted by DHS Headquarters or its components, except for those investigations conducted by OIG.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney

Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

I. To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena from a court of competent jurisdiction.

J. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

K. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

L. To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and in circumstances when union officials represent employees in investigations and personnel actions.

M. To a court, prosecutor, and/or defense attorney in satisfaction of the agency's obligations under the Giglio, Jenks, or Brady decisions;

N. To management officials at Federal, State or local agencies who may be in a position to take disciplinary or other corrective action and to boards and panels who may be charged with making recommendations or proposals regarding remedial action.

O. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by the individual's name, date of birth, or social security number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

The file records are maintained as long as the subject of the investigation is employed by DHS, and then one year after the subject terminates employment. The files are then transferred to the Federal Records Center for a period of 25 years, after which they are destroyed.

SYSTEM MANAGER AND ADDRESS:

For Headquarters and components of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Sources of information include: individuals who are the subject of the investigation or inquiry, employers, law enforcement organizations, members of the public, witnesses, education institutions, government agencies, credit bureaus, references, neighborhood checks, confidential sources, medical service providers, personal interviews, photographic images, military, financial institutions, citizenship, birth and tax records, and the applicant's, employee's or contractor's personnel history and application forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In additional, the Secretary of Homeland Security has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (2), (k)(3), and (5).

Dated: November 6, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–27091 Filed 11–13–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of the retirement of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to retire the following Privacy Act system of records notice, Treasury/CS.064 (October 18, 2001), from its inventory of record systems and rely upon the Government-wide system of records notice issued by the General Services Administration, GSA/GOVT–6 GSA SmartPay Purchase Charge Card Program (November 3, 2006), which is written to cover all Federal government purchase charge card record systems.

DATES: These changes will take effect on December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile (703) 235–0442.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is retiring the system of records notice, Treasury/CS.064 Purchase Card Files (66 FR 52984 October 18, 2001), that was issued by the Customs Service, Department of the Treasury prior to the creation of the Department of Homeland Security.

DHS will continue to collect and maintain records regarding individuals who are in possession of Department purchase cards and will rely upon the existing Federal Government-wide system of records notice titled GSA/GOVT–6 GSA SmartPay Purchase Charge Card Program (71 FR 64707 November 3, 2006), which is written to cover all Federal purchase charge card record systems.

Eliminating this notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–27096 Filed 11–13–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0112]

Review and Revision of the National Infrastructure Protection Plan

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice and request for comments.

SUMMARY: This notice informs the public that the Department of Homeland Security (DHS) is currently revising the 2006 National Infrastructure Protection Plan (NIPP) and, as part of a comprehensive national review process, solicits public comment on issues or language in this draft document that need to be updated during this triennial review cycle.

DATES: Written comments must be submitted on or before December 1, 2008.

ADDRESSES: Comments must be identified by docket number DHS–2008–0112 and may be submitted by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Charles H. Davis, NIPP Program Management Office, Mail Stop 8530, Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20528–8530.

FOR FURTHER INFORMATION CONTACT: Larry L. May, NIPP Program Management Office, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528, 703–235–3648 or *NIPP@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

DHS invites interested persons to contribute suggestions and comments for the revision of the National Infrastructure Protection Plan (NIPP) by submitting written data, views, or arguments. Comments that will provide the most assistance to DHS in revising the NIPP will explain the reason for any recommended changes to the NIPP and include data, information, or authority that supports such recommended changes. Identifying the proposed changes by page and line number, and/or Figure/Table number is requested. DHS first solicited comments, issues and/or language on the 2006 NIPP as part of this triennial NIPP revision, in a previous **Federal Register** Notice published on June 6, 2008, (72 FR 32341). All of the public comments received in response to the June 6, 2008, notice have been reviewed, adjudicated and as appropriate revisions have been incorporated into the draft 2009 National Infrastructure Protection Plan which is available for review in docket DHS–2008–0112 on *www.regulations.gov.*

Once all comments are received in response to this notice, they will be adjudicated, addressed, and DHS will distribute the revised NIPP for inter-agency review and concurrence through the Homeland Security Council (HSC) process. Upon receipt and adjudication of the comments resulting from the HSC review, a final document will be prepared for review and signature by the Secretary of Homeland Security and the respective heads of the federal departments and agencies in preparation for its reissue.

The 2009 reissue of the NIPP will represent the culmination of a comprehensive national review process involving the collaboration of critical infrastructure and key resources (CIKR) protection partners at all levels of government and the private sector; the consideration and inclusion of comments from the American public; and the benefit of shared knowledge and experience resulting from the robust public-private partnership established through the NIPP sector partnership model. Because of the open and collaborative process being used to review and update the document, the 2009 NIPP will be of maximum value to all CIKR protection partners and the public.

Instructions: All submissions received must include the agency name and docket number for this action. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. You may submit your comments and material by one of the methods specified in the **ADDRESSES** section above. Please submit your comments and material by only one means to avoid the receipt and review of duplicate submissions. If you submit comments by mail, your submission should be an unbound document and no larger than 8.5 by 11 inches to enable copying and electronic document management. If you want DHS to acknowledge receipt of comments by mail, please include with your comments a self-addressed, stamped postcard that includes the docket number for this action. We will date your postcard and return it to you via U.S. mail.

All comments or recommended changes should be identified by page and line number, and/or Figure or Table number.

Docket: Background documents and comments received can be viewed at *http://www.regulations.gov.*

II. Background

The NIPP sets forth a comprehensive risk management framework and clearly defines critical infrastructure protection roles and responsibilities for the DHS; Sector-Specific Agencies (SSAs); and other Federal, State, regional, local, tribal, territorial, and private-sector partners. The NIPP provides a coordinated approach for establishing national priorities, goals, and requirements for infrastructure protection so that funding and resources are applied in the most effective manner. The NIPP risk management framework responds to an evolving risk landscape; as such, there will always be changes to the NIPP—from relatively minor to more significant. The 2006 NIPP established the requirement to conduct a comprehensive review of the NIPP and fully reissue the plan every three years to ensure that it is current and of maximum value to all security partners as a national unifying plan for critical infrastructure protection. However, it is also important to provide periodic reviews to identify and address significant issues so that all NIPP partners are aware of these issues and their potential impact. Review of the NIPP in response to the June 2008 FRN provided proposed changes. The purpose of this notice is to invite interested parties to review the resulting draft of the revised NIPP (see *http://www.regulations.gov*) and propose edits and changes to this new document. Note that a detailed technical edit and check of acronyms will be conducted when all the comments are incorporated.

III. Initial List of Issues To Be Updated in the NIPP

Since the NIPP was released in June 2006, DHS and its partners have been working to implement the risk management framework and the sector partnership model to protect the Nation's CIKR. Throughout this implementation, DHS has engaged the NIPP feedback mechanisms to capture lessons learned and issues that need to be revised and updated in future versions of the NIPP. This section presents a brief summary of some of these issues to serve as a guide to reviewers and commenters in their review of the draft revised NIPP:

- Publishing the Sector Specific Plans (SSPs).
- Establishment of Critical Manufacturing as the 18th CIKR sector and designation of Education as a subsector of Government Facilities.
- Expansion of the sector partnership model to include the geographically focused Regional Consortium Coordinating Council (RCCC).
- Integration with State and local fusion centers.
- Evolution of the National Asset Database (NADB) to the Infrastructure Information Collection System (IICS) and the Infrastructure Data Warehouse (IDW).
- Developments in the programs, approaches, and tools used to implement the NIPP risk management framework.
- Updates on risk methodologies, information sharing mechanisms, and other DHS-led programs.

• Expansion and revision of the metrics discussion under the NIPP risk management framework.

• Description of additional Homeland Security Presidential Directives, National Strategies, and legislation.

• Release of the Chemical Facility Anti-Terrorism Standards (CFATS), regulating a segment of those industries that involve the production, use, and storage of high-risk chemicals.

• Discussion of expanded education, training, outreach, and exercise programs.

• Evolution from the National Response Plan (NRP) to the National Response Framework (NRF).

• Inclusion of further information on research and development and modeling, simulation, and analysis efforts.

Additionally, the revised NIPP integrates the concepts of resiliency and protection and broadens the focus of NIPP-related programs and activities to the all-hazards environment.

While the basic structure and principles have not changed, changes have been made throughout the document and interested parties are encouraged to read the portions of interest to them carefully. For purposes of review, the draft revised NIPP can be found at *http://www.regulations.gov.*

Robert B. Stephan,

Assistant Secretary, Office of Infrastructure Protection, Department of Homeland Security.

[FR Doc. E8–27106 Filed 11–13–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1795–DR]

Indiana; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1795–DR), dated September 23, 2008, and related determinations.

DATES: *Effective Date:* November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 23, 2008.

Franklin, Gibson, Ohio, Orange, Ripley, Vanderburgh, and Warrick Counties for Individual Assistance (already designated for Public Assistance).

Jasper, Posey, and St. Joseph Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–27036 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1808–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1808–DR), dated October 31, 2008, and related determinations.

DATED: *Effective Date:* October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 31, 2008, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, flooding, and tornadoes during the period of September 11–17, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Anderson, Butler, Chase, Cowley, Greenwood, Harper, Harvey, Russell, and Sumner Counties for Public Assistance.
All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–27035 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1807–DR]

Virgin Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of the U.S. Virgin Islands (FEMA–1807–DR), dated October 29, 2008, and related determinations.

DATES: *Effective Date:* October 29, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 29, 2008, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of the U.S. Virgin Islands resulting from Hurricane Omar during the period of October 14–16, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Territory of the U.S. Virgin Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the Territory, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Marianne C. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following islands of the Territory of the U.S. Virgin Islands have been designated as adversely affected by this major disaster:

The islands of St. Croix and St. Thomas, including Water Island for Public Assistance. Direct Federal assistance is authorized.

All islands within the Territory of the U.S. Virgin Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–27032 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1798–DR]

Puerto Rico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1798–DR), dated October 1, 2008, and related determinations.

DATES: *Effective Date:* November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 1, 2008.

Las Piedras and Naguabo Municipalities for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–27034 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1791–DR]

Texas; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1791–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 13, 2008.

Brazos, Calhoun, Cass, Marion, Morris, Panola, Robertson, and Upshur Counties for Public Assistance.

Gregg and Harrison Counties for Public Assistance (already designated for Individual Assistance).

Austin, Madison, Sabine, and Washington Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–27033 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of the National Advisory Committee meeting.

SUMMARY: This notice announces the date, time, location, and agenda for the next meeting of the National Advisory Council (NAC). At the meeting, the subcommittees will be reporting back regarding their work since the August 13–14, 2008 meeting. This meeting will be open to the public.

DATES: *Meeting Dates:* Wednesday, December 10, 2008, from approximately 9:45 a.m. to 5 p.m. and Thursday, December 11, 2008, 8:30 a.m. to 3:30 p.m. A public comment period will take place on the afternoon of December 11, 2008, between approximately 2:30 p.m. and 3 p.m.

Comment Date: Written comments or requests to make oral presentations must be received by December 1, 2008.

ADDRESSES: The meeting will be held at The Fairmont Hotel, 1717 North Akard Street, Dallas, Texas 75201. Persons wishing to make an oral presentation, or who are unable to attend or speak at the meeting, may submit written comments. Written comments and requests to make oral presentations at the meeting should be provided to the address listed in the **FOR FURTHER INFORMATION CONTACT** section and must be received by December 1, 2008. All submissions received must include the Docket ID FEMA–2007–0008 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow instructions for submitting comments on the Web site.

E-mail: FEMA-RULES@dhs.gov. Include Docket ID FEMA–2007–0008 in the subject line of the message.

Facsimile: (703) 483–2999.

Mail: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Hand Delivery/Courier: Office of the Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the Docket ID FEMA–2007–0008. Comments received will also be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (Room 718), Washington, DC 20472, telephone 202–646–2699, fax 202–646–4176, and e-mail *FEMA-NAC@dhs.gov* or *izola.shaw@associates.dhs.gov.* The NAC's Web site is located at: *http://www.fema.gov/about/nac/.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The National Advisory Council (NAC) will meet for the purpose of reviewing the progress and/or potential recommendations of the following NAC subcommittees: Stafford Act, National Response Framework, National Incident Management System, Post-Disaster Housing, Special Needs, and Public/Private Partnerships. The council will receive an update on the Regional Advisory Councils, transition issues, and other matters.

Public Attendance: The meeting is open to the public. Please note that the meeting may close early if all business is finished. Persons with disabilities who require special assistance should advise the Designated Federal Officer of their anticipated special needs as early as possible. Members of the public who wish to make comments on Thursday, December 11, 2008 between 2:30 p.m. and 3 p.m. are requested to register in advance, and must be present and seated by 1:30 p.m. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

Dated: November 3, 2008.

Harvey E. Johnson, Jr.,

Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. E8–27040 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–131, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–131, Application for Travel Document; OMB Control No: 1615–0013.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request 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 August 27, 2008, at 73 FR 50633, allowing for a 60-day public comment period. USCIS received one comment for this information collection. The comment is addressed in item 8 of the supporting statement.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 15, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0013 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–131. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. Certain aliens, namely permanent or conditional residents, refugees or asylees and aliens abroad use this information collection to apply for a travel document to lawfully enter or reenter the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 164,103 responses at 1 hour and 55 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 311,796 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: November 10, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–27125 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Forms G–1041 and G–1041A, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Forms G–1041 and G–1041A, Historical Records Services Request; OMB Control No. 1615–0096.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 13, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please add the OMB Control Number 1615–0096 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Forms G–1041 and 1041A. Should USCIS decide to revise these forms it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to these forms.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Historical Records Services Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms G–1041 and G–1041A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. These forms will be used by USCIS to facilitate an accurate and timely response to genealogy requests.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–1041—15,250 responses at 30 minutes (.50) per response. Form G–1041—11,347 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,299 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: November 10, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8–27126 Filed 11–13–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–60]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Disaster Housing Assistance Program—Ike (DHAP–Ike)

AGENCY: Office of Public and Indian Housing.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 28, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Compliance Officer, QDAM Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail *Lillian_Deitzer@hud.gov*, telephone (202) 402–2374. This is not a toll-free number. Copies of documentation submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection requirement as described below.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Housing Assistance Program—Ike (DHAP–Ike).

Description of Information Collection: This document provides notice that HUD and the Federal Emergency Management Agency (FEMA) have executed an Interagency Agreement (IAA) establishing a grant program called the Disaster Housing Assistance Program—Ike (DHAP–Ike), and that the operating requirements for the DHAP–Ike have been issued through HUD Notice PIH 2008–38. DHAP–Ike is a HUD–FEMA initiative to provide monthly rental assistance, case management services, security deposit and utility deposit assistance for certain families displaced from their homes by Hurricanes Ike or Gustav.

OMB Control Number: 2577–New.

Agency Form Numbers: Rent Subsidy Contract, Grant Agreement.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 1,038,300; the number of respondents is 300; the frequency of response for each form varies from quarterly and annually.

Status: This is a request for new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 6, 2008.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E8–27128 Filed 11–13–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–37]

Notice of Proposed Information Collection: Comment Request; Single Family Premium Collection Subsystem—Periodic (SFPCS–P)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: January 13, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202)402–8048.

FOR FURTHER INFORMATION CONTACT: Sonja Y. Sharpe, Branch Chief, Single Family Insurance Operations Branch, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–3391 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Premium Collection Subsystem—Periodic (SFPCS–P).

OMB Control Number, if applicable: 2502–0536.

Description of the need for the information and proposed use: The Single Family Premium Collection Subsystem—Periodic (SFPCS–P) allows the lenders to remit the Periodic Mortgage Insurance Premiums using funds obtained from the mortgagor during the collection of the monthly mortgage payment. The SFPCS–P strengthens HUD's ability to manage and process periodic single-family mortgage insurance premium collections and corrections to submitted data. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders use Automated Clearing House (ACH) application for all transmissions with SFPCS–P. The authority for this collection of information is specified in 24 CFR 203.264 and 24 CFR 203.269. In general, the lenders use the ACH application to remit the periodic premium payments through SFPCS–P for the required FHA insured cases and to comply with the Credit Reform Act.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The public reporting burden for this collection of information is estimated as the number of hours needed to prepare the information collection is 2,160 annually, the estimated number of respondents is 1,200 annually, the frequency of response is monthly generating 14,400 responses annually, and the estimated time per response is approximately 15 minutes. Since remittances are made through the ACH applications the periodic remittance is submitted electronically and there is no paperwork to complete and mail in.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 4, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8–27127 Filed 11–13–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 6, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–26887 Filed 11–13–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5266–D–01]

Order of Succession for the Office of the Assistant Secretary for Administration

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Secretary for Administration designates the Order of Succession for the Office of Administration. This Order of

Succession supersedes the Order of Succession for the Assistant Secretary for Administration published on October 18, 2006.

DATES: *Effective Date:* October 28, 2008.

FOR FURTHER INFORMATION CONTACT: Michelle Gaston, Director, Office of Budget and Management Support, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 6210, Washington, DC 20410–3000, telephone number 202–708–1583. (This is not a toll-free number.) For individuals with speech or hearing impairments, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary for Administration when, by reason of absence, disability, or vacancy in the office, the Assistant Secretary for Administration is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice published on October 18, 2006 (71 FR 61498).

Accordingly, the Assistant Secretary for Administration designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Administration is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Administration, the following officials within the Office of Administration are hereby designated to exercise the powers and perform the duties of the Assistant Secretary for Administration:

(1) General Deputy Assistant Secretary for Administration;

(2) Deputy Assistant Secretary for Human Resource Management;

(3) Deputy Assistant Secretary for Budget and Management Support;

(4) Director, Office of Security and Emergency Planning;

(5) Director, Office of Human Resource Management;

(6) Director, Office of Field Administrative Resources.

The officials shall perform the functions and duties of this office in the order specified herein, and no official shall serve unless all the other officials whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Administration published on October 18, 2006 (71 FR 61498).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 28, 2008.

Keith A. Nelson,

Assistant Secretary for Administration.

[FR Doc. E8–27130 Filed 11–13–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–61]

Public Housing Capital Fund Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Each year Congress appropriates funds to approximately 3,200 Public Housing Authorities (PHAs) for modernization, development, financing, and management improvements. The funds are allocated based on a complex formula. The forms in this collection are used to appropriately disburse and utilize the funds provided to PHAs. Additionally, these forms provide the information necessary to approve a financing transaction in addition to any Mixed-Finance and Capital Fund Financing transactions. Respondents include the approximately 3,200 PHA receiving Capital Funds and other PHAs wishing to pursue financing.

DATES: *Comments Due Date:* December 15, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2577–0157) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Capital Fund Program.

OMB Approval Number: 2577–0157.

Form Numbers: HUD–50029, HUD–50030, HUD–5084, HUD–5087, HUD–51000, HUD–51001, HUD–51002, HUD–51003, HUD–510004, HUD–51915, HUD–51915–A, HUD–51971–1, HUD–51971–ll, HUD–52396, HUD–52427, HUD–52482, HUD–52483–A, HUD–52484, HUD–52485, HUD–52651–A, HUD 52829, HUD–52830, HUD–52832, HUD–52833, HUD–52845, HUD–52846, HUD–52847, HUD–52849, HUD–53001, HUD–53015, HUD–5370, HUD–5370–EZ, HUD–5370–C, HUD–5372, HUD–5378, HUD–5460.

Description of the Need for the Information and its Proposed Use: Each year Congress appropriates funds to approximately 3,200 Public Housing Authorities (PHAs) for modernization, development, financing, and management improvements. The funds are allocated based on a complex formula. The forms in this collection are

used to appropriately disburse and utilize the funds provided to PHAs. Additionally, these forms provide the information necessary to approve a financing transaction in addition to any Mixed-Finance and Capital Fund Financing transactions. Respondents include the approximately 3,200 PHA receiving Capital Funds and other PHAs wishing to pursue financing.

Frequency of Submission: On occasion, monthly, annually.

REPORTING BURDEN

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
3,105	23.460	....	4.497	....	327,590

Total Estimated Burden Hours: 327,590.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 6, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–27129 Filed 11–13–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2008–N0115; 10120–1113–0000–C2]

Revised Recovery Plan for Sihek or Guam Micronesian Kingfisher (Halcyon cinnamomina cinnamomina)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of the Revised Recovery Plan for the Sihek or Guam Micronesian Kingfisher *(Halcyon cinnamomina cinnamomina).* This subspecies, which was found only on the island of Guam, was federally listed as endangered in 1984.

ADDRESSES: Copies of the recovery plan are available by request from the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone: 808–792–9400). An electronic copy of the recovery plan is also available at *http://endangered.fws.gov/recovery/index.html#plans.* Printed copies of the recovery plan will be available for distribution in 4 to 6 weeks.

FOR FURTHER INFORMATION CONTACT: Fred Amidon, Fish and Wildlife Biologist, Pacific Islands Fish and Wildlife Office, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, and estimating time and cost for implementing the measures needed for recovery.

Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. In fulfillment of this requirement, the Draft Revised Recovery Plan for the Sihek or Guam Micronesian Kingfisher *(Halcyon cinnamomina cinnamomina)* was made available for public comment from April 28 to June 28, 2004 (69 FR 23210). Information provided during the public comment period was considered in our preparation of this revised recovery plan, and is summarized in an appendix to the plan.

The sihek, or Guam Micronesian kingfisher, is federally listed as endangered and is also listed as endangered by the Territory of Guam. Sihek are endemic to the island of Guam in the Mariana archipelago. Sihek were last observed in the wild on Guam in 1988 and are now believed to be extirpated from the wild. Currently, sihek are represented by a captive population of 100 individuals in 17 captive propagation facilities in the mainland United States and Guam. Sihek utilized a wide variety of habitats including limestone forest, strand forest, ravine forest, agricultural forest, secondary forest, and forest openings. However, mature forests with appropriate nest sites may be an important component of sihek reproductive activities.

Habitat degradation and loss, human persecution, contaminants, and introduced species such as disease organisms, cats *(Felis catus),* rats (*Rattus* spp.), black drongos *(Dicrurus macrocercus),* monitor lizards *(Varanus indicus),* and brown tree snakes *(Boiga irregularis)* have all been suggested as factors in the population decline of this subspecies. However, predation by the brown tree snake is believed to be the overriding factor in the extirpation of sihek. Factors that continue to prevent the recovery of the sihek include poor reproductive success and high mortality in the captive population and the continued presence of brown tree snakes on Guam. Recovery actions in this revised plan are designed to address threats to the sihek to achieve the recovery objectives of downlisting to threatened status and then eventually delisting (removing from the list of endangered and threatened species).

To prevent the extinction of the sihek, the highest priority recovery tasks are to increase the size of the captive population, control brown tree snakes on Guam, and reestablish sihek in the wild on Guam. Increasing the captive population is to be accomplished by expanding the captive propagation program for the subspecies on Guam, genetic management, increasing reproductive success of the captive population, and decreasing juvenile and adult mortality in the captive population. Ideally, reestablishing sihek in the wild on Guam will occur after the captive population has increased further and optimal numbers of sihek are available for release to keep the captive population viable. However, if efforts to either increase the captive population or control brown tree snakes are not successful, it may be necessary to reevaluate the recovery strategy for the sihek. Reintroduction to Guam will

require a thorough reintroduction program and extensive predator control efforts, especially brown tree snake control. Once sihek have been reestablished in the wild, expanding predator control efforts to additional areas, habitat protection and restoration, and monitoring for additional threats to the subspecies would receive increased focus. Additionally, throughout the recovery program, efforts should be made to increase public awareness of sihek recovery needs and to coordinate and monitor recovery efforts.

The sihek may be downlisted from endangered to threatened when the following criteria are met: (1) Sihek occur in 2 subpopulations (one in northern Guam and one in southern Guam) of at least 500 adults each; (2) both subpopulations are either stable or increasing based on quantitative surveys or demographic monitoring that demonstrate an average intrinsic population growth rate (lambda) of greater than 1.0 over a period of at least 5 consecutive years; (3) sufficient sihek habitat, based on quantitative estimates of territory and home range size, is protected and managed to achieve criteria 1 and 2 above; and (4) brown tree snakes and other introduced predators are controlled over 5 consecutive years at a level sufficient to achieve criteria 1 and 2 above.

The sihek may be removed from the Federal list of endangered and threatened species when the following criteria are met: (1) Sihek occur in 2 subpopulations (one in northern Guam and one in southern Guam) of at least 1,000 adults each; (2) both subpopulations are either stable or increasing based on quantitative surveys or demographic monitoring that demonstrate an average intrinsic population growth rate (lambda) of greater than 1.0 over a period of at least 10 consecutive years; (3) sufficient sihek habitat, based on quantitative estimates of territory and home range size, is protected and managed to achieve criteria 1 and 2 above; and (4) brown tree snakes and other introduced predators are controlled over 10 consecutive years at a level sufficient to achieve criteria 1 and 2 above.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 3, 2008.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E8–27088 Filed 11–13–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–22290, F–22305; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc. for lands located in the vicinity of Buckland and Noatak, Alaska. Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 15, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Judy A. Kelley,

Land Law Examiner, Resolution Branch (962).

[FR Doc. E8–27078 Filed 11–13–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–070–08–1610–DO]

Notice of Intent To Revise a Resource Management Plan for the Buffalo Field Office, Wyoming, and Prepare an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Field Office, Buffalo, Wyoming, intends to revise a Resource Management Plan (RMP) and prepare an associated Environmental Impact Statement (EIS) for the Buffalo Field Office and by this notice is announcing the beginning of the scoping process and soliciting input on the identification of issues, proposed planning criteria, and calling for resource information. The RMP will replace the existing Buffalo Resource Management Plan of 1985.

DATES: The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site *http://www.blm.gov/wy/st/en/programs/Planning/rmps/buffalo.html* at least 15 days prior to the first meeting. We will provide additional opportunities for public participation upon publication of the Draft RMP/EIS, including a 90-day public comment period.

ADDRESSES: You may submit comments on issues, planning criteria, and resource information by any of the following methods:

- *Web site: http://www.blm.gov/wy/st/en/programs/Planning/rmps/buffalo.html.*
- *E-mail: BRMP_Rev_WYMail@blm.gov.*
- *Fax:* (307) 684–1122.
- *Mail:* Buffalo RMP Revision, Attn: Thomas Bills, RMP Technical Coordinator, Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834.

Documents pertinent to this proposal may be examined at the BLM Buffalo Field Office.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Linda Slone, RMP Project Manager; Telephone (307) 261–7520; e-mail *linda_slone@blm.gov* .

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Field Office, Buffalo, Wyoming, intends to revise an RMP and prepare an associated EIS for the Buffalo Field

Office and announces the beginning of the scoping process and seeks public input on issues, planning criteria, and resource information. The planning area is located in Campbell, Johnson, and Sheridan counties, Wyoming and encompasses approximately 800,000 acres of public surface land and 4.7 million acres of Federal mineral estate. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process.

1. Preliminary Issues

Preliminary issues for the planning area have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. These issues are: Energy and mineral resource exploration and development; access to and transportation on BLM lands; recreation and off-highway vehicle management; wildlife habitat management; management and the cumulative effect of land uses and human activities on threatened, endangered, candidate, and sensitive species and their habitats; vegetation, including impacts of invasive non-native species; management of cultural and paleontological resources, including historic trails; landownership adjustments; fire management; livestock grazing; visual resource management; Areas of Critical Environmental Concern (ACEC), Wilderness Study Areas (WSA), Wild and Scenic Rivers (W&SR), or other special management areas; and air and water quality.

2. Preliminary Planning Criteria

Proposed planning criteria are the following:

1. The proposed RMP will be in compliance with Federal Land Policy and Management Act and all other applicable laws, regulations, and policies.

2. Impacts from the management alternatives considered in the revised RMP will be analyzed in an EIS developed in accordance with regulations at 43 CFR 1610 and 40 CFR 1500.

3. Lands covered in the RMP will be public surface land and Federal mineral estate managed by BLM. No decisions will be made relative to non-BLM administered lands.

4. The planning process will follow 10 stages of an EIS-level planning process: conducting scoping; development of a Management Situation Analysis report; formulation of alternatives; analysis of the alternatives' effects; selection of a preferred alternative; publication of a Draft RMP/EIS, providing a 90-day public comment period; preparation and publication of a Proposed Plan/Final EIS, providing a 30-day public protest period; and preparation of a Record of Decision and Approved RMP. For specific information, please see the Land Use Planning Handbook, H–1601–1.

5. For program specific guidance of land use planning level decisions, the process will follow the Land Use Planning Manual 1601 and Handbook H–1601–1, Appendix C.

6. Broad-based public participation will be an integral part of the planning and EIS process.

7. Decisions in the plan will strive to be compatible with the existing plans and policies of adjacent local, State, Federal, and Tribal agencies as long as the decisions are consistent with the purposes, policies, and programs of Federal law, and regulations applicable to public lands.

8. The RMP will recognize the State's responsibility and authority to manage wildlife. BLM will coordinate with the Wyoming Game and Fish Department.

9. The National Sage-grouse Strategy requires that impacts to sagebrush habitat and sagebrush-dependent wildlife species be analyzed and considered in BLM land use planning efforts for public lands with sagebrush habitat in the planning area.

10. The RMP will recognize valid and existing rights.

11. The RMP/EIS will incorporate management decisions brought forward from existing planning documents.

12. The planning team will work cooperatively and collaboratively with cooperating agencies and all other interested groups, agencies, and individuals.

13. The BLM and cooperating agencies will jointly develop alternatives for resolution of resource management issues and management concerns.

14. The planning process will incorporate the Standards for Healthy Rangelands and Guidelines for Livestock Grazing Management for Public Lands Administered by the Bureau of Land Management in the State of Wyoming as goal statements.

15. Areas with special environmental quality will be protected and if necessary designated as ACECs, W&SR, or other appropriate designations.

16. Any public land surface found to meet the suitability factors to be given further consideration for inclusion in the W&SR System will be addressed in the RMP revision effort in terms of developing interim management options in the alternatives for the EIS.

17. WSAs will continue to be managed under the Interim Management Policy (IMP) for Lands under Wilderness Review until Congress either designates all or portions of the WSA as wilderness or releases the lands from further wilderness consideration. It is no longer the policy of the BLM to make formal determinations regarding wilderness character, to designate additional WSAs through the RMP process, or to manage any lands other than existing WSAs in accordance with the Wilderness IMP.

18. Forest management strategies will be consistent with the Healthy Forests Restoration Act.

19. Fire Management strategies will be consistent with the Wyoming Fire Management Plan (2004).

20. GIS and metadata information will meet Federal Geographic Data Committee (FGDC) standards, as required by Executive Order 12906. All other applicable BLM data standards will also be followed.

21. The planning process will involve American Indian Tribal governments and will provide strategies for the protection of recognized traditional uses.

22. All proposed management actions will be based upon current scientific information, research and technology, as well as existing inventory and monitoring information.

23. The RMP will include adaptive management criteria and protocols to deal with future issues.

24. The planning process will use the Wyoming BLM Mitigation Guidelines to develop management options and alternatives and analyze their impacts, and as part of the planning criteria for developing the options and alternatives and for determining mitigation requirements.

25. A reasonable foreseeable development scenario for fluid minerals will be developed.

26. Planning and management direction will be focused on the relative values of resources and not the combination of uses that will give the greatest economic return or economic output.

27. Where practicable and timely for the planning effort, current scientific information, research, and new technologies will be considered.

28. Known areas in the Buffalo planning area with coal development potential are located in Campbell and Sheridan counties, Wyoming. Coal screening determinations were made on these areas and updated during planning efforts for the existing Buffalo

RMP and the Thunder Basin National Grasslands Land and Resource Management Plan. No additional coal screening determinations with associated coal planning decisions are planned for the Buffalo RMP, unless public submissions of coal resource information or surface resource issues indicate a need to update these determinations.

29. The RMP/EIS will address the Pennaco Court Decision (Docket No. 02–CV–116–CAB) requiring analysis of coalbed natural gas development for fluid mineral leasing decisions in the Powder River Basin.

3. Public Participation

You may submit comments on issues, planning criteria, and resource information in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments within 30 days after the last public meeting. 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

4. Categorization of Issues

The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the plan as to why we placed an issue in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

5. Call for Coal and Other Resource Information

Parties interested in leasing and development of Federal coal in the planning area should provide coal resource data for their area(s) of interest. Specifically, information is requested on the location, quality, and quantity of Federal coal with development potential, and on surface resource values related to the 20 coal unsuitability criteria described in 43 CFR 3461. This information will be used for any necessary updating of coal screening determination (43 CFR 3420.1–4) in the area and in the environmental analysis.

In addition to coal resource data, the BLM seeks resource information and data for other public land values (*e.g.*, air quality, cultural and historic resources, fire/fuels, fisheries, forestry, lands and realty, non-energy minerals and geology, oil and gas (including coalbed natural gas), paleontology, rangeland management, recreation, soil, water, and wildlife) in the planning area. The purpose of this request is to assure that the planning effort has sufficient information and data to consider a reasonable range of resource uses, management options, and alternatives for management of the public lands.

Proprietary data marked as confidential may be submitted in response to this call for coal and other resource information. Please submit all proprietary information submissions to the Buffalo Field Manager at the address listed above. The BLM will treat submissions marked as ''Confidential'' in accordance with the laws and regulations governing the confidentiality of such information.

6. Interdisciplinary Team Approach

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Air quality, archaeology, fire/fuels, fisheries and wildlife, forestry and other vegetative communities, hydrology, hazardous materials, lands and realty, minerals and geology, paleontology, rangeland management, recreation, soils, sociology, and economics.

Authority: 43 CFR 1610.2(c) and 3420.1–2.

Donald A. Simpson,

Acting State Director.

[FR Doc. E8–27029 Filed 11–13–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–011–08–1610–DR–087L]

Notice of Availability of the Record of Decision for the Bay Resource Management Plan/Environmental Impact Statement (RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: The BLM announces the availability of the Record of Decision (ROD) and Approved RMP for the Bay planning area, located in southwest Alaska. The State Director signed the ROD on November 4, 2008. This constitutes the final decision of the BLM and makes the approved RMP effective immediately.

ADDRESSES: Copies of the Bay ROD and Approved RMP are available on request from the Field Manager, Anchorage Field Office, Bureau of Land Management, 4700 BLM Road, Anchorage, AK 99507, or on the Internet at *http://www.blm.gov/ak.*

FOR FURTHER INFORMATION CONTACT: James M. Fincher, Field Manager, Anchorage Field Office, 4700 BLM Road, Anchorage, AK 99507, (907) 267–1285 or toll free (800) 478–1263.

SUPPLEMENTARY INFORMATION: The Bay RMP was developed with broad public participation through a three-year collaborative planning process. This RMP/ROD addresses management of approximately 1.9 million acres of BLM-administered public lands and mineral estate in the planning area. The Bay RMP/ROD is designed to achieve or maintain desired future conditions identified through the planning process. It includes management direction to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, cultural and visual resources, and recreation.

The approved Bay RMP is nearly the same as Alternative D in the Bay Proposed RMP/Final EIS, published in December 2007.

As a result of protests and the Governor's consistency review, minor modifications and clarifications were made to portions of the analysis presented in the Bay Proposed RMP/Final EIS and are discussed in the Record of Decision.

No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS.

Authority: H–1790–1 National Environmental Policy Act Handbook—January 30, 2008.

Vincent Galterio,

Acting State Director.

[FR Doc. E8–27026 Filed 11–13–08; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1146–1147 (Final)]

1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from China and India

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping duty investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping duty investigation Nos. 731–TA–1146–1147 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and India of 1-Hydroxyethylidene-1,1-diphosphonic acid (HEDP),[1] provided for in statistical reporting number 2931.00.9043 of the Harmonized Tariff Schedule of the United States.[2]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* October 21, 2008.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of HEDP from China and India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on March 19, 2008, by Compass Chemical International LLC, Huntsville, TX.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 17, 2009, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 3, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 24, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 26, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 24, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 11, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 11, 2009. On March 31, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 2, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's

[1] HEDP is identified by CAS registry number 2809–21–4.

[2] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid, also referred to as hydroxethlylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid.''

rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 7, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26975 Filed 11–13–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–032]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 21, 2008, at 10 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meetings: none.

2. Minutes.

3. Ratification List.

4. Inv. Nos. 731–TA–1141 and 1142 (Final) (Uncovered Innerspring Units from South Africa and Vietnam)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before December 4, 2008.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 7, 2008.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–26967 Filed 11–13–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 10, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Amy Hobby on 202–693–4553 (this is not a toll-free number) / e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Trade Act Participant Report (TAPR).

OMB Control Number: 1205–0392.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 50.

Total Estimated Annual Burden Hours: 9,500.

Total Estimated Annual Costs Burden: $0.

Description: The Trade Act Participant Report is a Government Performance Results Act-compliant data collection and reporting system that supplies critical information on the operation of the Trade Adjustment Assistance program and the outcomes for its participants. For additional information, see related notice published at 73 FR 45076 on August 1, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8–27090 Filed 11–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0041]

OSHA Strategic Partnership Program for Worker Safety and Health (OSPP)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend the Office of Management Budget's (OMB) approval of the information collection requirements specified in the OSHA Strategic Partnership Program for Worker Safety and Health (OSPP).

DATES: Comments must be submitted (postmarked, sent, or received) by January 13, 2009.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0041, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2008–0041). All documents, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Cathy Oliver at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Office of Partnerships and Recognition, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2208.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The OSPP allows OSHA to enter into an extended, voluntary, cooperative relationship with groups of employers, employees, and representatives (sometimes including other stakeholders, and sometimes involving only one employer) to encourage, assist and recognize their efforts to eliminate serious hazards and to achieve a high level of employee safety and health that goes beyond what historically has been achieved through traditional enforcement methods. Each OSHA Strategic Partnership (OSP) determines which information will be needed, selects the best collection method, and specifies how the information will be used. At a minimum, each OSP must identify baseline illness and injury data corresponding to all summary line items on the OSHA 300 logs, and must track changes at either the worksite level or participant-aggregate level. An OSP may also include other measures of success, such as training activity, self inspections, and/or workers' compensation data. In this regard, the information collection requirements for the OSPP is used by the Agency to gauge the effectiveness of its programs, identify needed improvements, and ensure that its resources are being used to good and effective purposes.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Strategic Partnership Program for Worker Safety and Health (OSPP) (5 CFR 1320.5). The Agency is requesting to increase its current burden hour total from 57,923 to 361,416 hours for a total increase of 303,493 hours. The increase is a result of a growth in the number of partnerships and in accounting burden hours for individual employers in partnerships. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: OSHA Strategic Partnership Program for Worker Safety and Health (OSPP).

OMB Number: 1218–0244.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Number of Respondents: 32,586.

Frequency: On occasion.

Average Time Per Response: Eleven (11) hours to develop the partnership requirements, draft agreement language, and conduct an internal review process.

Estimated Total Burden Hours: 361,416.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0041). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on November 6, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–26981 Filed 11–13–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0042]

Announcement of a Meeting of the Advisory Committee on Construction Safety and Health (ACCSH), ACCSH Work Group Meetings, and Appointments to ACCSH Membership Including Member Representation Categories and Terms

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), ACCSH Work Group meetings, and appointments to ACCSH membership including member representation categories and terms.

SUMMARY: ACCSH Work Groups will meet December 2–3, 2008, and ACCSH will meet December 4–5, 2008, in Washington, DC.

DATES: *ACCSH Work Groups:* ACCSH Work Groups will meet Tuesday and Wednesday, December 2–3, 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, December 3, 2008, from 8:30 a.m. to 4:30 p.m. and Friday, December 4, 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 November 21, 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 *http://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. 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.*

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–2008–0042). 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 certain 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.

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 December 4–5, 2008, in Washington, DC. The meeting is open to the public.

ACCSH is authorized to advise the Secretary of Labor and 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;
- Construction Standards Update: OSHA, Directorate of Construction (DOC);
- Cooperative Programs Update: OSHA, Directorate of Cooperative and State Programs (DCSP);
- Construction Update: National Institute for Occupational Safety and Health (NIOSH);
- Mast Climbing Scaffold Comparative Overview: International Powered Access Federation;
- Work Group Reports, Work Group and Committee Administration: ACCSH Members;
- Ethics and Travel Considerations for Committee Members: Office of the Solicitor of Labor and OSHA Office of Communications;
- McGraw-Hill Construction Dodge Data Overview: McGraw-Hill Construction;
- IMIS Inspection Reporting and Data: OSHA, Directorate of Evaluation and Analysis; and
- Public Comment Period: Members of the public.

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 November 21, 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 also included in the official ACCSH meeting record.

ACCSH Work Group Meetings

In conjunction with the ACCSH meeting, the following ACCSH Work Groups will meet on December 2, 2008:

- Multilingual—8:30 to 10 a.m.;
- Silica—8:30 to 10 a.m.;
- Diversity—Women in Construction—10:30 a.m. to 12 p.m.; and
- Residential Fall Protection—1:45 to 4:15 p.m., December 2, 2008;

In conjunction with the ACCSH meeting, the following ACCSH Work Groups will meet on December 3, 2008:

- OTI (OSHA Training Institute work group)—8:30 to 10 a.m.;
- Trenching—8:30 to 10 a.m.;
- Regulatory Compliance (Formerly: Focused Inspection)—10:30 a.m. to 12 p.m.; and
- ROPS (Rollover Protective Systems)—1:45 to 4:15 p.m.

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 extra time to check in and reach the meeting rooms.

Submission of written comments and requests to address ACCSH. Interested parties may submit written comments and request to make oral presentations to ACCSH (1) electronically, (2) by FAX, or (3) by hard copy (mail, hand delivery, express mail, messenger, courier) by November 21, 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.

At the Committee meeting, attendees also 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 *http://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–2008–0042 at *http://www.regulations.gov.* The official meeting record and all submissions for this meeting will be listed in the *http://www.regulations.gov* index. Although listed in the index, some documents (*e.g.*, copyrighted materials) are not publicly available through *http://www.regulations.gov.* The official record and all submissions, including materials not available through *http://www.regulations.gov*, will be available for inspection and copying in the OSHA Docket Office at the address above.

ACCSH Membership

The ACCSH membership listed below includes members that the Secretary appointed to new or continuing terms on October 23, 2008.

New Appointments:

Representatives of Employee Viewpoints:

- Mr. Walter Jones, Associate Director, Occupational Safety and Health, The Laborers' Health and Safety Fund of North America (Term Expires October 23, 2010); and
- Mr. James Tomaseski, Director, Safety and Health Department, International Brotherhood of Electrical Workers (Term Expires October 23, 2010).

Representatives of Employer Viewpoints:

- Mr. William Ahal, Vice President of Pre-Construction, Alberici Constructors, Inc. (Term Expires October 23, 2010); and

• Ms. Susan Bilhorn, Senior Vice President of Operations, Jacobs Technology (Term Expires October 23, 2010).

Reappointments:

Representatives of Employee Viewpoints:

• Emmett M. Russell, Director—Department of Safety and Health, International Union of Operating Engineers (Term Expires October 23, 2010).

Representatives of Employer Viewpoints:

• Michael J. Thibodeaux, Consultant, National Association of Home Builders (Term Expires October 23, 2010).

Representative of the Public Interests:

• Thomas A. Broderick, Executive Director, Construction Safety Council and Chicagoland Construction Safety Council (Term Expires October 23, 2010).

Continuing ACCSH Members:

Representatives of Employee Viewpoints:

Thomas L. Kavicky, Safety Director/Assistant to the President, Chicago Regional Council of Carpenters (Term Expires November 30, 2009).

Frank L. Migliaccio, Jr., Executive Director, Safety and Health, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Term Expires November 30, 2009).

Representatives of Employer Viewpoints:

Thomas R. Shanahan, Assistant Executive Director, National Association of Roofing Contractors (Term Expires November 30, 2009).

Daniel D. Zarletti, Vice President/Chief Risk Officer, Kenny Construction Company (Term Expires November 30, 2009).

Representative of the Public Interests:

Ms. Elizabeth Arioto, Elizabeth Arioto Safety and Health Consulting Services (Term Expires November 30, 2009).

Representatives of State safety and health agencies:

Kevin D. Beauregard, Assistant Deputy Commissioner, Assistant Director, Division of Occupational Safety and Health, North Carolina Department of Labor (Term Expires November 30, 2009); and

Steven D. Hawkins, Assistant Administrator, Tennessee Occupational Safety and Health Administration (Term Expires November 30, 2009).

Designee of the Secretary of Health and Human Services:

Matt Gillen, Senior Scientist and Construction Program Coordinator, National Institute of Occupational Safety and Health (Term Expiration: Indefinite).

Authority and Signature: Thomas M. Stohler, Acting 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 31160).

Signed at Washington, DC this 10th day of November 2008.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–27131 Filed 11–13–08; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2009

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2009 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2009.

DATES: All comments and recommendations must be received on or before the close of business on December 15, 2008.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street, NW., Third Floor; Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or *haleyr@lsc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on April 4, 2008 (73 FR 18574), and Grant Renewal applications due on June 2, 2008, LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

Service area	Applicant name	Annualized grant amount
Alabama:		
AL–4	Legal Services Alabama, Inc	$6,224,674
MAL	Texas RioGrande Legal Aid, Inc	31,879
Alaska:		
AK–1	Alaska Legal Services Corporation	720,614
NAK–1	Alaska Legal Services Corporation	525,140
Arizona:		
AZ–2	DNA-Peoples Legal Services, Inc	522,923
AZ–3	Community Legal Services, Inc	3,774,454
AZ–5	Southern Arizona Legal Aid, Inc	1,820,449
MAZ	Community Legal Services, Inc	143,854
NAZ–5	DNA-Peoples Legal Services, Inc	2,533,824
NAZ–6	Southern Arizona Legal Aid, Inc	618,939
Arkansas:		
AR–6	Legal Aid of Arkansas, Inc	1,449,768
AR–7	Center for Arkansas Legal Services	2,164,117
MAR	Texas RioGrande Legal Aid, Inc	76,583
California		
CA–1	California Indian Legal Services, Inc	32,919
CA–2	Greater Bakersfield Legal Assistance, Inc	914,522
CA–12	Inland Counties Legal Services, Inc	4,063,416
CA–14	Legal Aid Society of San Diego, Inc	2,841,488

Service area	Applicant name	Annualized grant amount
CA–19	Legal Aid Society of Orange County, Inc	3,968,792
CA–26	Central California Legal Services	2,861,178
CA–27	Legal Services of Northern California, Inc	3,535,438
CA–28	Bay Area Legal Aid	4,167,881
CA–29	Legal Aid Foundation of Los Angeles	7,902,085
CA–30	Neighborhood Legal Services of Los Angeles County	4,667,690
CA–31	California Rural Legal Assistance, Inc	4,664,589
MCA	California Rural Legal Assistance, Inc	2,557,741
NCA–1	California Indian Legal Services, Inc	857,881
Colorado:		
CO–6	Colorado Legal Services	3,342,005
MCO	Colorado Legal Services	143,899
NCO–1	Colorado Legal Services	93,252
Connecticut:		
CT–1	Statewide Legal Services of Connecticut, Inc	2,309,701
NCT–1	Pine Tree Legal Assistance, Inc	15,201
Delaware:		
DE–1	Legal Services Corporation of Delaware, Inc	602,419
MDE	Legal Aid Bureau, Inc	24,055
District of Columbia:		
DC–1	Neighborhood Lgl. Svcs. Program of the Dist. of Col	981,372
Florida:		
FL–5	Legal Services of Greater Miami, Inc	3,439,909
FL–13	Legal Services of North Florida, Inc	1,412,494
FL–14	Three Rivers Legal Services, Inc	1,739,770
FL–15	Community Legal Services of Mid-Florida, Inc	3,003,141
FL–16	Bay Area Legal Services, Inc	2,548,178
FL–17	Florida Rural Legal Services, Inc	2,682,658
FL–18	Coast to Coast Legal Aid of South Florida, Inc	1,803,716
MFL	Florida Rural Legal Services, Inc	870,176
Georgia:		
GA–1	Atlanta Legal Aid Society, Inc	2,509,166
GA–2	Georgia Legal Services Program	6,376,119
MGA	Georgia Legal Services Program	379,876
Guam:		
GU–1	Guam Legal Services Corporation	311,816
Hawaii:		
HI–1	Legal Aid Society of Hawaii	1,348,279
NHI–1	Legal Aid Society of Hawaii	222,428
Idaho:		
ID–1	Idaho Legal Aid Services, Inc	1,151,879
MID	Idaho Legal Aid Services, Inc	181,101
NID–1	Idaho Legal Aid Services, Inc	63,085
Illinois:		
IL–3	Land of Lincoln Legal Assistance Foundation, Inc	2,398,320
IL–6	Legal Assistance Foundation of Metro. Chicago	6,260,443
IL–7	Prairie State Legal Services, Inc	2,678,284
MIL	Legal Assistance Foundation of Metro. Chicago	241,866
Indiana:		
IN–5	Indiana Legal Services, Inc	4,904,098
MIN	Indiana Legal Services, Inc	110,165
Iowa:		
IA–3	Iowa Legal Aid	2,275,787
MIA	Iowa Legal Aid	36,557
Kansas:		
KS–1	Kansas Legal Services, Inc	2,299,224
MKS	Kansas Legal Services, Inc	11,517
Kentucky:		
KY–2	Legal Aid Society	1,141,662
KY–5	Appalachian Res. and Defense Fund of Kentucky	1,970,137
KY–9	Kentucky Legal Aid	1,183,471
KY–10	Legal Aid of the Bluegrass	1,229,941
MKY	Texas RioGrande Legal Aid, Inc	41,235
Louisiana:		
LA–1	Capital Area Legal Services Corporation	1,373,069
LA–10	Acadiana Legal Service Corporation	1,944,899
LA–11	Legal Services of North Louisiana, Inc	1,824,796
LA–12	Southeast Louisiana Legal Services Corporation	2,458,484
MLA	Texas RioGrande Legal Aid, Inc	26,681
Maine:		
ME–1	Pine Tree Legal Assistance, Inc	1,144,853
MMX–1	Pine Tree Legal Assistance, Inc	121,009
NME–1	Pine Tree Legal Assistance, Inc	62,586

Service area	Applicant name	Annualized grant amount
Maryland:		
MD–1	Legal Aid Bureau, Inc	3,843,455
MMD	Legal Aid Bureau, Inc	88,090
Massachusetts:		
MA–4	Merrimack Valley Legal Services, Inc	804,133
MA–10	Massachusetts Justice Project, Inc	1,461,563
MA–11	Volunteer Lawyers Project of the Boston Bar Assoc	1,972,987
MA–12	New Center for Legal Advocacy, Inc	884,364
Michigan:		
MI–9	Legal Services of Northern Michigan, Inc	684,155
MI–12	Legal Services of South Central Michigan	1,237,935
MI–13	Legal Aid and Defender Association, Inc	3,707,470
MI–14	Legal Services of Eastern Michigan	1,327,630
MI–15	Legal Aid of Western Michigan	1,615,517
MMI	Legal Services of South Central Michigan	583,222
NMI–1	Michigan Indian Legal Services, Inc	159,845
Micronesia:		
MP–1	Micronesian Legal Services, Inc	1,598,130
Minnesota:		
MN–1	Legal Aid Service of Northeastern Minnesota	404,908
MN–4	Legal Services of Northwest Minnesota Corporation	362,901
MN–5	Southern Minnesota Regional Legal Services, Inc	1,179,358
MN–6	Central Minnesota Legal Services, Inc	1,268,918
MMN	Southern Minnesota Regional Legal Services, Inc	193,854
NMN–1	Anishinabe Legal Services, Inc	232,054
Mississippi:		
MS–9	North Mississippi Rural Legal Services, Inc	1,944,353
MS–10	Mississippi Center for Legal Services	2,912,397
MMS	Texas RioGrande Legal Aid, Inc	55,297
NMS–1	Choctaw Legal Defense	80,718
Missouri:		
MO–3	Legal Aid of Western Missouri	1,720,573
MO–4	Legal Services of Eastern Missouri, Inc	1,899,586
MO–5	Mid-Missouri Legal Services Corporation	378,675
MO–7	Legal Services of Southern Missouri	1,639,204
MMO	Legal Aid of Western Missouri	78,931
Montana:		
MT–1	Montana Legal Services Association	1,097,469
MMT	Montana Legal Services Association	52,886
NMT–1	Montana Legal Services Association	154,612
Nebraska:		
NE–4	Legal Aid of Nebraska	1,404,374
MNE	Legal Aid of Nebraska	40,967
NNE–1	Legal Aid of Nebraska	32,097
Nevada:		
NV–1	Nevada Legal Services, Inc	1,840,972
MNV	Nevada Legal Services, Inc	2,438
NNV–1	Nevada Legal Services, Inc	129,120
New Hampshire:		
NH–1	Legal Advice & Referral Center, Inc	694,175
New Jersey:		
NJ–8	Essex-Newark Legal Services Project, Inc	1,053,312
NJ–12	Ocean-Monmouth Legal Services, Inc	645,151
NJ–15	Legal Services of Northwest Jersey	380,629
NJ–16	South Jersey Legal Services, Inc	1,295,769
NJ–17	Central Jersey Legal Services, Inc	1,057,659
NJ–18	Northeast New Jersey Legal Services Corporation	1,721,200
MNJ	South Jersey Legal Services, Inc	116,913
New Mexico:		
NM–1	DNA-Peoples Legal Services, Inc	210,318
NM–5	New Mexico Legal Aid	2,653,055
MNM	New Mexico Legal Aid	84,622
NNM–2	DNA-Peoples Legal Services, Inc	22,060
NNM–4	New Mexico Legal Aid	451,172
New York:		
NY–7	Nassau/Suffolk Law Services Committee, Inc	1,347,715
NY–9	Legal Services for New York City	14,794,406
NY–20	Legal Services of the Hudson Valley	1,733,586
NY–21	Legal Aid Society of Northeastern New York, Inc	1,302,034
NY–22	Legal Aid Society of Mid-New York, Inc	1,706,655
NY–23	Legal Assistance of Western New York, Inc	1,672,992
NY–24	Neighborhood Legal Services, Inc	1,302,733
MNY	Legal Aid Society of Mid-New York, Inc	268,197

Service area	Applicant name	Annualized grant amount
North Carolina:		
NC–5	Legal Aid of North Carolina, Inc	8,072,566
MNC	Legal Aid of North Carolina, Inc	519,293
NNC–1	Legal Aid of North Carolina, Inc	211,921
North Dakota:		
ND–3	Legal Services of North Dakota	546,037
MND	Southern Minnesota Regional Legal Services, Inc	112,307
NND–3	Legal Services of North Dakota	261,564
Ohio:		
OH–5	The Legal Aid Society of Columbus	1,235,444
OH–17	Ohio State Legal Services	1,654,861
OH–18	Legal Aid Society of Greater Cincinnati	1,395,564
OH–20	Community Legal Aid Services, Inc	1,614,648
OH–21	The Legal Aid Society of Cleveland	2,054,329
OH–23	Legal Aid of Western Ohio, Inc	2,415,250
MOH	Legal Aid of Western Ohio, Inc	122,049
Oklahoma:		
OK–3	Legal Aid Services of Oklahoma, Inc	4,341,964
MOK	Legal Aid Services of Oklahoma, Inc	60,630
NOK–1	Oklahoma Indian Legal Services, Inc	795,057
Oregon:		
OR–6	Legal Aid Services of Oregon	2,944,294
MOR	Legal Aid Services of Oregon	539,710
NOR–1	Legal Aid Services of Oregon	179,250
Pennsylvania:		
PA–1	Philadelphia Legal Assistance Center	2,973,717
PA–5	Laurel Legal Services, Inc	738,798
PA–8	Neighborhood Legal Services Association	1,610,399
PA–11	Southwestern Pennsylvania Legal Services, Inc	536,752
PA–23	Legal Aid of Southeastern Pennsylvania	1,091,931
PA–24	North Penn Legal Services, Inc	1,741,876
PA–25	MidPenn Legal Services, Inc	2,130,983
PA–26	Northwestern Legal Services	702,841
MPA	Philadelphia Legal Assistance Center	160,586
Puerto Rico:		
PR–1	Puerto Rico Legal Services, Inc	15,685,832
PR–2	Community Law Office, Inc	332,080
MPR	Puerto Rico Legal Services, Inc	281,703
Rhode Island:		
RI–1	Rhode Island Legal Services, Inc	1,078,675
South Carolina:		
SC–8	South Carolina Legal Services, Inc	4,718,515
MSC	South Carolina Legal Services, Inc	191,650
South Dakota:		
SD–2	East River Legal Services	391,581
SD–4	Dakota Plains Legal Services, Inc	464,059
MSD	Dakota Plains Legal Services, Inc	3,845
NSD–1	Dakota Plains Legal Services, Inc	906,639
Tennessee:		
TN–4	Memphis Area Legal Services, Inc	1,377,389
TN–7	West Tennessee Legal Services, Inc	642,597
TN–9	Legal Aid of East Tennessee	2,103,998
TN–10	Lgl. Aid Soc. of Middle Tenn. and the Cumberlands	2,507,508
MTN	Texas RioGrande Legal Aid, Inc	61,454
Texas:		
TX–13	Lone Star Legal Aid	9,292,756
TX–14	Legal Aid of NorthWest Texas	7,331,805
TX–15	Texas RioGrande Legal Aid, Inc	9,970,530
MTX	Texas RioGrande Legal Aid, Inc	1,345,850
NTX–1	Texas RioGrande Legal Aid, Inc	30,390
Utah:		
UT–1	Utah Legal Services, Inc	1,783,452
MUT	Utah Legal Services, Inc	65,720
NUT–1	Utah Legal Services, Inc	79,886
Vermont:		
VT–1	Legal Services Law Line of Vermont, Inc	489,610
Virgin Islands:		
VI–1	Legal Services of the Virgin Islands, Inc	313,062
Virginia:		
VA–15	Southwest Virginia Legal Aid Society, Inc	795,045
VA–16	Legal Aid Society of Eastern Virginia	1,373,472
VA–17	Virginia Legal Aid Society, Inc	827,623
VA–18	Central Virginia Legal Aid Society, Inc	975,681

Service area	Applicant name	Annualized grant amount
VA–19	Blue Ridge Legal Services, Inc	688,403
VA–20	Potomac Legal Aid Society	1,071,971
MVA	Central Virginia Legal Aid Society, Inc	152,816
Washington:		
WA–1	Northwest Justice Project	4,781,018
MWA	Northwest Justice Project	707,224
NWA–1	Northwest Justice Project	276,611
West Virginia:		
WV–5	Legal Aid of West Virginia, Inc	2,794,821
MWV	Legal Aid of West Virginia, Inc	35,419
Wisconsin:		
WI–2	Wisconsin Judicare, Inc	853,560
WI–5	Legal Action of Wisconsin, Inc	3,105,042
MWI	Legal Action of Wisconsin, Inc	88,216
NWI–1	Wisconsin Judicare, Inc	150,626

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2009.

Dated: November 6, 2008.

Janet LaBella,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. E8–26931 Filed 11–13–08; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 20, 2008 via conference call. The meeting will begin at 2 p.m. (ET), and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

STATUS OF MEETING: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone should call toll-free 1–888–469–1565 and enter 35150 on the key pad when prompted. To enhance the quality of your listening experience as well as that of others and to eliminate background noises that interfere with the audio recording of the proceeding, please mute your telephone during the meeting.

MATTERS TO BE CONSIDERED: 1. Approval of the agenda.

2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of April 1, 2008 through September 30, 2008.

3. Consider and act on Resolution 2008–017 re-designating the LSC's and LSC OIG's Ethics Officers.

4. Public comment.

5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: November 12, 2008.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E8–27267 Filed 11–12–08; 4:15 pm]

BILLING CODE 7050–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act; Notice

November 4, 2008.

TIME AND DATE: 10 a.m., Thursday, November 20, 2008.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor on behalf of Lawrence L. Pendley* v. *Highland Mining Company, LLC*, Docket Nos. KENT 2007–383–D and KENT 2007–506–D. (Issues include whether the Administrative Law Judge properly concluded that the operator did not discriminate against the miner in question under section 105(c) of the Federal Mine Safety and Health Act, 30 U.S.C. 815(c).)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. E8–27214 Filed 11–12–08; 4:15 pm]

BILLING CODE 6735–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; NSB Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Board announces the following meeting:

Name: NSB Public Service Award Committee, 5195.

Date and Time: December 2, 2008, 1 p.m. EST (teleconference meeting).

Place: Call will originate from the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Jennifer Richards, Committee Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–7000. E-mail: *jlrichar@nsf.gov.*

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipient.

Agenda: Discussion of candidates for the NSB Public Service Award as part of the selection process.

Reason for Meeting Closure: The candidate nominations being reviewed include information of a personal nature where public disclosure would constitute clearly unwarranted invasions of personal privacy. These matters are exempt from open meeting and public attendance under 5 U.S.C. 55b(c)(6).

Dated: November 10, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8–27132 Filed 11–13–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

NUREG/CR–XXXX, ''Modeling a Digital Feedwater Control System Using Traditional Probabilistic Risk Assessment Methods''; Draft Report for Comment

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is conducting research to support development of regulatory guidance for using risk information related to digital systems in the licensing actions of nuclear power plants (NPPs). The objective of this research is to identify and develop methods, analytical tools, and regulatory guidance to support (1) using information on the risks of digital systems in NPP licensing decisions and (2) including models of digital systems into NPP probabilistic risk assessments (PRAs).

As part of this research, NRC is sponsoring a project on the use of traditional PRA methods to develop and quantitatively assess reliability models of digital systems. The initial tasks of this project, including preparatory work for developing reliability models of an example system, are addressed in NUREG/CR–6962, ''Traditional Probabilistic Risk Assessment Methods for Digital Systems'' (to be published shortly). The application of the selected traditional methods to the example system is documented in draft NUREG/CR–XXXX, ''Modeling a Digital Feedwater Control System Using Traditional Probabilistic Risk Assessment Methods.'' This notice announces the availability of the draft NUREG/CR for public comment.

DATES: Please submit comments on NUREG/CR–XXXX, ''Modeling a Digital Feedwater Control System Using Traditional Probabilistic Risk Assessment Methods,'' by December 29, 2008. Comments received after this date will be considered if practical to do so, but the NRC staff is able to ensure consideration only for those comments received on or before this date.

ADDRESSES: NUREG/CR–XXXX, ''Modeling a Digital Feedwater Control System Using Traditional Probabilistic Risk Assessment Methods,'' is available for inspection and copying for a fee at NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Publicly available documents created or received at NRC after November 1, 1999, are available electronically at NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession Numbers for NUREG/CR–XXXX, ''Modeling a Digital Feedwater Control System Using Traditional Probabilistic Risk Assessment Methods,'' are ML082800062 (main report) and ML082800063 (appendices). If you do not have access to ADAMS or have problems accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

This document also will be posted on NRC's public Web site at: *http://www.nrc.gov/about-nrc/regulatory/research/digital/tech-reference.html#one.*

Please submit comments to Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You also may deliver comments to 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:30 p.m. on Federal workdays, or by e-mail to: *nrcrep@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Alan Kuritzky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6255, e-mail: *Alan.Kuritzky@nrc.gov.*

Dated at Rockville, Maryland this 6th day of November, 2008.

For the U.S. Nuclear Regulatory Commission.

Christiana Lui,

Director, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. E8–27100 Filed 11–13–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–366]

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Unit No. 2; Exemption

1.0 Background

The Southern Nuclear Operating Company, Inc. (SNC, the licensee) is the holder of the Renewed Facility Operating License No. NPF–5 which authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 (HNP–2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Appling County in Georgia.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.12, ''Specific Exemptions'', SNC has, by letters dated March 21, May 2, August 8 and September 22, 2008, requested an exemption from the fuel cladding material requirements in 10 CFR 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors,'' and Appendix K to 10 CFR part 50, ''ECCS Evaluation Models,'' (Appendix K). The regulation in 10 CFR 50.46 contains acceptance criteria for emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations

presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46, and Appendix K is needed to irradiate a lead test assembly (LTA) comprised of different cladding alloys at HNP–2.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under Section 50.12(a)(2) of 10 CFR, special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the licensee to insert two lead test fuel assemblies with fuel rod cladding that does not meet the definition of Zircaloy or ZIRLO™ as specified by 10 CFR 50.46, and Appendix K, into the core of HNP–2, beginning with fuel cycle 21. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

In regard to the fuel mechanical design, the exemption request relates solely to the specific types of cladding material specified in the regulations. The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. In Section VI of its letter dated May 2, 2008, SNC provides a technical basis supporting the continued applicability of the 50.46 Paragraph (b) fuel criteria to GNF–Ziron. Quench tests under a restrained load have been conducted on GNF–Ziron samples oxidized to various levels at elevated loss-of-coolant accident (LOCA) temperatures. While these tests differ from the post-steam oxidized ring-compression testing (which forms the basis of the 50.46 post-quench ductility criteria), these results provide reasonable assurance that the 17 percent oxidation and 2200 degree Farenheit criteria are valid for GNF–Ziron and meet the underlying purpose of the rule, which is to maintain a degree of post-quench ductility in the fuel cladding material.

Based on an ongoing LOCA research program at Argonne National Laboratory, as discussed in NRC Research Information Letter 0801, ''Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46,'' ADAMS Accession No. ML081350225, cladding corrosion (and associated hydrogen pickup) has a significant impact on post-quench ductility. Post-irradiation examinations provided by the licensee demonstrate the favorable hydrogen pickup characteristics of GNF–Ziron as compared with standard zircaloy. Hence, the GNF–Ziron fuel rods would be less susceptible to the detrimental effects of hydrogen uptake during normal operation and their impact on post-quench ductility.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the LTA cladding for determining acceptable fuel performance. Metal-water reaction tests performed by GNF on GNF–Ziron demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, application of Appendix K, Paragraph I.A.5 is not necessary for the licensee to achieve its underlying purpose in these circumstances.

High temperature perforation test results were provided. These test results illustrate similar burst characteristics of GNF–Ziron as compared with standard zircaloy. In addition, the licensee provides further comparisons of material properties between GNF–Ziron and zircaloy. Based upon this comparison of material properties, GNF and SNC believe that currently approved methods and models are directly applicable to GNF–Ziron. Based upon the material properties provided in SNC's letters dated May 2 and August 8, 2008, the NRC staff finds the use of current LOCA models and methods acceptable for the purpose of evaluating LTAs containing a limited number of GNF–Ziron fuel rods.

In support of their exemption request, SNC submitted, with its letter dated August 8, 2008, a GNF document entitled, ''Impact of GNF–Ziron Cladding on Thermal-Mechanical Licensing Limits''. This report provides an assessment of the potential impact of differences in material properties on the GSTR–M fuel thermal-mechanical methodology. While not directly related to the 50.46 exemption request, the NRC staff finds the conclusion of this report acceptable for the purpose of evaluating LTAs containing a limited number of GNF–Ziron fuel rods. Further NRC staff review may be necessary prior to batch application of GNF–Ziron fuel cladding material.

Through mechanical testing and a comparison of material properties, SNC has provided reasonable assurance that anticipated in-reactor performance will be acceptable. Further, the licensee has demonstrated that the use of current methods and models are reasonable for evaluating the cladding's performance in response to anticipated operational occurrences and accidents. Nevertheless, as with any developmental cladding alloy, the NRC staff requires a limitation on the total number of fuel rods clad in a developmental alloy in order to ensure a minimal impact on the simulated progression and calculated consequences of postulated accidents. This limitation is directly related to the available material properties (both unirradiated and irradiated) used to judge the cladding alloy's anticipated in-reactor performance. Based on the material properties data presented within the application attachments, the NRC staff finds the HNP–2 LTA program acceptable with respect to achieving the underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50.

Based upon results of metal-water reaction tests and mechanical testing which ensure the applicability of ECCS models and acceptance criteria, the limited number and anticipated performance of the advanced cladding fuel rods, and the use of approved LOCA models to ensure that the LTAs satisfy 10 CFR 50.46 acceptance criteria, the NRC staff finds it acceptable to grant an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50 for the use of two LTAs within HNP–2.

Consistent With Common Defense and Security

The proposed exemption would allow the licensee to insert two lead test fuel assemblies with fuel rod cladding that does not meet the definition of Zircaloy or ZIRLO™ as specified by 10 CFR 50.46, and Appendix K, into the core of HNP–2, beginning with fuel cycle 21. This change has no relation to security issues. Therefore, the common defense

and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12, are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is to establish acceptance criteria for emergency core cooling system performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to these advanced cladding alloys, even though the evaluations discussed above show that the intent of the regulations is met. Therefore, since the underlying purpose of 10 CFR 50. 46 and Appendix K is achieved with the use of these advanced cladding alloys, the special circumstances required by 10 CFR 50.12 for the granting of an exemption from 10 CFR 50.46 and Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC exemptions from the requirements of 10 CFR 50.46, and 10 CFR Part 50, Appendix K, to allow the limited use of two LTAs with selected rods clad with GNF–Ziron cladding during fuel cycles 21 through 23 for the HNP–2 plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (73 FR 65415; November 3, 2008).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of November 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–27102 Filed 11–13–08; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

International Product Change—Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services

AGENCY: Postal Service ™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of its intent to file a request with the Postal Regulatory Commission to add the Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services to the Market-Dominant Products List pursuant to 39 U.S.C. 3642 and of its exercise of its authority to adjust rates for that product pursuant to 39 U.S.C. 3622.

DATES: November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that it intends to file with the Postal Regulatory Commission, on or about November 14, 2008, a *Request of United States Postal Service to Add Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services to the Market-Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing (Under Seal) Negotiated Service Agreement and Enabling Governors' Resolution.* The Postal Service further provides notice that it has determined to exercise its statutory authority to make a Type 2 rate adjustment for the proposed market dominant postal product. The implementation date for these rates is January 1, 2009. Documents are or will be available at on the Postal Regulatory Commission's Web site, *http://www.prc.gov.*

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–27148 Filed 11–13–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Sunshine Act Meeting

Board Votes To Close October 31, 2008, Meeting

By telephone vote on October 31, 2008, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held via teleconference. The Board determined that prior public notice was not possible.

ITEMS CONSIDERED:

1. Pricing.
2. Personnel Matters and Compensation Issues.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E8–27146 Filed 11–12–08; 11:15 am]

BILLING CODE 7710–12–P

DEPARTMENT OF STATE

[Public Notice 6424]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program With Algeria, the Philippines, or Serbia

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–09–10.

Catalog of Federal Domestic Assistance Number: 00.000.

Application Deadline: January 9, 2009.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for Youth Leadership Programs supporting exchanges with Algeria, the Philippines, or Serbia. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit separate proposals for grants that will support youth and adult participants from one of these three countries in a U.S.-based exchange program that explores civic education, leadership development, respect for diversity, and community activism. The program will conclude with follow-on activities in the participants' home countries in which they apply the knowledge and skills acquired during the exchange experience.

I. Funding Opportunity Description:

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the

Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the Algeria and Philippines programs is provided through legislation. The funding authority for the program with Serbia is provided through the Support for East European Democracy (SEED) Act (1989).

Purpose: Through these grants, the Youth Leadership Program provides an opportunity for teenagers (ages 15–17) and adult educators in Algeria, the Philippines, and Serbia to participate in intensive, thematic, four- to six-week-long exchanges in the United States that complement a more formal education in the principles of a civil society. The Serbia Program also includes an exchange component for American teenagers. The overarching goal is for the exchange participants and their American counterparts to develop a broad worldview that incorporates diverse perspectives and for the alumni to apply their skills toward productive and positive outlets in their home communities.

The program will enable participants to:

(1) To develop their sense of civic responsibility and commitment to community development;

(2) To become part of a cadre of community activists who will share their knowledge and skills with their peers through positive action and collaboration;

(3) To foster understanding and build relationships with youth from different ethnic, religious, and national groups;

(4) To promote mutual understanding between the people of their country and the United States.

Applicant organizations should identify their own specific objectives and measurable outcomes based on these program goals and the specifications provided in this solicitation.

The exchange format will be intensive and interactive, weaving together both formal and informal sessions to achieve the stated goals and objectives. Applicants must present a program plan that allows the participants to thoroughly explore the themes in a creative, memorable, and practical way. All activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home.

Applicants must demonstrate their capacity for doing programs of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience in working with the selected country or its region.

Applicant organizations need to have the necessary capacity in the partner country through a branch office, a partner organization, or other affiliates that have the demonstrated ability to conduct the specified activities in the partner country.

Should organizations wish to apply for a grant with more than one country, they must submit a separate proposal for each. Each of the three country programs will be judged independently and proposals for a particular country will be compared only to proposals for the same country.

Please see information specific to the program with each country below.

Algeria

Objective: To promote interaction among youth from Algeria and the United States and assist the participants in jointly developing their leadership skills.

Program focus: The applicant should present a program plan that focuses on leadership development, respect for diversity, and civic education. The applicant should also choose one of these two themes as an additional focus: (1) Media Literacy: How to analyze, access, evaluate and produce media; the impact of mass media on individuals and societies; and journalism techniques for sharing the voices of youth for positive action in their communities. (2) Business/Entrepreneurship: The study of applied economics, practical business skills, entrepreneurship, and related ethics and leadership education, including creating an effective business plan and establishing good business practices.

Note: The program will be implemented by a partnership of the Public Affairs Section in the U.S. Embassy in Algiers and the U.S. grantee organization. The Embassy will be responsible for recruiting, screening, and selecting the Algerian participants, while the U.S. grantee organization will be responsible for selecting the U.S. participants, travel logistics, an English language workshop in Algeria, the U.S.-based exchange activity, and follow-on activities with alumni.

Participants: 25 high school students and 2–3 adults from Algeria, plus 10 American high school students who will participate in the U.S.-based activities with the Algerian students.

Timeframe: The U.S.-based exchange program should take place between mid-July and mid-August, 2009. The U.S. program should be no less than four weeks in duration, preceded by up to two weeks of intensive English training that takes place in Algeria.

Amount of grant funds available: $275,000. The Bureau intends to award one grant.

Philippines

Objective: To advance dialogue and mutual understanding between Americans and Filipinos and between Muslim and non-Muslim youth from the Autonomous Region of Muslim Mindanao and surrounding provinces, leading to the cooperative implementation of service projects in Mindanao.

Program focus: The U.S. program should focus primarily on ways that youth can work collaboratively across ethnic and religious lines. All activities should be related to developing open dialogues among the participants through which they can develop strategies to work together to help solve some of the common challenges they face as teenagers in Mindanao. Participants will also gain a more thorough understanding of how democracy is practiced in the United States, particularly at the grassroots level, including community activism, minority rights, and the responsibilities of citizens.

Participants: 21–27 teenagers and 4–5 adults from the Autonomous Region of Muslim Mindanao (ARMM) and surrounding areas. Both the youth and adult contingents should represent the diversity of the region.

Time frame: The four- to six-week U.S.-based exchange program should take place between January and June 2010.

Amount of grant funds available: $275,000. The Bureau intends to award one grant.

Serbia

Objective: To promote interaction among youth from Serbia and the United States through reciprocal exchanges while introducing the two groups to how democracy is practiced in each country, the rights and responsibilities of citizens, and how community service allows youth to be proactive participants in their communities.

Program focus: There will be six exchange delegations from Serbia to the United States, and two to four exchange delegations of Americans to Serbia. Each exchange will focus on a specific theme related to participatory governance, such as grassroots activism, the rule of law, religious freedom, the role of local and municipal governments, ethnic tolerance and living in a multi-ethnic society, and student activism/student government.

Participants: Approximately 130 teenagers and educators (teachers or community leaders who work with youth) from Serbia who will travel to the U.S. for four weeks in six exchange delegations of 20–25 each. Approximately 30 U.S. teenagers and educators will travel to Serbia in groups of 7 to 15.

Time frame: The four-week Serbia-to-U.S. exchanges may take place between late 2009 and the end of 2010. The U.S.-to-Serbia exchanges, which may be two to four weeks in duration, may take place between or after the Serbia-to-U.S. exchanges. The grant(s) may span up to two years.

Amount of grant funds available: $1,355,000. The Bureau intends to award one or two grants. Applicants may apply to conduct the entire program, utilizing all of the grant funds. Alternatively, organizations may apply for a grant of roughly half the amount of funding available, in which case ECA may award grants to two organizations. These two organizations will be required to work in cooperation with each other in order to avoid public confusion between the two projects.

Guidelines for All Three Countries

Grants will begin in spring 2009. The grant period will be 12 to 24 months in duration, as appropriate to the program design.

In pursuit of the goals outlined above, the programs will include the following:

- Recruitment, screening, and selection of the youth participants and adult educators (exception with Algerian participants—the U.S. Embassy will complete this step).
- A pre-departure orientation program.
- Designing and planning of substantive and well-organized activities in the United States (and in Serbia) on leadership development, civic education, and community service. Some activities should be school and/or community-based, as feasible, and the programs will involve extensive interaction with American peers.
- Logistical arrangements, homestay arrangements and other accommodation, provisions for religious observance, disbursement of stipends/per diem, and international and local travel.
- Follow-on activities in the participants' home countries designed to reinforce the ideas, values, and skills imparted during the U.S. program.

Recruitment and Selection: With the exception of proposals for Algeria, applicants should present a recruitment plan for the foreign participants in their proposals. Upon receipt of a grant, the recipients must consult with the Public Affairs Sections at the U.S. Embassies to review the recruitment and participant selection plan. Organizers must strive for regional and ethnic diversity within the partner country. For the Algeria and Serbia programs, the applicant must present a plan for a competitive, merit-based selection process for the American participants. The Department of State and/or its overseas representatives must approve all selected delegations.

Participants: The student participants will be teenagers aged 15 to 17. Selected participants will demonstrate leadership potential and an interest in serving their communities, as well as strong social and academic skills, overall composure, openness and flexibility. The adult participants will be secondary school teachers or administrators and/or community leaders who work with youth. The adult participants will be exchange participants first and foremost, but will also serve as chaperones and advisors. Participants will be proficient in English.

U.S. Exchange Activities: Each program may take place in one to three communities and should offer the participants exposure to the variety of American life. The exchange programs should consist primarily of interactive activities, practical experiences, and other hands-on opportunities that enable participants to learn about the fundamentals of a civil society, as well as the underlying concepts of leadership, volunteerism, and positive participation in civic life. These topics must be thoughtfully addressed through focused community and/or school-based program activities. Format suggestions include simulations, case studies, workshops, site visits, discussion groups, mock trials, facilitated role plays, volunteer service projects, and leadership training exercises. Programming must include regular and substantive involvement by American peers as much as possible in order to give participants from both countries insight into working with members of the other culture. The participants will have homestays with properly selected local families for most of the exchange period. Cultural, social, and recreational activities will balance the schedule. Please see the POGI for more details.

The exchange activities of the American students and teachers in Serbia should follow up on the same themes and topics as the U.S. activity. These participants must have substantive educational activities during the exchange, which will also introduce them to home, school, and community life in Serbia.

Follow-on Activities and In-Country Programming: Follow-on activities for alumni are an essential component of the program. Applicants should present creative and effective ways to continue dialogue on the program themes, for both participants and their peers, as a means to amplify the program impact, which may include blogs, Web sites, newsletters, or listservs. One or two U.S. project staff, trainers, or educators should arrange a trip to the partner country three to six months after the U.S. exchange to help reinforce the U.S. experience.

Grant recipients will use the name ''[Country] Youth Leadership Program'' to identify their program. All participants and alumni should identify themselves with the Youth Leadership Program (YLP). Materials produced for grant activities need to acknowledge the State Department as the sponsor and reflect the State Department's goals for the program.

The Bureau reserves the right to reduce, revise, or increase proposal budgets and participant numbers in accordance with the needs of the program and the availability of funds.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations. Please refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY–2009, pending availability of funds.

Approximate Total Funding: $1,905,000.

Approximate Number of Awards: 3–4.

Floor of Award Range: $275,000.

Ceiling of Award Range: $1,355,000.

Anticipated Award Date: Pending availability of funds, April 15, 2009.

Anticipated Project Completion Date: 12 to 24 months after the onset of the award, to be determined by the applicant according to its program design.

Additional Information: Pending successful implementation of these programs and the availability of funds in subsequent fiscal years, it is ECA's intent to renew these grants for two additional fiscal years, before openly competing them again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: (a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making awards in amounts exceeding $60,000 to support program and administrative costs required to implement these exchange programs. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package: Please contact the Youth Programs Division, ECA/PE/C/PY, U.S. Department of State, SA–44, 301 4th Street, SW., Room 568, Washington, DC 20547, telephone: (202) 453–8171, fax: (202) 453–8169, E-mail: *PiersonCompeauHM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–09–10 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Carolyn Lantz and refer to the Funding Opportunity Number ECA/PE/C/PY–09–10 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective March 14, 2008, all applicants for ECA federal assistance awards must include with their application, a copy of page 5, Part V–A, ''Current Officers, Directors, Trustees, and Key Employees'' of their most recent Internal Revenue Service (IRS) Form 990, ''Return of Organization Exempt From Income Tax.'' If an applicant does not file an IRS Form 990, but instead files Schedule A (Form 990 or 990–EZ)—''Organization Exempt Under Section 501(c)(3),'' applicants must include with their application a copy of Page 1, Part 1, ''Compensation of the Five Highest Paid Employees Other Than Officers, Directors and Trustees,'' of their most recent Internal Revenue Service (IRS) Form—Schedule A (Form 990 or 990–EZ).

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient

organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3.—Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable timeframe), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change.

Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. For informational and planning purposes, we are informing all potential applicants that ECA is in the process of developing comprehensive approaches to alumni programming, Web portal development supported through ECA assistance awards (grants/cooperative agreements) and the expansion of private/public partnerships to increase the reach of ECA's exchange programs. In the event your proposal is recommended for funding, you may receive additional guidance/information related to these topics during the negotiation stage of the approval process.

In addition, all recipients of ECA grants or cooperative agreements should be prepared to state in any announcement or publicity where it is not inappropriate, that activities are assisted financially by the Bureau of Educational and Cultural Affairs of the United States Department of State under the authority of the Fulbright-Hays Act of 1961, as amended. Award recipients are strongly encouraged to use the Department seal on all promotional and related materials for ECA funded programs which support the commemoration of special occasions or events, but only after first obtaining written permission from the ECA program office(r) assigned to the project.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Funding levels for each country are as follows:

Algeria: One grant. Grant request $275,000 maximum.

Philippines: One grant. Grant request $275,000 maximum.

Serbia: One or two grants. Grant request $650,000 minimum, $1,355,000 maximum.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f.—Application Deadline and Methods of Submission

Application Deadline Date: Friday, January 9, 2009.

Reference Number: ECA/PE/C/PY–09–10.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and six copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–09–10, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any essential attachments, in Microsoft Word and/or Excel to the program office at *ORourkeMM@state.gov* (Algeria), *PiersonCompeauHM@state.gov* (Philippines and Serbia), and *LantzCS@state.gov* (all). The Bureau will provide these files electronically to the relevant U.S. Embassies for their review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support,

Contact Center Phone: 800–518–4726,

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time,

E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants

will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below:

1. *Quality of the program idea:* The proposed program should be well developed, respond to design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning and ability to achieve program objectives:* A detailed agenda and work plan should clearly demonstrate how project objectives will be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail. Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. *Program evaluation:* The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

6. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants

http://fa.statebuy.state.gov

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) Interim reports, as required in the Bureau grant agreement.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission

Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–7505, Fax: (202) 203–7529, E-mail: *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–09–10.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–26948 Filed 11–13–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 17, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0304.

Date Filed: October 15, 2008.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Expedited Composite Resolutions (Memo 1490).

Intended effective date: 1 December 2008.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–27050 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2008–1208]

Helicopter Emergency Medical Services Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on revisions to Operations Specification A021, pertaining to Helicopter Emergency Medical Services (HEMS) operations, and Operation Specification A050, pertaining to Helicopter Night Vision Goggle Operations (HNVGO).

DATES: We must receive your comments by December 15, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–1208 using the following method:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the on-line instructions for sending your comments electronically.

FOR FURTHER INFORMATION CONTACT: For technical questions regarding the A021 and A050 Operations Specifications revisions, contact: Larry Buehler, 135 Air Carrier Operations Branch, AFS–250, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166; e-mail *larry.buehler@faa.gov.* For legal questions concerning this notice, contact: Dean Griffith, FAA Office of the Chief Counsel, AGC–220, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *dean.griffith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to comment on the revised Operations Specification A021, pertaining to HEMS operations, and Operation Specification A050, pertaining to HNVGO by sending written data, views, or arguments. You should include the Federal docket number FAA–2008–1208 in your comments. We will consider all communications received by the closing date for comments.

Availability of Document

The revised Operations Specifications A021 (HEMS) and A050 (HNVGO) can be found and downloaded from the Internet at the following sites:

- FAA Web site: *http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/afs200/branches/afs250/*
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and search for the documents using the Federal docket number FAA–2008–1208.

Discussion

The FAA has determined that safety in air commerce and the public interest requires additional hazard mitigation for HEMS operations, and therefore has revised Operations Specifications A021 and A050 pursuant to 14 CFR 119.51.

The A021 revisions specify that if a flight, or sequence of flights, includes a part 135 segment then all visual flight rules (VFR) segments of the flight must be conducted within the weather minimums and minimum safe cruise altitude determined in pre-flight planning. Specifically, A021 requires pilots to identify a minimum safe cruise altitude during pre-flight planning by identifying and documenting obstructions and terrain along the planned flight path. HEMS pilots must also determine the minimum required ceiling and visibility to conduct the flight using the revised weather minimums contained in A021.

Revised Operations Specification A021 also permits HEMS instrument flight rules (IFR) operations at landing areas without weather reporting if an approved weather reporting source is located within 15 nautical miles of the landing area or if an area forecast is available.

Revised Operations Specification A050 changes weather minimums for HNVGO conducted in Class G Airspace to be consistent with changes made to the Class G Airspace minimums in A021.

The full text of the changes to Operations Specifications A021 and A050 are available on the FAA Web site and on *http://www.regulations.gov* as discussed above.

Issued in Washington, DC, on November 10, 2008.

Greg Kirkland,

Air Transportation Division, Acting Manager AFS–200.

[FR Doc. E8–27137 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Eagle County Regional Airport, Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Eagle County Regional Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before December 15, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig A. Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan R. Treu, Eagle County Attorney, 500 Broadway, P.O. Box 850, Eagle, Colorado 81631.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Eagle County Regional Airport under the provisions of the AIR 21.

On September 15, 2008, the FAA determined that the request to release property at the Eagle County Regional Airport submitted by the County of Eagle, Colorado met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than November 28, 2007.

The following is a brief overview of the request:

The County of Eagle, Colorado requests the release of 5.46 acres of non-aeronautical airport property, otherwise known as Lot 105 of the Eagle County Regional Airport, to the Colorado Department of Transportation. The purpose of this release is to allow the Colorado Department of Transportation to construct a new highway interchange. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may inspect the application, notice and other documents germane to the application in person at the Eagle County Courthouse, 500 Broadway, Eagle, Colorado 81631. Issued in Denver, Colorado on November 14, 2008.

Craig A. Sparks,

Manager, Denver Airports District Office.

[FR Doc. E8–26839 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Decision by FHWA and Notice of Limitation of Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces the availability of a Record of Decision by FHWA pursuant to the requirements of the National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. 4321, as amended and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508). In addition, this notice announces actions taken by FHWA and other Federal agencies that are final with in the meaning of 23 U.S.C. 139(l)(1). These actions relate to a proposed highway project, US–131 in St. Joseph County, Michigan. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 771 and 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the highway project will be barred unless the claim is filed on or before May 13, 2009. If the Federal law that authorizes that judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. David Williams, Environmental Program Manager, Federal Highway Administration Michigan Division, 315 West Allegan Street, Room 201, Lansing, MI 48933, (517) 702–1820, *David.Williams@fhwa.dot.gov.* Mr. Jason Latham, Project Manager, Michigan Department of Transportation, 1501 Kilgore Road, Kalamazoo, MI 49001, (269) 337–3900, *lathamj@michigan.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of Michigan: US–131 Improvement Project the Michigan/Indiana County line to North of the City of Three Rivers, St. Joseph County. This project consists of a new two-lane bypass of the Village of Constantine from north of Stears Road to south of Garber Road, the addition of two truck climbing lanes one each on existing US–131 northbound and southbound lanes from north of Garber Road to south of Drummond Road, and other minor intersection corrections. The actions by the Federal agencies, and the laws under which such action were taken, are described in the Final Environmental Impact Statement for the project approved on April 11, 2008, in the FHWA Record of Decision (ROD) issued on October 27, 2008, and in other project records. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the Michigan Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.michigan.gov/mdot/0,1607,7–151–9621_11058_28766,00.html* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economics:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indians Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [14 U.S.C. 1451–1465]; Land and Water Conservation fund [16 U.S.C. 4601–4604]; Safe Drinking Water act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [42 U.S.C. 401–406]; TEA–21 Wetland Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 9501–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource, Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplains Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13112, Invasive Species; E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 31, 2008.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. E8–26641 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–3637; FMCSA–00–7006; FMCSA–00–7165; FMCSA–00–7363; FMCSA–00–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 14 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 8, 2008. Comments must be received on or before December 15, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–98–3637; FMCSA–00–7006; FMCSA–00–7165; FMCSA–00–7363; FMCSA–00–8203, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 14 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 14 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Henry W. Adams	Wayne R. Mantela
Delbert R. Bays	Kenneth D. May
Eugene A. Gitzen	Gordon L. Nathan
Nelson V. Jaramillo	Bernice R. Parnell
Larry D. Johnson	Patrick W. Shea

Bruce T. Loughary	Roy F. Varnado, Jr.
Demetrio Lozano	Rick A. Young

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 14 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 20245; 65 FR 57230; 67 FR 57266; 69 FR 52741; 71 FR 66217; 65 FR 33406; 65 FR 57234; 67 FR 57266; 69 FR 64810; 71 FR 66217; 65 FR 45817; 65 FR 77066; 67 FR 71610; 65 FR 77069). Each of these 14 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 15, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 14 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 4, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–27079 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA–2001–9972]

Applicant: CSX Transportation, Inc., John R. Rimer, Director of Locomotive Engineering, Mechanical Operations, 500 Water Street—J340, Jacksonville, Florida 32202.

As a point of clarification, FRA has requested that CSX Transportation (CSXT) submit an application request for a modification to a signal system that has previously been made.

Upon installation of the Advanced Civil Speed Enforcement System (ACSES) required by the Order of Particular Applicability, FRA Docket Number 2001–9972 (formerly FRA Docket No. 87–2, Notice No. 7 issued on July 22, 1998), CSXT became aware of frequent nuisance penalty brake applications being experienced while performing routine freight switching maneuvers. The circumstances of the situation are as described below.

As a method of ''roll-away'' protection, ACSES required a train to be at 0 miles per hour (mph) with the reverser centered. If a train was not at 0 mph and the reverser was centered, the condition was recognized by ACSES as a moving train not intended to be moving, and therefore a possible roll-away. Freight trains, unlike passenger trains, do a lot of back and forth movements, with the reverser moved through the neutral position numerous times, as the locomotive switches in and out of a yard or work a business along the Northeast Corridor (NEC).

In 2001, CSXT, while hosting bi-monthly ACSES problem-solving meetings with Amtrak, FRA, and system suppliers PHW and Alstom, proposed and executed a modification (Number M–0122) which was external to ACSES that made ACSES act as through the reverser was in forward, while it was actually centered. This allowed CSXT engineers to perform freight switching activities without the nuisance penalty brake applications described above.

This modification also disabled a portion of ACSES roll-away protection, which was intended to have ACSES prevent a train from rolling away in the event the train brakes were not set properly and an end was not selected. This accounted for the immediate recognition of a roll-away condition no longer being available if a train's speed was not 0 mph. However, as a train's speed began to increase with the reverser centered (as would be the case in a standing train should it begin to roll away), the alerter function is enabled and within a short period of time (30 to 60 seconds depending on gained speed), the brakes will be set.

CSXT does not believe that the ACSES roll-away protection function was intended to be active while a train is being brought to a stop such as within switching movements. CSXT has operated with modification M–0122 since September 30, 2001, without incident. CSXT was requested to, and has submitted, a request for regulatory relief to use this modification on their GP–40–2 locomotives.

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 be identified by Docket Number FRA–2001–9972 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 November 7, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–27077 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

United We Ride State/Tribal Mobility Management Coordination Grants; Solicitation for Proposals and Technical Assistance/Training Available

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for proposals.

SUMMARY: This notice solicits proposals from States and tribal associations or consortia for United We Ride (UWR) mobility management grants. This solicitation is issued by the Federal Transit Administration (FTA) on behalf of the Federal Interagency Coordinating Council on Access and Mobility (CCAM). Funding in the amount of $1.5 million is provided by FTA to support grants ranging up to $300,000 each. These grants are intended to assist States and tribal associations in supporting the development of transportation coordination capabilities and capacity within local or regional human service networks to address the individualized customer transportation needs of persons and families with low income, persons with disabilities, older adults and youth. Specifically, these grants seek to address individual customer needs for mobility within workforce development, health care, aging, youth, disability, education, housing, veterans and other social service or human service support networks. State or tribal mobility management proposals may include the development of educational programs, training and technical assistance activities, and mobility management coordination pilots for or within such networks. These grants are not intended to fund the capital or operating costs of specific transportation services or transportation brokerage programs. The projects proposed should represent new or expanded activities, not just the maintenance of existing actions already being funded. FTA-funded technical assistance and training programs are described that may prove helpful to applicants in either developing or implementing proposals.

DATES: Proposals must be submitted February 12, 2009. States are advised to begin the Grants.Gov registration process immediately, if they have not previously submitted grant applications through *http://www.Grants.Gov* in order to be able to meet the deadline. Grants.Gov allows organizations to electronically find and apply for competitive grant opportunities from all Federal grant-making agencies. Grants.Gov is the single access point for over 1000 grant programs offered by the 26 Federal grant-making agencies.

ADDRESSES: *Proposals are to be submitted electronically* through *http://www.Grants.Gov.* Alternatively, proposals can also be submitted in hard copy at the address below. All proposals must be received by close of business February 12, 2009. Use of a commercial delivery service is recommended as U.S. Postal Service delivery to the Department is routinely subject to delays. [Proposals may not be submitted by e-mail.]

Douglas Birnie, United We Ride Grants, 1200 New Jersey Avenue, SE., Room E46–309, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Birnie at PH: 202–366–1666; FAX: 202–366–3394; or *UnitedWeRide@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

United We Ride (UWR) is an initiative of the Federal Interagency Coordinating Council on Access and Mobility (CCAM), established by President George W. Bush under Executive Order 13330 on Human Service Transportation Coordination. The CCAM includes eleven Federal departments working together to coordinate Federal programs funding transportation. The goals are to simplify access for customers, reduce transportation service duplication, and enhance cost efficiencies within existing resources.

There are 64 different Federal programs across nine Federal agencies that provide funding that may be used to support community transportation

services. The Congress and the Executive Branch are interested in ensuring that various human service transportation activities funded by various Federal programs are better coordinated and more efficient.

The intent of the UWR initiative is to break down the barriers among Federal programs to ensure that transportation services are seamless, comprehensive and accessible. Specifically, UWR is tasked with seeking ways to simplify access to transportation services for persons with disabilities, individuals and families with lower incomes, older adults and youth.

Mobility management projects are short term planning and management activities intended to coordinate transportation service modes in order to address the individualized needs of customers, in this case those within transportation disadvantaged populations, e.g., persons with disabilities, older adults, youth, and individuals and lower income families).

Grant Purpose

Grants are intended to provide states and tribal associations with financial support to help their local or regional education, health care, workforce development and human service agencies and provider networks address their customers' transportation needs in support of their program objectives through mobility management actions.

Eligible Coordination Grant Activities

Grants could be used by State and tribal associations:

1. Assist States and tribal associations to build capabilities and capacity of human service and other service networks to address their customers' mobility needs by participating and providing input/feedback on transportation needs/issues in collaborative local or regional coordinated public transit/human services transportation planning processes and by working with public, private non-profit and private for-profit transportation organizations to deliver comprehensive and coordinated transportation that meets the needs of the transportation-disadvantaged population (e.g., individuals with low incomes, older adults, youth and persons of all ages with disabilities).

2. Educate and train human service case workers/personnel and other service system personnel to assess customer mobility needs, develop appropriate individualized transportation plans and strategies, identify appropriate transportation service options, provide or arrange travel training for customers, and make service placements that are reachable and accessible to customers.

3. Develop transportation capabilities and capacity by establishing local or regional mobility managers, or travel navigators (transportation resource coordinators) working with or within education, health care, human service and workforce development and other service networks. The intent is to develop leadership capabilities and transportation knowledge in order to help these networks address the needs of transportation disadvantaged populations and to work on increasing cross-agency/departmental collaboration to facilitate coordination, enhance services, and address duplication and redundancies of programs and services. Local mobility resource coordinators or travel navigators working with or operating in human service, workforce development, health care, education and other community-based networks would provide or arrange travel orientation and training, trip planning, and other skill building and information activities to help customers address their transportation needs.

4. Implement additional elements in their coordination plans (i.e., plans developed under this or previous UWR State grants) to address capacity building within human service and other networks addressing the needs of transportation disadvantaged populations.

Eligibility of Applicants

Eligible applicants include the Governor's Office from each State. The Governor may designate a ''lead'' agency in writing. This designation should be submitted with the State's proposal. Eligible applicants also include tribal associations or consortia that would address the needs of multiple tribal networks addressing the human service transportation needs of the tribes. FTA will accept proposals submitted in electronic or hard copy. The proposal must clearly demonstrate collaboration among multiple State or tribal agencies. The Governor's Office, designated ''lead'' agency, or a designated tribal organization, is responsible for submitting the application, overseeing the implementation of the project and submitting required reports and evaluations.

State and Tribal Association/Consortia Grant Elements

The grants are to encourage States and tribal associations to develop, support, and demonstrate the potential of mobility management with specialized customer markets and within human service and other networks. These grants are meant to help States and tribal associations/consortia build transportation capacity and capabilities within these networks to meet customer travel needs and to provide feedback to transportation providers, planners, and political decision-makers on transportation services and service needs of human service network customers. The purpose of these grants is to apply the mobility management framework for targeted consumer groups—persons with disabilities, youth, older adults, and individuals and families with low incomes—and to develop transportation infrastructure for mobility management coordination within human service, workforce development, health care, education and other community-based networks.

Projects proposed for funding under this announcement must address the required elements listed below and give consideration to including other elements listed or developed in the plan, as appropriate.

1. Consult with an advisory board or planning committee to design the plan for grant-related activities. Members should include, but not be limited to, customers, social and community services, education organizations, local businesses, workforce development, health care, human service and other agencies from target networks, community organizations (faith-based or otherwise), and local leadership. (Required)

2. Provide forums for interagency dialogue on mobility management strategic plans and designs that invite the participation of key agencies (e.g., human service, workforce development, health care, education, transportation other appropriate networks), personnel serving youth with disabilities, older adults, and individuals and families with low incomes, and the business community. Education about mobility management and development of strategic plans and designs should involve the participation of consumers, community service providers, advocacy organizations and other key stakeholders. (Required)

3. Undertake actions to make stakeholders and advocacy groups representing youth with disabilities, older adult, and individuals and families with low incomes aware of the benefits of mobility management activities and to involve them in coordinated transportation and mobility management planning at the State, regional, and local levels. (Required)

4. Design and conduct an evaluation of statewide, local or tribal programs related to mobility management throughout the country to discern

promising practices and organize this information to facilitate the adoption of such practices by communities. (Optional)

5. Conceptualize, design, and deliver community awareness and training programs, targeting specialized providers, advocates, and customers, aimed at building mobility management capacity within social service, workforce development, health care, education, and other appropriate networks. This capacity-building training would strengthen participants' ability to implement mobility management programs across their communities, states and tribes. (Optional)

6. Undertake pilot programs and actions to assist local human service, workforce development, education, and health care organizations and their staff address their customer transportation needs, including travel training, individualized trip planning, transportation information, and other needed service skills and methods. (Optional)

Proposal Submission

The proposal should be prepared in a format compatible with Microsoft Word and submitted electronically through the *http://www.Grants.Gov* Web site. The proposal must include a project narrative that addresses the required and other selected elements described in the section above on ''State/Tribal Association/Consortia Grant Elements'' and the evaluation criteria below. Proposals may not exceed (20) pages, not including the budget or letters of support. The proposal should include an activity budget. The proposal narrative should be double-spaced, in Times New Roman, 12-point font. Applicants must also submit letters of support via scanned documents attached to the *http://www.Grants.Gov* submission.

Criteria for Rating and Selecting Proposals

1. The extent to which the state or tribal association/consortia proposal has developed an action plan or program adopted by and coordinated with multiple-State agencies or tribal organizations that addresses the building of capacity and capabilities within service networks to address customer mobility needs of older adults, youth, people with disabilities, and individuals and families with lower incomes. The proposal should reflect this plan and, at a minimum, demonstrate support from the Governor's office or tribal leadership and involvement from at least the State or tribal transportation, aging, labor and education departments.

(20 points)

2. The extent to which the state or tribal association/consortia demonstrates leadership and resources (e.g., matching funds, staff, policies) to implement coordinated human service transportation initiatives. This includes the extent to which the state or tribal association/consortia has addressed the key elements of change management including senior leadership support and ensuring that key personnel either have the skills and experience to lead coordination and strategic planning or will receive the training necessary to achieve success. (20 points)

3. The extent to which the state or tribal association adequately demonstrates coordination/collaboration with other partners including communication plans for keeping key stakeholders informed and involved (e.g., providers, consumers, private for profit, non-profit organizations, or government). (15 points)

4. The extent to which the state or tribal association/consortia demonstrates meaningful involvement of consumers in the development and implementation of human service transportation planning and grant activities at the State, regional and local levels. (15 points)

5. The extent to which the proposed activities, timelines, evaluation plan, and budget are congruent with the proposed goals, objectives, and outcomes for the project and State action plan. (15 points)

6. The extent to which the state or tribal association/consortia has addressed the development and implementation of performance measures and evaluation strategy for the targeted activities outlined in the proposal. (15 points)

Eligibility/Expenses

Grant funds may not be used for capital purchases or operating costs for provision of transportation services or brokerages. Grant funds may be used to support personnel for planning, outreach, training, coordination, mobility management, and other administration activities required to enhance coordination among and across agencies within the state or tribes to increase transportation coordination and customer service capabilities of state, regional and local human service networks. Supplies, small equipment (computer hardware and software, etc.), and travel are also eligible expenses.

Review and Award Process

Interagency panels from CCAM will review each grant application. FTA will notify successful applicants. The anticipated notification of grantee selections is March 2009. FTA regional offices will work with respective Washington, DC-based offices and technical assistance providers to assist states with implementation after the selections are announced. Selected recipients will recieve pre-award authority as of the date of notification of project selection. FTA will manage the grants through FTA's Transportation Electronic Award Management web-based system (TEAM).

Grant Periods and Awards

The grant period is two years (starting on the date of the grant contract obligation and ending two years from that date.) Grants will be awarded competitively based upon the criteria described, provided states and tribal associations that submit proposals meet the requirements outlined this notice.

Technical Assistance and Training

Technical Assistance Available

Technical assistance is available in developing or implementing human network transportation capabilities and capacity building programs. States or tribes may receive technical assistance through a variety of resources. Specific resource centers include the National Resource Center on the Human Service Transportation Coordination (NRC), Community Transportation Assistance Project (CTAP), the Rural Transportation Assistance Program (RTAP), Easter Seals Project ACTION, the National Center on Senior Transportation (NCST), Intelligent Transportation Systems (ITS) Peer-to-Peer Program, the Multi-State Technical Assistance Program (MTAP), the Joblinks Employment Transportation Initiative (Joblinks). The range of services available includes, but is not limited to, assistance with coalition building, assessment, strategic planning, policy development, customer outreach, implementation strategies and evaluation. Technical assistance is provided via phone, email, and during on-site visits when appropriate. States and tribal associations will also be able to receive technical assistance through the UWR ambassador program. The UWR ambassador program provides hands-on assistance to states and tribes in the development and delivery of coordinated human service transportation programs. Information on these technical assistance systems can be found at the United We Ride

Website, under the technical assistance section [*http://www.unitedweride.gov.*]

Training Available

Training is also available to support the program goals.

1. *Transportation Solutions: Linking People with Their Community Training:* A new training on community-level mobility management activities has been developed by the Community Transportation Association of America and Easter Seals. This 1-day in-person training teaches an individual to become a Certified Transportation Resources Coordinator (TRC) within his or her community. During the course, the TRC will learn about:

- Strategies and templates for gathering information on all available community transportation services.
- Transportation funding sources and programs.
- How to keep the gathered information updated.
- How to develop an individualized transportation plan.
- Support services that assist people in using available transportation options.
- Steps to take to impact their community's efforts to improve transportation options.

The TRC would then serve as a resource person for direct-service providers on potential transportation solutions within his or her agency or community, depending on the size of the service area. The TRC would also conduct a four-hour training course for interested direct-service providers in local human service agencies, workforce development agencies, and other groups on the resources specific to that community. The TRC will receive instruction and a written manual on how to implement the four-hour training when they attend the initial day-long training. The TRC training also provides three new tools for participants: the Individualized Transportation Plan, the Transportation Provider Profile, and the Report of Unmet Transportation Needs.

Initial development of this training was made possible with support of the Office of Disability Employment Policy, U.S. Department of Labor.

The training will be available beginning January 1, 2009. For more information, contact Len Cahill, Training Coordinator, Community Transportation Association of America, 202.415.9653 or 800.891.0590 x705, *cahill@ctaa.org.*

2. *Coordinated Mobility: Unified Transportation Management Solution Training:* The National Transit Institute (NTI) administered by Rutgers State University of New Jersey offers a two-day course on creative mobility management approaches for transforming fragmented transportation systems to a more seamless network with a customer-focused mindset.

Objectives and Course Content:

- Identify ways to forge partnerships with community players to coordinate multimodal transportation options around the needs of the customer.
- Develop an understanding of the customer travel needs of today.
- Create awareness of the opportunities.
- Present elements of mobility management and planning techniques.
- Identify and promote the benefits of mobility management for communities.
- Identify funding resources.

Audience and Fees: Human Service Professionals, Transit Providers, Brokerage Firms Personnel, State Agency Staff, transit managers for all of the different services, Metropolitan Planning Organization's (MPO), Transportation Management Association's (TMA's), Councils of Governments, Policy Makers are encouraged to register for this course. Tuition shall be waived for Federal, State and local government employees (including tribal employees) who work in transportation or related areas. Fee for contractors and consultants: $300.00.1.6 CEU credits are offered.

For more information, contact *msirleaf@nti.rutgers.edu* or call (732) 932–1700.

3. *Introduction to Travel Training:* This is a three-day course sponsored by Easter Seals Project ACTION. Delivered by Veteran Travel Trainers, this course will provide information on Travel Training Assessment Processes, Trip Planning, The Built and Natural Environment, Designing Travel Instruction Plans, Teaching Street Crossings, Teaching Boarding, Riding, Deboarding Vehicles and Understanding Vehicle Features, Preparing for Unforeseen Incidents and Emergencies. This in-person learning event is delivered in both a classroom and field setting.

Four courses will be offered during the fiscal year and information will be available beginning in October 2008. For more information, contact Kristi Ross, Easter Seals Project ACTION, 800.659.6428, *kross@easterseals.com.*

Issued on: November 4, 2008.

James S. Simpson,

Administrator, Federal Transit Administration.

[FR Doc. E8–27124 Filed 11–13–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35193]

Steven C. May—Continuance in Control Exemption—Lehigh Railway, LLC

Steven C. May (May), a noncarrier, has filed a verified notice of exemption to continue in control of Lehigh Railway, LLC. (LRWY), upon LRWY's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35192, *Lehigh Railway, LLC.—Lease and Operation Exemption—Norfolk Southern Railway Company*. In that proceeding, LRWY seeks an exemption under 49 CFR 1150.31 to lease from Norfolk Southern Railway Company (NSR) and to operate approximately 56.0 miles of rail line, including any sidings, sidetracks, yards or facilities presently owned by NSR that are accessed via the line, between specified points in Pennsylvania. In addition, LRWY shall have operating rights to certain designated track north of milepost IS 269.5 extending into Sayre, PA, solely for interchange with NSR.

The parties intend to consummate the transaction soon after the November 29, 2008, effective date of the exemption.

May either directly or indirectly controls two Class III rail carriers: Luzerne and Susquehanna Railway Company (LS); and the Owego & Harford Railway, Inc. (OHRY).

May represents that: (1) The rail lines to be leased and operated by LRWY do not connect with the rail lines of any existing carrier owned or operated by May; (2) this continuance in control is not part of a series of anticipated transactions that would result in such a connection; and (3) this control transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the

exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than November 21, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35193, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Janie Sheng, K&L Gates LLP, 1601 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http: // www.stb.dot.gov*.

Decided: November 7, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E8–27042 Filed 11–13–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35147]

Norfolk Southern Railway Company, Pan Am Railways Inc., et al.—Joint Control and Operating/Pooling Agreements—Pan Am Southern LLC

AGENCIES: Surface Transportation Board.

ACTION: Notice of Availability of Environmental Assessment and request for Public Review and Comment.

SUMMARY: On May 30, 2008, Norfolk Southern Railway Company (Norfolk Southern), Pan Am Railways, Inc. (PARI), Boston and Maine Corporation (B&M) and Springfield terminal Railway company (Springfield Terminal) (collectively, Applicants) filed a petition with the Surface Transportation Board (Board) seeking Board approval under 49 U.S.C. 11322 and 11323 of (1) the acquisition by Norfolk Southern and B&M of joint control and ownership of Pan Am Southern, LLC (PAS), a new rail carrier to be formed; and (2) the agreements by which Springfield Terminal would operate the lines of PAS and establish rates for PAS. The agreements for which approval and authorization are being sought by the application and the related filings will be referred to collectively as the Transaction. The Board, through its Section of Environmental Analysis (SEA), is the lead agency responsible for the preparation of the Environmental Assessment (EA).

If the Transaction is approved, PAS would own or operate over (through trackage rights) approximately 437 miles of existing rail lines (referred to in the application as the PAS Lines), comprised of approximately 238.4 miles of existing rail lines to be owned by PAS and approximately 198.4 miles of existing track over which PAS would have trackage rights. Norfolk Southern would contribute capital to PAS which would go into improving infrastructure by creating a new intermodal and automotive facility in Mechanicville, NY (the Mechanicville Facility), creating a new automotive facility in Ayer, MA (San Vel Automotive Facility), making minor improvements at an existing intermodal facility at Ayer (Ayer Intermodal), and enhancing other infrastructure along the existing east-west main line. The Transaction also includes acquisition and/or operation by PAS of six other existing rail yards in addition to the three facilities at which some construction would occur. The Transaction does not contemplate any yard improvements or changes in activity at any of these six rail yards.

Based on the information provided from all sources to date and its independent analysis, SEA preliminarily concludes that construction and operation of the two proposed new rail facilities and improvements to an existing rail facility and existing rail lines would not have significant environmental impacts if the Board imposes and Applicants implement the recommended mitigation measures set forth in the EA.

Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. The entire EA is also available for review on the Board's Web site (*http://www.stb.dot.gov*) by going to ''E-LIBRARY,'' clicking on the ''Decisions and Notices'' link, and then searching by the Service Date (November 14, 2008) or Docket Number (FD 35147). SEA will consider all comments received in making its final recommendations to the Board. The Board will then consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

FOR FURTHER INFORMATION CONTACT: Kenneth Blodgett, Project Manager, at (202) 245–0305; e-mail: *blodgettk@stb.dot.gov*. Federal Information Relay Service for the hearing impaired: 1–800–877–8339.

DATES: The EA is available for public review and comment. All comments must be submitted or post-marked by December 15, 2008.

ADDRESSES: Send written comments (an original and one copy) to Surface Transportation Board, Case Control Unit, 395 E Street, SW., Washington, DC 20423, to the attention of Kenneth Blodgett. Environmental comments may also be filed electronically on the Board's Web site, *http:// www.stb.dot.gov*, by clicking on the ''E-FILING'' link. Please refer to Finance Docket No. 35147 (FD 35147) in all correspondence, including e-filings, addressed to the Board.

Decided: November 14, 2008.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E8–27073 Filed 11–13–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35192]

Lehigh Railway, LLC.—Lease and Operation Exemption—Norfolk Southern Railway Company

Lehigh Railway, LLC. (LRWY), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Norfolk Southern Railway Company (NSR) and operate approximately 56.0 miles of NSR's rail line (the Line), extending between approximately milepost IS 269.5, at Athens, PA, and approximately milepost IS 213.5, at Mehoopany, PA, in Bradford and Wyoming counties, PA.[1] The line also includes any sidings, sidetracks, yards or facilities presently owned by NSR that are accessed via the line. NSR will also grant LRWY operating rights to certain designated track north of milepost IS 269.5 extending into Sayre, PA, solely for interchange with NSR.[2]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35193, *Steven C. May—Continuance in Control Exemption—Lehigh Railway,*

[1] The line does not connect with the Southern Tier, owned and operated by NSR.

[2] The line does not include properties south of milepost IS 213.5 which have been leased by NSR to the Reading, Blue Mountain, and Northern Railroad and to Proctor and Gamble Corporation at Mehoopany since 2001. If these properties revert back to the control of NSR during the term of the lease, NSR may, at its option, and subject to the approval of the Surface Transportation Board, if required, elect to assign the property or properties at Mehoopany to the lease.

LLC. In that proceeding, Steven C. May, has filed a verified notice of exemption to continue in control of LRWY upon LRWY's becoming a Class III rail carrier.

LRWY certifies that its projected annual revenues as a result of the transaction will not result in LRWY becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or soon after November 29, 2008, the effective date of the exemption.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 21, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35192, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Janie Sheng, K&L Gates LLP, 1601 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 7, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeff Herzig,

Clearance Clerk.

[FR Doc. E8–27045 Filed 11–13–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 6, 2008.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 15, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1209.

Type of Review: Extension.

Title: IA–83–90 (Final) Disclosure of Tax Return Information for Purposes of Quality or Peer Review; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

Description: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Respondents: Private Sector.

Estimated Total Burden Hours: 250,000 hours.

OMB Number: 1545–1661.

Type of Review: Extension.

Title: REG–106010–98 (Final) Qualified Lessee Construction Allowance for Short-Term Leases.

Description: The regulations provide guidance with respect to Sec. 110, which provides a safe harbor whereby it will be assumed that a construction allowance provided by a lessor to a lessee is used to construct or improve lessor property when long-term property is constructed or improved and used pursuant to a short-term lease. The regulations also provide a reporting requirement that ensures that both the lessee and lessor consistently treat the property subject to the construction allowance as nonresidential real property owned by the lessor.

Respondents: Private Sector.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–1418.

Type of Review: Extension.

Title: REG–154000–04 (Notice of Proposed Rulemaking Final and Temporary Regulations) Diesel Fuel and Kerosene Excise Tax; Dye Injection.

Description: In order for diesel fuel and kerosene that is used in a nontaxable use to be exempt from tax under section 4082(a), it must be indelibly dyed by use of a mechanical dye injection system that satisfies the requirement in the regulations.

Respondents: Private Sector.

Estimated Total Burden Hours: 1,400 hours.

OMB Number: 1545–1791.

Type of Review: Extension.

Form: 12339–A, 12339, 12339–B.

Title: Tax Check Waiver.

Description: The tax check waiver is necessary for the purpose of ensuring that all panel members are tax compliant. Information provided will be used to qualify or disqualify individuals to serve as panel members. The information will be used as appropriate by the Taxpayer Advocate service staff, and other appropriate IRS personnel.

Respondents: Individuals or households.

Estimated Total Burden Hours: 417 hours.

OMB Number: 1545–1941.

Type of Review: Extension.

Form: 3491.

Title: Consumer Cooperative Exemption Application.

Description: A cooperative uses Form 3491 to apply for exemption from filing information returns (Forms 1099–PATR) on patronage distributions of $10 or more to any person during the calendar year.

Respondents: Private Sector.

Estimated Total Burden Hours: 148 hours.

OMB Number: 1545–0295.

Type of Review: Extension.

Title: Notice 210 Preparation Instruction for Media Labels.

Description: Notice 210, Preparation Instructions for Media Labels, instructs the filers on how to prepare their own pressure sensitive label. This label must be attached to each and every piece of magnetic media to identify specific items needed so that the media can be processed by the Internal Revenue Service.

Respondents: Private Sector.

Estimated Total Burden Hours: 12,765 hours.

OMB Number: 1545–1275.

Type of Review: Extension.

Form Number:

Title: Limitations on Corporate Net Operating Loss Carryforwards (CO–45–91 Final).

Description: Section 1.382–9(d)(2)(iii) and (d)(4)(iv) allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies under section 382(l)(1)(5). Section 1.382–9(d)(6)(ii) requires a loss corporation to

file an election if it wants to apply the regulations retroactively, or revoke a prior section 382(l)(1)(6) election.

Respondents: Private Sector.

Estimated Total Burden Hours: 200 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Nicholas A. Fraser, (202) 395–5887, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E8–27017 Filed 11–13–08; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Literacy

AGENCY: Office of Financial Education, Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Literacy will convene its sixth meeting on Thursday, December 4, 2008, via teleconference beginning at 2 p.m. Eastern Time. The telephone meeting will be open to the public. Members of the public interested in listening to the meeting should e-mail the Treasury Department at *FinancialLiteracyCouncil@do.treas.gov* to obtain the information on how to listen to the call. Individuals needing special accommodations to take part because of a disability should notify the contact person listed below.

DATES: The telephone meeting will be held on Thursday, December 4, 2008 at 2 p.m. Eastern Time.

Submission of Writen Comments: The public is invited to submit written statements to the President's Advisory Council on Financial Literacy by any one of the following methods:

Electronic Statements

E-mail *FinancialLiteracyCouncil@do.treas.gov*; or

Paper Statements

Send paper statements in triplicate to President's Advisory Council on Financial Literacy, Office of Financial Education, Room 1332, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treasury.gov/offices/domestic-finance/financial-institution/fin-education/council/index.shtml*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will make such statements available for public inspection and copying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Tom Kurek, Office of Financial Education, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–0204 or *Thomas.Kurek@do.treas.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Advisory Council, has ordered publication of this notice that the President's Advisory Council on Financial Literacy will convene its sixth meeting on Thursday, December 4, 2008, via teleconference beginning at 2 p.m. Eastern Time. The meeting will be open to the public. Members of the public who wish to listen to the meeting should contact the Office of Financial Education at *FinancialLiteracyCouncil@do.treas.gov* by 5 p.m. Eastern Time on November 25, 2008. The primary purpose of this telephone meeting is for the President's Advisory Council on Financial Literacy to discuss the preliminary draft of the President's Advisory Council on Financial Literacy's Annual Report to the President.

Dated: November 3, 2008.

Taiya Smith,

Executive Secretary, Treasury Department.

[FR Doc. E8–27018 Filed 11–13–08; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Friday,

November 14, 2008

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 724, 773, et al.

Abandoned Mine Land Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 724, 773, 785, 816, 817, 845, 846, 870, 872, 873, 874, 875, 876, 879, 880, 882, 884, 885, 886, and 887

RIN 1029–AC56

[Docket ID: OSM–2008–0003]

Abandoned Mine Land Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are revising our regulations for the Abandoned Mine Reclamation Fund (Fund) and the Abandoned Mine Land (AML) program. This rule revises our regulations to be consistent with the Tax Relief and Health Care Act of 2006, Public Law 109–432, signed into law on December 20, 2006, which included the Surface Mining Control and Reclamation Act Amendments of 2006 (the 2006 amendments). The rule reflects the extension of our statutory authority to collect reclamation fees for an additional fourteen years and to reduce the fee rates. The rule also updates the regulations in light of the statutory amendments that change the activities State and Tribal reclamation programs may perform under the AML program, funding for reclamation grants to States and Indian tribes, and transfers to the United Mine Workers of America (UMWA) Combined Benefit Fund (CBF), the UMWA 1992 Benefit Plan, and the UMWA Multiemployer Health Benefit Plan (1993 Benefit Plan). Finally, our rule extends incentives reauthorized by the 2006 amendments pertaining to the remining of certain lands and water adversely affected by past mining.

DATES: *Effective Date:* January 13, 2009.

FOR FURTHER INFORMATION CONTACT: Danny Lytton, Chief, Reclamation Support Division, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone: 202–208–2788; E-mail: *dlytton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Reclamation Fee and the Abandoned Mine Land Program
A. How did the reclamation fee work before the 2006 amendments?
B. How did the AML program work before the 2006 amendments?
C. How did the 2006 amendments change these programs?
II. Outreach and Guidance
III. Description of the Final Rule and Discussion of the Comments Received
A. General Comments
B. Section By Section Analysis
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I. Background on the Reclamation Fee and the Abandoned Mine Land Program

A. How did the reclamation fee work before the 2006 amendments?

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) created an AML reclamation program funded by a reclamation fee assessed on each ton of coal produced. The fees collected have been placed in the Fund. We, either directly or through grants to States and Indian tribes with approved AML reclamation plans under SMCRA, have been using money from the Fund primarily to reclaim lands and waters adversely impacted by mining conducted before the enactment of SMCRA and to mitigate the adverse impacts of mining on individuals and communities. Also, since Fiscal Year (FY) 1996, an amount equal to the interest earned by and paid to the Fund has been available for direct transfer to the UMWA CBF to defray the cost of providing health care benefits for certain retired coal miners and their dependents. *See* Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776, 3056, § 19143(b)(2) of Title XIX.

Section 402(a) of SMCRA fixed the reclamation fee for the period before September 30, 2007, at 35 cents per ton (or 10 percent of the value of the coal, whichever is less) for surface-mined coal other than lignite, 15 cents per ton (or 10 percent of the value of the coal, whichever is less) for coal from underground mines, and 10 cents per ton (or 2 percent of the value of the coal, whichever is less) for lignite. As originally enacted, section 402(b) of SMCRA authorized collection of reclamation fees for 15 years following the date of enactment (August 3, 1977); thus, our fee collection authority would have expired August 3, 1992. However, Congress extended the fees and our fee collection authority through September 30, 1995, in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388, § 6003(a)). The Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776, 3056, § 19143(b)(1) of Title XIX), extended the fees through September 30, 2004. A series of short interim extensions in appropriations and other acts extended the fees through September 30, 2007.

B. How did the AML program work before the 2006 amendments?

SMCRA established the AML reclamation program in response to concern over extensive environmental damage caused by past coal mining activities. Before the 2006 amendments, the AML program reclaimed eligible lands and waters using money appropriated by Congress from the Fund, which came from the reclamation fees collected from the coal mining industry. Eligible lands and waters were those which were mined for coal or affected by coal mining or coal processing, were abandoned or left inadequately reclaimed prior to the enactment of SMCRA on August 3, 1977, and for which there was no continuing reclamation responsibility under State or other Federal laws.

SMCRA established a priority system for reclaiming coal problems. Before the 2006 amendments, the AML program had five priority levels, but reclamation was focused on eligible lands and waters that reflected the top three priorities. The first priority was ''the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.'' 30 U.S.C. 1233(a)(1) (unamended). The second priority was ''the protection of public health, safety, and general welfare from adverse effects of coal mining practices.'' 30 U.S.C. 1233(a)(2) (unamended). The third priority was ''the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices * * *.'' 30 U.S.C. 1233(a)(3) (unamended).

As the law required, the Fund was divided into State or Tribal and Federal shares. Each State or Indian tribe with a Federally approved reclamation plan was entitled to receive 50 percent of the reclamation fees collected annually from coal operations conducted within its borders. The ''Secretary's share'' of the Fund consisted of the remaining 50 percent of the reclamation fees collected annually and all other receipts to the Fund. The Secretary's share was allocated into three shares as required by the 1990 amendments to SMCRA. *See* Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1388, § 6004. First, we allocated 40% of the Secretary's share to ''historic coal'' funds to increase reclamation grants to States and Indian tribes for coal reclamation. However, all the funds which were allocated may not have been appropriated. Second, we allocated 20% to the Rural Abandoned Mine Program (RAMP), operated by the Department of Agriculture. However, funding for that program has not been appropriated AML funds since the mid 1990's. Last, SMCRA required us to allocate 40% to ''Federal expense'' funds to provide grants to States for emergency programs that abate sudden

dangers to public health or safety needing immediate attention, to increase reclamation grants in order to provide a minimum level of funding to State and Indian tribal programs with unreclaimed coal sites, to conduct reclamation of emergency and high-priority coal sites in areas not covered by State and Indian tribal programs, and to fund our operations that administer Title IV of SMCRA.

States with an approved State coal regulatory program under Title V of SMCRA and with eligible coal mined lands may develop a State program for reclamation of abandoned mines. The Secretary may approve the State reclamation program and fund it. At the time the 2006 amendments were enacted, 23 States received annual AML grants to operate their approved reclamation programs. Three Indian tribes (the Navajo, Hopi and Crow Indian tribes) without approved regulatory programs have received grants for their approved reclamation programs as authorized by section 405(k) of SMCRA.

Before the 2006 amendments, a State or Indian tribe was authorized to certify that it had addressed all known coal problems within the State or on Indian lands within its jurisdiction. These certified States and Indian tribes were able to use AML grant funds to abate the impacts of mineral mining and processing. SMCRA established the following priorities for the certified programs:

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects from mineral mining and processing practices.

(2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

30 U.S.C. 1240a(c).

Certified States and Indian tribes could also use these funds to improve or construct utilities adversely affected by mineral mining and to construct public facilities in communities impacted by coal or mineral mining or processing. 30 U.S.C. 1240a(e). In addition, certified States and Indian tribes could use these funds for activities or construction of specific public facilities related to the coal or minerals industry in areas impacted by coal or minerals development. 30 U.S.C. 1240a(f).

In contrast, uncertified States and Indian tribes could use AML grant funds on noncoal projects only to abate extreme dangers to public health, safety, general welfare, and property that arose from the adverse effects of mineral mining and processing and only at the request of the Governor or the governing body of the Indian tribe. 30 U.S.C. 1239.

The minimum program funding level provided additional grant funding to uncertified States and Indian tribes so that each reclamation program would receive enough annual AML funding to support a viable program. Before the 2006 amendments, SMCRA set the minimum program level at $2 million. 30 U.S.C. 1232(g)(8) (as amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, § 6004). However, appropriations have generally only funded the minimum program level at $1.5 million. *See, e.g.*, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Public Law 109–54, 119 Stat. 513 (2005) (''[G]rants to minimum program States will be $1,500,000 per State in fiscal year 2006.''). The Federal Fiscal Year runs from October 1 through September 30, so that FY 2006 is October 1, 2005, through September 30, 2006. SMCRA did not mandate a particular share of the Fund be used to support the minimum program, and we chose to use moneys from the Federal expense share of the Fund for this purpose.

Before the 2006 amendments, States and Indian tribes were allowed to deposit up to 10 percent of their State or Tribal share and 10 percent of their historic coal funds into set-aside accounts for either future coal reclamation or acid mine drainage abatement and treatment programs or both. 30 U.S.C. 1232(g)(6) (as amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, § 6004). In addition, uncertified States and Indian tribes were allowed to spend up to 30% of their funds on water supply projects that protect, repair, replace, construct, or enhance water supply facilities adversely affected by coal mining practices. 30 U.S.C. 1233(b)(1) (as amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, § 6005).

C. How did the 2006 amendments change these programs?

The Surface Mining Control and Reclamation Act Amendments of 2006 were signed into law as part of the Tax Relief and Health Care Act of 2006, on December 20, 2006. Public Law 109–432. The 2006 amendments revise Title IV of SMCRA to make significant changes to the reclamation fee and the AML program. The changes are summarized as follows:

- OSM's reclamation fee collection authority is extended through September 30, 2021. The statutory fee rates are reduced by 10 percent from the current levels for the period from October 1, 2007, through September 30, 2012. The fee rates are reduced by an additional 10 percent from the original levels for the period from October 1, 2012, through September 30, 2021. 30 U.S.C. 1232(a).
- The Fund allocation formula is changed. Beginning October 1, 2007, certified States are no longer eligible to receive State share funds. 30 U.S.C. 1231(f)(3)(B). Instead, amounts which would have been distributed as State share for fee collections for certified States are distributed as historic coal funds. 30 U.S.C. 1240a(h)(4). The RAMP share is eliminated. *See* 30 U.S.C. 1232(g). The historic coal allocation is further increased by the amount that previously was allocated to RAMP. 30 U.S.C. 1232(g)(5).
- Distributions of annual fee collections are made outside of the appropriations process. Once fully phased in, most fee collections will go to States and Indian tribes in annual mandatory distributions. Mandatory distributions from the Fund for uncertified States and Indian tribes include the State or Tribal share of all fees collected for coal produced the previous fiscal year, historic coal funds allocated from previous fiscal year production and also transferred from collections for certified States and Indian tribes for the previous fiscal year, and minimum program make up funding. 30 U.S.C. 1232(g)(1), (g)(5), and (g)(8)(A). These mandatory distributions are phased in at 50 percent for FY 2008 and FY 2009, and 75 percent for FY 2010 and FY 2011; full funding will be reached in FY 2012. 30 U.S.C. 1231(f)(5). After the end of the fee collection period, mandatory distributions of money from the Fund for FY 2023 and subsequent years will continue from balances in the Fund at the same level as FY 2022 to the extent funds are available. 30 U.S.C. 1231(f)(2)(B).
- Certified States and Indian tribes receive mandatory distributions of Treasury funds in lieu of the State and Tribal share they are no longer eligible to receive. 30 U.S.C. 1240a(h)(2). This mandatory distribution will be phased in at 25 percent for the first year, 50 percent for the second year, 75 percent for the third year, and fully distributed in the fourth year and thereafter. 30 U.S.C. 1240a(h)(3)(B). These funds may be used to address coal problems that arise after certification and for other purposes.

• All States and Indian tribes with approved reclamation plans are paid amounts equal to their unappropriated prior balance of State and Tribal share funds from fees collected on coal produced before October 1, 2007. 30 U.S.C. 1240a(h)(1)(A)(i). Payments are made in seven equal annual installments beginning in FY 2008. 30 U.S.C. 1240a(h)(1)(C). Payments are mandatory distributions from Treasury funds. These payments must be used by uncertified States and Indian tribes for the purposes of section 403 of SMCRA. 30 U.S.C. 1240a(h)(1)(D)(ii). These payments must be used by certified States and Indian tribes for purposes established by the State legislature or Tribal council, with priority given for addressing the impacts of mineral development. 30 U.S.C. 1240a(h)(1)(D)(i). Amounts in the Fund previously designated as State or Tribal share equal to the unappropriated balance payments transferred to historic coal funds as payments are made and used for reclamation grants in FY 2023 and thereafter. 30 U.S.C. 1240a(h)(4).

• The minimum funding level for each State or Indian tribe with an approved reclamation plan and unfunded high priority coal reclamation problems is increased to not less than $3 million annually. 30 U.S.C. 1232(g)(8)(A). This funding is a mandatory distribution from the Secretary's share of the Fund. However, like the rest of the distributions from the Fund, these distributions phased in at 50 percent for FY 2008 and FY 2009, and 75 percent for FY 2010 and FY 2011; full funding will be reached in FY 2012. 30 U.S.C. 1231(f)(5).

• The States of Tennessee and Missouri are each authorized to receive minimum program make up funding for their approved State reclamation programs even if they do not meet other requirements, such as having an approved coal regulatory program. 30 U.S.C. 1232(g)(8)(B).

• Federal expenses from the Secretary's share must be appropriated by Congress. 30 U.S.C. 1231(d)(a). Uses for Federal expense funding include the emergency reclamation program, Federal reclamation programs, the Watershed Cooperative Agreement Program, and our AML administrative expenses.

• The limit on set-aside funding for an acid mine drainage (AMD) abatement and treatment program (AMD set-aside) is increased from 10 percent to 30 percent of State or Tribal share funds and historic coal funds. 30 U.S.C. 1232(g)(6). In addition, States and Indian tribes are no longer required to get our approval for AMD plans. *Id.* Set-aside funding for future coal reclamation is no longer authorized. *Id.* The previous cap of 30 percent for water supply restoration projects is eliminated. 30 U.S.C. 1233(b).

• There are only three AML coal reclamation priorities because the previous priorities 4 and 5 have been removed. 30 U.S.C. 1233(a). Also, ''general welfare'' is eliminated as a component of priorities 1 and 2. 30 U.S.C. 1233(a)(1) and (a)(2). OSM must now ensure strict compliance with the coal priorities until the State or Indian tribe is certified. 30 U.S.C. 1232(g)(2). States and Indian tribes may initiate Priority 3 reclamation projects before completing all Priority 1 and 2 projects only if the Priority 3 reclamation is performed in conjunction with a Priority 1 or 2 project. 30 U.S.C. 1232(g)(7). Priority 3 lands and waters adjacent to past, present, and future Priority 1 and 2 project sites may be reclassified to Priority 1 or 2. 30 U.S.C. 1233(a)(1)(B)(ii) and 1233(a)(2)(B)(ii).

• The previous prohibition on filing a lien against the beneficiary of an AML reclamation project if the person owned the surface before May 2, 1977, is eliminated. 30 U.S.C. 1238(a). The automatic lien waiver is now extended to all landowners who did not consent to, participate in, or exercise control over the mining operations that necessitated the reclamation.

• We must approve amendments to the AML inventory system. 30 U.S.C. 1233(c).

• We may certify that a State or Indian tribe has completed coal reclamation without prior request from the State or Indian tribe. 30 U.S.C. 1240a(a)(2).

• There is a cap of $490 million on total annual Treasury funding under this legislation. 30 U.S.C. 1232(i)(3)(A). This cap limits payments to States and Indian tribes under 30 U.S.C. 1240a(h) and the payments to the CBF, 1992 Benefit Plan, and the 1993 Benefit Plan, collectively known as the ''UMWA health care plans,'' under 30 U.S.C. 1232(h) and 1232(i)(1).

• Subject to certain limitations, to the extent payments from premiums and other sources do not meet the financial needs of the UMWA health care plans, all estimated Fund interest earnings for each fiscal year must be transferred to these plans. 30 U.S.C. 1232(h). The unappropriated balance of the RAMP allocation as of December 20, 2006, is also available for transfer to the UMWA health care plans. 30 U.S.C. 1232(h)(4)(B). These additional transfers to the CBF began in FY 2007, while transfers to the 1992 and 1993 Benefit Plans began in FY 2008. 30 U.S.C. 1232(h)(1). Transfers to the 1992 and 1993 Benefit Plans are phased in, with transfers in FY 2008–2010 limited to 25%, 50%, and 75% respectively, of the amounts that would otherwise be transferred. 30 U.S.C. 1232(h)(5)(C). If necessary to meet their financial needs, the UMWA health care plans are also entitled to payments from unappropriated amounts in the Treasury, subject to the overall $490 million cap on all transfers from the Treasury under the 2006 amendments. 30 U.S.C. 1232(i)(1)(B) and (i)(3)(A). All interest earned by the Fund before December 20, 2006, and not previously transferred to the CBF is set aside in a reserve fund that will be used to make payments to the UMWA health care plans in the event that their financial needs exceed the annual cap. 30 U.S.C. 1232(h)(4)(A).

• The 2006 amendments removed the expiration date for remining incentives initially authorized on October 24, 1992, when SMCRA was amended to include a new section 510(e) that created an exemption from the section 510(c) permit-block sanction for remining operations and a new section 515(b)(20)(B) that provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West). Energy Policy Act of 1992, Public Law 102–486, section 2503. Until the 2006 amendments, those remining incentives had a statutorily defined expiration date of September 20, 2004, under 510(e) of SMCRA. *Id.*

• The 2006 amendments authorized us to develop regulations to promote remining of eligible land under section 404 in a manner that leverages the use of amounts from the Fund to achieve more reclamation. 30 U.S.C. 1244.

• Upon our approval, an Indian tribe may develop '' a tribal program under section 503 [of SMCRA] regulating in whole or in part surface coal mining and reclamation operations on reservation land under the jurisdiction of the Indian tribe using the procedures of section 504(e).'' 30 U.S.C. 1300(j).

II. Outreach and Guidance

Shortly after the enactment of the 2006 amendments, we notified potentially affected parties of the statutory amendments and solicited comments on issues related to the 2006 amendments. In January and September 2007, we notified all fee payers in writing of the fee rate changes. In January, February, and May 2007, we met with representatives of States and Indian tribes with approved reclamation programs at meetings hosted by the

Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP) to notify the States and Indian tribes of the 2006 amendments' changes to SMCRA and to seek their input on the amendments. IMCC and NAAMLP subsequently submitted joint written comments on specific provisions of the amendments. We summarized their comments in the preamble to the proposed rule and we took all of the comments into consideration when developing the proposed rule.

In order to facilitate distribution of funds for FY 2008, as required in the 2006 amendments, the Director of OSM issued written guidance in December 2007. To the extent feasible, we restated and expanded upon the content of that guidance in the proposed and final rules. We have included the December 2007 written guidance in the docket for this rulemaking.

The December 2007 written guidance was based in part on a December 2007 memorandum Opinion (M-Opinion), from the Department of the Interior, Office of the Solicitor, which analyzed three issues related to AML funding. *See* Funding to States and Indian Tribes Under the Surface Mining Control and Reclamation Act of 1977, as Amended by the Tax Relief and Health Care Act of 2006, M–37014 (December 5, 2007). In this M-Opinion, the Office of the Solicitor advised us that:

- We are required to use grants to pay moneys to eligible States and Indian tribes under sections 411(h)(1) and (h)(2) of SMCRA;
- Uncertified States and Indian tribes may not use funds that they receive under section 411(h)(1) of SMCRA for noncoal reclamation or for the AMD set-aside authorized by section 402(g)(6); and
- The minimum program make up funds that eligible uncertified States and Indian tribes are entitled to receive under section 402(g)(8)(A) of SMCRA are subject to the four year phase-in provision of section 401(f)(5)(B).

The comment period on the proposed rule was originally scheduled for 60 days, closing on August 19, 2008. We received requests from IMCC, NAAMLP, one State and one environmental group asking us to extend the comment period by an additional 60 days. In order to provide further opportunity to comment but to facilitate issuance of this final rule, we extended the comment period for ten days, through August 29, 2008. We believe that the number and quality of the comments we received, as discussed in the next section, indicate that we provided adequate time for comment.

III. Description of the Final Rule and Discussion of the Comments Received

This rulemaking revises our regulations to be consistent with all of the revisions to SMCRA contained in the 2006 amendments, except for those provisions relating to the remining incentives provisions leveraging amounts from the Fund and to tribal primacy. The remining incentives provisions that leverage amounts from the Fund are the subject of a separate rulemaking, primarily about incentives to reclaim refuse ''gob'' piles, proposed on May 1, 2008, at 73 FR 24120. Efforts by Indian tribes to develop programs to take over regulatory authority for coal mining under the 2006 amendments will be addressed separately for each Indian tribe applying for primacy.

Generally, this rulemaking sets forth standards and procedures for the coal reclamation fee, the Fund, and the AML program. This rule includes extensive regulations for long term operations of the amended Title IV program, including regulations that implement provisions of the 2006 amendments that will become effective at later dates. We are also taking advantage of this rulemaking opportunity to make other changes that we believe are needed to update and clarify related Parts of our existing regulations. Throughout this rule, the terms ''money'' and ''moneys'' are interchangeable with the terms ''fund'' or ''funds,'' but not with the term ''Fund,'' as defined in § 700.5.

We received approximately 51 comments on the proposed rule, including joint comments from IMCC and NAAMLP and ten comments from individual States and Indian tribes that currently have AML reclamation programs under Title IV of SMCRA. In addition, we received comments from five environmental groups, one township, and approximately 35 citizens, most of whom submitted identical letters. Many commenters specifically concurred in whole or in part with the IMCC/NAAMLP comments.

The comments that we received ranged from extremely specific to very general. We will first address the general comments. Any comment directed at a specific section of the proposed rules will be summarized and responded to in our section by section analysis. All comments timely submitted have been placed in the docket for this rule and are available for public review.

A. General Comments

Several commenters, including IMCC/NAAMLP, made general comments regarding the proposed rulemaking. Because these comments affect the rule as a whole, we will first address these comments.

IMCC/NAAMLP and one State commenter suggested that we withdraw the proposed rule because of the ''significant differences of opinion'' that exist between the States and OSM. The commenters alternatively recommended that if we chose not to withdraw the proposed rule that we seriously analyze their comments and consider significantly restructuring and modifying the final rule to be consistent with their suggestions.

Upon considering the commenters' request, we have decided that withdrawing the rule is not appropriate. Our overall general mission is to enforce and administer SMCRA, including all of its amendments. This final rule helps us to follow that mission because this rule is necessary to align our regulations with the 2006 amendments. Without this rulemaking, the existing regulations will not reflect the statutory changes and could create confusion. In addition, we believe this final rule will assist the States, Indian tribes, and the public by making our regulations easier to understand by using plain English and by providing the affected parties with more guidance and clarification when needed. Withdrawing the rule would delay the accomplishment of these purposes.

Several commenters expressed concern that OSM drafted proposed rules in a ''heavy handed'' or ''patriarchal'' manner that is a ''significant and detrimental departure from the cooperative spirit between OSM and the States and Tribes that has existed in the AML program for the last 25 years.'' As evidence of this point, the commenters mention that OSM is ''tak[ing] whatever approach is necessary [in interpreting the 2006 amendments] * * * to limit the flexibility of the States and Tribes to conduct AML reclamation on the sites most important to them within their respective borders. * * * We think OSM is merely seizing any justification it can to further limit the States and Tribes beyond what Congress intended.'' The commenters continued by pointing out that the preamble to the proposed rule frequently relies on our increased oversight responsibilities brought about by the 2006 amendments to justify the proposed rule. The commenters noted that by doing so, OSM is ''departing from the long

established reliance on oversight as the tool of choice to monitor and guide State and Tribal programs in favor of a command and control approach. Because of that, the proposed rule has the tone of a Title V rule meant to achieve compliance from regulated entities rather than a Title IV rule promoting reclamation with partners.'' Another commenter stated that the rule violates the intent of Congress because it is ''micro-managing the methods of AML funding to States and Tribes * * *.''

We appreciate hearing about these concerns from our State AML reclamation partners. In drafting both the proposed rule and this final rule, we did not attempt to be ''heavy handed'' in our approach or to increase oversight or OSM involvement except where mandated by the 2006 amendments. We value the collegial relationship we have had with the State and Tribal AML programs for many years and do not wish to see it erode. We recognize that the 2006 amendments significantly expanded all the programs' discretion to determine the most effective use of AML funds and have tried to reflect this in the proposed and final regulations. For instance, as discussed further in the section by section analysis, the regulations provide, consistent with the 2006 amendments, that uncertified programs can choose to direct more funding to water supply projects or AMD set-aside accounts with less OSM involvement or to address environmental problems adjacent to or in conjunction with high priority coal problems. This final rule does not extend our oversight role any further than is necessitated by the 2006 amendments.

With this rule, we have sought to reflect a balance that will promote and enhance the cooperative spirit that presently exists between State and Tribal AML programs and their Federal partners at OSM. To that end, we believe we have been working openly and closely with these State and Tribal programs and the organizations that represent them since the 2006 amendments were enacted. Even before the proposed rule was published, we met with the concerned States, Tribes, and their organizations, and even circulated draft proposed rule language to them on several occasions. Through these outreach efforts, we believe we have demonstrated that we have been open to comments and suggestions from the outset. This openness is further evidenced by the fact that we developed the proposed and final rules in order to incorporate changes suggested by the States and Indian tribes, including revising methods of calculating fund distributions, such as the calculation of the minimum program adjustments as described in the preamble to § 872.27, and changing several key definitions including ''adjacent'' and ''in conjunction'' as described in § 874.13.

In addition, the commenters criticize our reliance on advice from the Department of the Interior's Solicitor on three issues addressed in the rule—the use of grants instead of payments, the effect of the phase-in on minimum program funding, and the use of funds received under section 411(h)(1) of SMCRA for noncoal reclamation and AMD set-aside accounts. We acknowledge that many of our decisions are based upon the Solicitor's M-Opinion. When the 2006 amendments were first enacted, we began extensive analysis of the statute and outreach to the States and Indian tribes. At that time, we discovered that there were differences regarding the interpretation of several provisions contained in the 2006 amendments, and we sought legal guidance from the Solicitor's Office on three specific issues. The result of this guidance was the M-Opinion, which we used to help draft the proposed rule and to make the FY 2008 distributions. The M-Opinion is part of the docket for this rulemaking. OSM is bound by the interpretations of the 2006 amendments contained in the M-Opinion. *See* 209 Departmental Manual (DM) 3.2(A)(11) (''M-Opinions * * * shall be binding, when signed, on all other Departmental offices and officials and which may be overruled or modified only by the Solicitor, the Deputy Secretary, or the Secretary.''). Thus, our regulations must comply with the interpretations contained within the M-Opinion.

Similarly, a commenter complained about our reliance on section 402(g)(2) of SMCRA, which states that the Secretary of the Interior ''shall ensure strict compliance by the States and Indian Tribes with the priorities described in section 403(a) until a certification is made * * *.'' 30 U.S.C. 1232(g)(2). We agree that the proposed and final rule is consistent with this statutory provision, just as with other provision of the 2006 amendments.

The commenters have also criticized what they perceive to be an implied sense in the proposed rule that the States and Tribes should be satisfied and comfortable with OSM's interpretation of the 2006 amendments because of the significant increases in grant money provided to most States and Indian tribes under the new law. One commenter states:

> While the States and Tribes are very appreciative of Congressional action to return past unappropriated and current moneys to us, our focus has always been to use whatever moneys we receive to address public health and safety issues arising from the hazards of abandoned mines. For us, it is not just about the money—it's about programs and partnerships that work effectively and efficiently to accomplish the greatest amount of AML remediation possible. As a result, our comments regarding the proposed rule are intended to restore and structure the AML program in such a manner that it can make a difference for our citizens and the environment.

Congress decided to continue the important reclamation work that the States and Tribes are conducting by enacting the 2006 amendments. The 2006 amendments created many new opportunities for the States and Tribes, and we eagerly anticipate working with the States and Tribes—our reclamation partners—as this program moves forward. While the 2006 amendments created great opportunities, it is also quite specific in many areas. As we stated above, one of our goals for this rulemaking is to align our rules with the 2006 amendments. We believe this final rule does so.

Some commenters are concerned that we have no intention of considering their comments to the proposed rule and making revisions to the final rule because we have already distributed revised versions of some of the existing directives, guidelines, forms and manuals that accompany or are significantly related to our rules on the AML program, including the Federal Assistance Manual (FAM or GMT–10), and OSM Directive AML–1.

We would like to assure these commenters that no final decisions were made concerning the final rule until after we had read and analyzed all of the comments that we received. As mentioned above, we are bound by the interpretations in the Solicitor's M-Opinion since it was issued in December 2007. Pursuant to that M-Opinion as well as the decision documents issued with regard to the 2008 distributions, we updated the FAM in December 2007 and July 2008. The FAM is a series of OSM directives that relate to the management of grants provided to States and Tribes under SMCRA. The updates to the FAM allowed us to complete the FY 2008 grant distribution, to award and manage the FY 2008 grants, to provide streamlined grants procedures for certified States and Indian tribes, and to make other changes not related to the 2006 amendments. Because the FAM consists of internal OSM directives, we can easily make changes to these

directives to conform them to the current law and regulations. Thus, we are prepared to make additional changes that will be required to conform the contents of the FAM with the final rules that are enacted after consideration of the comments received on the proposed rule.

With respect to the AML–1, which is the directive that describes OSM's policies and procedures relating to the AML inventory (also known as Abandoned Mine Land Inventory System or AMLIS), we circulated a draft of this directive to States and Indian tribe to receive their input as we are currently in the process of migrating the AML inventory into a more usable database. The circulation of a draft of AML–1 has allowed us to receive many useful comments on the AML inventory and will greatly improve our new AML inventory system. We would like to emphasize that we have not yet finalized any changes to AML–1, and nothing we are doing to improve the AML inventory will prevent us from fully considering the comments received on the proposed rule.

We received several comments that included general support for the AML program and portions of the rule. For instance, one citizen commenter encouraged us to ''go through with the amendment to reauthorize the Abandoned Mine Land Program [because] our state, communities and people deserve to have the land reclaimed and brought back to something that can be used again rather than a dangerous eyesore that the land is now.'' We appreciate all of the comments we received in support of this rule.

Several environmental groups and one township submitted comments that generally support the 2006 amendments and the positive change that should result as programs address acid mine drainage in the coalfields. These commenters and others stressed the need to recognize that the States have diverse AML reclamation programs, and that there is no one-size-fits-all method to address AML reclamation. Flexibility was stressed by many commenters, including but not limited to the many commenters that expressed the sentiment that ''States should be given the latitude to use the funds for the construction or reconstruction of dams and waterways on public lands * * *.''

We recognize that conditions vary at AML sites across the country—from climate to the terrain— and that SMCRA was implemented to provide the States with primary governmental responsibility over surface mining and reclamation operations. 30 U.S.C. 1201(f). The 2006 amendments did not alter the relationship between public and private lands and did not change the funding authorities related to the construction of dams and waterways. Project selection is the responsibility of each State and Indian tribe according to its approved reclamation plan. Thus, where possible, we have attempted to provide as much flexibility to States and Indian tribes as allowed by SMCRA, as amended in 2006.

We also received several comments on remining as part of AML reclamation. One commenter strongly encouraged us to continue to pursue remining incentives, as they state that remining incentives are one of the most cost effective means of AML reclamation. In contrast, another commenter took a strong position against a broader interpretation of remining as an effective way to reclaim abandoned mine lands because reclamation in the name of remining has had some unfortunate environmental consequences in at least one State. In particular, this commenter stated that it is ''opposed [to] any changes that would broaden the interpretation of remining beyond the scope of reclaiming coal refuse.''

We would like to state unequivocally that this final rule does not address remining in any meaningful way. As discussed below in conjunction with Parts 700, 773, 785, 816 and 817, the only changes we are making to the regulations related to remining are those that must be made to conform the existing regulations with the changes made by the 2006 amendments. As mentioned above, we proposed a separate rulemaking on May 1, 2008, that addresses our discretionary authority under section 415 of SMCRA to enact remining incentives related to AML reclamation. 30 U.S.C. 1244. This final rule does not promulgate any of the provisions proposed in that rule.

A commenter also specially criticized the Programmatic Environmental Impact Statement (PEIS) for the Federal program for the State of Tennessee, and stated that it does ''not support any proposed revision of regulations that would further undermine preparation of environmental assessments (EA) or findings of no significant impact (FONSI) or environmental impact statements (EIS).'' We appreciate the concerns raised by this commenter and do not believe that this rulemaking changes the preparation of environmental documents under the National Environmental Policy Act (NEPA) for Tennessee. Other comments related to the Tennessee PEIS are outside of the scope of this rule.

As one of our goals of this rulemaking was to make the AML regulations easier to understand, we have attempted to address a few comments that stated the proposed rule was hard to follow and should be clarified. Although one State commended our efforts to make the regulations clear, it still found that in some places the proposed rule was somewhat difficult to fully understand. For example, that same State commented that the preamble to the proposed rule referred to a separate rulemaking related to the 2006 amendments that was published in the **Federal Register** on May 1, 2008. The State suggested that we clarify this reference to note that this May 2008 proposed rule was primarily about incentives to reclaim refuse ''gob'' piles. We made this change in the final rule and have made every effort to present and explain all of the complex issues as easily and simply as possible.

One environmental group commented that it strongly supports our Watershed Cooperative Agreement Program and urges us to use our discretion to recommend to Congress in our upcoming FY 2010 budget request at least $10 million for that program because restoration groups can leverage this funding several times over to provide an additional source of funding for AMD remediation. We appreciate the comment, but the Watershed Cooperative Agreement Program and future budget decisions are beyond the scope of this rule.

In their previous joint comments dated May 21, 2007, IMCC/NAAMLP commented that it will be very important for the States and Indian tribes to receive the training they will need to implement the provisions of the new rules once they are in place, and urged us to keep this in mind. Although it does not impact this rulemaking, we agree with the comment and plan to hold training and planning meetings with the States and Indian tribes after this rule takes effect.

B. Section by Section Analysis

Part 700—General

Definitions (§ 700.5)

We are adopting the changes to § 700.5 as proposed. These changes include the addition of two new definitions (''AML'' and ''AML inventory'') and relocation of six existing definitions (''eligible lands and water,'' ''emergency,'' ''extreme danger,'' ''left or abandoned in either an unreclaimed or inadequately reclaimed condition,'' ''project,'' and ''reclamation activity'') from existing § 870.5 to § 700.5. Each of these terms apply to all

of the regulations in Chapter VII of Title 30 of the Code of Federal Regulations, and we are making limited substantive changes to the text of the definitions of the six relocated terms. We are revising the first sentence of the definition of eligible lands consistent with the preamble to Part 884 to make it clear that certification qualifies a State or Indian tribe for a State or Tribal reclamation plan. However, the rest of the definition is substantively unchanged as it applies to AML programs. We are also correcting a mistaken reference to § 874.14 in this definition. As explained in the preamble to the proposed rule, the correct reference is § 875.14—Eligible lands and water subsequent to certification. In addition, we are rewording two definitions (''eligible lands and water,'' and ''left or abandoned in either an unreclaimed or inadequately reclaimed condition'') using plain English.

We are also combining two definitions from § 870.5 (''Indian reclamation program'' and ''State reclamation program'') into one definition in § 700.5 (''reclamation program''). The substance of the definition is not changing. In addition, we are moving the definition of ''expended'' from § 870.5 to § 700.5 and removing the existing limitation that it only applies to costs for reclamation in order to make the definition consistent with the entire chapter.

Last, we are expanding the definition of ''Fund'' in § 700.5. Previously, this term was defined slightly differently in both §§ 700.5 and 870.5. Under this rule, the definition of this term in § 700.5 is being expanded to include additional information that was contained in § 870.5 (''Abandoned Mine Reclamation Fund or Fund''). We believe this will eliminate any confusion that may have resulted from having different terminology and definitions to describe the same source of money in two Parts of the regulations.

Responses to Comments

We received one comment on our proposed changes to § 700.5. This commenter explained that the proposed changes might ''still lead to misinterpretations and inadequate decision making regarding the best method to reclaim an AML site, i.e. reclamation or remining.'' We have considered this comment, and we appreciate the commenter's concern but do not believe that any changes to the definitions are necessary. The definition of ''reclamation activity'' in this section explains what is considered reclamation of lands and waters eligible under Title IV of SMCRA. This definition is not intended to provide guidance as to the best method for reclamation. Instead, each State or Indian tribal reclamation program has the choice and flexibility to determine what reclamation tools to use, including remining, as described in their reclamation plan and authorized by law.

Part 724—Requirements for Permits and Permit Processing

Payment of Penalty (§ 724.18)

We are revising § 724.18(d) to update the references in that section to reflect our division of existing § 870.15 into separate sections within Part 870 and to update information on how to find the interest rate for late payments. We received no comments on either this Part or Part 870, and we are adopting the changes as proposed.

Part 773—Requirements for Permits and Permit Processing

Unanticipated Events or Conditions at Remining Sites (§ 773.13(a)(2))

We proposed a technical amendment to § 773.13(a)(2) to conform this section with changes made to section 510(e) of SMCRA by the 2006 amendments. 30 U.S.C. 1260(e). As explained in the preamble to the proposed rule, section 510(e) was added to SMCRA in 1992 and created an exemption from the section 510(c) permit-block sanction for remining operations. This statutory provision originally contained a statutorily defined expiration date of September 30, 2004, which was removed by the 2006 amendments.

Responses to Comments

One environmental group commented that they oppose an open exemption from the section 510(c) permit-block sanction for remining operations. While we recognize the group's concern about remining and have considered their comment, we are only changing this regulation to conform to the 2006 amendments to SMCRA, which we believe are clear. Thus, we are adopting the revision to § 773.13(a)(2) as proposed to make our regulations consistent with SMCRA.

Part 785—Requirements for Permits for Special Categories of Mining

Information Collection (§ 785.10)

We revised this paragraph using plain language and the current format approved by the Office of Management and Budget (OMB). It describes OMB's approval of information collections in Part 785, our use of that information, and the estimated reporting burden associated with those collections. The change is editorial in nature and has no substantive effect.

Lands Eligible for Remining (§ 785.25(c))

As explained in more detail in the preamble to the proposed rule, we are removing § 785.25(c) to conform our regulations with the 2006 amendments. As discussed above in connection with § 773.13(a)(2), the 2008 amendments removed the statutorily defined expiration date of September 30, 2004, under section 510(e) of SMCRA. 30 U.S.C. 1260(e). We received no comments on this section and are adopting this section as proposed.

Part 816—Permanent Program Performance Standards—Surface Mining Activities

Revegetation: Standards for Success (§ 816.116)

We proposed a technical amendment to § 816.116(c)(2)(ii) and (c)(3)(ii) to conform this section with changes made to section 510(e) of SMCRA by the 2006 amendments. 30 U.S.C. 1260(e). As explained in the preamble to the proposed rule, sections 510(e) and 515(b)(20)(B) were added to SMCRA in 1992 and provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West), but those remining incentives had a statutorily defined expiration date of September 30, 2004. See 30 U.S.C. 1260(e) and 1265(b)(20)(B) (1993). The 2006 amendments removed this expiration date, and we are updating our regulations in conformance with this change. We are also rewording this section using plain English.

Responses to Comments

One environmental group commented that they ''do not support the concept in section 515(b)(20)(B) that provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West). Any revision of this section should allow for conditional requirements that reflect changes in seasonal averages due to extreme wet or dry conditions within the two or five year time frame.'' As we state in our response to § 773.13(a)(2), we recognize the commenter's concern but are only changing this regulation to conform to the 2006 amendments to SMCRA, which we believe are clear. Thus, we adopt the revision to § 816.116(c)(2)(ii) and (c)(3)(ii) as proposed to make our regulations consistent with SMCRA.

Part 817—Permanent Program Performance Standards—Underground Mining Activities

Revegetation: Standards for Success (§ 817.116)

We also proposed a technical amendment to § 817.116(c)(2)(ii) and (c)(3)(ii) to conform this section with changes made to section 510(e) of SMCRA by the 2006 amendments. 30 U.S.C. 1260(e). The revisions to this section are identical to those adopted in § 816.116, except that this section relates to underground mining activities instead of surface mining activities. As explained in the preamble to the proposed rule, sections 510(e) and 515(b)(20)(B) were added to SMCRA in 1992 and provided incentives for certain eligible remining operations in the form of reduced revegetation responsibility periods (2 years in the East and 5 years in the West), but those remining incentives had a statutorily defined expiration date of September 30, 2004. 30 U.S.C. 1260(e) and 1265(b)(20)(B). The 2006 amendments removed the expiration date, and we are updating our regulations in conformance with this change. We are also rewording this section using plain English.

Responses to Comments

One environmental group commented that they do not support the language proposed for this section for the same reasons they do not support the revision to § 816.116. Likewise, after consideration of this comment and for the same reasons stated in § 816.116, we are adopting the revisions to 817.116(c)(2)(ii) and (c)(3)(ii) as proposed.

Part 845—Civil Penalties

Use of Civil Penalties for Reclamation (§ 845.21)

We are revising § 845.21(b)(1) as proposed to reflect our move of the definition of ''emergency'' from § 870.5 to § 700.5 of this chapter. We received no comments on this Part.

Part 846—Individual Civil Penalties

Payment of Penalty (§ 846.18)

We are revising § 846.18(d) to update the references in that section to reflect our division of existing § 870.15 into separate sections within Part 870 and to update information on how to find the interest rate for late payments. We received no comments on either this Part or Part 870 and are adopting this section as proposed.

Part 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting

Part 870 describes the requirements and process for you, the coal mine operator, to report coal production and to pay the AML reclamation fee. We did not receive any comments on our proposed revisions for Part 870, and we are adopting the proposed changes to this Part for the reasons described in the preamble to the proposed rule

Part 872—Moneys Available to Eligible States and Indian Tribes

We are revising Part 872 to address the changes to SMCRA that the 2006 amendments made. Generally, our revisions to Part 872 describe the moneys that make up the Fund and other sources of funding under SMCRA that are available to you, the eligible States and Indian Tribes with approved reclamation programs, including otherwise unappropriated funds in the U.S. Treasury. This Part also describes how we convey these funds to you and the purposes for which you may use them. In addition, we are dividing, removing, and renumbering parts of existing §§ 872.11(a) through 872.11(c) and § 872.12, changing headings, adding new sections and headings as appropriate, and more clearly describing the different types of funds available under this Part. We are making these additional changes to make the regulations easier to read and understand. Each change, a summary of the comments we received, if any, and our responses to these comments are described below in more detail.

Throughout this Part, the terms ''money'' and ''moneys'' are interchangeable with the terms ''fund'' or ''funds,'' but not with the term ''Fund,'' as defined in § 700.5.

What does this Part do? (§ 872.1)

This section explains that the purpose of Part 872 is to set forth the responsibilities for administering reclamation programs and the procedures for managing funds used to finance these programs. We received no comments on this section and, for the reasons set forth in the preamble to the proposed rule, we are adopting this section as proposed.

Definitions (§ 872.5)

This new section contains definitions pertinent to Part 872, including four definitions (''allocate,'' ''Indian Abandoned Mine Reclamation Fund or Indian Fund,'' ''reclamation plan,'' and ''State Abandoned Mine Reclamation Fund or State Fund'') that we are moving from existing § 870.5 and two new definitions (''award'' and ''distribute''). We received no comments on this section and are adopting § 872.5 generally as proposed and for the reasons discussed in the preamble to the proposed rule. For clarity, we are summarizing here our discussion of the terms ''allocate,'' ''distribute,'' and ''award'' because they are important in describing the process that we follow to make funds available to States and Indian tribes. Our accounting process first allocates funds to a particular share in the Fund when we receive the collected fees. Next, we distribute funds annually after the end of each Federal FY to specific States and Indian tribes according to the statutory provisions and the regulations governing those funds. After the funds are distributed, we award funds to States and Indian tribes in grants when they apply for such grants. Also, we did make a few minor edits to ''Indian Abandoned Mine Reclamation Fund or Indian Fund'' and ''State Abandoned Mine Reclamation Fund or State Fund'' for clarity.

Information Collection (§ 872.10)

In this section, we discuss the Paperwork Reduction Act requirements and the information collection aspects of Part 872. We are updating this section and rewording it using plain English. We did not receive any comments on this section and are adopting the section as proposed.

Where Do Moneys in the Fund Come From? (§ 872.11)

This section describes the funds we collect, recover, and otherwise receive that are the sources of revenue to the Fund. We proposed several changes to this section, including rephrasing the section heading, and renumbering existing §§ 872.11(a) through (a)(6) as §§ 872.11 through 872.11(f).

Substantively, we proposed removing language from existing § 872.11(a)(6) (now renumbered as § 872.11(f)) that made interest earned after September 30, 1992, available for possible future transfer to the UMWA CBF under section 402(h) of SMCRA because the 2006 amendments added new provisions related to our transfers to the UMWA health care plans. We also proposed to revise and reorganize the information in existing §§ 872.11(b), including paragraphs (b)(1) through (b)(8). For instance, existing § 872.11(b)(1) is now included in §§ 872.14 and 872.15 on State share funds and § 886.20 on unused funds. Similarly, existing § 872.11(b)(2) is now included in §§ 872.17 and 872.18 on Tribal share funds and § 886.20 on unused funds. Existing § 872.11(b)(3)

related to the RAMP program is moved to § 872.20, and existing § 872.11(b)(4) is included in §§ 872.21 and 872.22 on historic coal funds. Existing § 872.11(b)(5), as well as §§ 872.11(b)(7) and (b)(8), are moved to §§ 872.24 and § 872.25 on Federal expense funds. Existing § 872.11(b)(6) is included in §§ 872.26 and 872.27 on minimum program makeup funds. We are moving existing § 872.11(c) to § 872.12(c). We are revising all these provisions to be consistent with the 2006 amendments and to use plain English.

Responses to Comments

A State commented on proposed § 872.11(f), which provides that revenue to the Fund includes ''[i]nterest and other income earned from investment of the Fund. We will credit interest and other income only to the Secretary's share.'' The commenter reasoned that the interest earned on moneys in the Fund that have been allocated to States and Indian tribes as State or Tribal share funds ''should be credited to the respective state/tribe'' and that this interest would be used for the purposes of Title IV.

Although we agree with the commenter that sections 402(g)(1)(A) and (B) direct us to allocate moneys deposited in the fund to the State and Indian tribal shares, after consideration of this comment we must respectfully disagree with the commenter's conclusion that State and Indian tribes should also receive the interest on this allocation. Until the Abandoned Mine Reclamation Act of 1990 was enacted, there was no provision in SMCRA that allowed the Fund to contain any interest it earned. Compare the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388–290, § 6002) with SMCRA (Pub. L. 95–87 (1977)). The 1990 amendments to SMCRA added sections 401(b)(5) and 401(e). 30 U.S.C. 1231(b)(5) and 1232(e). Section 401(e) directs the Secretary of the Treasury to ''invest such portion of the [Fund that is not required to meet current withdrawals] in public debt securities * * *.'' Under SMCRA, as amended in 2006, we must credit the interest earned on these investments to ''the fund for the purpose of the transfers'' to the UMWA health care plans referred to in section 402(h) of the Act. Thus, as noted in section 401(b)(5), the Fund will contain ''interest credited to the fund under subsection (e)'' but this interest can only be used for transfers to the UMWA health care plans. We do not have the statutory authority to credit the interest earned on State and Tribal shares to individual States and Tribes for their use under Title IV. Therefore, we adopted § 872.11(f) as proposed so that interest earned on the fund is properly credited to enable us to meet our obligations as prescribed by sections 401(e) and 402(h) of SMCRA.

Where Do Moneys Distributed From the Fund and Other Sources Go? (§ 872.12)

We did not receive any comments on this section and are adopting our proposed changes to § 872.12 for the reasons stated in the preamble to the proposed rule.

What Money Does OSM Distribute Each Year? (§ 872.13)

Section 872.13 is a new section that we proposed to add to describe how we distribute moneys each year to States and Indian tribes under SMCRA. Section 872.13(a) is intended as a tool that can be used to locate specific regulatory provisions relating to each type of funding that States and Tribes receive under sections 401, 402, and 411 of SMCRA. These distributions include State share (§ 872.14), Tribal share (§ 872.17), historic coal (§ 872.21), minimum program make up (§ 872.26), prior balance replacement (§ 872.29), and certified in lieu funds (§ 872.32). Each type of funding is described in greater detail elsewhere in the rule.

Paragraph (b) explains that we use fee collections for coal produced in the previous Federal FY on a net cash basis to calculate the annual distribution. In other words, collections from the most recent FY include any adjustments to fees collected in previous years. In order to meet our customer service obligation, we must quickly determine how much money we collected each FY so that we can complete the mandatory distribution of AML funds to you as early in the FY as possible. When we make adjustments to the fees collected in an earlier FY due to refunds or additional fee payments, we must make these changes to the FY in which we learn that the adjustments are necessary because we cannot go back and revise the prior year fee collection amounts and distributions that we have already made to you.

Paragraph (c) briefly states that we distribute Congressionally-appropriated Federal expense funds when the appropriation becomes available.

Last, paragraph (d) states that you may apply for funds any time after we distribute them. Certified States and Indian tribes apply for grants using the procedures of Part 885 and uncertified States and Indian tribes use the procedures of Part 886.

Responses to Comments

A State commented on the mandatory annual distributions we described under § 872.13, and asked whether the distributions will occur in mid-December of each year as they have under our past practice for timing annual distributions.

Section 402(f)(2)(i) of SMCRA only requires us to distribute amounts deposited into the Fund for the preceding fiscal year. It does not specify when this distribution should occur. Because the fourth quarter of the fiscal year ends on September 30, with collections due 30 days after that, we expect to cut off collections as of November 30 of each year to capture most of the fourth quarter's collections. As we did for the FY 2008 distribution, we distribute these funds to States and Indian tribes as soon as practicable thereafter, generally in mid-December. However, after consideration of this comment, we decided not to address the timing of the distribution in this rulemaking in order to maintain flexibility to address unforeseen circumstances in future years, and we are adopting the rule as proposed.

What are State share funds? (§ 872.14)

To add clarity and establish a consistent structure for the types of funding in this Part, and as discussed in the preamble to the proposed rule, we proposed adding this section to explain that State share funds are 50 percent of the reclamation fees collected on coal mined in your State (excluding Indian lands) and allocated to you under section 402(g)(1)(A) of SMCRA for coal produced in the previous fiscal year. We did not receive any comments on this section, and we are adopting it as proposed.

How does OSM distribute and award State share funds? (§ 872.15)

We are adding § 872.15 to explain how we distribute and award State share funds to you if you are eligible to receive them. Section 872.15(a)(1) replaces the third sentence of existing § 872(b)(1) and provides that for you to be eligible to receive State share funds, you must have and maintain an approved reclamation plan. Section 872.15(a)(2) incorporates section 401(f)(3)(B) of SMCRA and provides that States certified under section 411(a) are ineligible to receive moneys from their State share of the Fund as of October 1, 2007. 30 U.S.C. 1231(f)(3)(B). In accordance with section 401(f)(3)(B), we did not distribute State share funds to certified States in FY 2008.

In § 872.15(b), we describe how we distribute and award State share funds

if you meet the eligibility criteria of paragraph (a). In paragraph (b)(1), we include a table explaining the distributions of State share funds, which are required to be phased in under 401(d)(3) and (f) of SMCRA. 30 U.S.C. 1231(d)(3) and (f). Section 402(g)(1) of SMCRA generally requires us, acting on behalf of the Secretary, to distribute annually to an uncertified State 50 percent of the reclamation fees we collect in that State for the previous FY without prior Congressional appropriation. However, section 401(f)(5) of SMCRA, as added by the 2006 amendments, requires us to phase in the mandatory distribution of these funds. 30 U.S.C. 1231(f)(5)(B). As a result, for FY 2008 and FY 2009, which begin on October 1, 2007, and October 1, 2008, respectively, we are distributing to you, the uncertified State, only 50 percent of the State share allocated to you. Because the State share is 50 percent of the reclamation fees collected on production in your State, for FY 2008 and FY 2009, you received only 25 percent of the reclamation fees collected on coal produced in your State (a 50 percent phase-in of the 50 percent in reclamation fees for the State share). Likewise, State shares that we distribute in FY 2010 and FY 2011, which begin October 1, 2009, and October 1, 2010, respectively, will be 75 percent of your 50 percent share, which is 37.5 percent of the reclamation fees collected on coal produced in your State. We will distribute to you your full 50 percent State share from the Fund each year beginning with FY 2012, which starts on October 1, 2011, and lasting through FY 2022, which ends on September 30, 2022. In FY 2023, we expect to distribute to you all moneys remaining in your State share of the fund.

Consistent with section 402(g)(1)(C) of SMCRA, § 872.15(b)(2) explains that we are continuing to award funds under this paragraph in grants in accordance with Part 886. 30 U.S.C. 1232(g)(1)(C).

Responses to Comments

IMCC/NAAMLP and two States commented on various aspects of this section as proposed. First, as part of a broader comment that affects historic coal funds (§ 872.22), minimum program make-up funds (§ 872.27), prior balance replacement funds (§ 872.30), and certified in lieu funds (§ 872.33), as well as State and Tribal share funds (this section and § 872.18), IMCC/NAAMLP suggested that we change our proposed regulations to allow States and Indian tribes a choice to receive these funds either in grants or by direct payments. The commenters prefer allowing each State and Indian tribe to choose whether to use a grant or direct payment because it maximizes flexibility. In support of this position, the commenter asserts that Congress did not dictate in the 2006 amendments that we must use grants to award funds under SMCRA.

After consideration of SMCRA and this comment, we have determined to finalize § 872.15(b)(2) as proposed with minor edits made for clarity. Thus, under this regulation State share funds will be awarded as grants to uncertified States and Indian tribes. Section 402(g)(1)(C) of SMCRA requires that funds the Secretary allocates to State and Indian tribal shares under paragraph (g)(1) of section 402 ''shall only be used for annual reclamation project construction and program administration *grants*.'' 30 U.S.C. 1232(g)(1)(C) (emphasis added). This provision clearly requires us to award State share funds in grants.

Second, IMCC/NAAMLP and two separate State commenters suggested that we modify the proposed rule to specify what will happen to the State share funds that are not distributed during FY 2008 through FY 2011 under section 401(f)(5)(B) of SMCRA and proposed § 872.15(b)(1). IMCC/NAAMLP mentioned several possible ways in which these withheld funds could be treated, including returning them to the States as part of the prior balance replacement funds, holding them in the Fund until the end of the AML program in FY 2023, or placing them in the historic coal fund. However, IMCC/NAAMLP and one State commenter settled on requesting that we add paragraph (c) to this section that states: ''We will distribute to you the amounts we withhold under subparagraph (b) of this section in two equal installments. We will do this in Federal fiscal years 2018 and 2019.''

IMCC/NAAMLP expressed concerns about whether the States can spend these withheld funds on noncoal reclamation and the AMD set-aside once they are returned. Similarly, another State commenter requested that we allow the amounts that are withheld under the phase-in provision to be used as part of the AMD set-aside when they are distributed to the States. Specifically, this State commenter was unsatisfied with our apparent decision in the proposed rule to ''plac[e] these withheld funds into the unappropriated balance category for distribution along with the Prior Balance Replacement Payments in subsequent years.'' This commenter asserted that we should treat these withheld funds differently ''because Prior Balance Replacement Payments carry the October 1, 2007 cutoff date.''

We appreciate the questions and concerns that we received regarding what happens to State share funds withheld according to the phase-in provision of section 401(f)(5). After careful consideration of the alternative approaches presented in the comments, we have decided not to modify the proposed rule and are adopting it as proposed with minor editorial modifications for clarity.

In coming to this conclusion, we first reviewed the language provided by IMCC/NAAMLP and one State that would have us distributing the withheld amounts over two years. As the commenters pointed out, such a provision would make the return of these withheld moneys consistent with the return of the phased-in certified in lieu funds that certified States and Indian tribes receive under section 411(h)(3)(C). Although this approach has an appeal because it promotes consistency as to how to treat the separate phase-in provisions contained in the 2006 amendments, after a thorough analysis of this issue we have determined that we do not have statutory authority to make such a distribution. SMCRA unambiguously states that certified States will receive ''[a]mounts withheld from the first 3 annual installments [of certified in lieu funds] in 2 equal annual installments beginning with fiscal year 2018.'' There is no such comparable provision for State share moneys that uncertified States receive, and we cannot read such a provision into the statute where it does not exist. Therefore, we reject the suggested addition of § 872.15(c).

In addition, after reviewing the proposed language of § 875.15, we determined that the language of § 872.15(b)(1)(iv) is clear that in FY 2023 and thereafter, uncertified States will begin to receive moneys ''remaining in their State share of the Fund.'' *See also* 30 U.S.C. 1231(f)(2)(B). We believe this language is clear because the only State share funds remaining in the Fund in FY 2023 and thereafter are those amounts withheld from the phase-in provision of section 401(f)(5)(B) of SMCRA.

There are two reasons why the only State share money remaining in the Fund in FY 2023 and thereafter is the withheld money from the phase-in provision. First, the prior balance replacement fund provisions of section 411(h)(1) provide that an amount equivalent to all of the State share moneys allocated, but not appropriated, to States for reclamation fee collections received on coal produced before

October 1, 2007, will be returned to the States through Treasury funds. 30 U.S.C. 1240a(h)(1). As explained in the preamble to § 872.30(c), the actual State share moneys that remain in the Fund will then become historic coal funds that will also be distributed in FY 2023 and thereafter. 30 U.S.C. 1240a(h)(4)(A). In other words, after the prior balance replacement funds are paid, there will be no State share moneys in the Fund for moneys collected on coal produced prior to October 1, 2007. Second, because State share funds are now permanently appropriated at their full allocation amount, subject to the section 401(f)(5)(B) phase-in for four fiscal years, the only State share funds that will remain in the Fund that can be paid out in FY 2023 are those that are withheld by the phase-in. These funds can be used for any of the purposes enumerated in § 872.16, including noncoal reclamation and inclusion in an AMD set-aside account. Thus, § 872.15(b)(1)(iv), as proposed, adequately addresses this issue.

We would also like to mention that we agree with one State's analysis that section 411(h)(1)(B) of SMCRA defines the amount that will be distributed for prior balance replacement funds as ''the unappropriated amount allocated to a State or Indian tribe before October 1, 2007 under subparagraph (A) or (B) of section 401(g)(1).'' 30 U.S.C. 1240a(h)(1)(B). Thus, we are not authorized to use prior balance replacement funds to return the withheld amounts of the State share for collections received on coal produced after October 1, 2007. Section 872.31 explains the purposes for which prior balance replacement funds can be used.

We recognize, however, that only States that remain uncertified in FY 2023 and thereafter will receive funds under § 872.15(b)(1)(iv). Given the tenor of the comments, we anticipate that some States that are currently uncertified may have phased-in State share amounts withheld but may certify before they would be eligible to receive these funds back in FY 2023 and thereafter. Therefore, as authorized by section 411(h)(2)(A) and described further in the preamble to § 872.33, we are adding language to § 872.33 to clarify that if a certified State has unpaid State share funds withheld in the phase-ins, we will distribute certified in lieu funds to it at the next annual distribution after it certifies. This certified in lieu payment will then cover both the State share funds withheld during the phase-in and State share allocations from fee collections in the previous FY. Thus, States that are currently uncertified and subject to the phase-in of State share funds will receive an amount equivalent to the withheld amount from Treasury funds as part of their certified in lieu payments if they become certified before they have this withheld amount returned as State share funds in 2023 and thereafter. As such, these funds can be used without restriction as described in § 872.34.

Are there any restrictions on how States may use State share funds? (§ 872.16)

For the reasons described in the preamble to the proposed rule, we are adopting § 872.16(a) through (e) generally as proposed, although we have changed the title and added a word to the introductory language for clarity. Moreover, as described below, we are also adding paragraph (f) in response to comments received. These paragraphs now provide that you, the uncertified State, may use your State share grant funds only for the following purposes: (1) To reclaim coal lands and waters under § 874.12; (2) to restore water supplies under § 874.14; (3) to reclaim noncoal lands and waters under § 875.12 as requested by the Governor under section 409(c) of SMCRA; (4) to deposit into an AMD set-aside fund under Part 876; (5) to acquire land under § 879.11; and (6) to maintain the AML inventory under section 403(c) of SMCRA.

Responses to Comments

One State and IMCC/NAAMLP commented that States should be allowed to use their State share funds to maintain the AML inventory. They observed that, by not specifically saying States may use funds other than prior balance replacement funds to maintain the AML inventory, the regulations could be interpreted to mean the only types of funds that States could use to maintain the AML inventory would be prior balance replacement funds.

After reviewing this comment, we have revised § 872.16 to include paragraph (f), which specifies that uncertified States can use State share funds ''to maintain the AML inventory under section 403(c) of SMCRA.'' This addition recognizes that maintaining the AML inventory will help uncertified States measure progress toward addressing all known coal problems.

What are Tribal share funds? (§ 872.17)

To add clarity and establish a consistent structure for the types of funding in this Part, and as discussed in the preamble to the proposed rule, we proposed adding this section to explain that Tribal share funds are 50 percent of the reclamation fees we collect and allocate under 402(g)(1)(A) of SMCRA to you, the Indian tribe(s), in the Fund for coal produced in the previous fiscal year from the Indian lands in which you have an interest. We did not receive any comments on this section, and we are adopting it as proposed.

How does OSM distribute and award Tribal share funds? (§ 872.18)

This section largely is a duplicate of § 872.15 except that it applies to Indian tribes and the Tribal share funds instead of States and State share funds. So, the explanations in the preamble for § 872.15 are largely the same for distributing and awarding Tribal share funds under this section (including the phase-in provisions), and we will not repeat them. In the preamble to the proposed rule, we did note a few distinctions involving the distribution of Tribal share funds to Indian tribes, including why § 872.18 excludes all certified Indian tribes from receiving Tribal share funds after October 1, 2007, and the reason why the Crow Indian tribe received a Tribal share distribution for FY 2008. We received no comments on these points. We are retaining the relevant provisions in the final rule and are adopting them as proposed with minor modifications to the wording for clarity.

Responses to Comments

All of the comments we received on § 872.18 were the part of the comments made by IMCC/NAAMLP and the two States that commented on § 872.15. Essentially, one State and IMCC/NAAMLP commented that we should give Indian tribes the option of receiving their Tribal share funds in grants or by direct payments. For the same reasons we give in our response to that comment under § 872.15 relating to State share funds, we adopt § 872.18(b)(2) as proposed, with a minor modification for clarity. Thus, we would continue to award Tribal share funds to any uncertified Indian tribes in grants.

In addition, also as part of a broader comment, IMCC/NAAMLP and one State commented that we should distribute Tribal share funds held back for the phase-ins in two equal payments in FY 2018 and 2019. Another State commenter was unsatisfied with our apparent decision to make withheld funds part of the prior balance replacement funds, thereby effectively restricting their use in noncoal reclamation and AMD set-aside accounts. For the same reasons we give in our response to that comment under § 872.15 relating to State share funds, we adopt § 872.18 as proposed, with minor modifications made for clarity.

Thus, we will distribute any Tribal share moneys withheld under the phase-in provision for reclamation fee collections for coal produced after October 1, 2007, in FY 2023 and thereafter when it will be returned to any remaining uncertified Tribes.

Are there any restrictions on how Indian tribes may use Tribal share funds? (§ 872.19)

For the reasons described in the preamble to the proposed rule, we are adopting § 872.19(a) through (e) generally as proposed, although we have changed the title and added a word to the introductory language for clarity. Moreover, as described below, we are also adding paragraph (f) in response to comments received. These paragraphs now provide that you, the uncertified Indian tribe, may use your Tribal share grant funds only for the following purposes: (1) To reclaim coal lands and waters under § 874.12; (2) to restore water supplies under § 874.14; (3) to reclaim noncoal lands and waters under § 875.12 as requested by the governing body of the Indian tribe according to section 409(c) of SMCRA; (4) to deposit into an AMD set-aside fund under Part 876; (5) to acquire land under § 879.11; and (6) to maintain the AML inventory under section 403(c) of SMCRA.

Responses to Comments

As part of a comment related to the almost identical provision related to the use of State share funds, IMCC/NAAMLP commented that we should allow use of funds other than prior balance replacement funds to maintain the AML inventory. Similarly, one State specified that we should add paragraph (f) to § 872.16, related to State share funds, that provides that State share funds be allowed to maintain the AML inventory. To promote consistent uses of State share and Tribal share funds and for the same reasons we decided to include that paragraph (f) in § 872.16, we have also decided to include it here. So, § 872.19(f) now clearly allows uncertified Indian tribes to use their Tribal share funds to maintain the AML inventory under section 403(c) of SMCRA.

What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program? (§ 872.20)

We received no comments on this section. For the reasons discussed in the preamble to the proposed rule, we are adopting § 872.20 as proposed.

What are historic coal funds? (§ 872.21)

Section 872.21 describes historic coal funds, which are provided under section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in your State or on Indian lands in which you have an interest. 30 U.S.C. 1232(g)(5). Under § 872.21(a), we determine the amount of the historic coal funds by allocating 60 percent of the amount of money left in the Fund after we allocate the 50 percent of reclamation fees to the State or Tribal shares under section 402(g)(1). We distribute these historic coal funds for each FY to supplement grants awarded to uncertified States and Indian tribes that have not completed reclamation of their Priority 1 and 2 coal problems as defined by section 403(a). Under § 872.21(b), we describe other moneys included in historic coal funds as a result of the reallocations we must make during our annual fund distribution. We received no comments on this section. For the reasons discussed in the preamble to the proposed rule, we are adopting § 872.21 as proposed.

How does OSM distribute and award historic coal funds? (§ 872.22)

We are adding § 872.22 to describe how we distribute and award historic coal funds. We distribute these funds by determining which States and Indian tribes are eligible for historic coal funds. We also determine the total amount of funds available from fee collections for coal produced in the previous FY and from reallocations based on Treasury payments. Then we divide the available total between the eligible States and Indian tribes according to each State's or Indian tribe's percentage of the total tons of coal produced prior to August 3, 1977, from all eligible States and Indian tribal lands. We also are removing existing § 872.11(b)(4)(i) and (ii) and including similar provisions at §§ 872.22(d) and (e) as explained below.

Section 872.22(a) includes three criteria you must meet to be eligible to receive historic coal funds. First, in paragraph (a)(1), you must have and maintain an approved reclamation plan under Part 884 to be eligible to receive historic coal funds. Second, you cannot be certified under section 411(a) of SMCRA. Third, because section 402(g)(5)(A) of SMCRA states that you can receive historic coal funds only if you have unfunded Priority 1 and 2 coal problems under section 403(a), to meet the criterion of paragraph (a)(2) you cannot have reclaimed all your Priority 1 and 2 coal problems. Thus, if you are an uncertified State or Indian tribe that has no remaining unfunded Priority 1 or 2 problems, you cannot receive historic coal funds.

Section 872.22(b) provides that once the eligibility criteria listed in § 872.22(a)(1) and (2) are met, we calculate the amount of historic coal funds that you receive using a formula based on the amount of coal historically produced before August 3, 1977, in your State or from the Indian lands concerned. We will continue to use the formula described in paragraph (b) of this section to distribute historic coal funds to you even after reclamation fee collections end.

The table in § 872.22(c) describes how we distribute historic coal funds, and how these distributions are affected by the four year phase-in contained in section 401(f)(5)(B) of SMCRA.

Section 872.22(d) states that we only distribute the historic coal funds you need to reclaim your unfunded Priority 1 or 2 coal problems and includes the provisions that we are moving from existing § 872.11(b)(4)(i) and (ii). Specifically, this paragraph addresses the situation where the cost to reclaim all your, the uncertified State's or Indian tribe's, remaining Priority 1 and 2 coal problems is more than the amount you receive for your State or Tribal share alone, but is less than the amount that you receive for your State or Tribal share, unused funds from prior allocations, and historic coal funds combined. If this event occurs, we will reduce the amount of historic coal funds that you receive to the amount needed for you to fund reclamation of your remaining Priority 1 or 2 coal problems.

Under § 872.22(e), we are continuing the long-standing practice of awarding historic coal funds to you in grants following the provisions of Part 886.

Responses to Comments

We received six comments regarding paragraphs (b), (c), and (e) of § 872.22. However, after careful consideration of these comments and for the reasons stated below, we are adopting all paragraphs of this section as proposed with only minor revisions to clarify some of the references in the regulation.

As explained in detail above and in the preamble to the proposed rule, § 872.22(b) provides that we distribute historic coal funds to eligible States and Indian tribes according to an existing formula based on the amount of historic coal production before SMCRA was enacted. We received comments on this paragraph from IMCC/NAAMLP and two States.

To begin, IMCC/NAAMLP asked whether we would ''recalculate the percentages used in the formula each

year * * *?'' The answer to this question is that we recalculate the percentages in the formula every year. The formula is based on the tons of coal produced in your State or on your Indian lands prior to August 3, 1977, and these historic coal production numbers do not change. We calculate the distribution percentages by determining the percentage your State or Indian tribe has of the total coal tonnage produced in the States and Indian tribes eligible for historic coal funding that year. The percentages will only change only in two instances: (1) When a State or Indian tribe that was not previously eligible for historic coal funding becomes eligible by establishing an approved reclamation program or by entering sufficient Priority 1 or 2 coal problems in the AML inventory; or (2) when a previously eligible State or Indian tribe loses eligibility by certifying coal completion or falling below the requirement for inventoried Priority 1 or 2 coal problems. Thus, we expect the formula to remain the same in many years. Because the formula does change, but we expect that it can only change in the limited instances described above, we have decided not to place the formula into the regulations. The formula and calculations to make the annual historic coal fund distribution are published on OSM's Web site each year as part of the fund distribution package.

In addition, two States suggested that we revise the historic coal formula. One State suggested that we revise the formula to take into account ''the hazards left to be abated.'' Similarly, the other State commenter proposed that we revise the formula to take into ''consideration the inability of a State to complete its [high priority reclamation] by September 30, 2022 and beyond.'' As these States point out, such revisions would help to ensure minimum program States could complete their high priority reclamation projects before the AML programs end.

We appreciate these suggested revisions to the formula and recognize that some States with large inventories of high priority coal problems receive small distributions of historic coal funds. We also recognize that increasing the amount of historic coal funds distributed to these States would help them reclaim their coal problems more quickly. However, section 402(g)(5)(A) of SMCRA requires us to allocate historic coal funds ''through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977.'' 30 U.S.C. 1232(g)(5)(A). Because SMCRA does not give us the discretion to consider the amount of high priority coal problems for each State as listed in the AML inventory when we allocate and distribute historic coal funds, we did not make any substantive changes to § 872.22(b).

As with the State share funds under § 872.15 and the Tribal share funds under § 872.18, we received several comments inquiring into and proposing suggestions for the distribution of historic coal funds withheld under the phase-in provision of section 401(f)(5)(B). For instance, IMCC/NAAMLP noted that our proposed rule was unclear about what happens to these withheld funds, and IMCC/NAAMLP and one State recommended that we distribute the amounts of historic coal funds withheld because of the phase-in provision in two equal distributions in FY 2018 and 2019. These commenters also expressed concerns regarding the purposes that the withheld historic coal funds may be used for once returned.

In the discussion in the preamble to §§ 872.15 and 872.18, we explained that SMCRA does not authorize us to distribute State and Tribal share moneys withheld under the section 401(f)(5)(B). Likewise, SMCRA does not authorize us to distribute withheld historic coal moneys through two payments in FY 2018 and 2019, as we do for the certified in lieu moneys withheld from certified States and Indian tribes under the phase-in provision of section 411(h)(3). We think that § 872.22 explains what happens to these withheld historic coal moneys. We slightly expanded § 872.22(c)(4) to clarify that in FY 2023 and thereafter, States that remain uncertified will receive the amount calculated using the historic coal formula each year ''until funds are no longer available or you have reclaimed your remaining Priority 1 and 2 coal problems.'' So, the amount of historic coal funds withheld during the phase-in period will remain in the Fund along with other undistributed historic coal funds, which will primarily consist of the large amounts transferred from unappropriated State and Tribal share balances upon payment of prior balance replacement funds under section 411(h)(1) of SMCRA. In FY 2023 and thereafter, we expect these historic coal funds to provide the bulk of funding to States that still have high priority coal reclamation. States that receive historic coal funds in FY 2023 and thereafter can use them for any of the purposes described in § 872.23, including noncoal reclamation and inclusion in the AMD set-aside account. Certified States and Indian tribes, however, cannot receive certified in lieu funds to make up for any withheld historic coal funds. Section 411(h)(2)(A) of SMCRA, which governs the use of certified in lieu funds, refers only to State and Tribal share funds that were allocated after October 1, 2007, and not to historic coal funds. So we could not add a paragraph to § 872.33 that would allow an amount equal to any withheld historic coal funds to be distributed from certified in lieu funds if a State is certified before FY 2023.

As part of its larger comment discussed in more detail in the preamble to § 872.15, IMCC/NAAMLP also requested that we change our proposed regulations to allow you to have the option of receiving historic coal funds in grants or by direct payments. Although we considered this comment, we cannot adopt this suggestion for the same reason we cannot allow State and Tribal share funds to be paid as direct payments in §§ 872.15 and 872.18. SMCRA specifies that historic coal funds are awarded as ''annual *grants* to States and Indian tribes which are not certified under section 411(a) to supplement [State and Tribal share] *grants* received by such States and Indian tribes * * * until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved * * *.'' 30 U.S.C. 1232(g)(5)(A) (emphasis added). Thus, we must distribute historic coal funds as grants.

Are there any restrictions on how you may use historic coal funds? (§ 872.23)

For the reasons described in the preamble to the proposed rule, we are adopting § 872.23(a) through (e) generally as proposed, although we have changed the title and added a word to the introductory language for clarity. Moreover, as described below, we are also adding paragraph (f) in response to comments received. These paragraphs now provide that you, the uncertified State or Indian tribe, may use your historic coal funds only for the following purposes: (1) To reclaim coal lands and waters under § 874.12; (2) to restore water supplies under § 874.14; (3) to reclaim noncoal lands and waters under § 875.12 as requested by the Governor or the governing body of an Indian tribe under section 409(c) of SMCRA; (4) to deposit into an AMD set-aside fund under Part 876; (5) to acquire land under § 879.11; and (6) to maintain the AML inventory under section 403(c) of SMCRA.

Responses to Comments

IMCC/NAAMLP and one State commented that States and Indian tribes should be allowed to use their historic coal funds to maintain the AML

inventory. As with their similar comments directed at §§ 872.16 and 872.19, they observed that, by not specifically saying States and Indian tribes may use funds other than prior balance replacement funds to maintain the AML inventory, the regulations could be interpreted to mean that the only type of funds that States could use to maintain the AML inventory would be prior balance replacement funds.

After reviewing this comment, we have revised § 872.23 to include paragraph (f), which specifies that uncertified States and Indian tribes are allowed to use historic coal funds to maintain the AML inventory. This addition recognizes that maintaining the AML inventory will help uncertified States and Indian tribes measure progress toward addressing all known coal problems.

In the preamble to the proposed rule, we specifically requested comments on whether or not the requirement in section 402(g)(2) of SMCRA for ''strict compliance'' by uncertified States and Indian tribes with the priorities for reclamation of coal problems also impacts the authorization in section 409(b) that allows historic coal funds to be expended on noncoal reclamation. IMCC/NAAMLP commented that they do not believe the requirement of section 402(g)(2) applies to the use of historic coal funds or prior balance replacement funds.

We agree with the comment to the extent it describes the purposes for which historic coal funds can be used. Amended section 402(g)(2) of SMCRA, which requires ''strict compliance'' by uncertified States and Indian tribes with the priorities for reclamation of coal problems, does not impact the authorization in section 409(b) that allows you to spend historic coal funds on noncoal reclamation. Once requests are made under section 409(c) of SMCRA, uncertified States and Indian tribes may use historic coal funds provided under section 402(g)(5) ''for those reclamation projects which meet the priorities stated in section 403(a)(1)''. 30 U.S.C. 1239(c)(1). Thus, we are adopting § 872.23(c), as proposed, to explicitly allow uncertified States and Indian tribes to continue using historic coal funds for noncoal reclamation consistent with section 409(b) of SMCRA. Although we agree that historical coal share funds can be used for noncoal reclamation, the same is not true for the use of prior balance replacement funds. We will discuss this comment as it relates to why a different analysis applies to prior balance replacement funds, in conjunction with § 872.31.

What are Federal expense funds? (§ 872.24)

As proposed, we are dividing existing § 872.11(b)(5) into two sections and renumbering those sections as §§ 872.24 and 872.25. These sections address what previously were known as ''Federal share funds'' under section 402(g)(3) of SMCRA. With the exception of minimum program make up funds, which the 2006 amendments added to section 402(g)(3) in paragraph (E), we called them ''Federal expense'' funds in the proposed rule and this final rule. The new sections address the 2006 amendments and use plain English.

Section 872.24 replaces the introductory paragraph at existing § 872.11(b)(5) and identifies Federal expense funds as moneys in the Fund that are not allocated as State share, Tribal share, historic coal, or minimum program make up funds. Under section 401(d)(1) of SMCRA, we may use Federal expense funds only if Congress appropriates them.

Responses to Comments

Comments we received from IMCC/NAAMLP and one State revealed that our description of Federal expense funds under proposed § 872.24 and our explanation for removing a reference to minimum program make up funds in proposed § 872.25(b) were inconsistent. Specifically, the comments noted that, under proposed § 872.24, Federal expense funds are considered moneys in the Fund that are not allocated or distributed as State and Tribal share funds, historic coal funds, and minimum program make up funds. Yet, we stated in proposed § 872.25(b) that we may not deduct the amount of funds we allocate or distribute as Federal expense funds from your State or Tribal share funds and historic coal funds, and we proposed to remove a reference to minimum program make up funds in proposed § 872.25(b) because ''under section 402(g)(3)(E) of SMCRA, as revised by the 2006 amendments, minimum program make up funds are expressly included in Federal expenses so the additional reference is no longer necessary.'' 73 FR 35225. The commenters wanted us to clarify whether or not minimum program make up funds are Federal expense funds.

We agree with the commenters that this language in proposed §§ 872.24 and 872.25 could be confusing, and as explained below, we are revising § 875.25 to remove any potential inconsistency. Thus, for the reasons stated in the preamble to the proposed rule, we are adopting § 872.24 as proposed. As such, Federal expense funds are considered to be moneys in the Fund that we do not allocate or distribute as State and Tribal share funds, historic coal funds, or minimum program make up funds. Section 402(g)(3) of SMCRA addresses uses of the Secretary's 20 percent share of the Fund, which we divide into two subsets: ''Federal expense funds'' that Congress must appropriate, which include funding for expenses under sections 402(g)(3)(A) through (D); and minimum program make up funds under section 402(g)(3)(E) that are provided under section 402(g)(8) of SMCRA and are not subject to Congressional appropriation. Though minimum program make up funds come out of the Secretary's 20 percent share (sometimes called the ''Federal share''), we do not consider them ''Federal expense funds'' because Congress does not specifically appropriate them (other than the appropriation contained within the 2006 amendments).

Are there any restrictions on how OSM may use Federal expense funds? (§ 872.25)

Section 872.25 describes how we may use Federal expense funds. For clarity, we have changed the title of this section from that proposed. However, with the exceptions described below, we are generally adopting this section as proposed. Section 872.25 replaces existing §§ 872.11(b)(5)(i) through (v) as well as §§ 872.11(b)(7) and 872.11(b)(8) and is worded in plain English.

Paragraphs (a) through (a)(5) detail that we may, for instance, use these funds to perform nonemergency and other projects for States and Indian tribes that do not have approved reclamation programs and for the Secretary's administration of Title IV of SMCRA and subchapter R of the Federal regulations. These paragraphs are based on section 402(g)(3)(A)–(D) and 402(g)(4) of SMCRA.

We are renumbering existing § 872.11(b)(7) as § 872.25(b) and rewording this provision using plain English to describe the Federal expense distributions. This paragraph reflects the provision in the last sentence of section 402(g)(5)(A) of SMCRA, which states ''[f]unds made available under paragraph (3) or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.'' 30 U.S.C. 1232(g)(5)(A). This paragraph clarifies that we are prohibited from deducting the amount of funds we allocate or distribute as Federal expense funds, described at § 872.25, from your State or Tribal share funds and historic

coal funds. Section 872.25(b) also removes a reference in former § 872.11(b)(7) to minimum program make up funds provided under section 402(g)(8) of SMCRA. After considering the comments described with regard to § 872.24 and this section, we are removing the reference to minimum program make up funds that we had included in the proposed rule. We do not consider minimum program make up funds to be Federal expense funds because, unlike the funds listed in sections 402(g)(3)(A) through (D) and 402(g)(4) of SMCRA, minimum program make up funds have already been appropriated by Congress in the 2006 amendments and do not require any further annual appropriation before distribution can occur. 30 U.S.C. 1232(g)(3)(E).

In addition, we are renumbering existing § 872.11(b)(8) as § 872.25(c) and rewording it using plain English. This paragraph is consistent with section 402(g)(3)(C) of SMCRA. That section allows us to use Federal expense funds to address Priority 1, 2, and 3 coal problems that meet the eligibility requirements of section 404 in States and on Indian lands where the State or Indian tribe does not have an abandoned mine reclamation program approved under section 405. 30 U.S.C. 1232(g)(3)(C).

Responses to Comments

As discussed above in connection with § 872.24, comments from IMCC/NAAMLP and one State pointed out an inconsistency in our description of Federal expense funds under § 872.24 and our explanation for removing a reference to minimum program make up funds in § 872.25(b). More specifically, the comments noted that our proposed rule in § 872.24 essentially said minimum program make up funds are not Federal expense funds, yet proposed § 872.25(b) said they are.

As we explained in the discussion of § 872.24 in this final rule, we agree with the comments and are making changes in the text of § 872.25(a) and (b) in the final rule to clarify that minimum program make up funds are not Federal expense funds, although both minimum program make up funds and Federal expense funds are subsets of the Secretary's 20 percent share of collections to the Fund. We believe these changes we made to this section are consistent with sections 401(d)(1) and 402(g)(5)(A) of SMCRA. Section 401(d)(1) of SMCRA specifically provides that ''[m]oneys from the fund for expenditures under subparagraphs (A) through (D) of section 402(g)(3) shall be available only when appropriated for those subparagraphs.'' 30 U.S.C. 1231(d)(1). In contrast, minimum program make up funds are covered by section 401(d)(3) which says ''[m]oneys from the fund shall be available for all other purposes of this title without prior appropriation * * *.'' 30 U.S.C. 1231(d)(3). This section would include minimum program make up funds as set out in sections 402(g)(3)(E) and 402(g)(8)(A). It is because of this distinction that for the final rule we removed the reference to section 402(g)(8) of SMCRA from § 872.25(b). It also is why we addressed minimum program make up funds separately in §§ 872.26 through 872.28 instead of including them with Federal expenses in § 872.24.

We also received comments from IMCC/NAAMLP that said we should include minimum program make up funding in the list of authorized uses of Federal expense funds in § 872.25(a). The comments asserted that we ''can use any number of funds to make these [minimum program] payments, including the federal expense fund.''

After consideration of this comment, we decided not to make any additional changes to § 872.25. As we stated previously, we consider minimum program make up funds to be distinct from Federal expense funds even though both minimum program make up funds and Federal expense funds come out of the Secretary's 20 percent share of annual fee collections, as authorized under section 402(g)(3). The primary distinction is that Congress must appropriate Federal expense funds while minimum program make up funds do not need a Congressional appropriation other than that contained in the 2006 amendments. Section 401(f)(5)(A) of SMCRA allows us in any fiscal year to request, and Congress to appropriate, Federal expense funds from the Fund in addition to the mandatory appropriations made for grants to States and Indian tribes in the 2006 amendments. We believe, however, that it is not necessary to list in this regulation all the possible budget choices future administrations and Congress may make.

IMCC/NAAMLP and two States commented that we should revise § 872.25(a)(2) to state more affirmatively our responsibility to administer emergency powers under section 410 of SMCRA either through our Federal Reclamation Program in States and for Indian tribes without approved emergency programs or through approved State and Indian tribal emergency programs. The comments maintained that section 410(a) of SMCRA makes OSM, and not States and Indian tribes, responsible for funding emergency projects. In support, the commenters assert that we have not given States with approved emergency programs full autonomy to operate them, and that recently some States' proposed emergency projects have not been approved. The commenters expressed their concern that we intend to reduce or eliminate emergency program funding.

After considering these comments, we have decided not to change proposed § 875.25(a)(2). While we appreciate these comments, they address issues that are beyond the scope of this rulemaking. For example, the 2006 amendments did not amend section 410 of SMCRA or otherwise address the scope of OSM's emergency powers. Thus, whether, and to what extent, OSM expends money on AML emergencies is unaffected by the 2006 amendments and this rulemaking. While we are adding § 875.25, this section does not expand or constrict the scope of OSM's emergency powers. We certainly recognize that AML emergencies can pose extreme hazards to public health and safety and property, and we do not in any way suggest that it is acceptable for such emergencies to go unabated. As always, we will work in a cooperative manner with our State co-regulators to assure that AML emergencies will be abated.

What are minimum program make up funds? (§ 872.26)

As proposed, part of our changes to existing § 872.11(b)(6) included moving that section to §§ 872.26 and 872.27. These sections are consistent with the provisions of section 402(g)(8) of SMCRA, as revised by the 2006 amendments, for what commonly has been called ''minimum program funding'' or the ''minimum program make up.''

Section 872.26 addresses what we call ''minimum program make up funds'' in this rule. First, § 872.26(a) describes these funds as additional moneys that we distribute to eligible States and Indian tribes each year to make up the difference between their total distribution of other funds and $3 million. After consideration of the comments received, we have amended § 872.26(a) to identify the source of these funds as moneys in the Secretary's 20 percent share of the Fund that are authorized for mandatory distribution and are not included in the Federal expense share under §§ 872.24 and 872.25. Section 402(g)(3)(E) of SMCRA requires us to use the Secretary's 20 percent share of the Fund provided under section 402(g)(3) for this mandatory distribution. 30 U.S.C.

1232(g)(3)(E). However, unlike the Federal expense funds provided under paragraphs (A) through (D) of section 402(g)(3) and §§ 872.24 and 872.25 of the regulations, these funds do not need additional Congressional appropriation. 30 U.S.C. 1231(d)(1).

Second, § 872.26(b) describes four criteria that you must meet to be eligible to receive minimum program make up funds. First, you must have and maintain an approved reclamation plan under Part 884. Next, you cannot be certified under section 411(a) of SMCRA. Third, the total amount of State or Tribal share, historic coal, and prior balance replacement funds you receive annually must be less than $3 million. Last, you must have unfunded Priority 1 and 2 coal problems greater than your total annual amount of State or Tribal share, historic coal, and prior balance replacement funds. Other than minor modifications for clarity, we did not change these requirements from the proposal.

Last, consistent with section 402(g)(8)(B) of SMCRA, § 872.26(c) makes the same amount of funding available to the States of Missouri and Tennessee to reclaim Priority 1 and 2 coal problems provided they have abandoned mine reclamation plans under Part 884. This paragraph was adopted as proposed.

Responses to Comments

The calculation and use of minimum program make up funds was a subject of several comments. These commenters were primarily concerned with the amount of money minimum program States will be receiving under the 2006 amendments and these regulations. In particular, the general comments reflected two primary concerns: first, that if minimum program States receive only the minimum level of funding annually they will not complete the reclamation of the coal problems listed in the AML inventory during the life of the AML program; and, second, whether the phase-in provision of SMCRA section 401(f)(5)(B) should apply to minimum program make up funds. We will discuss the first concern below, but because § 872.27 contains language implementing the phase-in provision, we will discuss the second under that section.

Two States expressed concern that OSM is interpreting the 2006 amendments in such a manner as to guarantee that minimum program States will not receive enough funds to reclaim the sites listed in the AML inventory during the life of the program. One of these commenters notes that it has ''an AML inventory which exceeds $200 million [and it] would never be able to complete reclamation on all the Priority 1 and 2 hazards in the State by the end of fee collection in 2022 at $3 million per year minimum,'' which would leave the citizens of that State ''in great danger of being injured or even killed through some type of contact with one of these [unreclaimed] hazards.'' Another State asserted the same concerns: ''At an annual $3 million funding distribution [this State] will not get the Priority 1 and Priority 2 AML problems reclaimed by September 30, 2022.'' Three environmental groups generally commented that minimum program States deserve and are due $3 million annually.

A specific suggestion that these two State commenters and IMCC/NAAMLP made was to add the words ''or greater'' at the end of the first sentence of § 872.26(a) and at the end of § 872.27(a)(1). These commenters indicate that these changes will allow the Secretary to give a State or Indian tribe more than the minimum program mandatory funding of $3 million per year, if he so chose. This language could be used, as two States note and IMCC/NAAMLP appears to agree, to allow the Secretary to give more funds to minimum program States, particularly in the later years of the program after more States and Indian tribes certify coal completion and more historic coal funds are available to distribute among uncertified States and Indian tribes with large AML inventories remaining. One State asked that throughout the rule we make it clear that ''minimum program funding is not less than $3 million annually and can be greater than $3 million on an annual funding basis.'' In regard to a similar suggested change to § 872.27, IMCC/NAAMLP stated that they did not care how OSM was able to get the minimum program States more funds, but that ''it simply needs to be done in order to meet the minimum $3 million [annual] award beginning immediately.''

We appreciate the concerns that commenters raise on this point, but after careful consideration we have determined that we cannot change paragraph (a) of this section (or of § 872.27 as explained below) as suggested. We agree with the commenters' point that a static funding level of $3 million a year will not enable some States to complete their high priority coal reclamation by the time the fee collections end. We regret this situation because, as IMCC/NAAMLP and one State pointed out, '' 'minimum program' does not refer to [a] lack of AML hazards that a State has to address,'' and dangerous AML sites will likely continue to exist after FY 2022 in minimum program States and could pose grave danger to those States' citizens and visitors.

Unfortunately, the 2006 amendments do not provide us with the statutory authorization to augment the $3 million floor to ensure that the minimum program States can complete high priority coal reclamation using any funds appropriated for mandatory distribution under section 401 of SMCRA, although we may increase funding above this floor for appropriated Federal expenses such as State emergency program funding.

Section 402(g)(8) of SMCRA requires us to ''ensure that the grant awards total not less than $3,000,000 annually to each State and each Indian tribe having an approved abandoned mine reclamation program * * *.'' 30 U.S.C. 1232(g)(8)(A). All this section does is establish the threshold amount that minimum program States will receive; it does not alter the underlying calculation that determines how much every uncertified State will receive. To calculate whether any uncertified State will meet this minimum threshold, you must look at section 401(f)(3), which states:

> [F]or each fiscal year, * * * the Secretary shall distribute—
>
> (i) The amounts allocated under [the State and Tribal share provisions], the amounts allocated under [the historic coal funds provision], and any amount reallocated [because of equivalent amount is paid out of Treasury as certified in lieu funds], for grants to States and Indian tribes [as historic coal funds]; and
>
> (ii) The amounts allocated [for the minimum program make-up] under section 1232(g)(8).

30 U.S.C. 1231(f)(3). For uncertified States with a total amount to be distributed less than $3 million, section 401(f)(3)(ii) authorizes us to distribute minimum program make up funds in order to get them up to the threshold amount in section 402(g)(8)(A). It is the provisions of section 401 that authorize and appropriate these moneys from the Fund to uncertified States in mandatory distributions, and nothing in section 402(g)(8) changes the formula allocation set forth in section 401(f)(3). Thus, we are only authorized by SMCRA to provide minimum program make up funds, if needed, to bring the funding for each uncertified State up to $3 million. We are not authorized to use minimum program make up funds to give mandatory distributions in excess of these amounts to minimum program States.

To use Federal expense funds to provide the States with amounts greater

than $3 million, we would need a specific Congressional appropriation. Section 401(f)(5)(A) says that ''the amount distributed under this section shall be in addition to the amount appropriated from the fund during the fiscal year.'' 30 U.S.C. 1231(f)(5)(A). Although section 401(f)(5)(A) of SMCRA authorizes us to provide additional grants from Federal expense funds, it does not require us to provide such grants. Instead, the language of individual appropriations acts and our budgetary discretion, which are outside the scope of this rulemaking, govern how we expend the Federal expense funds.

We agree that more historic coal funds will be available to the remaining uncertified States as other States finish their coal problems and become certified. This occurs because the historic coal distribution percentages are increased for the remaining States, and also because amounts in the Fund equal to the certified in lieu funds the newly certified States will now receive are reallocated to historic coal funds under section 411(h)(4) and used to increase total historic coal distributions. We expect that as States certify, minimum program States will receive more historic coal funds and eventually will no longer require minimum program make up funds because the increase in historic coal funds will raise their funding over the $3 million threshold.

We also note that the comments we received in conjunction with §§ 872.24 and 872.25 about an inconsistency between the description of Federal expense funds and minimum program make up funds in the proposed rule also apply to this section. As we previously clarified in this final rule, we do not consider minimum program make up funds to be Federal expense funds, and, to be consistent with the changes we made in §§ 872.25(a) and (b), we are also changing § 872.26(a) to clarify that the source of minimum program make up funds is the moneys in the Secretary's 20 percent share of the Fund that are authorized for mandatory distribution.

How does OSM distribute and award minimum program make up funds? (§ 872.27)

Section 872.27 describes how we distribute and award minimum program make up funds. Paragraph (a) provides that we distribute these funds to you if you meet the eligibility requirements of § 872.26(b). In paragraph (a)(1), we describe how we calculate the amount of the Secretary's share funds, if any, we use to supplement the other funds you receive under Title IV of SMCRA. We add up the annual distributions you receive for your prior balance replacement funding under § 872.29, your State or Tribal share moneys under §§ 872.14 or 872.17, and your historic coal funds under § 872.21. If your distribution of these funds is equal to or greater than $3 million annually, you do not receive any minimum program funding under this section. If your distribution of these funds is less than $3 million annually, we add Secretary's share funds to increase your total distribution to $3 million.

Although we use Secretary's share funds to ensure that you receive at least $3 million in your distributions, we are required to reduce the amount of these minimum program make up distributions for the first four years to comply with the phase-in provision of section 401(f)(5)(B). The table in paragraph (a)(2) describes how we phase-in funding beginning October 1, 2007, until you reach the full funding level beginning October 1, 2011.

We are phasing-in this funding based on sections 401(f)(2)(A)(ii), 401(f)(3)(A)(ii), and 401(f)(5) of SMCRA. We are calculating the phased-in distribution using the method that we chose for the 2008 distribution because we believe it maximizes funding for the minimum program States. To calculate the distribution, we first add up your annual prior balance replacement, State or Tribal share, and historic coal fund distributions. Then we calculate how much additional minimum program make up funding you would need to reach $3 million. We apply the phase-in only to that additional minimum program make up funding.

The following example illustrates the phase-in method: The distribution of State A's prior balance replacement funds and its phased-in State share funds and historic coal funds totals $400,000. The amount of minimum program funds we would add to bring State A's total distribution to $3 million is $2.6 million. In FY 2008 and FY 2009, we would have added 50 percent of the $2.6 million in minimum program make up funds, or $1.3 million, to the $400,000 sum of the State's other funding. State A's total distributions for FY 2008 and FY 2009 therefore would have been $1.7 million each. In FY 2010 and FY 2011, we would add 75 percent of the $2.6 million amount of minimum program funds, or $1,950,000, to the $400,000 sum of State A's other funding (assuming, for this example, that those other funding levels remain constant). State A would therefore receive $2,350,000 in both FY 2010 and FY 2011.

The table in § 872.27(a)(2)(iii) shows that beginning in FY 2012, your total annual distribution will not be less than $3 million unless the estimated reclamation cost of your remaining Priority 1 and 2 coal problems is less than $3 million. Section 872.27(a)(2)(iv) explains that if you have Priority 1 and 2 coal problems remaining after September 30, 2022, we will continue to fund your total annual distribution at no less than $3 million (to the extent funds still are available) until the estimated cost of reclaiming your Priority 1 and 2 coal problems is less than $3 million.

If the estimated cost of reclaiming your Priority 1 and 2 coal problems is less than $3 million but more than your total annual distribution of all other types of Title IV funds, we will provide minimum program make up funding up to the unfunded reclamation costs of your Priority 1 and 2 coal problems.

Last, § 872.27(b) says we are awarding minimum program make up funds to you in grants following the procedures of Part 886 for uncertified States and Indian tribes, as we have for many years. After careful consideration of the comments received and explained below, we decided to adopt § 872.27 as proposed.

Responses to Comments

As mentioned in the comments to § 872.26, the comments we received on minimum program make up funding generally related to two primary concerns—the need to complete high priority reclamation before the end of the AML program and the application of the phase-in provision to minimum program make up funds. With regard to the first concern, the commenters who suggested that we add ''or greater'' to § 872.26 also suggested we add that phrase to § 872.27(a)(1). For the reasons described in § 872.26, we have decided not to add the suggested language to this section.

The rest of the comments on this section, from IMCC/NAAMLP, four States, and three environmental groups, generally related to § 872.27(a)(2), which incorporates SMCRA's phase-in provision of Fund moneys. The commenters asserted that SMCRA requires that minimum program States receive at least the full $3 million as soon as possible, and some of them presented specific reasons why. In particular, IMCC/NAAMLP and State commenters specified that we should not phase in distributions of minimum program make up funds. To justify this position, IMCC/NAAMLP provided an extensive discussion of section 401(f) and 402(g)(8). Particularly they quoted section 401(f)(5)(B), which states

''notwithstanding paragraph (3), the amounts distributed under this subsection'' will be phased in for the first four years beginning with FY 2008. 30 U.S.C. 1231(f)(5)(B). The commenter relies on this provision and states that OSM ignores this provision, and ''by its own terms (i.e. the 'notwithstanding' phrase), [the phase-in provision] only overrides the requirements of section 401(f)(3).'' The commenter finds independent justification in sections 401(f)(1), 401(f)(2), and 402(g)(8) to support a conclusion that ''section 401(f)(5) only applies to such additional funds as might otherwise be provided to OSM to the minimum program States and Tribes above the guaranteed distributions required elsewhere in the statute. This means that OSM cannot contribute more than $1.5 million in additional funding to each minimum program States and Tribes in fiscal years 2008 and 2009, and not over $2.3 million in additional funding in each of fiscal years 2010 and 2011, and not over $3.0 million in additional funding in each subsequent year through fiscal year 2024.''

IMCC/NAAMLP and one State described the history of minimum program make up funding and how it has neither been fully appropriated nor met the needs of eligible States and Indian tribes for several years. IMCC/NAAMLP and one State detailed portions of the legislative history of SMCRA and some of its amendments as it related to historical guarantees made to the States and Indian tribes for funding of at least $2 million. The legislative history included ''Congressional letters from committee chairmen [confirming] that Congress did not intend for funding to minimum program states to be phased-in.''

The commenters pointed out that despite these guarantees, Congress has generally only appropriated the minimum funding level at $1.5 million. Moreover, IMCC/NAAMLP provided a chart of the funding increases for States and Indian tribes in FY 2008 showing that every State and Indian tribe, except minimum program States, received an increase in funding ranging from 29 to 269 percent. IMCC/NAAMLP also asserted that minimum program States would not expect an increase until FY 2012. It continued by pointing out that large numbers of serious coal problems remain in some eligible States despite Congressional and State intent and efforts to strengthen provisions for abating them, and stresses that the purpose of Title IV is to help States and Indian tribes abate abandoned mine problems. Thus, IMCC/NAAMLP encouraged us to '' 'look outside the box' and consider the real reason that Title IV was enacted almost 30 years ago'' to justify amending the rule as proposed to fund the full $3 million in minimum program make up funds immediately. As one State commented, to provide less than the full $3 million would be a breach of faith between OSM and the States and Indian tribes.

As we stated in response to the comments under § 872.26, we agree that minimum program States and Indian tribes face widespread and significant abandoned coal mine problems that have yet to be addressed despite the Fund's 30-year existence. We acknowledge that eligible States and Indian tribes historically have not received the full $2 million that the previous version of section 402(g)(8) of SMCRA indicated they were authorized to receive. With the 2006 amendments, Congress addressed this underfunding by increasing the minimum level of distributions under this paragraph and making them mandatory. *See* 30 U.S.C. 1231(d)(3) and 1232(g)(8)(A). But it also enacted the phase-in provision of section 401(f)(5)(B), which effectively makes the minimum program States wait until FY 2010 to receive any significant increase in funding. 30 U.S.C. 1231(f)(5)(B).

We must, moreover, disagree with the conclusions that the commenters drew from the chronic underfunding of minimum program States and the changes to SMCRA made by the 2006 amendments. To begin, we must correct a misperception made by some of the commenters. As we described in the preamble to the proposed rule and repeated here, the formula that the regulations establish to determine the amount of funds that minimum program States receive give them an increase, however slight, over the $1.5 million annually that they previously received. In our calculation example above, we increased State A's funding from $1.5 million to $1.7 million, a 13% increase. Our records show that all of the 10 States that received minimum program funding in FY 2007 received more total funding in FY 2008 than they did in the FY 2007 distribution, with increases ranging from 4% to 168%.

Most importantly, the commenters have not provided any statutory authority under the language of SMCRA as written that supports our not applying the phase-in provision of section 401(f)(5)(B) to minimum program make up funds. When the 2006 amendments were enacted, we recognized the complicated interconnectedness of sections 401 and 402 of SMCRA. As described above, at our request, the Solicitor issued an M-Opinion that provides the Department's interpretation of SMCRA on the issue of whether the section 401(f)(5)(B) phase-in provision applies to minimum program make up funds. The Solicitor determined that section 401(f)(3) plainly requires us to reduce the total amount of annual grants in FY 2008 through FY 2011, including State or Tribal share, historic coal, and minimum program make up funds, to eligible States and Indian tribes by applying the phase-in provision of section 401(f)(5)(B). The M-Opinion recognizes that Congress's reason for imposing the phase-in is not readily apparent. At the same time, however, it concludes that the language of SMCRA that makes the State or Tribal share, historic coal, and minimum program make up funds subject to the phase-in is clear.

After extensively reviewing the rationales presented by the commenters, we still believe that the analysis contained in the M-Opinion is correct. As described, IMCC/NAAMLP asserts that SMCRA only applies the phase-in provision in section 401(f)(5)(B) to funds that the Secretary may provide to the minimum program States after the other guaranteed distributions are made, including the minimum program fund distribution that would bring them up to the $3 million floor. We believe that such an interpretation of SMCRA is incorrect and ignores the statutory scheme of section 401. Section 401(f) of SMCRA clearly requires the Secretary to distribute to States and Indian tribes the amounts determined under section 401(f)(2). Section 401(f)(2), in turn, provides a calculation of funds that are then distributed under section 401(f)(3). The phase-in provision of section 401(f)(5)(B) unambiguously applies to all amounts distributed under section 401(f)(3). Nothing in section 401(f)(3) indicates that it only refers to funds distributed in addition to other funds distributed under Title IV. Indeed, it clearly states it applies to ''the amount to be distributed to States and Indian tribes pursuant to'' section 401(f)(2). Thus, we disagree with the analysis presented by the commenters.

Even though it may be unfortunate that some States do not receive as much critical funding as they need to reclaim their high priority coal projects, we are only authorized to provide as much funding as SMCRA allows. As much as we appreciate the desire of these States to reclaim the high priority coal problems as quickly as practicable, we cannot interpret SMCRA in such a way as to go against its plain meaning. Therefore, we are not changing § 872.27 in response to these comments.

Because we recognize the importance of reclaiming high priority coal problems in all uncertified States and Indian tribes, including minimum program States, in the proposed rule we specifically invited comments on ''other ways to calculate minimum program make up funding that meet SMCRA's requirements.'' 73 FR 35226. IMCC/NAAMLP responded that they do not prefer a specific approach as long as it provides a minimum grant award of $3 million beginning in FY 2008. But as we explained, SMCRA's requirements do not allow us provide the full $3 million.

Another comment from IMCC/NAAMLP addressed the last line of the table in § 872.27(a)(2)(iv). On that line we stated that, if you have Priority 1 and 2 coal problems remaining after September 30, 2022, we will continue to fund your total annual distribution at no less than $3 million (to the extent funds still are available) until the estimated cost of reclaiming your Priority 1 and 2 coal problems is less than $3 million. IMCC/NAAMLP commented that we should revise this section to state that, if a State or Indian tribe has more than $3 million in Priority 1 or 2 problems remaining after that date and funds still are available, we can and will distribute more than $3 million, not just a minimum of $3 million.

We understand the commenter's position, but we included § 872.27(a)(2)(iv) to make clear that we will add minimum program make up funds to your distribution amount until you have less than $3 million in Priority 1 and 2 coal problems remaining. This is consistent with section 402(g)(8)(A), which authorizes us to set $3 million as the floor amount of your total annual mandatory distribution, including minimum program make up funds if you qualify for them under this section. This is also consistent with section 401(f)(2)(B) of SMCRA, which requires that, for FY 2023 and each fiscal year after that, to the extent funds are available, we must distribute an amount equal to the amount we distributed under 401(f)(2)(A) during fiscal year 2022. Further, we use the word ''and'' to include Priority 1 and 2 coal problems consistent with the wording of section 402(g)(8) of SMCRA.

As with State and Tribal share funds and historic coal funds, IMCC/NAAMLP and two States requested that we change our regulations in §§ 872.26 and 872.27 to allow States and Indian tribes a choice to receive minimum program make up funds either in grants or by direct payments. Section 402(g)(8), however, refers to the Secretary's ensuring that ''the *grant* awards'' are made to each minimum program State and Indian tribe. Thus, as discussed further in the preamble in regard to §§ 872.15, 872.18, and 872.22 and because section 402(g)(8)(A) clearly contemplates that minimum program make up funds will be distributed as grants, we are not making the suggested change to these sections.

As with the State share funds under § 872.15, Tribal share funds under § 872.18, and historic coal funds under § 872.22, we received comments about historic coal funds withheld pursuant to the phase-in provision of section 401(f)(5)(B). For instance, IMCC/NAAMLP recommended that we distribute the amounts of minimum program make up funds withheld because of the phase-in provision in two equal distributions in FY 2018 and 2019. As we explained in §§ 872.15, 872.18, and 872.22, SMCRA does not authorize us to distribute moneys withheld because of the phase-in of State share, Tribal share, historic coal and minimum program make up funds in two payments in FY 2018 and 2019. Minimum program make up funding withheld during the phase-in period will remain in the Fund as part of the Secretary's share until it is either distributed as minimum program make up funding in FY 2023 and thereafter under § 872.27(a)(2)(iv), or otherwise appropriated by Congress and expended by OSM for Federal expenses under § 872.25. As we explained for historic coal funds in § 872.22, certified in lieu funds can only be used to pay for withheld State share or Tribal share funds, so when a State certifies we cannot distribute certified in lieu funds equal to withheld minimum program funds.

Are there any restrictions on how you may use minimum program make up funds? (§ 872.28)

Section 872.28 lists what you may use minimum program make up funds for. We first revised the title and introductory text for clarity. Furthermore, after considering the comments, we have revised this section so that it now allows you to use minimum program make up funds for: (a) Priority 1 and 2 coal reclamation under sections 403(a)(1) and (2) of SMCRA; and (b) Priority 3 coal reclamation that is part of Priority 1 and 2 coal reclamation under sections 403(a)(1) and (2) of SMCRA and § 874.13 of this chapter. You may not use minimum program make up funds for AMD set-asides because section 402(g)(6)(A) of SMCRA allows only State share, Tribal share, or historic coal funds to be used for this purpose. Similarly, you may not use minimum program make up funds for water supply restoration under section 403(b) or noncoal reclamation under section 409(b) because those sections also allow only State share, Tribal share or historic coal funds to be used. You may not use minimum program make up funds for stand alone Priority 3 problems or other work because section 402(g)(8) of SMCRA allows us to distribute minimum program make up funds only so long as they are necessary to achieve the priorities in section 403(a)(1) and (a)(2).

Responses to Comments

IMCC/NAAMLP and one State commented on this section. As proposed, § 872.28 would have allowed States and Indian tribes to use minimum program make up funding only for Priority 1 and 2 coal reclamation. Both comments suggested we change this section to allow States to use minimum program make up funds to reclaim certain Priority 3 coal problems as part of addressing Priority 1 or 2 hazards. The State clarified that it was not proposing to do ''stand alone'' Priority 3 coal reclamation with minimum program make up funds. Both, however, asserted that reclaiming Priority 3 problems such as spoil ridges as part of abating Priority 1 or 2 hazards such as highwalls allows them to leverage their limited funding to get the best reclamation at the lowest cost. They observed that we historically allowed this practice, under which States and Indian tribes save considerable amounts of money while providing valuable reclamation.

We agree with the comments. Section 402(g)(8)(A) of SMCRA provides that we will ensure grant awards total not less than $3,000,000 ''so long as an allocation of funds to the State or tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a)''. 30 U.S.C. 1232(g)(8)(A). This section does not limit expenditures of minimum program funds to Priority 1 and 2 coal problems. However, we believe that there must be a strong connection between expenditures of these funds and the Priority 1 and 2 coal problems which made them necessary. We recognize that States have an interest in getting the most reclamation for their limited funds, and we share that interest. Also, we recognize that it can be economically and logistically advantageous to address lower priority problems, such as spoil ridges or waste piles, as part of abating higher priority problems such as highwalls, portals, and vertical openings. This approach reclaims more AML problems overall, in

some cases can more effectively abate and reclaim hazards and can reduce the cost of reclaiming the higher and lower priority problems. In that context, paragraph § 872.28(b) is added to allow you, the eligible States and Indian tribes, to use minimum program make up funds for Priority 3 coal reclamation that is part of Priority 1 and 2 coal reclamation under sections 403(a)(1) and (2) of SMCRA and § 874.13 of this chapter.

What are prior balance replacement funds? (§ 872.29)

Section 872.29 is one of three new sections we are adding regarding section 411(h)(1) of SMCRA and what we have termed ''prior balance replacement funds.'' This section describes these funds as moneys we must distribute to you instead of the moneys that we allocated to your State or Tribal share of the Fund before October 1, 2007, but that we did not actually distribute to you because Congress never appropriated them. It identifies the source of these funds as general funds of the U.S. Treasury that are otherwise unappropriated, not the Fund. Under SMCRA, distributions of prior balance replacement funds from general funds of the U.S. Treasury are mandatory and are not subject to Congressional appropriation. These distributions start in FY 2008 and continue through FY 2014. Other than comments related to new § 872.35 and discussed in the preamble to that section, we did not receive any comments on this section and adopt it as proposed.

How does OSM distribute and award prior balance replacement funds? (§ 872.30)

We are adding § 872.30 to describe how we distribute and award prior balance replacement funds. Under paragraph (a)(1), we distribute U.S. Treasury funds to you, all States and Indian tribes with approved reclamation plans, equal to the moneys that we allocated to your State or Tribal share before October 1, 2007, but that were not distributed before then. Under paragraph (a)(2), we distribute these funds to you if you are, or are not, certified under section 411(a) of SMCRA. Consistent with section 411(h)(1)(C) of SMCRA, paragraph (a)(3) requires us to distribute these funds to you in seven equal annual installments, beginning in FY 2008.

Under § 872.30(b), we are awarding prior balance replacement funds to you in grants under Part 885 if you are a certified State or Indian tribe or under Part 886 if you are uncertified. Section 411(h)(1) of SMCRA says ''* * * the Secretary shall make payments to States or Indian tribes for the amount due * * *.'' 30 U.S.C. 1240a(h)(1)(A)(i).

Section 872.30(c) addresses sections 411(h)(1)(A)(ii) and 411(h)(4)(A) of SMCRA, as revised by the 2006 amendments. 30 U.S.C. 1240a(h)(1)(A)(ii) and 1240a(h)(4)(A). It requires us to transfer to historic coal funds the moneys in your State or Tribal share of the Fund that were allocated, but not appropriated to you, before October 1, 2007. The amount of this transfer is the same amount that we pay you as prior balance replacement funds under this section and 411(h)(1) of SMCRA. Section 872.30(c) further requires us to make the amounts transferred to the historic coal funds available for annual grants beginning in FY 2023, which is the same time we distribute the remaining moneys under Title IV. Finally, it requires us to allocate, distribute, and award the transferred amounts to you according to the provisions applicable to historic coal funds under §§ 872.21, 872.22, and 872.23.

Responses to Comments

We received comments on this section from IMCC/NAAMLP and two States. Two commenters advocated that we amend our proposed rule text to allow States and Indian tribes the option of receiving prior balance replacement funds under this section and certified in lieu funds under § 872.32 either in grants or by direct payments. The third commenter simply asserted that ''OSM's interpretation that the payments to certified States must be accomplished by the grant process is in error and the funds should be distributed by a direct payment.''

More specifically, IMCC/NAAMLP and one State contend that SMCRA does not directly address the issue of the system that should be used to disburse Treasury funds to States and Indian tribes and acknowledge that the ''Secretary has the discretion to design a payment mechanism that meets the needs of the States and tribes.'' At the same time, these two commenters advocate that we choose a system that allows the States and Indian tribes to have the flexibility to choose between grants, which would give States and Indian tribes the '' 'protection' and guidance that such a process affords,'' and some type of direct payment mechanism, which would ''provide more unrestricted and immediate access to these moneys for States and Tribes who desire maximum discretion with regard to the use of these moneys * * *.'' These commenters never identified a specific mechanism that we could use to provide the direct payment but urged us to create a system similar to that used to pay mineral royalties to States under the Mineral Leasing Act. They also stated that State legislatures and Tribal councils will ensure States and Indian tribes use the funds legally and appropriately under SMCRA and State and Tribal contracting law and that Federal audits will scrutinize project selection and expenditures.

We disagree with the commenters' assertions either that we should distribute Treasury funds to you as direct payments or allow you to choose between receiving the funds in grants or some type of direct payment. We agree with the Solicitor's M-Opinion that we are required to use grant agreements to make the Treasury payments under section 411(h) of SMCRA, and we incorporate its reasoning by reference. Furthermore, even if we did have some discretion, we would still choose to distribute these funds as grants. As explained further in the preamble to the proposed rule, we identified at least four reasons why it is advantageous to use grants to distribute funds under section 411(h). These reasons include allowing us to continue the established and effective process we have been using for almost 30 years to disburse moneys from the Fund to States and Indian tribes, helping us to address our programmatic responsibilities concerning certified and uncertified States and Indian tribes under sections 201(c)(1) and (4) of SMCRA, maintaining financial accountability for the distributed moneys, and maintaining consistency with Treasury regulations associated with grants (31 CFR Part 205).

In a separate but related comment, IMCC/NAAMLP requested that we change this section to allow distributions of prior balance replacement funds to occur on October 1 of each fiscal year. This would be in contrast to our proposal, which would have us distribute funds in the mandatory distribution after we account for all reclamation fees collected for the previous year.

We agree that we have the authority and the ability to distribute the prior balance replacement funds earlier in the fiscal year than the other funds in the annual mandatory distribution. Prior balance replacement funds are the only funds we are required to distribute that will usually not change in amount based on annual collections. For two reasons, however, we do not believe it advisable to provide for earlier distribution of the prior balance replacement funds. First, in order to distribute these funds earlier than other funds, we would have to

conduct a separate distribution and grants process. This, we believe, would be a waste of our administrative resources. Second, distributing these funds in advance of others could create a significant problem in years where proposed distributions of Treasury funds exceed the $490 million cap provided in section 402(i)(3)(A) of SMCRA. 30 U.S.C. 1232(i)(3)(A). In such years, we would have to reduce the amount of prior balance replacement funds that we distribute. We could not determine that amount of reduction, however, until we calculate the total amount of fee collections for the FY in question. Distributing prior balance replacement funds before we have made that calculation would create a significant administrative burden. Consequently, we did not change the regulatory text to specifically provide for earlier distributions. However, because we are not including any regulations mandating that distributions be made on a specific date, we reserve the right to use our discretion at some point in the future to reconsider the circumstances and allow for an earlier distribution of prior balance replacement funds.

In sum, we are adopting § 872.30 generally as proposed, but, for the reasons explained in the preamble to new § 872.35 we are adding a reference to make clear that prior balance replacement funds will be reduced if the $490 million cap set forth in section 402(i)(3) is exceeded.

Are there any restrictions on how you may use prior balance replacement funds? (§ 872.31)

Consistent with section 411(h)(1)(D)(i) of SMCRA, § 872.31(a) requires you, a certified State or Indian tribe, to use the prior balance replacement funds you receive only for the purposes that your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development. 30 U.S.C. 1240a(h)(1)(D)(i). Under SMCRA, as revised by the 2006 amendments, the State legislature or Tribal council has broad and sole discretion to determine how prior balance replacement funds will be spent. Because OSM has no basis for approving or disapproving individual projects to be undertaken with these funds, we do not believe that projects paid for with prior balance replacement funds would be subject to our review requirements under laws such as the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA). Certified States or Indian tribes would be solely responsible for determining what other Federal laws are applicable to their activities. Therefore, we are not requiring an Authorization to Proceed (ATP) from OSM with an accompanying NEPA review.

Sections 872.31(b) through (b)(3) require that uncertified States and Indian tribes use their prior balance replacement funds only for activities related to abandoned coal mine problems. Section 411(h)(1)(D)(ii) specifies that uncertified States ''shall use any amounts provided under this paragraph for the purposes described in section 403.'' 30 U.S.C. 1240a(h)(1)(D)(ii). So, uncertified States and Tribes must use prior balance replacement funds to reclaim Priority 1, 2, and 3 coal problems under § 874.12, to restore water supplies under § 874.14, and to maintain the AML inventory under section 403(c) of SMCRA. Though not a required use in § 872.31(b), we believe uncertified States and Indian tribes may use these funds to acquire lands under § 879.11 as needed to address coal problems under section 403.

Responses to Comments

We received numerous comments on this section. We will begin by discussing the comments we received on § 872.31(a) from IMCC/NAAMLP, one Indian tribe, and two States regarding compliance with the National Environmental Policy Act (NEPA). IMCC/NAAMLP and State commenters generally preferred not to have us do the NEPA review or an ATP for prior balance replacement funds expended by certified States and Indian tribes, but these commenters asked that we clarify why we will not require NEPA review. In contrast, IMCC/NAAMLP added that if ''a Tribe is still required to perform a NEPA review due to other federal requirements (i.e. federal fiduciary responsibilities), the Tribes would prefer to work with OSM to accomplish this.'' Likewise, an Indian tribe commented that it was required to have NEPA documentation, and that we should conduct the NEPA reviews and issue ATPs for projects funded with prior balance replacement funds under section 411(h)(1) upon receipt of a certified State's or Indian tribe's written request because we have ''provided well-timed review and approval of [their] SMCRA projects resulting in the timely completion of these projects.''

After reviewing these comments, we have decided not to change § 872.31(a) to specifically incorporate NEPA. As IMCC/NAAMLP suggested, we do not believe that a Federal nexus exists on individual projects undertaken by certified States and Indian tribes using prior balance replacement funds for the purposes set forth by their State legislatures or Tribal councils. We do not need to address this point in these regulations because other statutes, regulations, and case law support that principle. For example, the Department's NEPA regulations state: ''If Federal funding is provided with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary.'' 43 CFR 46.100(a); *see also* 40 CFR 1508.18 (''`Major Federal Action' includes actions with effects that may be major and which are potentially subject to Federal control and responsibility.''). Because SMCRA clearly requires us to make the prior balance replacement fund payments to certified States and Indian tribes and gives the State legislatures and Tribal councils sole discretion as to how the funds are spent, we do not need to document NEPA compliance or issue ATPs. The exception to this lack of Federal nexus exists when certified States and Indian tribes use prior balance replacement funds, as directed by their State legislature or Tribal council, to maintain certification status under section 411 of SMCRA by reclaiming any remaining or newly discovered coal problems following the requirements of sections 403 and 404 of SMCRA and Parts 874 and 875 of this chapter.

We also would like to stress that it is possible certified States or Indian tribes will undertake projects with prior balance replacement funds that involve Federal decisions by some other Federal entity, and, as such, NEPA compliance may be required. Moreover, it is possible that some certified States and Indian tribes will have their own requirements to comply with NEPA or its State or Tribal counterparts. It is the responsibility of each certified State and Indian tribe to determine what requirements, if any, apply to individual projects (other than any coal reclamation they do under Part 874) that they fund with moneys they receive under § 872.31(a) and section 411(h)(1) of SMCRA. Thus, it is the responsibility of all States and Indian tribes to ensure that they meet all the applicable requirements they identify including NEPA requirements, and a specific regulation relating to NEPA requirements is not needed.

In much the same way, while we are appreciative that at least one Indian tribe would like for us to remain involved in their NEPA compliance process, given the limitation on our discretion on the use and control of the funds under section 411(h)(1), we do not believe it is appropriate to provide

a formal option for us to do NEPA reviews and issue ATPs for Indian tribes (other than for coal projects under Part 874). However, we will fulfill the Secretary's trust responsibilities for Indian tribes and continue to work cooperatively with them while respecting the roles and jurisdictions of other Federal entities.

With regard to § 872.31(a), we received two additional comments from States in response to our request for comments on the wording of the regulation to describe the purposes for which certified States and Indian tribes may use prior balance replacement fund moneys distributed to them under section 411(h)(1). In the proposed rule, we explained that § 872.31(a) may significantly affect certified States' and Indian tribes' reclamation programs and invited comments on it. The commenters specified that no additional explanation is needed; therefore, we are adopting § 872.31(a) as proposed, with a minor change for clarity to conform to the new title for the section.

Most of the comments submitted on § 872.31 related to paragraph (b). These comments came from IMCC/NAAMLP, one Indian tribe, five uncertified States, one certified State, and three environmental groups. In particular, they were concerned with two purposes for which, under proposed § 872.31(b), uncertified States and Indian tribes cannot use prior balance replacement funds—namely for placement in the 30 percent AMD set-aside accounts and for noncoal reclamation under section 409(c). Most of the comments received were similar because they generally urged us to allow uncertified States and Indian tribes to use prior balance replacement funds for these two additional purposes. But there were subtle differences between them. For instance, IMCC/NAAMLP and most State commenters asserted that we should change this section to give uncertified States and Indian tribes the ability to use prior balance replacement funds for the 30% AMD set-aside and for noncoal reclamation under section 409(c). IMCC/NAAMLP and two States proposed specific language consistent with their interpretation. One State went further and commented that we do not have the authority under SMCRA to limit the use of prior balance replacement funds for noncoal reclamation, and, if we did so, it would be at least considered arbitrary and capricious, violate NEPA, and be tantamount to a taking of their property under the Fifth Amendment. However, we did receive one comment in support of our interpretation because that State perceived that our interpretation gives it greater flexibility on how certified States and Indian tribes can spend their prior balance replacement funds.

To begin, IMCC/NAAMLP and most States maintained that prior balance replacement funds are ''colored'' as State and Tribal share moneys because they are being provided by Congress to compensate them for the State and Tribal share balances that had been allocated, but never appropriated to them, based on past reclamation fees collected from coal producers in those States and from Indian lands. Because uncertified States and Indian tribes had historically been able to use the State and Tribal share moneys that they did receive for noncoal reclamation and the AMD set-aside, these commenters advance the argument that they should be allowed, if they so choose, to use prior balance replacement funds for these purposes as well.

These commenters take issue with the discussion in the preamble to the proposed rule that asserts a fundamental distinction exists between the Treasury funds we distribute under section 411(h)(1) and Fund moneys allocated under section 402(g)(1) for State and Tribal share funds. They refer to section 411(h)(1)(A)(i) of SMCRA, which says ''the amount due for the aggregate unappropriated amount allocated to the State or Indian tribe under subparagraph (A) or (B) of section 402(g)(1)'' and in 411(h)(1)(B) to ''the unappropriated amount allocated to a State or Indian tribe before October 1, 2007, under subparagraph (A) or (B) of section 402(g)(1).'' According to these commenters, these statutory provisions recognize that prior balance replacement funds are considered and always have been considered State and Tribal share funds allocated under section 402(g)(1) of SMCRA regardless of the funding source used to provide the moneys to the States and Indian tribes. In that context, they urge that we base the use of prior balance replacement funds on the original uses for State and Tribal share funds, which would include noncoal reclamation and the AMD set-aside. In contrast, one State supported our statement that there is a fundamental distinction between prior balance replacement funds and section 402(g) moneys distributed from the Fund because this State perceives that such a distinction allows it greater flexibility on how certified States can use prior balance replacement funds.

What is more, one State advocated that a better reading of this provision relies on the references to the ''amount due'' in sections 411(h)(1)(A)(i) and 411(h)(1)(B). Because section 411(h)(1)(B) refers to the past allocation, this State advances that ''funds may be allocated, on the one hand, but unappropriated, on the other. * * * The fact that funds have not been appropriated or are appropriated from one source as opposed to another, does not change the fact that they have been allocated under [section 402(g)(1)].'' Using this approach, the State concludes that because section 409 allows State and Tribal share funds and historic coal funds to be used for noncoal reclamation, and the prior balance replacement funds are simply Treasury fund appropriations used to satisfy the State and Tribal share allocations under section 402(g)(1), then prior balance replacement funds must be allowed to be used for noncoal reclamation, just as the State and Tribal share allocations may be used.

The same State questioned our use of section 411(h)(1)(D)(ii) to prevent uncertified States from using prior balance replacement funds on noncoal reclamation projects. It and other States pointed out that, under section 411(h)(1)(D)(ii), uncertified States are required to use prior balance replacement funds ''for purposes described in section 403.'' 30 U.S.C. 1240a(h)(1)(D)(ii). Section 403 lists three priorities, all of which are coal based. This State correctly noted that section 403 applies to ''all expenditures from the Fund, including [section 402(g)] allocations'' and that section 402(g)(2) provides that ''the Secretary shall ensure strict compliance by the States and Indian tribes with the priorities described in section 403(a)'' in making grants under sections 402(g)(1) and 402(g)(5).

That State continued by pointing out that section 409(c)(1) provides: ''The Secretary may make expenditures and carry out the purposes of this section * * * for those reclamation projects which meet the purposes of this section, the reference to coal in section 403(a)(1) of this title shall not apply.'' 30 U.S.C. 1239(c)(1). The State contends that this provision ''specifically broadens the scope'' of section 403 and that OSM has no basis for interpreting the reference to section 403(a)(1) differently in section 402(g)(2).

Some commenters also maintained that prior balance replacement funds are not fundamentally distinct from State and Tribal share funds when SMCRA is read as a whole. IMCC/NAAMLP and other commenters emphasized that we must read the entire statute in context when interpreting the meaning of section 411. The comments maintained: ''Section 403 * * * is modified by Section 409, which provides for the expenditure of AML funds at any

Priority 1 or 2 site, regardless of the commodity mined.'' Because the wording of section 409(b) indicates that State or Tribal share funds (from 402(g)(1)or (g)(2)) and historic coal funds (402(g)(5)) may be used for noncoal reclamation, these commenters contend that Congress easily could have changed section 411(h)(1), section 409, or both to limit the use of the unappropriated State and Tribal share balances that are being distributed under section 411(h)(1) if it wanted to, but did not. Thus, the commenters assert that because Congress left section 409 unchanged, uncertified States and Indian tribes should be allowed to use all funds distributed under SMCRA to reclaim extremely dangerous noncoal mine problems that threaten public health, safety, and property. *See* 30 U.S.C. 1233(a)(1)(A) and 1239(c).

One comment made by IMCC/NAAMLP provided that section 402(g)(2) does not apply to the use of historic coal funds or prior balance replacement funds. As support, the commenters explained that section 411(h)(1) allows these funds to be ''expended pursuant to the 'priorities' of section 403'', and expenditures made pursuant to section 409(b), which refers to those priorities, are indeed part of the section 403 priorities. As additional support, they point out that section 401 of SMCRA, which ''speaks to the 'purposes' of the Fund,'' specifically includes coal reclamation under section 403 and noncoal reclamation under section 409.

Moreover, IMCC/NAAMLP and two States commented that they believe our position on the use of prior balance replacement funds would force them to spend years working on high-cost, low-priority coal projects that present little threat to public health and safety at the expense of leaving tens of thousands of hazardous abandoned noncoal mines unattended. They stated that all fatalities in recent decades in two western States were related to abandoned noncoal mines. Additionally, they observed that the danger to public health and safety from abandoned noncoal mines throughout the country is increasing due to increased urban sprawl into undeveloped areas and outdoor recreation. One Indian tribe stated that allowing uncertified States to use as much funding as possible would allow timely completion of AML problems that would benefit both Tribal and State stakeholders. One State maintained that we could be held liable if people are hurt or injured in abandoned noncoal mines that we refuse to fund.

Furthermore, comments from IMCC/NAAMLP and some States described events that occurred after the enactment of the 2006 amendments that they maintain demonstrates Congressional intent to allow uncertified States and Indian tribes to use prior balance replacement funds for noncoal reclamation. They point to a June 6, 2007, letter in which six Senators of three western States expressed their view that a fair reading of the amended Act allows using historic coal funds and prior unappropriated balance allocations for high priority noncoal sites because section 409 did not change in the amendments, allowing it to operate as it did in the past. The comments also described legislation introduced into the 2008 Congressional session and testimony given in support of that legislation to clarify Congress's intent that prior balance replacement funds be used for noncoal reclamation.

After a thorough analysis of the comments, we determined that our interpretation of the 2006 amendments as presented in the proposed rule is consistent with the plain meaning of SMCRA and the Solicitor's M-Opinion, which also analyzes section 409(b). For those reasons, and as explained in the preambles to our proposed rule and this final rule, we are adopting § 872.31(b) as proposed, with a minor change for clarity to conform to the new title for the section.

A proper analysis of this issue must begin with section 409(b) of SMCRA because it specifically provides that ''[f]unds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the respective States or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g).'' 30 U.S.C. 1239(b). Thus, the plain meaning of this subsection is that moneys uncertified States and Indian tribes can use for noncoal reclamation are restricted to those moneys we must allocate to their State or Tribal share and historic coal funds. While it is true that section 411(h)(1)(B) also discusses the ''unappropriated amount allocated to a State or Indian tribe before October 1, 2007'' for State or Tribal share funds, we believe the statute makes a clear distinction between those Treasury funds (i.e., prior balance replacement funds) based on unappropriated, but previously allocated, State and Tribal share payments, and those that continue to be allocated from current revenue collections. Section 409(b) is written in the present tense—''limited to those funds which *must* be allocated'' as State share funds (emphasis added). 30 U.S.C. 1239(b). The only funds that must be allocated are those from current reclamation fee collections, and not the funds that already have been allocated prior to the beginning of fiscal year 2008, which are the ones that the prior balance replacement funds seek to replace.

In any event, the prior balance replacement funds are not ''allocations'' under section 402(g)(1); they are distributions under section 411(h). Prior balance replacement funds provide a payment equal to the amount of what had been allocated, but had never been appropriated. It is Congress's prerogative to allocate moneys to entities, but not appropriate the full amount. It happens frequently. *See, e.g.*, the discussion in § 872.27 of Congress authorizing $2 million as the minimum program funding level but only appropriating $1.5 million. Just because SMCRA now appropriates the amount of money as prior balance replacement funds that the States and Indian tribes would have received as State and Tribal share funds had it fully appropriated the allocated amount in the first place, it does not follow that the conditions that apply to allocated State and Tribal share funds also attach to the prior balance replacement funds. The prior balance replacement funds are a separate appropriation whose calculation just happens to depend on the difference between the amounts of a prior allocation and a prior appropriation.

We also do not perceive any conflict between the different uses of the moneys distributed under sections 402(g)(2) and 411(h)(1)(D)(ii) even though they both refer to section 403(a)(1). We do not view section 409(c)(1) as a general broadening of the scope of section 403(a)(1) to allow noncoal reclamation; instead, section 409(c)(1) is restrictive and only allows for noncoal reclamation to occur on lands otherwise meeting the criteria of section 403(a)(1) when funds specifically mentioned by section 409(b) are used—the State or Tribal share and historic coal funds. As such, we are acting within the authority that SMCRA grants under section 201(c)(2) ''to publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act.''

Likewise, although we recognize how important noncoal reclamation is to several States, the primary purpose of the enactment of SMCRA relates to coal. *See* 30 U.S.C. §§ 1201, 1202. Allowing uncertified States to continue to use the same type of funds that they have used in the past to fund noncoal reclamation (i.e., State or Tribal share and historic coal funds), while providing that some

funds must be used toward coal reclamation (i.e., prior balance replacement funds), is consistent with the purposes of SMCRA.

We recognize the extreme hazards posed by unreclaimed noncoal mine lands. Uncertified States and Indian tribes may continue to use their State or Tribal share and historic coal funds to abate Priority 1 noncoal problems under section 403(a)(1) as provided in section 409(b) and (c) of SMCRA. Nothing in this rulemaking prevents that. In fact, most uncertified States and Indian tribes will have roughly the same amount of those funds available for noncoal reclamation that they have had in the past, even considering the phase-ins. We note that some uncertified western States commonly partner with Federal land management agencies to abate high priority noncoal problems on public lands. Those States receive additional funding from those agencies and in their legislative appropriations that enable them to address a wider range of noncoal AML problems. One Indian tribe commented that uncertified States should be allowed to use prior balance replacement funds for noncoal reclamation to enable an adjacent uncertified State to continue partnering with that Tribe on noncoal projects that impact members of that tribe in areas outside Indian lands. Our interpretation of section 411(h)(1) should not adversely affect such ongoing partnerships or prevent uncertified States and Indian tribes from addressing Priority 1 noncoal problems.

It is possible some uncertified States may find they have more funds for noncoal reclamation than they expected. By using prior balance replacement funds exclusively for coal purposes under section 403, uncertified States no longer would have to split their State share and historic coal funds between coal and noncoal reclamation to the extent they did in the past and could use more State share and historic coal funds for noncoal if they so choose. Moreover, as the phase-in years are completed and as some States certify coal completion, more State share and historic coal funds will become available to uncertified programs for coal and noncoal reclamation. Uncertified States therefore should be able to address Priority 1 noncoal problems to no less an extent than they did before Congress enacted the 2006 amendments. Once States complete reclamation of all known coal problems and certify, their legislatures have the authority to use all the funding States will receive under sections 411(h)(1) and (2) for noncoal reclamation.

IMCC/NAAMLP, five States, and three environmental groups also commented that we should change § 872.31 to allow uncertified States and Indian tribes to use prior balance replacement funds for the 30% AMD set-aside. IMCC/NAAMLP commented that much of its reasoning for using prior balance replacement funds for noncoal reclamation also applies to allowing States and Indian tribes to use those funds for the 30% AMD set-aside, so we do not repeat all of it here. IMCC/NAAMLP and States asserted that AMD treatment projects typically are Priority 3 projects. They maintained that to allow them to use prior balance replacement funds for AMD projects under § 874.13, but not for the AMD set-aside, is inconsistent because both treat the same type and priority of coal-related problems under section 403 of SMCRA. As one State noted, in its opinion, ''OSM is essentially authorizing the use of prior balance replacement funds for current AMD work on one hand, while denying the use of these funds for further AMD work on the other.'' Further, it noted such work clearly is one of the purposes of section 403 of SMCRA, so any restriction on the use of these funds for AMD remediation is inappropriate. It also maintained that section 402(g)(6)(B)(ii)(I) of SMCRA, which states that a qualified hydrologic unit destined for AML abatement must have land and water that ''include[s] any of the priorities described in section 403,'' establishes and defines the use of AMD set-aside funds. It asserted that this passage, along with the statement at section 411(h)(1)(D)(ii), provided a clear nexus to section 403 of SMCRA, and thus prior balance replacement funds can be used for AMD set-aside because it is effectively a priority of section 403. It cited the fact that the references in sections 402 and 411 to section 403 are identical and concluded that ''Treasury funds should not be artificially excluded for use in set-aside for AMD.''

One State commented that Congress created the AMD fund language in SMCRA to allow States and Indian tribes to address this ''eligible priority problem type'' well into the future beyond the expiration of the fee collections and the end of grants to States under SMCRA. That State's comment described its chronic and acute acid mine drainage problem. The comment added that funding the AMD set-aside at the highest level of deposits available is of great importance to the citizens of that State. IMCC/NAAMLP added that Congress has included language in the recent appropriation bills that affirms its support of Title IV funds being set aside for the purpose of environmental restoration related to treatment or abatement of acid mine drainage without restriction.

We agree with the comments that acid mine drainage is a widespread and serious problem and recognize how important it is to the States to address it. Nothing in this rulemaking reduces a State's authority to address acid mine drainage in projects it funds under § 874.13 with State share and historic coal funds. In addition, because prior balance replacement funds must be expended for the reclamation of coal problems, which as many commenters pointed out often includes Priority 3 problems related to AMD, uncertified States can use these funds for those purposes. In sum, as the regulation reflects, funding Priority 1, 2, or 3 acid mine drainage projects with prior balance replacement funds distributed under section 411(h)(1) of SMCRA is consistent with all subsections of section 403 of SMCRA, including section 403(a)(3).

For the reasons in the preamble to the proposed rule, the Solicitor's M-Opinion, and those we provided in this preamble in our responses to comments on uncertified States and Indian tribes using these funds for noncoal reclamation, we do not believe that prior balance replacement funds can be used for the same purposes as State or Tribal share funds simply because an equal amount was allocated but not appropriated as State or Tribal share. The actual appropriation of these funds occurred in the 2006 amendments, and section 411(h)(1)(d)(2) of SMCRA now clearly authorizes prior balance replacement funds to be used only for the ''purposes described in section 403.''

Section 403 of SMCRA does include Priority 1, 2, and 3 coal problems, the restoration of water supplies, and the maintenance of the AML inventory. Priority 1, 2, or 3 coal problems include AMD projects. As § 872.31(b) provides, uncertified States and Indian tribes can use prior balance replacement funds for any of these purposes.

Section 403 does not include the AMD set-aside. So, § 872.31 does not allow uncertified States to place prior balance replacement funds into the AMD set-aside accounts established under State law under section 402(g)(6) of SMCRA. That section explicitly authorizes uncertified States and Indian tribes to set-aside up to 30 percent of ''the total of the grants made annually to the State under paragraphs (1) and (5)'' to address AMD. The requirement in section 402(g)(6)(B) that funds

deposited in the set-aside be used to address AMD in a qualified hydrologic unit that contains land and water that are eligible pursuant to section 404 and include any of the ''priorities described in section 403(a)'' provides the flexibility and assurance that those funds will be used to address AMD ''in a comprehensive manner'' and that their use will not be limited to addressing only part of a problem.

Though Priority 3 AMD projects and funds in the AMD set-aside will address similar problems, section 403 does not refer to the AMD set-aside in its description of the priorities for which funds can be expended under that section. Congress could have said you may use section 411(h)(1) funds for the AMD set-aside under section 402(g)(6), but it did not do so in sections 402(g)(6) or 411(h)(1). It also could have referred to the AMD set-aside in section 403, but did not do that either. Instead, it explicitly worded section 402(g)(6) to say you may use funds you receive under sections 402(g)(1) (State or Tribal share funds) and (g)(5) (historic coal funds) for the AMD set-aside and referred to the ''purposes described in section 403'' for prescribing the use of funds available under section 411(h)(1).

We realize our interpretation means you can use prior balance replacement funds for current AMD projects but not for deposit into the AMD set-aside. We acknowledge that moneys set-aside in such State accounts should be used at some future date to address AMD abatement and treatment problems, but we think there is a distinction between expending funds directly for reclamation costs and depositing funds in a trust account to earn interest. We believe our interpretation of section 411(h)(1)(D)(ii) and of section 403 is consistent with the amended wording of SMCRA.

What are certified in lieu funds? (§ 872.32)

We are adding three new sections addressing funds distributed to States and Indian tribes described in section 411(h)(2) of SMCRA. 30 U.S.C. 1240a(h)(2). We call these moneys ''certified in lieu funds'' in this rule. As the first of these three sections—§ 872.32—describes, certified in lieu funds are moneys that we distribute to you, a certified State or Indian tribe, in lieu of moneys otherwise allocated to your State or Tribal share of the Fund after October 1, 2007. We are prohibited from distributing State and Tribal share moneys to you because of the exclusion in section 401(f)(3)(B) of SMCRA. 30 U.S.C. 1231(f)(3)(B). This section also identifies the source of these certified in lieu funds as otherwise unappropriated funds in the United States Treasury, not the Fund. The annual distribution of certified in lieu funds is mandatory and not subject to prior Congressional appropriation. These distributions start in FY 2009 because section 411(h)(2) of SMCRA specifies that our payments must equal the State and Tribal share funds ''allocated on or after October 1, 2007.'' 30 U.S.C. 1240a(h)(2)(A). So, the first fees collected that can serve as the basis for calculating certified in lieu payments are those allocated on coal produced during FY 2008. As a result, we are distributing certified in lieu funds for the first time in FY 2009. Other than comments related to new § 872.35 and discussed in the preamble to that section, we did not receive any comments on this section and adopt it as proposed.

How does OSM distribute and award certified in lieu funds? (§ 872.33)

Section 872.33 describes how we distribute and award certified in lieu funds. Paragraph (a) states that you must be certified under section 411(a) of SMCRA to receive certified in lieu funds, as required in section 411(h)(2) and defined in section 411(h)(2)(B). If you meet that requirement, we follow the steps described in paragraph (b) to distribute these moneys to you. Under paragraph (b)(1), we annually distribute to you, beginning in FY 2009, an amount based on 50 percent of the reclamation fees we received for coal produced during the previous FY in your State or on Indian lands within the jurisdiction of your Indian tribe. Paragraph (b)(2) states that the funds we annually distribute to you are in lieu of moneys you would have received from your State or Tribal share of the Fund if section 401(f)(3)(B) of SMCRA, as revised by the 2006 amendments, did not specifically exclude you from receiving those funds. 30 U.S.C. 1231(f)(3)(B). Although the Fund is not the source of these moneys that we distribute to you, you receive moneys each year as though you were still receiving them from your State or Tribal share of the Fund.

Section 872.33(b)(3) explains, using a table, how we are phasing in our distribution of certified in lieu funds to you over the first three years beginning October 1, 2008. This paragraph is consistent with section 411(h)(3)(B) of SMCRA, which requires that in the first three fiscal years beginning with FY 2009, the amount we annually distribute to you is equal to 25 percent, 50 percent, and 75 percent, respectively, of 50 percent of the annual reclamation fee collections in your State or from Indian lands within your jurisdiction. 30 U.S.C. 1240a(h)(3)(B). You will receive an amount equal to 100 percent of your 50 percent State or Tribal share of annual reclamation fee collections in the fiscal year beginning October 1, 2011, and in the following fiscal years.

Section 872.33(c) states that we use grants to pay these funds to you. Section 411(h)(2) of SMCRA says ''the Secretary shall pay to each certified State or Indian tribe * * *.'' 30 U.S.C. 1240a(h)(2)(A). As with the section 411(h)(1) prior balance replacement fund ''payments,'' we must use grants to pay certified in lieu funds to you. *See* the discussion of § 872.30 above.

Paragraph § 872.33(d) addresses the provisions of sections 401(f)(3)(A)(i) and 411(h)(4) of SMCRA. It requires us to transfer to historic coal funds the same amount of funds that we distribute to you as certified in lieu funds. The transferred amounts come from moneys in your State or Tribal share of the Fund that are otherwise allocated to you for the prior fiscal year, but which you are barred from receiving. We must make those transferred amounts available for annual grants beginning in FY 2009, and are doing so at the same time we distribute all other moneys under Title IV. Finally, § 872.33(d) requires us to allocate, distribute, and award the transferred amounts to uncertified States and Indian tribes according to the provisions applicable to historic coal funds under §§ 872.21, 872.22, and 872.23.

Section 411(h)(3)(C) of SMCRA requires us to distribute to you, in two equal annual installments in FY 2018 and FY 2019, the amounts we withhold from the first three payments of certified in lieu funds as a result of the phased-in distribution. 30 U.S.C. 1240a(h)(3)(C). Section 872.33(e) incorporates that provision into the regulations.

Responses to Comments

As part of a broader comment, IMCC/NAAMLP commented that we should give States and Indian tribes the option of receiving their certified in lieu funds in grants or by direct payments. In addition, one State stated that SMCRA required certified in lieu funds to be distributed by direct payments.

As we explained in response to similar comments we received on § 872.30, we conclude that we are required to distribute all funds to States and Indian tribes in grants, including certified in lieu funds we distribute under this section. Our detailed explanation of our decision to use grants appears in the discussion of our responses to comments we received on that section, and we do not repeat it

here. Therefore, we are adopting the § 872.33 as proposed with one minor addition to (b) for clarity.

Are there any restrictions on how you may use certified in lieu funds? (§ 872.34)

As proposed, § 872.34 stated that you may use certified in lieu funds for any purpose. After considering the comments described below, we have interpreted SMCRA to place no restrictions on the use of certified in lieu funds. This is because Congress did not place any limits on the use of these funds in the 2006 Amendments. Thus, we have revised the title and language for clarity. Because section 411(h)(2) does not specify the purpose(s) for which the funding it provides may be used, we interpret it to mean that the use of the funds it provides is not restricted.

As a certified State or Indian tribe, you must address coal problems that arise after certification under existing § 875.14(b), and we are not changing this requirement. In addition, when each State and Indian tribe became certified under the existing regulations at § 875.13(a)(3), it had to provide an agreement to ''give top priority'' to any coal problems that occur after certification. So, certified States and Indian tribes must address these coal problems, regardless of the funding source.

Responses to Comments

In the proposed rule, we requested comments on an alternative interpretation of section 411(h)(2). At that time, we explained that section 411(h)(2) of SMCRA, as revised by the 2006 amendments, is silent on how certified in lieu funds may be used, and that an argument could be made that this section's silence on the use of these funds does not mean certified States and Indian tribes may use them for any purpose. Instead, it might be viewed as meaning that the other provisions of section 411 of SMCRA, specifically 411(b) through (g), apply to the use of certified in lieu funds. We asked for comments because we recognized this interpretation would make a major difference in not only how these funds may be used but in our role in overseeing that use.

IMCC/NAAMLP, one State, and three environmental groups representing a coalition of conservation districts and watershed groups responded to our request for comments. The IMCC/NAAMLP and State commenters agreed with our interpretation that the use of the funds we distribute under section 411(h)(2) is not restricted by SMCRA. Moreover, they pointed out that provisions in section 411(b) through (g) would be difficult to apply to certified States and Indian tribes. Both the IMCC/NAAMLP and the State commenter maintained that the provisions of sections 411(b) and (c) could possibly apply to newly discovered coal problems because we could require newly discovered coal problems to meet the eligibility criteria of paragraph (b) and the priorities described in paragraph (c). Those commenters added that paragraph (d) would not apply because it refers to expenditures from the Fund and certified States and Indian tribes no longer receive moneys from the Fund. Further, they maintained that paragraphs (e) and (f) would not apply because they restrict the use of funds certified States and Indian tribes receive.

In contrast, the three environmental groups agreed with the alternative approach mentioned in the preamble. Specifically, they contended that sections 411(b) through (g) provide context and guidance for and set the rules on how all funds for the AML program must be used, regardless of their origin. These commenters stated that ''[t]he absence of explicit provision[s] in SMCRA addressing how certified in lieu funds may be used does not authorize organizations that receive such funds to use them for any purpose * * *. [A]n explicit provision in the statute would be required in order to use certified in lieu funds for any purpose'' (emphasis omitted).

After careful consideration of the comments that both agree and disagree with our proposed rule, we agree with the rationale presented in the preamble to the proposed rule and generally espoused by the IMCC/NAAMLP and State commenters. Thus, in the final rule we have clarified that our interpretation of SMCRA is that there are no restrictions on the use of certified in lieu funds. Because we believe there are no restrictions on certified in lieu funds, we disagree with the portion of the IMCC/NAAMLP comment that said the language of the 2006 amendments specifically allows these funds to be used for any purpose. We find SMCRA contains no specific instruction on the use of these funds, but at the same time, it places no restrictions upon them. We also believe that section 411(b) and (c) of SMCRA only apply to certified States and Indian tribes that conduct noncoal reclamation programs with State or Tribal share funds distributed prior to October 1, 2007. As further explained in the preamble to § 875.13, our intention is to work cooperatively with certified States or Indian tribes to ensure coal problems that exist after certification are appropriately addressed.

When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you? (§ 872.35)

In the proposed rule, we specifically invited comments on whether we should add a provision to the regulations that describes how we would reduce our distribution of prior balance replacement funds and certified in lieu funds, as well as transfers made to the UMWA health care plans under section 402(i) of SMCRA, if we exceed the annual funding cap of $490 million for disbursement of Treasury funds.

Two States and IMCC/NAAMLP responded to this invitation. IMCC/NAAMLP asserted that such a provision was not necessary, but that we should adopt the language in section 402(i)(3)(B) of SMCRA verbatim if we chose to add one. The State commenters did not take a position on whether or not we should add such a provision, but they also suggested we use the exact wording of section 402(i)(3)(B) if we did.

Although our current funding projections do not indicate that we will ever need to invoke this section, we have decided to add this section so that we can more completely address future funding scenarios. We tried to incorporate the language of section 402(i)(3)(B), while still placing it in plain English. Thus, § 872.35(a) provides that for any FY when moneys distributed from Treasury under section 402(i), including prior balance replacement funds, certified in lieu funds, and transfers to the UWMA health care plans, total more than $490 million, we will adjust all of the disbursed amounts by the same percentage to reduce total payments to the level of the cap. For that FY, we would reduce distributions of prior balance replacement funds by that same percentage from the amount otherwise required under § 872.30. Similarly, we would reduce distributions of certified in lieu funds by that same percentage from the amount otherwise required under § 872.33. Section 872.35(b) incorporates the language of section 402(i)(3)(B)(ii), which states we will not include funds under section 402(h)(5)(A) as part of this calculation.

IMCC/NAAMLP also suggested that if we add a section about the $490 million cap it should say: ''This adjustment does not apply to the minimum program make up funds.'' Although we are not adding this language, we agree with this statement to an extent. The cap applies only to Treasury funds, but minimum

program make up funds come from the Fund not Treasury. So minimum program funds distributed under § 872.27 will not be reduced under this section.

However, we must disagree with a similar comment made by one State that if we add this provision, we need to provide that every State and Indian tribe is guaranteed $3 million because that is the level of funding that States, OSM, Congress, and others recognized as being the minimum funding level to support a viable AML program. We appreciate this comment, but after review, we believe the regulations as written already provide that minimum program States will receive the full $3 million, subject to applicable phase-ins, even if the $490 million cap is reached. The only type of Treasury funds provided to minimum program States is prior balance replacement funds during FY 2008 through 2014. If the cap were reached during that time, their prior balance replacement funding would be reduced by the same percentage as every other recipient of Treasury funds under section 402(i). However, under § 872.27 we calculate minimum program make up funding by adding up the distributions of all other types of funds for that FY, including prior balance replacement funds, then adding the amount of minimum program make up funding needed to increase the total distribution to $3,000,000, subject to phase-ins. Thus, if the $490 million cap is exceeded and prior balance replacement funding is reduced, the Fund will effectively supplement any reduction of the prior balance replacement funds with increased minimum program make up funds, and the total funding for minimum program States will be unchanged.

Part 873—Future Reclamation Set-Aside Program

We proposed to make changes to §§ 873.11 and 873.12 primarily to reflect the elimination of the authority for States and Indian tribes to set aside funds for future reclamation that was once contained in section 402(g)(6). The changes to §§ 873.11 and 873.12 reflect that change by restricting future set-aside actions to funding received prior to December 20, 2006, while preserving the requirements that existing funds contained in the set-aside account be used for their intended purpose. We received no comments on our proposed changes to this part, and are adopting them as proposed.

Part 874—General Reclamation Requirements

Definitions (§ 874.5)

We proposed to add this section to Part 874 to include the definition of the term ''Reclamation plan or State reclamation plan'' as it is defined in § 872.5. We received no comments on this section and adopt it as proposed.

Information Collection (§ 874.10)

In this section, we discuss the Paperwork Reduction Act requirements and the information collection aspects of Part 874. We are updating this section and rewording it using plain English. We did not receive any comments on this section and are adopting the section as proposed.

Applicability (§ 874.11)

As explained in the preamble to the proposed rule, we proposed to revise this section to clarify how the provisions of Part 874 apply to the types of funding made available under the 2006 amendments and to reword it using plain English. We received no comments on this section, but for reasons explained in connection to comments received on Part 875, we have made some changes to this section for consistency. Other than minor editorial changes, the significant revision to the final rule merges proposed paragraphs (c) and (d) into a new paragraph (c) that requires certified States and Indian tribes to comply with Parts 874 and 875 to maintain their certification status under section 411(a) of SMCRA, regardless of the funding they use to accomplish the reclamation.

Eligible Coal Lands and Water (§ 874.12)

As explained in the preamble to the proposed rule, we are revising existing paragraphs (c), (e), and (f) of § 874.12 to reflect our changes to the funding applicability in § 874.11, to correct minor errors in the existing regulations, and to reword these paragraphs using plain English. We have not extended the eligibility criterion in paragraph (d) to certified States and Indian tribes because the AML inventory does not show that any sites would be eligible under this section in certified States and Indian tribes and because certified States and Indian tribes would not need any special authority due to their generally unrestricted authority to expend Title IV funds as described in Part 872. We received no comments on this section and adopt it as proposed.

Reclamation Objectives and Priorities (§ 874.13)

We are changing § 874.13 to reflect expenditure priorities outlined in section 403(a) of SMCRA, as revised by the 2006 amendments, and to clarify how reclamation programs should address Priority 3 reclamation objectives. Paragraph (a) of § 874.13 contains the most recent date for our ''Final Guidelines for Reclamation Programs and Projects'' published in 2001. 66 FR 31250, 31258. In addition, it contains the long-standing requirement in section 403(a) of SMCRA that expenditures must ''reflect the * * * priorities in the order stated.'' 30 U.S.C. 1233(a).

The remainder of § 874.13(a) is generally the same as the text of sections 403(a)(1), (a)(2), and (a)(3) of SMCRA, as revised by the 2006 amendments. However, we are adding the last sentence of § 874.13(a)(3) to clarify the term ''adjacent,'' which was added by the 2006 amendments. More specifically, sections 403(a)(1)(B)(ii) and (a)(2)(B)(ii) of SMCRA allow for certain lands and waters that have been degraded by past coal mining practices to be restored as either a Priority 1 or Priority 2 expenditure if they are adjacent to a Priority 1 or Priority 2 site. This new statutory provision also extends to certain degraded lands and waters adjacent to Priority 1 or 2 sites that have already been reclaimed under the approved reclamation plan. In effect, the 2006 amendments allow reclamation programs to offer amendments to the AML inventory, where applicable, that would reclassify certain current Priority 3 lands and waters as Priority 1 or Priority 2 expenditures.

We are defining the term ''adjacent'' as Priority 3 eligible lands and waters that are ''geographically contiguous.'' Land and water resources that are spatially connected to a Priority 1 or Priority 2 site, even those sites previously reclaimed, may now be recorded in the AML inventory as Priority 1 or Priority 2 unfunded costs, funded costs, or completed expenditures, as applicable.

Paragraph (b) of § 874.13 incorporates the 2006 amendments' complete revision of section 402(g)(7) of SMCRA. Previously, section 402(g)(7) contained the requirements for developing hydrologic unit plans consistent with the AMD set-aside trust provision of section 402(g)(6). The amended language of section 402(g)(7) now addresses how Priority 3 work can be undertaken; it states:

> In complying with the priorities described in section 403(a), any State or Indian tribe

may use amounts available in grants made annually to the State or tribe under paragraphs (1) and (5) for the reclamation of eligible land and water described in section 403(a)(3) before the completion of reclamation projects under paragraphs (1) and (2) of section 403(a) only if the expenditure of funds for the reclamation is done in conjunction with the expenditure before, on, or after the date of enactment of the Surface Mining Control and Reclamation Act Amendments of 2006 of funds for reclamation projects under paragraphs (1) and (2) of section 403(a).

30 U.S.C. 1232(g)(7).

In effect, section 402(g)(7) prevents uncertified States or Indian tribes from using State or Tribal share funds, as discussed in section 402(g)(1) of SMCRA, and §§ 872.14 and 872.17, and historic coal funds, as discussed in section 402(g)(5) of SMCRA and § 872.21, for the reclamation of Priority 3 lands and water before they have completed their Priority 1 and 2 reclamation projects. However, section 402(g)(7) does provide an exception that allows State or Tribal share funds and historic coal funds to be used for Priority 3 lands and waters, but only if that reclamation is done in conjunction with the expenditure of funds before, on, or after December 20, 2006, for Priority 1 and Priority 2 reclamation.

To be consistent with this section, we are applying section 402(g)(7) of SMCRA in a manner that is slightly more restrictive than the way we have promoted Priority 3 land and water reclamation in the past. Our longstanding approach, based on the first sentence of section 403(a), has been that reclamation programs can reclaim Priority 3 land and water projects before the completion of all Priority 1 and 2 projects as long as the overall reclamation program generally reflects the priorities in section 403(a) of SMCRA. The Department of the Interior initially expressed this approach in a May 18, 1982, memorandum by the Office of the Solicitor that recognized the discretion program officials have in selecting projects based upon a wide range of qualitative and quantitative data. This memorandum also concluded that the States and the Secretary have ample authority and rationale to select projects based upon such factors as are outlined in § 874.13 and to fund lower priority projects together with higher priority projects as long as the total program reflects the achievement of objectives in section 403(a) of SMCRA.

Through the life of the AML program, we published and maintained an advisory document titled ''Final Guidelines for Reclamation Programs and Projects'' (*see* latest version 66 FR 31250, June 11, 2001). These guidelines direct that, generally, reclamation of lower priority projects should not begin until all known higher priority projects have been completed, are in the process of being reclaimed, or have been approved for funding by the Secretary. *See* 66 FR 31252 (''Reclamation Site Ranking''). Our guidance further explains that lower priority projects or contiguous work may be undertaken in conjunction with high priority projects, but it sets forth factors to weigh to determine if the lower priority projects should be considered over higher priority projects. Examples of these factors include: When a landowner consents to participate in post reclamation maintenance activities of the area; when the reclamation provides many benefits to the landowner and those benefits have a greater cumulative value than other projects; and when reclamation provides offsite public benefits. *Id.* We also promote the reclamation of lower priority lands and waters when it is cost effective. *See* 66 FR 31253 (''Reclamation Extent''). To date, we have encouraged stand-alone Priority 3 projects and Priority 3 work that is contiguous with higher priority work based upon the efficiencies gained for the program and the environmental and community benefits.

To be consistent with the revised language of section 402(g)(7) of SMCRA, we are replacing the existing language under § 874.13(b) with language that specifies that this provision applies to uncertified States and Indian tribes who seek to use State or Tribal share funds and historic coal funds for Priority 3 reclamation. However, based on section 402(g)(7) and our past experience, this provision also requires uncertified States and Indian tribes to meet one of two conditions before being allowed to reclaim Priority 3 sites.

Under the first condition, described in § 874.13(b)(1), uncertified States and Indian tribes may only complete stand-alone Priority 3 projects after the State or Indian tribe has completed all Priority 1 and 2 reclamation projects in its jurisdiction. We believe this provision to be slightly more restrictive than the existing regulations because it prohibits stand-alone Priority 3 projects until all known Priority 1 or 2 sites have been completed, unless the uncertified State or Indian tribe meets the conditions detailed in § 874.13(b)(2).

Section 874.13(b)(2) allows uncertified States and Indian tribes to reclaim Priority 3 lands and waters before all higher priority sites are reclaimed, as long as they are being done ''in conjunction with'' a Priority 1 or Priority 2 project. Specifically, § 874.13(b)(2) allows you to expend State or Tribal share and historic coal funds for the reclamation of Priority 3 lands and water that are related to past, present, or future projects, but only if you determine that such expenditures would or would have (i) facilitate(d) the Priority 1 or Priority 2 reclamation or, (ii) provide(d) reasonable savings at the time of the project towards the objective of reclaiming all Priority 3 land and water problems. We are adding these two conditions because they will promote Priority 3 reclamation while emphasizing the elevated Priority 1 and 2 reclamation objectives contained in the 2006 amendments. Under our revision, program officials could not only use State and Tribal share and historic coal funds for Priority 3 sites that would aid in the reclamation of higher priority sites or would be cost efficient to do so, but they could also revisit each completed project and determine if there are Priority 3 lands and waters related to those past projects that still need to be reclaimed. These Priority 3 sites could then be reclaimed before the all Priority 1 and 2 problems have been addressed.

While we anticipate that most Priority 3 lands that fall within § 874.13(b)(2)(i) would have been addressed during the initial project, there may be areas where, at the time, the efficiencies of combined contracting or other cost saving factors would have satisfied § 874.13(b)(2)(ii). Reasons why such lands may not have been incorporated in the initial project could include past landowner restrictions, shortage of available grant funding, staffing and administrative considerations, or the potential for remining.

We believe that the language of § 874.13(b)(2) does not specifically preclude allowing Priority 3 work as a separate phase of construction within a Priority 1 or 2 project. However, Priority 3 work that is undertaken as a separate phase may not realize the administrative and contracting efficiencies of combined design and development, one-time mobilization and demobilization costs, or reduced unit costs that can be attributed to larger projects. These types of factors would be central to an analysis to determine whether there are reasonable savings under § 874.13(b)(2)(ii).

As described above, the 2006 amendments substantially elevated and redirected resources towards the uncertified programs with the most hazardous—Priority 1 and 2—coal sites. This was accomplished through the mandatory distributions of State or Tribal share funds and historic coal funds, the reallocation of the section 402(g)(1) funding away from certified

programs, and raising the minimum program make up funding level. 30 U.S.C. 1231(f)(3)(B), 1232(g)(1)(A), 1232(g)(1)(B), 1232(g)(5), 1232(g)(8)(A), and 1240a(h)(4). In addition, the 2006 amendments strengthened our responsibilities towards oversight of reclamation by obliging us to ensure that uncertified States and Indian tribes strictly comply with the priorities in section 403, by requiring us to review amendments to the AML inventory, by granting us the authority to unilaterally certify the completion of coal problems, and by restricting the use of prior balance replacement funds to address coal problems under section 403. 30 U.S.C. 1232(g)(2), 1233(c), 1240a(a)(A), and 1240a(h)(1)(D)(ii).

Given these new funding directives and our enhanced oversight responsibilities, we believe that limiting the number and types of Priority 3 projects that could be addressed under the ''in conjunction with'' provision is consistent with the intent of SMCRA, as revised by the 2006 amendments, particularly section 402(g)(7). To ensure that high priority site reclamation is promoted while we observe our long-term commitment to eliminate all coal problems, we are providing that you may use State or Tribal share funds or historic coal funds to reclaim Priority 3 sites even if you have not completed all Priority 1 and Priority 2 problems if the reclamation of those sites facilitates the reclamation of Priority 1 and 2 problems or if you determine that there would be reasonable savings towards the objective of reclaiming all Priority 3 land and water problems.

Generally, we expect reasonable savings to be composed of a number of reduced expenditures in project development and construction, such as reduced design costs, reduced mobilization and demobilization charges, reduced unit prices, and administrative efficiencies, and that as the Priority 3 work increases in size or cost, the amount of potential savings diminishes. As part of our oversight and AML inventory management responsibilities, we will review individual State or Indian tribe determinations under § 874.13(b)(2)(ii) that the reclamation of specific Priority 3 lands and waters are appropriate because they facilitate reclamation or provide reasonable savings towards the long-term objective of reclaiming all coal problems.

We do not believe that our efforts to define the use of ''in conjunction with'' will significantly reduce the types of Priority 3 projects that are reclaimed. While our § 874.13(b)(2) is intended to address Priority 3 reclamation undertaken as part of the process of developing and undertaking traditional reclamation projects under 403(a) of SMCRA, there are a number of activities that are performed by reclamation programs to address eligible lands and waters that are not subject to this provision, including water supply restoration, the 30 percent set-aside for AMD projects, the use of prior balance replacement funds, projects authorized under the AML Enhancement Rule, Appalachian Clean Streams projects, Watershed Cooperative Agreement projects, and any AML sites reclaimed under the remining incentives provided under section 415 of SMCRA, as revised by the 2006 amendments. These activities primarily address Priority 3 lands and waters but are not affected by the limitation contained in § 874.13(b)(2) for a variety of reasons. Water supply restoration projects and the AMD 30% set-aside program are authorized by sections 403(b) and 402(g)(6)(A) of SMCRA, respectively. 30 U.S.C. 1233(b) and 1232(g)(6)(A). Prior balance replacement funds may be used for Priority 3 reclamation because they are specifically directed to be used for the purposes of section 403 of SMCRA, as provided in § 872.31. Although funded from the Federal expense share of the Fund, Appalachian Clean Streams projects and Watershed Cooperative Agreement projects are authorized through specific Congressional appropriations. AML Enhancement Rule projects were established through a specific rulemaking process where the Secretary used the powers and authority under section 413(a) of SMCRA to provide States and Indian tribes with the authority to reduce project costs to the maximum extent practicable on abandoned mine sites which have deposits of coal or coal refuse remaining. 30 U.S.C. 1242(a); *see also* 64 FR 7470. Qualifying sites are specifically provided for as an exception to SMCRA under section 528. 30 U.S.C. 1278. Neither section 413(a) nor section 528 was revised by the 2006 amendments, and we do not believe anything in the 2006 amendments would affect the existing AML Enhancement Rule. Finally, many of the AML sites that may be reclaimed pursuant to the remining incentives contained in the 2006 amendments would be Priority 3 sites. These remining incentives are specifically authorized by section 415 of SMCRA, as amended. In conclusion, while our requirements at § 874.13(b)(2) will prevent the reclamation of some stand-alone Priority 3 sites previously undertaken as part of the traditional reclamation program, the programs discussed above still offer many Priority 3 land and water reclamation opportunities.

Responses to Comments

We received a range of comments disagreeing and agreeing with various portions of our proposed revisions to § 874.13. Some comments regarding this section were very general, while some suggested specific revisions. We begin with a discussion of the general comments. Some commenters did not agree that the new statutory provisions restricted Priority 3 land and water reclamation. These commenters viewed the proposed revisions to § 874.13 as unwarranted and unnecessary restrictions on the discretion of the State to decide how Priority 3 lands should be addressed prior to the completion of all health and safety problems within their borders. In contrast, two State commenters recognized that the new statutory provisions emphasized the reclamation Priority 1 and Priority 2 AML coal problems first and foremost, but they urged us to be very cautious in defining terms in the new regulations. They supported restraint on both the types and extent of land and water reclamation problems that might qualify for reclamation as a Priority 1 or 2 expenditure so as to not reclaim an inappropriate amount of Priority 3 AML problems.

IMCC/NAAMLP stated that they disagreed with our description in the preamble to the proposed rule that the 2006 amendments substantially elevated and redirected resources towards the reclamation of hazardous coal sites. They assert that Congress did not intend to upset the existing programmatic design; a design they characterize as allowing discretion and flexibility for the States and Indian tribes to undertake stand-alone Priority 3 projects along with other Priority 1 and/or 2 projects. As support, the commenters reviewed the AML inventory and determined that Priority 3 projects are only 15 percent of total projects being reclaimed by the States and Indian tribes; thus, their reclamation work already reflects the priorities in section 403(a).

Moreover, IMCC/NAAMLP contended that the proposed rule would place an unreasonable burden on the States and Indian tribes and would further indicate that we are unwilling to work with the States and Indian tribes to accomplish as much Priority 3 work as is appropriate and feasible under SMCRA. They questioned this perceived approach because ''lower priority, environmental restoration work has paid some of the largest dividends

under the AML program and received some of the greatest accolades from our citizens.'' These commenters pointed to the proposed language of § 874.13 as another example of OSM taking a heavy-handed approach that further erodes the heretofore cooperative relationship between OSM and the States and Indian tribes in reclaiming AML problems. Although IMCC/NAAMLP recognizes that ''OSM has attempted to pave the way for a variety of priority 3 projects to continue, the restrictions and limitations that are contained in [this regulation] will only serve to stifle the flexibility that has been the hallmark of this program since 1982.''

Four State commenters repeated the sentiments expressed by IMCC/NAAMLP. For instance, one State summarized its position that ''it should be the State/Tribe that determines if they have met the requirements and if the Priority 3 features meet eligibility requirements.'' All State commenters and three environmental groups specifically advocated flexibility in State decisions.

After carefully considering the comments by IMCC/NAAMLP, States, and environmental groups regarding these provisions, we have concluded that the 2006 amendments did change the programmatic focus of the AML program by changing how Priority 3 lands and waters can be addressed prior to a State's completion of all Priority 1 or 2 health and safety problems within its borders. In the proposed rule, we observed that the 2006 amendments substantially elevated and redirected resources towards the uncertified State and Tribal reclamation programs with the most hazardous—Priority 1 and 2—coal sites. We base this conclusion on the mandatory distributions of funds, the reallocation of the section 402(g)(1) funding away from certified programs, and raising the minimum program make up funding level, which are all contained in the 2006 amendments. 30 U.S.C. 1231(f)(3)(B), 1232(g)(1)(A), 1232(g)(1)(B), 1232(g)(5), 1232(g)(7), 1232(g)(8)(A), and 1240a(h)(4).

In addition, although we recognize that some commenters disagree, the 2006 amendments clearly imposed additional oversight responsibilities on us by obliging us to ensure that uncertified States and Indian tribes strictly comply with the priorities in section 403 of SMCRA, by requiring us to review amendments to the AML inventory, by granting us the authority to unilaterally certify the completion of coal problems, and by directing the use of prior balance replacement funds to reclaiming coal problems under section 403. 30 U.S.C. 1232(g)(2), 1233(c), 1240a(a)(A), and 1240a(h)(1)(D)(ii). Although we do not intend for this rule to weaken our cooperation with our State co-regulators, it is clear that the 2006 amendments intentionally altered the design of the program to accelerate the reclamation of Priority 1 and 2 problems and to restrict the amount of Priority 3 reclamation prior to the completion of projects addressing health and safety problems. Thus, we are required to take a more active role in monitoring progress towards these goals.

Although IMCC/NAAMLP acknowledged that they did not dispute our ability and authority ''to review individual State or Tribal determinations on these matters as part of our oversight and inventory management responsibilities,'' they expressed major concerns that this regulatory section and all of these rules will create an adversarial relationship between us and our co-regulators. After having closely reviewed these concerns and SMCRA, as revised by the 2006 amendments, we do not believe the regulations will have such an effect.

Our commitment to cooperatively work with our State and Indian tribal partners on the reclamation of such problems, including Priority 3 lands and waters to the extent provided for under SMCRA, remains as strong as it has been in the past. We view our working relationship with the individual State and Indian tribal programs as a mutually cooperative partnership. As the commenters point out, for close to 30 years, individual States and Indian tribes have implemented effective AML programs, assisted each other as partners, directly supported our training efforts, and worked with us to implement our oversight role. We anticipate that States and Indian tribes will quickly adjust to the new emphasis placed on completing Priority 1 and 2 problems and will incorporate Priority 3 lands and waters under section 402(g)(7) consistent with SMCRA.

In addition to the general comments, IMCC/NAAMLP and several States disagreed with portions of the proposed revisions to §§ 874.13(a)(1), 874.13(a)(2), and 874.13(a)(3). To begin, many comments expressed concern about our use and definition of the term ''adjacent to'' to mean ''geographically contiguous.'' As mentioned above, in § 874.13(a)(3) we provided that ''Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(ii) or (a)(2)(ii) of this section.'' At that time, we requested input from commenters concerning the types and extent of land and water reclamation problems that could be elevated to Priority 1 or Priority 2 expenditures under the ''adjacent to'' provision. For example, we provided a list of questions to help frame comments, including whether we should adjust our definition of ''adjacent to'' to encompass hydrologic connections and/or disturbances by a single mining operation or company, whether large and expensive Priority 3 problems next to small and inexpensive Priority 1 or 2 problems would be appropriate to elevate to Priority 1 or 2 status, and whether water lines or AMD abatement activities specifically provided for under other sections of SMCRA (sections 403(b) and 402(g)(6), respectively) should be excluded from coverage.

We received a range of answers on these questions and this provision as a whole. Generally, IMCC/NAAMLP and several States opposed any restrictions on the type or extent of land and water reclamation problems subject to the ''adjacent to'' provision of section 403(a)(1) and (a)(2). These commenters were against any limitations, monetary or otherwise, relative to adjacent lands and waters, and they oppose restrictions on the types of Priority 3 problems or costs that can qualify, including any restrictions on including AMD problems and water supply problems. These commenters generally promoted a rule that would make no limits on the ''adjacent to'' provision and would defer entirely to the discretion of the individual State or Indian tribe. IMCC/NAAMLP stated that the language of SMCRA did not support any restrictions on the types of land and water resources eligible for consideration under the ''adjacent to'' provision. Another State commented that the definition of ''adjacent to'' would be an undue limitation. Moreover, IMCC/NAAMLP and one State cautioned that we not create a situation where we effectively create ''high'' Priority 3 projects and ''low'' Priority 3 projects.

Specifically, we received many comments that suggested alternative definitions for ''adjacent to.'' IMCC/NAAMLP, two State commenters, and three environmental groups proposed that we allow for the watershed connection, and could do so by adding ''and/or hydrologically connected'' after ''geographically contiguous'' in § 874.13(a)(3). IMCC/NAAMLP and one State also indicated that they would not object to the regulations further defining ''hydrologically connected'' to mean ''all watershed areas bounded by a third order stream.'' They promoted this position as being consistent with the

Total Maximum Daily Load (TMDL) process and representing a ''compromise between no limitations on use and directly connected features.'' In addition, three environmental groups suggested we change § 874.13 to allow both geographically contiguous or hydrologically connected Priority 3 sites to be elevated, and that we should add the following sentence to the end of § 874.13(a)(3): ''Priority 3 water resources will be considered hydrologically connected to the problem if the problem is the source of at least 50% of the acid mine drainage that the Priority 3 water resource discharges or receives.'' They point out that mining does not just affect the surface and often affects hydrology, which does not follow surface borders, but the 50 percent limitation will prevent Priority 3 sites whose connection to a Priority 1 or 2 site is highly attenuated from being elevated in priority. What is more, an environmental group explained that the ''[d]efinition of the term 'adjacent' should include all disturbances by a single mining operation. If there is a hydrologic connectivity with sites that might be distant, those should be included in the definition of 'adjacent.' ''

On the other hand, one State supported our proposed definition limiting ''adjacent to'' to land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems. This State requested that if we expanded the definition, then we should do so carefully ''in order to reduce the 'opportunity' for abuse of reclaiming excessive (acres) amount of Priority 3 AML problems.'' Another State generally agreed with limiting ''adjacent to'' to mean ''geographically contiguous,'' and it further commented that it could see no reason to include water supply replacement problems as eligible under a definition of ''adjacent to'' because they currently are assigned no priority and up to 100% of the grant can be spent on them. Thus, it recommended we delete ''and water'' from the last sentence of the proposed § 874.13(a)(3). This State further expressed concern for any definition of ''adjacent to'' that would allow adjacent Priority 3 problems to be used to elevate other Priority 3 problems adjacent to them; in effect creating a domino effect where ''adjacent to'' determinations would elevate the expenditure priority beyond the initial connection to the original health and safety problem. This State, however, suggested we change ''will'' to ''can'' in the last sentence of § 872.13(a)(3). According to the commenter, this change would give the States flexibility to determine whether or not it wanted to have a Priority 3 project elevated in priority.

We thank all commenters for their suggestions, but we have decided not to make any changes to the definition of the term ''adjacent to'' under § 874.13(a)(3). As explained above, we have incorporated the language from sections 403(a)(1) and (a)(2) of SMCRA into § 874.13(a)(1) and (a)(2). We do not believe further regulatory guidance as to that language is needed at this time. As for § 874.13(a)(3), we believe the plain meaning of ''adjacent to'' clearly limits the types of Priority 3 projects that can be elevated to those that are geographically contiguous or share a border with at least one Priority 1 or 2 site. Even if it were not clear, there are many reasons why we would choose to define ''adjacent to'' to relate only to those land and water resources and the environment that are physically next to the Priority 1 or 2 site. We are not including within the definition of ''adjacent to'' the possibility that a hydrologic connection alone could elevate the expenditure priority of land and water reclamation problems. In addition, we are not including in the definition the possibility that all AML problems within a specific watershed or all problems created by a single mining operation would automatically qualify for elevated expenditure priority. We have concluded that to provide such expansions to the definition of ''adjacent to'' would not be consistent with the intent of the 2006 amendments to substantially elevate and redirect resources towards the uncertified programs with the most hazardous—Priority 1 and 2—coal sites.

We considered the comments received from IMCC/NAAMLP that advocated few restrictions on the ''adjacent to'' definition while also observing that, prior to the 2006 amendments, Priority 3 work only comprised about 15 percent of the completed reclamation. We have concluded that there is no need at this time to incorporate limitations on the types and costs of Priority 3 land and water reclamation that may be elevated to a Priority 1 or Priority 2 expenditure under revised § 874.13(a)(1) and (a)(2). Given the requirement in section 402(g)(2) that the Secretary must ensure strict compliance by the States and Indian tribes with the priorities described in section 403(a) until a certification is made under section 411(a), we will continue to perform our oversight duties and monitor the accomplishments of reclamation programs. If we determine that limitations are appropriate for § 874.13(a)(1) and (a)(2), we will develop proposed changes consistent with SMCRA. In summary, all types of land and water reclamation problems, including water supply projects and AMD projects (sections 403(b) and 402(g)(6), respectively) may be elevated in expenditure priority under § 874.13(a)(1) and (a)(2) as long as they are physically contiguous (meaning spatially connected) to a Priority 1 or 2 health or safety problem.

With regard to how many projects could be elevated under our interpretation of ''adjacent to,'' one State raised the possibility of the domino effect where a Priority 3 problem that is elevated to a Priority 1 or 2 expenditure could be used to elevate other Priority 3 problems that are not ''adjacent to'' a Priority 1 or 2 health and safety problem. After considering the comment, we have concluded that the specific language contained in sections 403(a)(1)(B) and (a)(2)(B) does not allow adjacent Priority 3 problems to be used to elevate the expenditure priority of other adjacent Priority 3 problems that are beyond the physical connection to the original health and safety problem. The plain language of 403(a)(1)(B) and (a)(2)(B) requires that the Priority 3 land and water reclamation problems be adjacent to the Priority 1 or 2 health and safety site.

Although we understand the commenter's concerns, we are also not adopting its suggestion that we change ''will'' to ''can.'' We have concluded that sections 403(a)(1) and (a)(2) of SMCRA unambiguously define the expenditure priorities for lands and waters, and Priority 1 and 2 sites clearly include Priority 3 projects that are adjacent to a current or previously addressed health and safety problem. States and Tribes still have discretion to decide whether or not to address lands and waters that are adjacent to a health and safety problem. However, once they commit to address them, such lands and waters must be identified as Priority 1 or Priority 2 expenditures when reporting on program activities.

Another group of comments on this section focused on § 874.13(b). The introductory text of § 874.13(b) allows uncertified States and Indian tribes to use State or Tribal share funds and historic coal funds to reclaim Priority 3 lands and waters when one of two conditions apply. IMCC/NAAMLP and one State requested that we add references to §§ 872.26 and 872.29 to this paragraph to allow uncertified States and Indian tribes to use minimum program make up funds and prior balance replacement funds under this

paragraph. In a similar manner, IMCC/NAAMLP and one State suggested we add a new paragraph (c) to state that prior balance replacement funds could be used to reclaim Priority 3 sites.

The provision as proposed reflects our interpretation that the ''in conjunction with'' provision of section 402(g)(7) of SMCRA does not apply to prior balance replacement funds received under section 411(h)(1) of SMCRA. As provided by section 411(h)(1), uncertified programs must use prior balance replacement funds for the ''purposes described in section 403.'' Section 403 of SMCRA includes the basic land and water reclamation priorities (section 403(a)), the construction of water supply projects (section 403(b)), and the maintenance of the AML inventory (section 403(c)). Because section 402(g)(7) directs the expenditure of section 402(g)(1) and (g)(5) funds and not section 411(h)(1) funds, and because section 411(h)(1) states that the funds received under that section must be used for the ''purposes described in section 403,'' we have concluded that Priority 3 land and water reclamation may be addressed with section 411(h)(1) funds. Uncertified States and Indian tribes may use prior balance replacement funds to fund Priority 3 projects as long as the total program reflects the achievement of objectives in section 403(a) of SMCRA.

One State also suggested we modify § 874.13(b)(1) to state explicitly that States can only conduct stand-alone Priority 3 reclamation after all Priority 1 and Priority 2 reclamation is complete. We are not making any changes in response to this comment. We have concluded that § 874.13(b)(1) is clear that until you completed all of Priority 1 or 2 reclamation, you may only expend funds for Priority 3 reclamation if it is in conjunction with a Priority 1 or 2 project.

We received numerous comments on suggested changes to § 874.13(b)(2). As proposed this paragraph provides: ''The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects, including Priority 1 or Priority 2 reclamation projects conducted before December 20, 2006. Expenditures under this paragraph must either: (i) Facilitate the Priority 1 or Priority 2 reclamation; or (ii) Provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of your State or Indian tribe.''

IMCC/NAAMLP suggested that in the introductory text of § 874.13(b)(2), we substitute the words ''past, current or future'' to define the scope of Priority 3 projects that can be undertaken in conjunction with Priority 1 and 2 projects. We disagree with this comment and have not incorporated this change. The comment suggested that § 874.13(b)(2), as it refers to § 874.13(b)(2)(i) and (b)(2)(ii), concerns entire Priority 3 projects. Section 874.13(b)(2) implements the amendments to section 402(g)(7) of SMCRA, and to the extent that a State has not completed all of the Priority 1 or 2 sites within its jurisdiction, using the term ''Priority 3 projects'' would be incorrect.

One State noted that the first sentence of § 874.13(b)(2) appeared confusing and suggested that it be changed to read: ''The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects including past, current, and future Priority 1 or Priority 2 reclamation projects.'' We agree with this comment and are making the suggested change.

IMCC/NAAMLP also suggested that we remove the requirements of § 874.13(b)(2)(i) and (b)(2)(ii) and adopt a provision that would allow Priority 3 in conjunction with higher priority work as long as the ''overall reclamation program generally reflects the priorities in section 403(a) of SMCRA.'' The commenter agreed with the May 18, 1982, memorandum by the Solicitor's Office that we described in the preamble to the proposed rule. 73 FR 35230. Upon review of this comment and the memorandum, we have determined that the 2006 amendments no longer support a strong adherence to that memorandum. The memorandum addressed Priority 3 reclamation conducted with those types of funds prior to the 2006 Amendments. Our deference in this rulemaking to section 402(g)(7) of SMCRA which prohibits certain types of Priority 3 reclamation before the completion of all high priority problems recognizes these limitations and has nothing to do with how States may or may not have exercised discretion prior to the 2006 amendments to SMCRA.

Two States did not express specific concerns about the proposed language but did urge us to keep the final rules general in nature. One State commented that each site may have its own unique situation and the rules should allow the State programs the greatest flexibility in resolving the concerns at each site. We are not making any changes in response to these comments. We have revised existing rules consistent with the 2006 amendments while maintaining flexibility for AML reclamation programs.

IMCC/NAAMLP and two States submitted comments expressing concern that we are significantly limiting the types of Priority 3 projects that may be reclaimed by imposing requirements that Priority 3 projects facilitate higher priority projects or result in reasonable savings at the time of the project towards the objective of reclaiming all Priority 3 land and water problems. One State, however, agreed with our statement in the preamble to the proposed rule and that we reiterate here. We appreciate this State's support and reiterate that we do not believe that our efforts to define ''in conjunction with'' will significantly reduce the types of Priority 3 projects that are reclaimed.

In response to our request for comment, one State noted that Priority 3 work requested by a property owner as a condition of agreeing to provide entry to address health or safety problems should not fall within the scope of § 874.13(b)(2)(i) which allows expenditures that facilitate the reclamation of Priority 1 or 2 problems. We agree with this commenter that the States and Indian tribes have the necessary authority under their reclamation plan and regulations to gain entry to sites with Priority 1 and 2 problems, and so we did not change the regulation.

We received a comment from two States that related to the practice of phasing reclamation activities under the ''in conjunction with'' provision. One State urged flexibility in applying the ''conjunction'' standard, as it relates to phases of a project that may be subject to a three-year or longer grant. Another State commented that OSM should not include language that would specifically preclude allowing Priority 3 work that is adjacent to or within a Priority 1 or 2 site as a separate phase of construction. This State cited that efficiency in reclamation should dictate phasing and not the priority designation.

We find that the language of § 874.13(b)(2) as proposed does not specifically preclude Priority 3 work as a separate phase of construction within a Priority 1 or 2 project. However, we also note that Priority 3 work that is undertaken as a separate phase may not realize the administrative and contracting efficiencies of combined design and development, one-time mobilization and demobilization costs, or reduced unit costs that can be attributed to larger projects and that these types of factors would be central to an analysis to determine whether there are reasonable savings under

§ 874.13(b)(2)(ii). States and Indian tribes have qualified staff with years of mine land reclamation and contracting experience. As one commenter noted ''States and Indian tribes have been reclaiming lands and water for over 30 years. This experience and efficient management of AML funds give the States and Indian tribes the ability to define 'reasonable' without OSM providing the definition in its proposed rules.'' We agree with this commenter and are confident that each State and Indian tribe is capable of reviewing Priority 3 lands and waters to determine if delaying reclamation to a separate phase will prevent a determination under § 874.13(b)(2) that the reclamation will provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within their jurisdiction.

One State suggested that the ''in conjunction with'' provision of § 874.13 (b)(2) should be implemented in a manner that allows Priority 3 problems to be addressed ''as long as the Priority 3 that is being reclaimed is necessary to complete the reclamation of a Priority 1 or Priority 2 project.'' This suggested requirement appears to be a more stringent requirement than we have proposed. Generally, we are endeavoring to give States and Indian tribes as much flexibility and discretion as we can within the bounds of SMCRA. We do not believe that section 402(g)(7) of SMCRA requires such as a restrictive approach, and we think that such an approach would fail to take advantage of the reclamation efficiencies that may be present on a site-by-site basis. Thus, we are not adopting this suggestion.

IMCC/NAAMLP and one State requested that we confirm that projects conducted under the Appalachian Regional Reforestation Initiative (ARRI) and no-cost AML projects are not subject to the ''in conjunction with'' provision at § 874.13(b)(2). ARRI is an OSM initiative that encourages the planting of trees on reclaimed AML sites. Approval by AML program managers to incorporate ARRI tree planting techniques into an AML project design in no way determines the applicability of § 874.13(b)(2). With regard to no-cost AML projects, as we stated in the preamble to the proposed rule, projects conducted under the AML enhancement rule of 1999 are not subject to the ''in conjunction with'' provision at § 874.13(b)(2) because they are provided for under a separate rulemaking by the Secretary. To the extent that a no-cost contract is implemented under that rulemaking, we agree that it too is not subject to § 874.13(b)(2). Thus, no changes are being made in accordance with these comments.

Several comments were submitted that relate to the interplay between the ''adjacent to'' standard in § 874.13(a)(3) and the ''in conjunction'' language of § 874.13(b)(2). One concern raised by numerous commenters, including IMCC/NAAMLP and several States, regards the potential unnecessary administrative burdens that they perceive that the regulations are placing on the States and Indian tribes. Specifically they were concerned that they will need to devote precious time and resources to demonstrate to us that their Priority 3 projects meet the requirements of this section. Moreover, IMCC/NAAMLP asserted that the requirements are too elusive and subjective, are difficult to define, and will result in significant disputes and conflicts between OSM and the States and Indian tribes. The commenters questioned the level of detail, proof, and justification we will require to obtain project approval and whether we would set a specific timeframe for the qualifying Priority 3 work to be completed. But one State commented that it did not want a formal definition of reasonable.

We are not making changes to the rule as a result of the above comments on the level of detail, proof, and justification we will require to obtain project approval and whether there would be a specific timeframe for the qualifying Priority 3 work to be completed within. We originally proposed these two conditions because they will promote Priority 3 reclamation while emphasizing the elevated Priority 1 and 2 reclamation objectives contained in the 2006 amendments. We continue to believe that these objectives are central to the 2006 amendments. We do not agree that the requirements are too elusive and subjective, are difficult to define, or will result in significant disputes and conflicts, as suggested by IMCC/NAAMLP. Rather, we believe that experienced State and Indian tribal program officials will have little difficulty recognizing when Priority 3 reclamation facilitates higher priority work, and also in understanding the mechanics and costs of site reclamation to be able to conclude when reclamation of Priority 3 lands and waters represents a reasonable savings through program efficiencies. In those cases where State or Indian tribal officials are uncertain, we remain available to assist in making the determination. In terms of the level of detail and justification needed to confirm that the provision is being implemented properly, each site will be different. Some sites will be located in a manner so favorable that assessments of potential savings on the mobilization/demobilization costs, reduced unit prices, or other such efficiencies will be straightforward and obvious. Some sites, however, may require more detailed assessments of potential savings. AML reclamation programs have been operating for close to 30 years. We remain confident that they possess the technical and administrative expertise to perform adequate assessments.

IMCC/NAAMLP and two States commented that States and Tribes should have sole discretion to determine which type of Priority 3 designation is applicable in the event that a Priority 3 problem would qualify for funding as being both ''adjacent to'' and ''in conjunction with'' a high priority problem. IMCC/NAAMLP suggested a revision to the proposed regulations to support the requested discretion. One State went further by commenting that it should be the State or Indian tribe that determines if it has met the requirements of our definitions for the terms ''adjacent to'' and ''in conjunction with'' and that the burden of proof should be on us to prove that a Priority 3 feature does not meet the stated requirements. Another State proposed we add paragraph (b)(3) to specify States and Indian tribes ''will determine the eligible subparagraphs for eligibility and priority determination.''

We agree with the premise of these comments. States and Indian tribes are responsible for determining whether they have met the requirements of our definitions for the terms ''adjacent to'' and ''in conjunction with,'' but we do not believe explicit language needs to be added to the rule. Determinations made under this section are consistent with essentially all of the other programmatic functions, such as the eligibility requirements in section 404 of SMCRA, that our State and Tribal co-regulators make routinely. We intend to provide assistance to the States and Indian tribes through program guidance, if needed, and will conduct oversight as necessary to ensure that the provisions are being implemented properly. To the extent that we become concerned with individual site or program-wide implementation by a State or Indian tribe, we will address the matter consistent with our oversight process. However, given the new funding directives of the 2006 amendments, it is possible that our oversight process will have to be adjusted. As has been our practice in the past, the States and Indian tribes will be invited to participate in the process of refining the oversight process and the guidance that

helps define the State/Federal partnership in the reclamation program.

In response to one statement that alluded to uncertainty as to what we will require to obtain project approval, we remind the commenter that the environmental clearance and the ATP process is governed by our directive GMT–10, FAM chapter 5–11. We do not believe that the reclamation of Priority 3 lands in conjunction with Priority 1 or 2 problems will require more than minimal additional environmental clearance or inventory review time. In accordance with the simplified grants process implemented in the early 1990s, we rely on the oversight process for conducting in-depth reviews of project implementation and inventory management. Under that process, States can participate with us in studies and reviews that will help staff exchange information and ideas on how best to document program decisions related to the requirements of § 874.13(b)(2)(i) and (b)(2)(ii).

One State commented that the terms ''adjacent,'' ''geographically contiguous,'' and ''spatially connected'' appear ambiguous and requested further guidance from OSM in the final rule. The term ''adjacent to'' is defined as being geographically contiguous. We further explained that such sites must be spatially connected. If needed, we will provide additional guidance as situations arise.

One State commented that OSM Directive AML–1 should be used to make keyword-specific determinations of ''in conjunction with''. This comment is beyond the scope of this rulemaking, but we intend to consider it if and when we review the OSM Directive AML–1.

Although beyond the scope of the rule, we intend to address how the AML inventory is to be revised to provide for the proper recording and reporting of lands and waters adjacent to Priority 1 or 2 health and safety problems. At that time we will consider the detailed comments that IMCC/NAAMLP and some States provided on this rule that relate to changes that could be made to the AML inventory.

One State commented that the differences in how the State or Tribal share, historic coal, and prior balance replacement funds can be applied to Priority 3 expenditures raises the issue of how OSM intends to track Priority 3 reclamation relative to the type of fund expended. This commenter stated that tracking Priority 3 expenditures at a project-by-project level would create a substantial administrative burden on OSM and the States and Indian tribes. The commenter suggested that we revise FAM to require Priority 3 expenditures to be tracked on an overall grant basis. We are not making any changes in response to this comment. We agree that administrative effort will be expended to properly track expenditures from the various funding sources. However, State reclamation programs have performed similar tracking and management duties relative to administrative funding, minimum program funding, set-aside funding, water projects, and any special appropriations received in the past. We are confident that reclamation programs have or will have the accounting tools in place to accurately track expenditures and preserve funding flexibility. However, we will consider making this change to FAM in the future if it becomes appropriate.

One commenter strongly encouraged us to allow modification to the reclamation processes and authorize expenses for Priority 1 and 2 sites to include water quality improvements as a main objective. They stated that Priority 1 and 2 reclamation conducted solely for the purpose of removing a safety hazard may be overlooking the potential water quality benefits that could be derived if alkaline addition occurred as part of the reclamation process. This commenter promoted the use of alkaline material at Priority 1 and 2 sites as a way to significantly reduce the amount of acid mine drainage being produced and then discharged at Priority 3 sites. We did not make any changes in response to this comment. First, we believe that the main objective of reclamation at every Priority 1 or 2 site is the elimination of all health and safety hazards. However, State reclamation programs should review all coal related problems at each Priority 1 or 2 site and address those lower priority problems, including water quality problems, which can be integrated into the reclamation plan consistent with § 874.13(b)(2). The use of alkaline material at Priority 1 or 2 sites to reduce mine drainage produced at nearby Priority 3 sites will have to be evaluated on a site-by-site basis to determine if such expenditures provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of a State or Indian tribe.

Water Supply Restoration (§ 874.14)

As explained in the preamble to the proposed rule, we are changing this section primarily to reflect the 2006 amendments' removal of section 403(a)(4). We received no comments on this section, and adopt it as proposed.

Contractor Eligibility (§ 874.16)

As explained in the preamble to the proposed rule, we are revising § 874.16 to reflect our changes to the funding applicability section in § 874.11. We received no comments on this section, but as explained further in the preamble to Part 875, this section has been changed to apply to both uncertified States and Indian tribes receiving moneys under Title IV as well as certified States or Indian tribes conducting coal AML reclamation as required to maintain certification under this Part.

Part 875—Certification and Noncoal Reclamation

As proposed, we are amending the title of this Part to more accurately describe the subject matter covered by these regulations. Our proposed revisions to this Part contained a new definition section at § 875.5 and changes to existing §§ 875.10 (Information collection), 875.11 (Applicability), 875.12 (Eligible lands and water prior to certification), 875.13 (Certification of completion of coal sites), 875.14 (Eligible lands and water subsequent to certification), 875.16 Exclusion of certain noncoal reclamation sites), and 875.20 (Contractor eligibility).

In 1994, we explained:

> Congress has created a two-tiered process for addressing noncoal problems. Prior to completing all known coal problems, Congress has limited a State's/Indian tribe's ability to do noncoal work. This is shown in [existing] § 875.12. A State/Indian tribe desiring to implement a greatly expanded noncoal reclamation program (see [existing] §§ 875.14–19), or what could be called the second tier, would first have to certify that it had completed all known coal problems and the Director would have to concur in the finding (see [existing] § 875.13).
>
> Section 409 of SMCRA, as enacted in 1977, authorized States and Indian tribes to undertake noncoal reclamation activities if: (a) The Governor of a State or the Chairman of an Indian tribe requested funding and the State had either completed all known coal reclamation objectives or (b) if coal problems remained, the project for which funding was requested was necessary to protect the public health and safety.

59 FR 28160.

As with the proposed rule, the changes we are adopting in the final rule update certification procedures and how certified States and Indian tribes must address remaining or newly discovered coal problems. As indicated in the preamble to the proposed rule, we are also finalizing one major substantive change from the existing regulations, namely that this Part generally does not apply to certified States and Indian tribes that are expending prior balance

replacement funds or certified in lieu funds. 73 FR 35232–35233.

Responses to Comments

In general comments, IMCC/NAAMLP and one State referred to our proposed changes to Part 875 as a major area of concern. First, they questioned whether our proposed revisions could be interpreted to require certified States and Indian tribes to complete all known noncoal reclamation projects using certified in lieu funds, or alternatively, to require a certified State or Indian tribe that decides to do noncoal reclamation to follow the priority list in the regulations. These two commenters disagreed with either potential interpretation. To further expand on these points, the two commenters noted a perceived conflict between §§ 872.31 and 872.34, which generally allows certified States and Indian tribes to use prior balance replacement funds and certified in lieu funds with few, if any, restrictions and our proposed rule in Part 875, which did not propose any changes to § 875.15 (Reclamation priorities for noncoal program). In other words, the commenters expressed concern that any application of § 875.15 to certified States or Indian tribes would place ''unsupported and illegal restraints'' on their use of prior balance replacement funds and certified in lieu funds. The commenters recommended language be included in the regulations that confirmed that certified States and Indian tribes are not required to spend these types of funds according to Part 875, including according to the noncoal reclamation priorities in § 875.15, and to clarify that a certified State can elect to do noncoal reclamation outside the framework of this Part.

After a careful review of SMCRA and consideration of the comments, we determined to retain Part 875, with the revisions discussed below. We believe it is important to retain these regulatory provisions because they implement sections 411(b) through (g) of SMCRA and are still applicable to any State or Tribal share funds distributed to certified and uncertified States and Indian tribes under section 402(g)(1) before October 1, 2007. We agree with commenters, however, that certified States and Indian tribes are not required to use prior balance replacement funds and certified in lieu funds received under sections 411(h)(1) and (h)(2) to conduct reclamation under this Part. As the commenters pointed out, any other interpretation of Part 875 would be inconsistent with §§ 872.31 and 872.34. However, using the interpretation of SMCRA contained in §§ 872.31 and 872.34, we are no longer authorized to support a noncoal reclamation program under SMCRA that uses prior balance replacement funds or certified in lieu funds because sections 411(b) through (g), which authorized noncoal reclamation programs in certified States and Indian tribes, are expressly not applicable to any funds other than State or Tribal share funds. Thus, as discussed below, we are using § 875.11(b) to clarify the applicability of this part as it applies to certified States and Indian tribes. Noncoal reclamation programs conducted by uncertified States and Indian tribes and funded by State or Tribal share and/or historic coal share funds are authorized by section 409 and are still covered by this Part.

Definitions (§ 875.5)

We are adding a new section to Part 875 to include the definition of the term ''Reclamation plan or State reclamation plan.'' We received no comments on this section and are adopting it as proposed.

Information Collection (§ 875.10)

In this section, we discuss the Paperwork Reduction Act requirements and the information collection aspects of Part 875. We are updating this section and rewording it using plain English. We did not receive any comments on this section and are adopting the section as proposed.

Applicability (§ 875.11)

Except in connection with the sources of funding that may be used for reclamation, our revisions to this section make minimal changes for uncertified States and Indian tribes with approved reclamation plans. Generally, our changes relate to the use of certified in lieu funds and prior balance replacement funds by certified State and Indian tribes because, as explained in Part 872 (Moneys Available to Eligible States and Indian Tribes) and Part 884 (State Reclamation Plans), certified States are not required to spend these funds according to Part 875.

In paragraph (a) we are clarifying that when you, an uncertified State or Indian tribe, expend State share funds, Tribal share funds, and historic coal funds for noncoal reclamation, you are subject to the limitations on the use of those funds contained in this Part and in §§ 872.16, 872.19, or 872.23. This portion of our rule does not change the existing requirements and is consistent with section 409 of SMCRA, which requires that moneys provided by sections 402(g)(1) and (g)(5) of SMCRA may be used to address high priority noncoal hazards at the request of the Governor or governing body of an Indian tribe. 30 U.S.C. 1239(b) and (c). We did not include minimum program make up funds or prior balance replacement funds as a source of moneys that uncertified States may use for noncoal reclamation under this Part for the reasons discussed in the preamble to §§ 872.28 and 872.31, respectively.

In paragraph (b) of the proposed rule, we had proposed to limit the applicability of this part to certified States and Indian tribes. As proposed, certified States and Indian tribes could, but were not required to, expend prior balance replacement funds and certified in lieu funds to address eligible coal problems to maintain certification as required by §§ 875.13 and 875.14 or to implement any other requirements of this Part as provided by the approved reclamation plan. After consideration of the comments and discussed in more detail below, we have decided to adopt an amended version of this paragraph to dispel commenters' concerns that the proposed language would require certified States and Indian tribes to spend prior balance replacement funds and certified in lieu funds under Part 875. A sentence has been added at the end of this section to make this point clear.

Responses to Comments

As explained in the general comments to Part 875, we received comments from IMCC/NAAMLP and one State concerning a possible inconsistency between §§ 872.31 and 872.34 and the applicability of Part 875 regarding restrictions on the use of prior balance replacement funds and certified in lieu funds by certified States and Indian tribes. In response, we have amended the regulatory language to clearly express in § 875.11(b)(1) that certified States and Indian tribes are only required to comply with all of the provisions in Part 875 when they expend State or Tribal share funds distributed to them before October 1, 2007. In contrast, under revised § 875.11(b)(2), they may choose to expend prior balance replacement funds and certified in lieu funds under this Part to address eligible coal problems to maintain certification as required by §§ 875.13 and 875.14. If they choose to address eligible coal problems, this reclamation would be governed by Part 874.

In addition, IMCC/NAAMLP and one State responded to our request for alternative approaches to our proposal that certified States and Indian tribes be required to use prior balance replacement funds or certified in lieu funds to address eligible coal problems to maintain certification. Specifically,

they commented that a certified State or Indian tribe should be able to use either prior balance replacement funds or certified in lieu funds to maintain certification. However, to use prior balance replacement funds, a certified AML program would be required to gain the approval of the State legislature or Tribal governing body to do so. These commenters suggested that our proposed § 875.11(b) should be rewritten to clarify prior balance replacement funds can be used for the purposes stated only if approved by the State legislature or Tribal governing body.

After consideration of this comment, we have decided not to include any language in § 875.11 that specifies that States and Indian tribes would have to gain approval from their State legislature or Tribal council before using prior balance replacement funds to maintain certification status. We believe that any such provision would simply repeat what is already contained in § 872.31(a) of these regulations. In accordance with this comment and as discussed above, we also clarified that § 875.11(b)(2) gives certified States and Indian tribes discretion on whether to spend any prior balance replacement funds and/or certified in lieu funds to maintain certification status as required by §§ 875.13(a)(3) and 875.14(b).

IMCC/NAAMLP and one State also responded to our request for comments on a possible alternative approach under which our regulations would require certified States and Indian tribes to continue to conduct noncoal reclamation under this Part and to use certified in lieu funds only for reclamation of lands or water affected by the mining of minerals and materials other than coal. These commenters asserted that such an approach would be contrary to SMCRA because SMCRA ''mandates the use of the funds received by a certified State or Tribe.'' They followed that ''the decision to do noncoal reclamation should be up to the individual States and Tribes, as noncoal reclamation is an option in SMCRA and not a requirement.''

These comments relate to our discussion of the comments received under § 872.34 regarding the alternative approach that would require certified in lieu funds to be expended under this Part. As discussed in more detail in the preamble to that section, § 872.34 makes clear that we have decided not to place any restrictions on the use of certified in lieu funds. We do not believe that we need to repeat a similar provision here.

Importantly, however, as a consequence of this decision, we must remove proposed § 875.11(b)(2) from the rule altogether. This provision had been proposed to allow certified States and Indian tribes the choice to expend prior balance replacement funds or certified in lieu moneys to fund a noncoal reclamation program under SMCRA. *See, e.g.*, 73 FR 35236. Under the existing rules, after a State or Indian tribe certified, the State or Indian tribe could ''implement a noncoal reclamation program pursuant to the provisions in Section 411 of SMCRA.'' 30 CFR 875.13(c) (2005). Sections 411(b) through 411(g) of SMCRA, which provide the authority for certified States' and Indian tribes' noncoal reclamation programs, by their own terms apply only to grants of State or Tribal share funds. *See, e.g.*, 30 U.S.C. 1240a(b) (''If the Secretary has concurred in a State or tribal certification under subsection (a), for purposes of determining the eligibility of lands and waters for annual grants under section 402(g)(1) * * *.''). After October 1, 2007, certified States and Indian tribes no longer receive grants under section 402(g)(1). *See* 30 U.S.C. 1231(3)(B) (''Beginning on October 1, 2007, certified States shall be ineligible to receive amounts under section 402(g)(1).''). Because sections 411(b) through (g) allow only State or Tribal share funds to be expended for a noncoal reclamation program under SMCRA and because these funds are no longer distributed to certified States and Indian tribes, SMCRA no longer authorizes a noncoal reclamation program for certified States and Indian tribes. Thus, we cannot allow certified States and Indian tribes a choice to expend the funds they do get, namely prior balance replacement funds and certified in lieu funds, for a SMCRA sponsored noncoal reclamation program.

This approach is consistent with our 1994 statement that ''[t]he Secretary has no independent authority to undertake noncoal reclamation activities, and only the States and Indian tribes, utilizing AML funds allocated pursuant to Section 402(g)(2) (as amended in 1990, this section is now Section 402(g)(1)), could carry out such tasks.'' 59 FR 28160. The only difference is that now certified States and Indian tribes are prohibited from receiving moneys under section 402(g)(1) of SMCRA. We do recognize that certified States and Indian tribes may choose to use prior balance replacement funds, certified in lieu funds, or other funds to conduct their own program to reclaim noncoal hazards. Such a program, however, would not be conducted under SMCRA, and Part 875 would not be applicable.

Finally, one State commenter suggested a revision to § 875.11(a) to enable uncertified States and Indian tribes to use prior balance replacement funds under § 872.31 to conduct reclamation projects on land or water affected by mining of minerals and materials other than coal. As described in our discussion of comments received in the preamble to § 872.31, we have decided not to make the proposed revisions.

Eligible Lands and Water Prior to Certification (§ 875.12)

We proposed to make minor revisions to § 875.12. We received no comments on this section, and we adopt it as proposed.

Certification of Completion of Coal Sites (§ 875.13)

We proposed to make some changes to paragraphs (a) and (a)(1) of this section and add a new paragraph (d). We did not receive any comments on these proposed changes and are adopting them as proposed. However, we also invited comments as to whether we should add language to the rule detailing how we would suspend or remove certification from a State or Indian tribe that is unable or unwilling to address coal problems once they are known to exist after certification.

Responses to Comments

In their comments, IMCC/NAAMLP recognized our authority to suspend or remove certification from a State or Indian tribe under SMCRA as revised by the 2006 amendments, but they believe OSM should never use this authority. They suggest that the addition of such a provision would only continue to highlight what they perceive as a undeserved heavy handed approach that we are taking against our State and Tribal co-regulators in this rule.

After consideration of this comment, we have decided not to add any additional provisions regarding a certification suspension or removal process. We view our authority to suspend or remove certification of a State or Indian tribe as an action of last resort, if necessary. We intend to focus our efforts to work cooperatively with certified States or Indian tribes to ensure coal problems that exist after certification are appropriately addressed.

We have also decided to retain § 875.13(c). As discussed in the responses to comments under § 875.11, existing § 875.13(c) allows certified States and Indian tribes to conduct reclamation programs under section 411 of SMCRA. Because certified States and

Indian tribes still have active grants that use State and Tribal share funds distributed before October 1, 2007, we believe it is important to recognize that those funds may be used for SMCRA's noncoal reclamation program authorized by sections 411(b) through (g). However, our decision to retain § 875.13(c) does not authorize certified States and Indian tribes to expend prior balance replacement funds and certified in lieu funds under their SMCRA noncoal reclamation program. Thus, as explained below, any reclamation of noncoal hazards that uses prior balance replacement funds and certified in lieu funds will not benefit from the provisions in Part 875, including limited liability.

Eligible Lands and Water Subsequent to Certification (§ 875.14)

We proposed revisions to § 875.14(a) to clarify eligibility dates and reword it using plain English. We did not receive any comments on this section and adopt it as proposed. We note, however, that because this paragraph is related to a SMCRA noncoal reclamation program, certified States and Indian tribes cannot use it to expend prior balance replacement and certified in lieu funds. We only retained it because of the remaining active grants that certified States and Indian tribes have that contain State share or Tribal share funds distributed under section 402(g)(1) and that can be used for a noncoal reclamation program under sections 411(b) through (g) of SMCRA.

We also proposed revisions to § 875.14(b) to clarify the timing of reclamation efforts and the sources of funds that may be used to address coal problems after certification. Under existing § 875.14(b), you, the certified State or Indian tribe, were required to address coal problems no later than the next grant cycle, subject to the availability of funds distributed. Under our proposed rules we would require you to submit to us a plan that describes the approach and funding sources that you will use to address any coal problems in a timely manner. Our proposed rules acknowledged that certified in lieu or prior balance replacement funds would, most likely, be identified as a funding source in any plans submitted to us. In our proposed rule, we stated that we would review plans submitted to us to ensure they represent a timely approach to reclamation of existing coal problems. We also confirmed that we will monitor progress towards completion of any plans submitted. Finally, we proposed retaining the requirement that any coal reclamation projects, regardless of funding source, must conform to sections 401 through 410 of SMCRA and Part 874 of this chapter. 30 U.S.C. 1231–1240.

Responses to Comments

IMCC/NAAMLP and one State responded to our request for comments on how we might review plans submitted under § 875.14(b) by certified States and Indian tribes to address newly discovered coal sites. The commenters said that it is appropriate that a certified State or Indian tribe submit to OSM a notice that an eligible coal problem has been discovered and that the notice should contain an estimated timeframe for addressing the problem and the source of funding. They also commented that our review should be limited to the reasonableness of the State's or Indian tribe's approach to address the problem. IMCC/NAAMLP said that to conduct an investigation of the coal lands, obtain clearances, and to physically mitigate the problem may take several years. Both commenters stated that the notice should not be required to be submitted as a formal reclamation plan amendment. They observed that the reclamation plan should already contain a commitment to address any newly discovered eligible coal problem as part of the certification process and, therefore, a revision to the reclamation plan is not required.

We agree with the commenters that the discovery of a new coal problem should not require an amendment to the reclamation plan as long as the State or Indian tribe maintains certification. We also agree that each coal problem will present its own unique set of circumstances when developing and reviewing any plans. Because we received no adverse comments, we are adopting § 875.14(b) generally as proposed. However, we are removing the ''at the direction of the State legislature or Tribal council'' because this language is redundant with the regulations contained in § 872.31. Under this provision then, certified States and Indian tribes must comply with all of the applicable coal provisions contained in sections 401 through 410 of SMCRA and Part 874 of this chapter, the applicable regulations that address existing or newly discovered coal problems.

Reclamation Priorities for Noncoal Program (§ 875.15)

In our proposed rule, we did not include any revisions to the language in § 875.15 (Reclamation priorities for noncoal program) stating that we believed that fund applicability requirements in Part 872 along with any reclamation plan revisions completed under Part 884 will properly define how the section applies to a project conducted by a certified program under Part 875.

Responses to Comments

IMCC/NAAMLP and one State commented on our original proposal that § 875.15 would remain unchanged; thus requiring a certified State or Indian tribe to get a determination from the Governor or Tribal Chairman in order to do public facilities projects under Part 875. The commenters objected that our proposed § 875.15 went on to list priorities that a certified State or Tribe must meet to gain approval from us. IMCC/NAAMLP and the State said that the clear wording in SMCRA contains no restrictions on certified States or Indian tribes other than responding to newly discovered coal sites and expending prior balance replacement funds as directed by the State or Tribal legislative body. The commenters concluded that requiring a certified State or Indian tribe to comply with all provisions of this section is contrary to SMCRA.

We respect this comment but have decided not to make changes to § 875.15. We believe it is necessary to retain this section because it is still applicable to State or Tribal share funds distributed before October 1, 2007, that certified States and Indian tribes are using to fund SMCRA noncoal reclamation programs. However, as previously discussed, § 875.15 would not apply to any project, either related to noncoal reclamation or otherwise, that uses prior balance replacement funds or certified in lieu funds. Section 875.15 is authorized by sections 411(b) through (g), which does not apply to prior balance replacement funds or certified in lieu funds.

Exclusion of Certain Noncoal Reclamation Sites (§ 875.16)

We proposed revisions to § 875.16 to exclude you, an uncertified State or Indian tribe, from expending moneys from the Fund or prior balance replacement funds provided under § 872.29 for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), 42 U.S.C. 7901 *et seq.*, or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* We proposed this revision to maintain consistency with the existing prohibitions on the use of moneys from the Fund and the statutory

restrictions on the use of prior balance replacement funds as explained in the preamble to § 872.29. In our proposed rule we also clarified that certified States and Indian tribes may use prior balance replacement funds or certified in lieu funds for these purposes provided they comply with the general statutory and regulatory restrictions of those funds. Finally, we invited you to comment on whether this paragraph is still needed.

Responses to Comments

IMCC/NAAMLP and one State supported our proposal, which allows certified States and Indian tribes to use prior balance replacement funds or certified in lieu funds for reclamation projects identified under UMTRCA or the CERCLA provided they comply with the general statutory language and restrictions of those funds. IMCC/NAAMLP also noted that the Tribes handle these sites by working with the U.S. Department of Energy and the U.S. Environmental Protection Agency. IMCC/NAAMLP and one State commented that the proposed rules currently dictate that uncertified States may not use money from the Fund or from the prior balance replacement fund for those purposes and requested that the proposed rule be revised to expressly allow certified States and Indian tribes to use those funds for these purposes should they choose to do so.

However, one Indian tribe commented that they did not support our proposal to allow the certified States and Indian tribes to use their prior balance replacement funds or certified in lieu funds for UMTRCA or CERCLA remedial action projects. The Tribe commented that these projects are very expensive environmental activities and that current legislation exists that clearly defines the regulatory authority for these two programs, which would be in direct conflict with SMCRA authority. Finally, the Tribe noted that Congress continues to fund the U.S. Department of Energy to carry out remedial action of the UMTRA sites and that the U.S. Environmental Protection Agency (EPA) takes the lead on CERCLA sites. They commented that the EPA should be responsible for all costs associated with CERCLA sites.

We appreciate the comments from the IMCC/NAAMLP and one State supporting our proposal allowing certified States and Indian tribes to use prior balance replacement funds or certified in lieu funds for reclamation projects identified under the UMTRCA or CERCLA. Consistent with our discussions above, we have included paragraph (b) to state that certified States and Indian tribes are only restricted in using moneys from the Fund distributed under section 402(g)(1) for UMTRCA and CERCLA projects. This provision was necessary because certified States and Indian tribes may still have State or Tribal share moneys distributed before October 1, 2007. Because prior balance replacement funds and certified in lieu funds are not ''moneys distributed from the Fund,'' these moneys do not contain the same restriction. Moreover, we do not believe it is necessary to expressly state that certified States and Indian tribes may use their prior balance replacement funds or certified in lieu funds for UMTRCA or CERCLA remedial action projects because we believe that the authority for such expenditures is clear under Part 872. We also cannot accommodate the comment made by the Indian tribe because of the generally unrestrictive nature of our interpretation of the use of prior balance replacement funds or certified in lieu funds contained in §§ 872.31 and 872.34. We do note, however, that a certified State or Indian tribe is not required to use these moneys for UMTRCA or CERCLA remedial action projects, and our regulations simply give certified States and Indian tribes discretion on the use of these funds.

IMCC/NAAMLP and one State commented that in our proposed rule this subsection used the phrase ''of this chapter'' twice. One should be deleted. We agree with the comment and have revised the final language of § 875.16.

Limited Liability (§ 875.19)

In our proposed rule, we did not include any revisions to the language in § 875.19 (Limited liability), but we did note that under the proposed rule, the only scenario in which a certified State or Indian tribe could avail itself of the limited liability provision of § 875.19 would be if it decided to maintain a noncoal reclamation program under section 411 of SMCRA. 73 FR 35236.

Responses to Comments

IMCC/NAAMLP and one State commented that ''certified AML programs should not be required to follow all of Part 875 to enjoy the protection of the limited liability provisions of § 875.19 * * *.'' The commenters supported this position by noting that ''the limited liability provisions are tied to a State or Tribe following approval of the reclamation plan not, to the other provisions of Section 875.''

We disagree with the implication of this comment and have not made any changes to this section. As explained elsewhere in this Part, a certified State or Indian tribe must comply with all provisions of Part 875 in order to expend all State and Tribal share funds distributed to certified States and Indian tribes before October 1, 2007. Thus, they would receive the benefit of § 875.19 in these circumstances. However, prior balance replacement funds and certified in lieu funds cannot be used to fund a noncoal reclamation program under SMCRA; therefore, the only provisions in Part 875 applicable to those funds relate to existing or newly discovered coal problems in certified States and Indian tribes. If a certified State or Indian tribe decides to use prior balance replacement funds and/or certified in lieu funds to reclaim existing or newly discovered coal problems, they must do so under sections 401 through 410 of SMCRA and Part 874 of this chapter. In that case, the limited liability provision of § 874.15 would apply. As we interpret SMCRA in this regulation, the limited liability provision contained in § 875.19 will not apply to the reclamation of noncoal hazards by certified States and Indian tribes regardless of whether they use prior balance replacement funds and/or certified in lieu funds as a funding source since such expenditures are not subject to this Part.

We are not persuaded by the commenters' statement that the limited liability provisions of our regulations are tied to the approval of the reclamation plan and not Part 875. Section 405(l) provides:

> No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

As the commenters mention, it is this statutory subsection that provides the basis for §§ 874.15 and 875.19. However, the reclamation plans under section 405 only contain information regarding Title IV of SMCRA. Because prior balance replacement funds and certified in lieu funds cannot be used to fund a noncoal reclamation program under SMCRA, section 405(l) does not support an interpretation that limited liability protection is extended to noncoal reclamation programs that are not conducted under Title IV. Under the general framework of § 875.11, however, this provision still provides limited liability protection to noncoal

reclamation performed by uncertified States or Indian tribes using State or Tribal share funds and/or historic coal funds, as well as certified States and Indian tribes that expend State or Tribal share moneys distributed before October 1, 2007.

Contractor Eligibility (§ 875.20)

We proposed revisions to § 875.20 to remove the phrase ''[t]o receive AML funds for noncoal reclamation'' to clarify that prior balance replacement funds received by uncertified States and Indian tribes are also subject to the restrictions of this section. We also proposed that this section applies to contracts by certified States and Indian tribes only when used to address coal problems as necessary to maintain certification and that this section is not intended to apply to use of section 411(h) funds by certified States and Indian Tribes for any purpose other than coal AML reclamation.

We did not receive any comments on this proposed section. However, we made some changes to the proposed language consistent with the other changes to this Part. This section now clearly applies to uncertified State or Indian tribes conducting noncoal reclamation under this Part and certified States or Indian tribes undertaking noncoal reclamation using moneys distributed from the Fund under section 402(g)(1) of SMCRA. Section 874.16 will now apply to certified States and Indian tribes that elect to use prior balance replacement funds and certified in lieu funds to address existing or newly discovered coal problems.

Part 876—Acid Mine Drainage Treatment and Abatement Program

Along with some minor changes, we proposed to make three major changes to this Part consistent with the 2006 amendments. First, to comply with amended section 402(g)(6)(A), we are raising the previous 10% limitation on grants for AMD abatement and treatment set-asides to 30% of annual State or Tribal share and historic coal funds. Second, we are specifying the requirements for an uncertified State or Indian tribe to establish an AMD abatement and treatment fund. Third, we are eliminating the requirements for a State or Indian tribe to prepare AMD abatement and treatment plans and for those plans to be approved by the Director of OSM.

The decision by an uncertified State or Indian tribe to establish an AMD abatement and treatment fund, or to deposit moneys into an established fund, is optional. Section 403(a) of SMCRA established health and safety coal AML problems as the top two priorities for reclamation programs. SMCRA provides uncertified States and Indian tribes with a mechanism for abating AMD while working on high priority reclamation projects, if the water resources are adjacent to a high priority problem. 30 U.S.C. 1233(a)(1)(B)(ii) and (a)(2)(B)(ii).

Information Collection (§ 876.10)

In this section, we discuss the Paperwork Reduction Act requirements and the information collection aspects of Part 876. We are updating this section and rewording it using plain English. We did not receive any comments on this section and are adopting the section as proposed.

Eligibility (§ 876.12)

As explained in the preamble to the proposed rule, we are revising the first sentence of paragraph (a) to delete the specific information on the time period during which States and Indian tribes may expend funds under the 2006 amendments. This section does not need to explain these time limits in detail because this section makes these limits not applicable to the AMD set-aside program. We also are raising the existing 10% cap on deposits to AMD abatement and treatment funds to 30%, as required by the 2006 amendments. Four environmental groups commented in support of the increase in the funding limit for AMD set-asides from 10% to 30% because of the huge task of cleaning up acid mine drainage from abandoned coal mines.

Existing paragraph (a)(1) is deleted because it referred to the future reclamation set-aside fund, which is addressed in Part 873. Existing § 876.12(a)(2), which requires that States and Indian tribes create the AMD funds under their State or Tribal law, is now located in the last sentence of § 876.13(a).

In addition, we are revising this subsection to clarify that section 402(g)(6) of SMCRA establishes that the only moneys from the Fund that you may set aside for AMD treatment under this section are those that you receive as State or Tribal share funds under section 402(g)(1) of SMCRA, §§ 872.14 and 872.17, or as historic coal funds under section 402(g)(5) of SMCRA, § 872.21. Therefore, the funds you receive as minimum program make up funds under § 872.26 or prior balance replacement funds under § 872.29 may not be set aside under this Part. As indicated in our discussion of § 872.29, we believe that section 411(h)(1) of SMCRA clearly requires uncertified States and Indian tribes to use prior balance replacement funds only for the purposes of section 403 of SMCRA. This subsection also provides that generally up to 10% of the funds we distributed to you before December 20, 2006, may be deposited into an AMD abatement and treatment fund.

We are eliminating existing paragraph (b), because it required States and Indian tribes to spend their AMD abatement and treatment funds according to a plan approved by the Director. Under the 2006 amendments, the requirements to prepare a plan, consult with the Natural Resources Conservation Service, or get the Director's approval were eliminated, so existing paragraph (b) is no longer needed.

With minor modifications suggested by commenters, we are adding a new paragraph (b) that requires an uncertified State or Indian tribe to establish a special fund account providing for the earning of interest as required by section 402(g)(6)(A) of SMCRA. 30 U.S.C. 1232(g)(6)(A). This AMD fund must specify that moneys in it may only be used for the abatement of the causes and the treatment of the effects of AMD in a comprehensive manner. We are using the modifier ''comprehensive'' in the regulatory text of paragraph (b)(2) because we are deleting existing § 876.13 where ''comprehensive abatement of the causes and treatment of the effects of acid mine drainage'' was previously contained. We received one comment in support of this deletion.

Also, paragraph (b)(2) requires AMD abatement and treatment projects to occur within ''qualified hydrologic units.'' We are defining ''qualified hydrologic unit'' in paragraph (c). We are removing this definition from existing § 870.5 of this chapter and adding it to this section for clarity and ease of use because the phrase is used only in this section. In addition, we are rewording the definition slightly in an attempt to make it easier to understand.

We are also adding paragraph (d) providing that deposits into the State or Tribal AMD accounts are considered State or Indian tribal moneys. We receive two comments in support of this addition.

Responses to Comments

IMCC/NAAMLP and one State commented that paragraph (b)(2) as proposed would require that moneys may only be used for the comprehensive abatement of the causes and treatment of the effects of AMD and that such a result is different from section 402(g)(6)(A) of SMCRA which requires amounts from the AMD accounts to be

''expended by the State for the abatement of the causes and the treatment of the effects of acid mine drainage in a comprehensive manner * * *.'' The comment suggests that we revise the regulation language to better match the statutory language. We agree with this comment and are changing the regulation accordingly.

Three environmental groups also noted that OSM did not propose to define the terms ''hydrologic unit'' and ''comprehensive manner'' in section 402(g)(6) of SMCRA. They noted that by not proposing uniform national definitions, we have effectively left the interpretation of these terms to the discretion of each State or Indian tribe. The commenters believed this deference is appropriate but urged us to eliminate any doubt on the subject by stating explicitly that our regulations leave the definition of ''hydrologic unit'' and ''comprehensive manner'' to the discretion of each State or Indian tribe authorized to administer an approved AML program. We agree that States and Indian tribes are in the best position to designate qualified hydrologic units within their borders. While § 876.12(c) provides the overall basic structure for a hydrologic unit, States and Indian tribes have considerable flexibility in determining the location, shape, size, and components of such units. With regard to providing a definition of ''comprehensive manner'' we believe that it is best left to reclamation program officials to establish appropriate restoration goals and treatment thresholds for each hydrologic unit to ensure that funds are expended by the State for the abatement of the causes and the treatment of the effects of acid mine drainage in a comprehensive manner. Past guidance from us to State and Tribe reclamation programs emphasized that expenditures must address the eligible sites in a hydrologic unit as a whole rather than site-by-site. We have concluded that, at this time, we do not need to revise the regulations to incorporate a definition of ''comprehensive manner.''

IMCC/NAAMLP commented that the word separating the two conditions for defining a hydrologic unit in paragraphs (c)(1) and (c)(2) should be ''or'' instead of ''and''. They realized that our definition is consistent with the statutory language, but they note that actual practice over the past 25 years has been that hydrologic units must meet one or the other of these criteria, but not both. They commented that if the term is defined as we proposed, the scope of this important provision will be severely limited in a way that would render the purposes and intent of the program ineffective despite the increase in the funding limit to 30%.

We agree with this commenter and others who have identified acid mine drainage as a major problem associated with many AML sites, and that there is a significant need to treat and abate it. However, the statutory requirement is clear. Section 402(g)(6)(B)(ii) says a qualified hydrologic unit must contain ''land and water that are (I) eligible pursuant to section 404 and include any of the priorities described in section 403(a); and (II) the subject of the expenditures by the State from the forfeiture of bonds required under section 509 or from other States sources to abate and treat acid mine drainage.'' Our proposed regulation incorporates this language and we are adopting it as proposed.

IMCC/NAAMLP and one State responded under this section to our request for comments on whether AMD abatement and treatment should be included in the types of Priority 3 reclamation projects subject to the ''adjacent to'' and ''in conjunction with'' provisions of § 874.13.

IMCC/NAAMLP asserted that all AMD abatement and treatment projects are considered at a minimum to be Priority 3 projects. As a result, the ''adjacent to'' and ''in conjunction with'' provisions of § 874.13 are applicable. The State commenter urged that maximum flexibility be given to the States in determining whether AMD abatement and treatment can be accomplished under the adjacent to or in conjunction with provisions. We agree and are not making any revisions here that would restrict AMD as a problem type that can be accomplished under the ''adjacent to'' or ''in conjunction with'' provisions.

Plan Content (§ 876.13)

We are removing this section because the 2006 amendments eliminated the previous requirement for States and Indian tribes to prepare AMD abatement and treatment plans. We did not receive any comments on the proposed deletion of this section and are adopting it as proposed.

Plan Approval (§ 876.14)

We are also removing this section because the 2006 amendments eliminated the previous requirement for the Secretary to approve AMD abatement and treatment plans that were prepared by the States and Indian tribes. We did not receive any comments on the proposed deletion of this section and are adopting it as proposed.

Part 879—Acquisition, Management, and Disposition of Lands and Water

Scope (§ 879.1)

Our proposed rule did not include any changes to this section, but we received comments from IMCC/NAAMLP and one State that this Part should not apply to certified States and Indian tribes for anything other than land acquisition for coal reclamation work to maintain certification. We agree with the commenters, and we are now revising § 879.1 to clarify the scope of this Part. However, after reviewing the comments, we have decided that this Part should not apply to certified States and Indian tribes because certified States and Indian tribes have such wide discretion over the projects and activities they choose to complete with the funds they receive under Title IV. In addition, we are also deleting the phrase ''and establishes requirements for the redeposit of proceeds from the use or sale of land.'' to reflect our revisions to § 879.15, and we are rewording this section in plain English.

Definitions (§ 879.5)

We are adding a new section to Part 879 to include the definition of the term ''Reclamation plan or State reclamation plan.'' We did not receive any comments on this section and are adopting it as proposed.

Information Collection (§ 879.10)

We are removing § 879.10 because the information collection requirements contained in Part 879 have been approved by OMB under the grants provisions for Part 886 and assigned clearance number 1029–0059. We did not receive any comments on this section and are adopting it as proposed.

Land Eligible for Acquisition (§ 879.11)

In addition to minor plain English revisions, we proposed to modify this section to incorporate the appropriate references to prior balance replacement funds received by uncertified programs under section 411(h)(1) of SMCRA and § 872.29 and remove references that restrict land acquisition to moneys that States and Indian tribes receive from the Fund because the prior balance replacement funds for uncertified States are derived from the Treasury. We are adopting these changes as proposed because we believe that uncertified States and Indian tribes can use prior balance replacement funds to acquire land as part of their obligation under section 411(h)(1)(D)(ii) to use the moneys for the purposes described in section 403 of SMCRA.

We also proposed to move the definition of ''permanent facility'' from § 870.5 to § 879.11(a)(2) and modify it. For the reasons stated in the preamble to the proposed rule, we are adopting this regulation as proposed.

Responses to Comments

We received comments from IMCC/NAAMLP and one State that this section should not apply to certified States and Indian tribes acquiring lands that are not necessary for coal reclamation work. We agree with these comments, and, as explained in the preamble to § 879.1, we made changes to that section to make this Part not applicable to certified States and Indian tribes.

Disposition of Reclaimed Land (§ 879.15)

For the reasons stated in the preamble to the proposed rule, we proposed to revise the language in existing § 879.15 to remove the provision (h) and replace it with language that would implement the requirements of §§ 885.19 and 886.20, which relate to the disposition of unused funds, particularly those that have been deobligated. After review of the comments received on this section, we are adopting it with the modifications described below.

Responses to Comments

We received comments from IMCC/NAAMLP and one State that moneys gained from the sale of property acquired for any reason should be placed in the State's or Indian tribe's own reclamation fund account rather than returned to the Federal government because paying the funds to the Federal government then awarding them back to the State is unnecessary bureaucratic paper shuffling. We consider funds received from disposal of acquired land to be one of many possible sources of unused funds in grants, so we are adopting the proposed revisions that require any proceeds received by uncertified States and Indian tribes under this section to be treated as unused funds under § 886.20. However, we deleted the sentence in the proposed rule text that required all moneys received from disposal of acquired land to be returned to us because appropriate handling of unused grant funds may vary depending on the particular circumstances. We address the general question of whether States and Indian tribes must return unexpended grant funds in our discussion of comments to § 886.20. We also deleted the reference in the proposed rule to § 885.19, about unused funds in grants to certified States and Indian tribes, because this Part no longer applies to certified States and Indian tribes.

Part 880—Mine Fire Control

Definitions (§ 880.5)

We are adding a new section to Part 880 to include the definition of the term ''Reclamation plan or State reclamation plan.'' We did not receive any comments on this section and are adopting it as proposed.

Part 882—Reclamation on Private Land

Information Collection (§ 882.10)

In this section, we discuss the Paperwork Reduction Act requirements and the information collection aspects of Part 882. We are updating this section and rewording it using plain English. We did not receive any comments on this section and are adopting the section as proposed.

Liens (§ 882.13)

Consistent with the 2006 amendments' revision of section 408(a) of SMCRA, in paragraph (a)(1) we are removing the authority for liens to be placed against property for the sole reason that the owners purchased the property after May 2, 1977. 30 U.S.C. 1238(a). We are also replacing the word ''shall'' with ''must'' in accordance with plain English. We received one comment from an environmental group in support of our changes and are adopting the section as proposed.

Part 884—State Reclamation Plans

As further explained in the preamble to the proposed rule, the only proposed changes to this Part were the addition of a definitions section and revisions to §§ 884.11 and 884.17. Consistent with section 405(h) of SMCRA, our proposed revisions to this Part 884 clarified that the requirement to maintain an approved reclamation plan continues to apply to all States and Indian tribes, regardless of certification status under section 411(a) of SMCRA. However, we specifically requested comments on how we should implement these provisions as they relate to prior balance replacement funds and certified in lieu funds. After review of the comments, we have not made any further changes to this Part. Instead, we have modified the first sentence of the definition of eligible lands and water in § 700.5 to make it clear that certification qualifies a State or Indian tribe for a State or Tribal reclamation plan. That change, along with the proposed changes that we are adopting here, will clarify how this Part relates to certified State and Indian tribal reclamation programs.

Responses to Comments

IMCC/NAAMLP and one State commented that we should require certified States or Indian tribes to have an approved reclamation plan including a commitment to address newly discovered coal issues beginning with the next grant period. They explained that the next grant request should include the information concerning the newly discovered coal issue and the approximate time to obtain clearances, design and actual mitigation of the coal issue and if available a cost estimate. These commenters also maintained that all other projects directed by the legislature of a certified State or the governing body of a certified Indian tribe, including noncoal projects, would be part of the simplified grant process and do not need to be part of the reclamation plan, which should simply state that the State or Indian tribe will undertake projects as directed by the State or Tribal legislative body. Finally, the commenters proposed that very little information should be required to be in the reclamation plans for certified States and Indian tribes on noncoal reclamation projects other than that projects will be undertaken as selected and that the specific projects would be included as part of the simplified grant process.

As we discussed in our responses to comments under Part 875, we are modifying our approach to reclamation plan requirements for certified programs. We initially proposed that in addition to the necessary commitments to address existing and newly discovered coal problems, States and Indian tribes planning to conduct noncoal reclamation programs under the umbrella of Part 875 would need to maintain, and revise as necessary, their reclamation plan. We now conclude that while certified programs still need to maintain a reclamation plan that contains the appropriate assurances for addressing coal problems in order to receive Title IV moneys, they cannot operate a noncoal reclamation program under Part 875 unless they are expending State or Tribal share funds received before October 1, 2007. However, as discussed in the preamble to Part 874, we are requiring that States and Indian tribes that expend moneys, regardless of the source, to maintain certification under section 411(a) of SMCRA do so as required by the applicable provisions of sections 401 to 410 of SMCRA and Parts 874 and 875 of this chapter. As a consequence of our revised position on the applicability of Part 875, we are not requiring any information for the reclamation plan on

activities other than maintenance of certification and a statement that the program will undertake projects in accordance with the State or Tribal legislative body.

One State commenter suggested that the reclamation plans of minimum program States should primarily reflect funding sources and what may or may not be reclaimed with these funding sources. After consideration of this comment, we have decided not to make any changes to this Part to implement this suggestion. Upon completion of rulemaking, we intend to develop notifications to be sent to the States and Indian tribes concerning reclamation plan modification, and we expect that each State and Indian tribe will review their existing reclamation plan and propose modifications. To the extent that a State or Indian tribe wishes to inform the public about the allowable uses of specific funding sources, they may incorporate the information into their modified reclamation plan.

Definitions (§ 884.5)

We are adding a new section to Part 884 to include the definition of the term ''Reclamation plan or State reclamation plan.'' We did not receive any comments on this section and are adopting it as proposed.

State Eligibility (§ 884.11)

Existing § 884.11 requires a State with eligible lands and water to submit a reclamation plan, which we cannot approve unless the State has an approved regulatory program that is consistent with other requirements of SMCRA and its implementing regulations except as discussed below. As proposed, we are finalizing several revisions to this section. First, we proposed to update the citation to the definition of ''eligible lands and water'' because we are moving that definition from § 870.5 to § 700.5. In addition, we proposed to add the appropriate reference to Indian tribes because section 405(k) of SMCRA authorizes the Navajo, Hopi, and Crow Indian tribes to have an approved reclamation plan without having an approved regulatory program. 30 U.S.C. 1235(k); *see also* 30 CFR Part 756. More substantively, for the reasons set forth in the preamble to the proposed rule, we proposed to use this section to clarify how Tennessee and Missouri are affected by the requirement to have and maintain a reclamation plan in light of the statutory direction under section 402(g)(8) of SMCRA.

Responses to Comments

We received three comments from environmental groups regarding this section. One commenter supported the statutory mandate that Tennessee and Missouri receive minimum program make up funding under section 402(g)(8)(A) in spite of the section 405(c) requirement to have an approved State regulatory program under section 503 of SMCRA. Another commenter supported the requirement that an approved reclamation plan continues to apply to all States and Indian tribes, regardless of certification status under section 411(a) of SMCRA.

We received no adverse comments on this section and adopt it as proposed. But we would like to clarify that Tennessee and Missouri are not exempt from the certification process. As with any State, they may not certify until they have completed all known coal problems, but once they have done so, we expect them to proceed with certification in accordance with § 875.13.

Content of Proposed State Reclamation Plan (§ 884.13)

We did not propose any changes to this section in our proposed rule. However, we received two comments on this section. First, IMCC/NAAMLP and one State commented that section 403 of SMCRA, with the exception of paragraph (c), does not apply to certified States and Tribes. Thus, they contend that this section should be revised to clarify that certified States and Indian tribes are subject to different policies and procedures with regard to their State reclamation plans. We agree with the commenter and are revising the final rule to reflect that States and Indian tribes are eligible to submit a reclamation plan if they have been certified under section 411(a) of SMCRA and Part 875 of this chapter. Second, we received a comment from one State that State plans should be updated to reflect any additional requirements that the State may have to meet under the final approved rules. We agree with the comment but believe the requirement is sufficiently imposed under the existing rules.

State Reclamation Plan Amendments (§ 884.15)

We did not propose any changes to this section in our proposed rule. However, we received a comment on this section. This State commenter suggested that we include the specific changes that States and Indian tribes are required to make to their reclamation plans when we notify them under § 884.15(b). The State or Indian tribe would then make those specific changes with any other changes that it believes are necessary. We agree with the comment to the extent that we are required by § 884.15 to notify each State and Indian tribe of any changes to SMCRA and AML regulations. But because each reclamation plan is tailored to specific program and regional conditions, we believe rather than for us to dictate amendments to the reclamation plans, it will be more constructive for us to work cooperatively with each State or Indian tribe to identify and revise plan amendments as necessary to comply with SMCRA and these regulations.

Other Uses by Certified States and Indian Tribes (§ 884.17)

For the reasons explained in the preamble to the proposed rule, we only proposed to update the grant application reference from § 886.15 to § 885.13 and to change the heading and wording of this section to reflect the greater discretion that certified States and Indian tribes now have to use Title IV moneys.

Responses to Comments

IMCC/NAAMLP and one State opposed our proposed retention of § 884.17(a), with provisions for a reclamation plan which includes construction of public facilities as a result of coal development. The commenters stated that imposing such requirements are in direct conflict with SMCRA which allows prior balance replacement funds to be used at the discretion of the State legislature or Tribal governing body and certified in lieu funds to be used for any purpose. They suggest that existing subparagraphs (a) and (b) should be deleted and replaced by the language proposed for the new subparagraph (b).

We agree that § 884.17(a) no longer applies to certified States and Indian tribes using prior balance replacement funds or certified in lieu funds. However, we are retaining paragraph (a) to accommodate the unexpended 402(g)(1) funds still being managed by certified States and Indian tribes. We are also retaining our proposed paragraph (b) that ''Grant applications for uses other than coal reclamation by certified States and Indian tribes may be submitted in accordance with § 885.15 of this chapter.''

Part 885—Grants to Certified States and Indian Tribes

As explained further in the preamble to the proposed rule, we are adding this new Part to provide different rules for

Title IV grants to certified States and Indian tribes.

What does this Part do? (§ 885.1)

This section specifies that this Part provides procedures for grants to certified States and Indian tribes only. We did not receive any comments on this section and are adopting it as proposed.

Definitions (§ 885.5)

We are adding this section to include definitions of the terms ''award,'' ''distribute,'' and ''reclamation plan or State reclamation plan.'' We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

Information Collection (§ 885.10)

The information collection section refers to all Title IV grants because we currently have an information collection clearance from OMB for existing Part 886, which covers all Title IV grants to all eligible certified and uncertified States and Indian tribes. We are changing Part 886 by limiting it to grants to uncertified States and Indian tribes and adding new Part 885 for grants to certified States and Indian tribes. Though the information collection burden for grants will be split between the two Parts, the total burden will remain the same. We expect to notify OMB of the change and to reflect both Parts in future clearance actions. We received no comments on this section and are adopting it as proposed.

Who is eligible for a grant? (§ 885.11)

In this section, we are stipulating that only certified States or Indian tribes with an approved reclamation plan are eligible for grants under this Part. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What can I use grant funds for? (§ 885.12)

In this section, we are describing how you, a certified State or Indian tribe, may use funds awarded in Title IV grants. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What are the maximum grant amounts? (§ 885.13)

Paragraph (a) allows you to apply for a grant of any or all available funds at any time. Paragraph (b) provides how we determine the amount of Title IV funds available to the certified State or Indian tribe. Paragraph (c) provides that current FY funds are not available for award until after we complete the annual distribution. Paragraph (d) requires us to give you current information on the amounts and types of funds that are available for award. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

How long is my grant? (§ 885.14)

In this section, we proposed that the performance period of a certified State's or Indian tribe's grant will be the period of time you request in your grant application. This proposed section did not establish any requirements for how long a grant should be or how many grants may be open at any time.

Responses to Comments

We received comments from IMCC/NAAMLP and one State agreeing that the performance period of the grant should be at the discretion of the individual States and Indian tribes. The commenters stated that we should not be concerned about the administrative burdens of managing grants which are open for very long periods, and that the length of the grants should be left to the discretion of the States and Indian tribes. IMCC/NAAMLP noted that we should be more concerned about the administrative burden of the myriad confusing codes used in the process of managing our grants. Because we received no adverse comments, we are adopting this section as proposed. Although it is beyond the scope of this rulemaking, we intend to do what we can to simplify our accounting system's codes if an opportunity arises.

How do I apply for a grant? (§ 885.15)

In this section, we proposed to provide application procedures for certified States and Indian tribes to receive Title IV grant awards. Paragraph (a) mandates that you must use the application forms and procedures that we specify. As explained in the preamble to the proposed rule, we are not specifying in these rules exactly what information we will require because the information we need is likely to evolve over time based upon changing laws and OMB requirements for Federal grants. Proposed paragraph (b) requires us to award your grant agreement as soon as practicable, but no later than 30 days after we receive your complete application. Paragraph (c) requires that if your application is not complete, we must notify you as soon as practicable of the additional information we need to process the award. Paragraph (d) requires you to agree to perform the grant in accordance with SMCRA, all applicable Federal laws, including nondiscrimination statutes, and applicable Federal regulations, including those issued by OMB and Treasury.

Responses to Comments

We received a comment from IMCC/NAAMLP and one State in response to our request for suggestions on further streamlining grant procedures. The commenters stated that the process is streamlined but noted that if we want to really streamline the process, we should change it from a grant to a direct payment. This suggestion is addressed in our discussion of comments on § 872.30. After consideration of this comment and for the same reasons stated in § 872.30, we are adopting this section as proposed.

After OSM approves my grant, what responsibilities do I have? (§ 885.16)

In this section, we proposed to describe the formal grant agreement and your operations under it. Proposed paragraph (a) required us to send you a written grant agreement when we award you a grant. Proposed paragraph (b) provided that you could subgrant functions and funds to other organizations, but that you will still be responsible for administration of the grant, including funds and reporting. Proposed paragraph (c) provided that funds become obligated when we approve the grant agreement and that you accept the grant by starting work or drawing down funds under it. In paragraph (d), we proposed to make you responsible for ensuring that all applicable laws, clearances, permits, or requirements are met before you expend funds. Proposed paragraph (e) provided that when you reclaim coal projects under our regulations in Part 874, we are jointly responsible with you for compliance with NEPA and any other laws, clearances, permits or requirements. Proposed paragraph (f) required that public facilities constructed with grant funds should use fuel other than petroleum or natural gas to the extent technologically and economically feasible. Finally, proposed paragraph (g) required that you not commit or spend more funds than we have awarded and provided that our award of a grant does not obligate us to award continuation grants or grant amendments providing more funds to cover cost overruns. This provision does not affect our annual mandatory distributions to you under section 411(h) of SMCRA.

Responses to Comments

We received comments from IMCC/NAAMLP and one State requesting clarification of the requirement in paragraph (d) that certified States or Indian tribes must ensure compliance with any applicable laws, clearances, permits or requirements for projects other than coal reclamation. The commenters state that NEPA must have a Federal nexus, and because we maintain in the preamble that we will make no Federal decision authorizing individual project expenditures, there will be no Federal involvement. They therefore assume that NEPA will not apply to projects certified States and Indian tribes do and suggest that we clarify this in the regulations.

We disagree with the commenters' assumption that NEPA compliance will not be required and we made no changes to the regulation. As we discussed in the responses to comments for § 872.31, we will not make a Federal decision authorizing individual projects other than coal reclamation, but it is possible that you will have to comply with NEPA for other Federal or State or Indian tribal requirements. We believe the regulation language appropriately assigns to the States and Indian tribes the responsibility to determine which requirements apply to individual projects other than coal reclamation they do under Part 874 and to ensure that those requirements are met before they begin projects.

How can my grant be amended? (§ 885.17)

In this section, we describe the procedures to amend an existing grant. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What audit, accounting, and administrative requirements must I meet? (§ 885.18)

In this section, we explain that you and we must follow standard procedures from OMB for grants management actions. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What happens to unused funds from my grant? (§ 885.19)

In this section, we describe how we handle any funds awarded in grants but not expended. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What must I report? (§ 885.20)

This section describes the information you must report to us about your grant. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What happens if I do not comply with applicable Federal law or the terms of my grant? (§ 885.21)

In this section, we explain that if you fail to comply with your grant award or a Federal law or regulation, we will take appropriate action. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

When and how can my grant be terminated for convenience? (§ 885.22)

This section allows either you or us to terminate the grant for convenience if that should become appropriate. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

Part 886—Reclamation Grants to Uncertified States and Indian Tribes

In this Part, we are describing the procedures that you, the uncertified State or Indian tribe, and we, OSM, use in applying, awarding, managing, and closing grants authorized by SMCRA, as revised by the 2006 amendments. Existing Part 886 covered all reclamation grants, but because we are adding a new Part 885 for grants to certified States and Indian tribes, we are now limiting this Part to grants to uncertified States and Indian tribes only. Throughout this Part, we are also changing section titles to a question format in order to make it easier to use.

What does this Part do? (§ 886.1)

In this section, we are adding ''uncertified'' to limit this Part to grants to uncertified States and Indian tribes and update the reference to ''OSM's Final Guidelines for Reclamation Programs and Projects'' from the 1980 version in the existing regulations to the current version published in 2001. 66 FR 31250. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

Authority (§ 886.3)

We proposed to delete this section because it is unnecessary and duplicative. We did not receive any comments on this proposed deletion, and, for the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

Definitions (§ 886.5)

We are adding a new section to Part 886 defining the terms ''award,'' ''distribute,'' and ''reclamation plan or State reclamation plan.'' We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

Information Collection (§ 886.10)

We are revising this paragraph using plain English and using the current format approved by OMB. It describes OMB's approval of information collections under Part 886, our use of that information, and the estimated reporting burden associated with those collections. In the future, these information collections will apply to fewer States and Indian tribes because of the new Part 885. We expect to notify OMB of the change and to reflect both Parts in future clearance actions. We received no comments on this section and are adopting it as proposed.

Who is eligible for a grant? (§ 886.11)

We are adding language to this paragraph to specify that this Part applies to grants to uncertified States and Indian tribes only. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What can I use grant funds for? (§ 886.12)

We proposed to reword paragraph (a) using plain English and move the existing provision about OMB cost principles from this paragraph to paragraph (e). In paragraph (b), we proposed to reword the provision about our reclamation grants and move the existing provision about fuels to be used in public facilities to § 886.16(f). We proposed to add a new paragraph (c) to this section requiring you to use each type of funds according to the provisions in Part 872 of this chapter. This proposed paragraph listed each type of funds that may be awarded in an AML grant to an uncertified State or Tribe and referenced the section number which governs its use. We also proposed to move existing paragraph (c) to paragraph (d), reword it using plain English, and correct a spelling error. Finally, we proposed to add paragraph (e) requiring you to use grant funds only for costs that are allowable according to OMB cost principles in Circular A–87. We did not receive any comments on this section. For the reasons explained

in the preamble to the proposed rule, we are adopting it as proposed.

What are the maximum grant amounts? (§ 886.13)

As proposed, this new section established and clarified our current grant procedures. Proposed paragraph (a) allowed you to apply for a grant of any or all funds distributed to you at any time. Proposed paragraph (b) set forth a calculation for determining the amount of funds available to your State or Tribe. Proposed paragraph (c) provided that current FY funds are not available for award until after we complete the annual distribution, which occurs after we receive fee collections for coal produced in the final quarter of the previous fiscal year. Moreover, proposed paragraph (d) required us to give you current information on the amounts and types of funds that are available for award.

Responses to Comments

We received comments from IMCC/NAAMLP and one State suggesting that we change the wording of § 886.13(a) that you may apply at any time for a grant of any or all of the program funds ''that are distributed to you'' to funds ''to which you are entitled'' because this wording is more accurate and reflects a more appropriate perspective. We agree with the commenters that ''distributed'' is not the most accurate word as funds may also become available through deobligation or carry-over. However, we disagree that ''entitled'' is a more appropriate word because the amount we can award in a grant is limited to the funds actually available for obligation. We changed the wording to funds ''which are available to you'' because that is consistent with the parallel language in § 885.13 for grants to certified States and Indian tribes.

IMCC/NAAMLP also commented that the list of all available funds in the preamble for § 886.13(b) should include minimum program make up funds and carryover funds from previous years. The regulatory text as proposed includes these types of funds, so the preamble should have explained the calculation as:

- The current annual AML distribution, including State share, Tribal share, historic coal funds, minimum program make up funds, and prior balance replacement funds;
- Plus any funds distributed in previous years that were not awarded in a grant (''carryover'');
- Plus any funds distributed in previous years that were awarded but were subsequently deobligated from a grant (''recoveries''); but
- Minus any funds already awarded to you this fiscal year.

One state commented that the information we give States and Indian tribes on funds currently available for award should be provided to the States and Indian tribes between October 1 and December 15 of each year, and on an as-needed basis. For the immediate future, we intend to provide an annual report to all States and Indian tribes on current funds available as part of the annual distribution process. Furthermore, we intend to provide additional information to each State and Indian tribe upon request throughout the year. However, we decided not to add this requirement to the regulations because we expect that future system changes will allow us to give you direct access to this information rather than relying on requests and scheduled reports.

How long will my grant be? (§ 886.14)

We proposed deleting existing § 886.14, recodifying existing § 886.13 as § 886.14, and revising it to reflect the simplified grant process that we use for AML grants. Paragraph 886.14(a) is the existing § 886.13(b) which we are rewording using plain English. Paragraph (b) establishes three years as the normal grant period. Paragraph (c) allows us to extend the grant period, typically for a year, if requested. Paragraph (d), which establishes one year as the normal period for administrative accounts, is the existing § 886.13(a) and is reworded using plain English.

We also proposed to add § 886.14(e), which would have allowed us to lengthen the time period for new or amended AML grants that contain State or Tribal share funds distributed during FY 2008, 2009, and 2010 for up to five years at your request. This paragraph incorporated the new provision in section 402(g)(1)(D) of SMCRA that requires that State share and Tribal share funds that are not expended within 3 years after the date of any grant award (except for grants during FY 2008, 2009, and 2010 to the extent not expended within 5 years), will be transferred to historic coal funds. 30 U.S.C. 1232(g)(1)(D). After consideration of the comments received on this section, we are modifying proposed paragraph (e), as described below, but are otherwise adopting this section as proposed.

Responses to Comments

We received comments from one State about the provision in paragraph (c) that we normally limit extensions of the grant performance period to one extension for up to one additional year, which was expanded in the preamble to the proposed rule with the explanation that we may allow more or longer extensions in special or unusual circumstances. The State notes that it currently has at least one construction contract longer than three years and expects to have many contracts lasting five years or longer as program funding increases. The commenter suggests we allow grant extensions on the basis of the needs of the projects so that States and Indian tribes can run their programs efficiently. We agree that we must consider the needs of the projects when we review a grant extension request. However, we also have a responsibility to encourage States and Indian tribes to use program funds efficiently and to minimize unobligated fund balances. We did not change the regulation because we believe the word ''normally'' allows us to consider project needs, as evidenced by the fact that the State currently has a longer project. Thus, we still are able to allow more or longer grant extensions in special circumstances.

We received comments from IMCC/NAAMLP and two States about paragraph (e) of our proposed rule. We proposed that, although grants are normally awarded for three years, we may award or extend grants containing State or Tribal share funds distributed in FY 2008, 2009, or 2010 for up to five years at your request. IMCC/NAAMLP and one State noted that section 402(g)(1)(D) of SMCRA states that States and Indian tribes shall have up to five years to expend State and Tribal share funds awarded in FY 2008 through 2010. These commenters suggested that we award grants with these funds for a five year period, which may be decreased to three years at your request. However, another State commented that they supported the proposed language because in many cases States and Indian tribes will be able to expend the funds within that period and the additional years would add more administrative burden. To reflect that State opinions differ on the most efficient length of these grants, we revised the rule to give individual States the flexibility to choose whether we award these grants for three or five years.

IMCC/NAAMLP also commented that section 411 of SMCRA does not establish any timelines on grant performance periods for uncertified States' or Indian tribes' use of prior balance replacement funds. The commenter concluded that ''an annual distribution payment in the full amount due under section 411 should be available as an option for grants to each State/Tribe, which in turn could be

deposited into a separate State/Tribal account and considered State/Tribal funds and used without restriction for any section 403 priority (including AMD treatment).'' We agree that section 411 does not establish any time limits but disagree with the commenter's conclusion for the reasons explained in the preamble to § 872.30.

How do I apply for a grant? (§ 886.15)

In paragraph (a), we are removing the existing provision that a preapplication is not required under certain conditions. We do not require a preapplication for AML grants. In paragraph (b), we are removing the requirement that we must prepare and sign the grant agreement because this provision was duplicated in § 886.16, which is a more appropriate location. We are rewording this entire section using plain English. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

After OSM approves my grant, what responsibilities do I have? (§ 886.16)

This section reflects the electronic processing of our grant awards and has been reworded in plain English. Paragraph (a) requires us to send you a written grant agreement. Paragraph (b) allows you to subgrant functions and funds, but you retain responsibility for them. Paragraph (c) explains how you accept an award. Paragraph (d) concerns our Authorization to Proceed and NEPA review process. Paragraph (f) relates to fuel used at public facilities, and paragraph (g) states that we are not obligated to provide any more funds to you in new or revised grants. We did not receive any comments on any of these paragraphs. For the reasons explained in the preamble to the proposed rule, we are adopting these provisions as proposed.

We are revising paragraph (e) to conform to section 403(c) of SMCRA, which now requires that OSM, acting for the Secretary, must approve proposed amendments to the AML inventory that are made by States and Indian tribes. 30 U.S.C. 1233(c). In this paragraph, we define ''amendment'' to mean any new coal problem under section 403(a) or section 403(b) of SMCRA that is added to the system after December 20, 2006. In addition, we define the term ''amendment'' to include instances where you, the State or Indian tribe, elevate a Priority 3 coal problem contained in the AML inventory to either Priority 1 or Priority 2 status. We are making these changes to be consistent with section 403(c) of SMCRA, and also section 402(g)(2), which requires us to ensure strict compliance by uncertified States and Indian tribes with the priorities described in section 403(a) of SMCRA. Problems are normally approved and entered in the AML inventory when identified, before you begin development, design and construction activities, but our approval may occur during the ATP process if the problem has not previously been approved. Non-emergency problems must be approved and entered in the AML inventory before we approve the ATP.

We do not intend for this provision to require our approval for a 30% AMD set-aside, or noncoal work conducted by uncertified States under section 409 of SMCRA, or for salaries or administrative costs of the AML program. With the exception of those instances where Priority 3 AML inventory problems are being elevated to a Priority 1 or Priority 2, we also do not intend for this provision to require our approval for subsequent revisions to coal problems once they have been included in the AML inventory. This provision does not change existing procedures where States and Indian tribes routinely update the AML inventory at the time projects are funded or completed.

Under § 886.16(e)(1), we provide that our approval of an emergency project under section 410 of SMCRA, which is our ATP for an emergency project, also constitutes our approval to place the coal problems being addressed by the emergency into the AML inventory. We are establishing this process for emergency projects because our declaration of an emergency confirms that the problem is a danger to the public health, safety, or general welfare under section 410(a)(1) of SMCRA.

In paragraph (e)(2), we are adding an approval requirement consistent with that in section 403(c) so that you cannot use funds for project development, design, or construction of new coal reclamation projects before we have approved the problems for inclusion in the AML inventory. We do not intend this requirement to limit your ability to use funds to assess a problem and to determine its eligibility and feasibility for reclamation. This paragraph applies only to coal reclamation problems added to the AML inventory after December 20, 2006. We believe this requirement helps fulfill our responsibility under section 402(g)(2) to ensure strict compliance by uncertified States and Indian tribes with the priorities described in section 403(a) of SMCRA. 30 U.S.C. 1232(g)(2). Requiring AML coal problems to be in the AML inventory prior to the development of designs promotes coordination between us and uncertified States and Indian tribes early in the planning process. This early coordination will help eliminate the potential for agency conflict after property owners have been promised reclamation and substantial design funding has been spent. Finally, requiring AML coal problems to be in the AML inventory before the development of designs will spread out our review workload and potentially expedite later project ATP reviews because field staff will already be familiar with the proposed project area.

Responses to Comments

We received multiple comments about paragraph (e) and its subparagraphs relating to the AML inventory. IMCC/NAAMLP and one State commented that the term ''coal problem'' in paragraph (e) should be clarified. They asked if this phrase was synonymous with an AML feature or with additional units. They suggested it would be helpful to add to the preamble examples of the types of changes which would and would not constitute amendments and require our approval. We agree with the commenters that it could be helpful to discuss these questions here, but we note that we make decisions on individual problem sites case by case. Generally, we consider a coal problem to be anything on lands eligible under section 404 of SMCRA and that meets the priority requirements of section 403(a), and we consider the addition of another AML feature or units to the AML inventory to be a new coal problem requiring our approval. The examples provided by the commenters of adding a new portal or other problem type in the same location as an existing dangerous highwall, or increasing the length of an existing dangerous highwall to include a previously undocumented segment as a Priority 3 highwall, would likely constitute amendments. However, the commenters' other example of increasing the length of an existing dangerous highwall to include a previously undocumented segment likely would not constitute an amendment.

One State noted that requiring AML inventory entry and approval for new problems would prohibit or slow the reclamation of problems identified during the actual reclamation construction. We do not intend this provision to require that you enter these newly discovered problems into the AML inventory if they are found during reclamation. After reclamation begins, any newly discovered coal problems on the site would not be entered into the AML inventory until after reclamation is

completed when you report the problems which have been reclaimed.

IMCC/NAAMLP and one State commented that this definition of amendment is inconsistent with the definition we provided in Change Notice AML 1–2, which defined ''amendment'' as a new Problem Area, and that this change significantly increases the administrative burden. We agree that the directive, issued shortly after enactment of the 2006 amendments, contained a narrower definition, but we now believe that our definition in this rule is more appropriate because it better enables us to fulfill our responsibility under section 402(g)(2) to ensure strict compliance by uncertified States and Indian tribes with the priorities described in section 403(a) of SMCRA.

IMCC/NAAMLP and one State suggested three changes to reduce the number of required inventory approval actions, and the administrative burden that would come with the regulation as proposed:

- Make our new definition effective on the effective date of this rule rather than December 20, 2006, so States don't have to go back and re-process all the inventory changes between these two dates.
- Add a dollar threshold provision, so States don't have to request approval for changes made simply for nominal additional costs.
- Do not consider the addition of Priority 3 problems to be an amendment to the AML inventory.

We appreciate these comments and are sensitive to the additional administrative burdens this statutory requirement may impose on uncertified States and Indian tribes, but we do not agree with the recommendations and have not changed the regulation. Generally, after reviewing our process for our approval, we do not believe this section will be unduly burdensome. Therefore, the measures suggested by the commenters are not necessary. In addition, delaying the effective date is not an option because the 2006 amendments became effective on December 20, 2006, and using this date recognizes that, as required by the law, our regulation must apply to the entire period since enactment of the 2006 amendments. We are not adopting the suggestion for a dollar threshold at this time because we believe that we need more experience with this process to be able to determine if we should accept this proposal. Such a threshold could be the subject of future rulemaking. Finally, we believe that if you plan to expend funds on a problem, even if it is Priority 3, it must be in the AML inventory.

IMCC/NAAMLP and one State commented that AML inventory requirements should not apply to water supply projects under section 403(b) of SMCRA or to Priority 3 problems because section 403(c) of SMCRA only requires the AML inventory to include eligible lands and waters which meet the priorities in 403(a)(1) and (a)(2). We agree that SMCRA limits the AML inventory to Priority 1 and 2 coal problems. However, we have for many years required you to enter all types of projects into the AML inventory, including water supply and priority 3 problems, before you expend AML funds on them. This information needs to be in the AML inventory so that we can track and report on projects funded and completed with AML funds. We therefore disagree with this comment and did not change the regulation.

IMCC/NAAMLP and three States also suggested that we delete the provisions in paragraphs (e) and (e)(2) that require problems to be entered into the AML inventory before you can spend AML funds on project development and design. The commenters asserted that this requirement is overly burdensome and could waste time if a project turns out not to be feasible. One State commented that some project development and design work is necessary to assess a problem and identify its eligibility and feasibility for reclamation. Another State notes that there are many instances when programs can receive substantial savings by doing design work prior to or in conjunction with a problem being entered into the AML inventory. These commenters conclude that our historic requirement that projects be entered into the AML inventory prior to NEPA processing and project construction has proven to be efficient and effective and there is no need to change it.

After consideration of these comments, we have concluded that significant amounts of AML funds should not be spent on a project until we have approved its entry into the AML inventory. Thus, we are adopting the regulation as proposed. However, we recognize that programs must expend funds to assess a coal problem, to determine whether it is eligible and feasible for reclamation, and to collect the information needed to enter the problem into the AML inventory. We do not believe that we need to add specific language to the regulations for you to use AML funds for project assessment.

How can my grant be amended? (§ 886.17)

We are moving the requirement that grant amendment procedures must follow the Grants Common Rule from the last sentence of existing paragraph (a) to paragraph (c). In paragraph (b), we are deleting the second sentence, with specific conditions which require an advance amendment, because we believe it is unnecessary. We are renumbering existing paragraph (c) to (d). We are also rewording this section using plain English. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What audit and administrative requirements must I meet? (§ 886.18)

We are moving and dividing existing § 886.18 into §§ 886.20, 886.23, 886.24, 886.25, and 886.26. New § 886.18 is a combination of two short existing sections, §§ 886.19 and 886.20. Paragraph (a) contains the audit requirement from existing § 886.19, which we are updating by deleting the reference to the General Accounting Office and adding one to OMB Circular A–133. Paragraph (b) comes from the existing § 886.20 on administrative procedures. We are deleting the existing requirement that you use our property inventory form because the form is now optional. In addition, this section now refers to the Grants Common Rule, which provides sufficient information on property management requirements. We will address specific requirements and forms in our directives. We are also rewording this section using plain English. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

How must I account for grant funds? (§ 886.19)

As explained above, we are moving existing § 886.19 to § 886.18(a). We are moving the content of existing § 886.22, ''Financial management,'' to this section and rewording it using plain English. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What happens to unused funds from my grant? (§ 886.20)

As proposed, we are moving existing § 886.20 to § 886.18(b) and adding a new section here to clarify how we treat unused grant funds. However, portions of this section are based on existing § 886.18(a)(2) and on the fourth and fifth

sentences of existing §§ 872.11(b)(1) and (b)(2). Grant funds may be left unexpended at the end of a grant due to changes occurring during the grant period such as increases or decreases in project scope or reclamation costs. Changes may also occur after the end of a grant period that reduce the total funds expended under the grant, such as the receipt of funds from the sale of property. We also consider unawarded funds, moneys which have been distributed to a State or Indian tribe but not awarded in a grant, as unused funds.

In paragraph (a), we explain that we deobligate all unexpended funds from a completed grant agreement in order to close it out and describe how we treat unexpended funds. Paragraph (a)(1) is based on existing § 886.18(a)(2), which allows us to reduce your grant if you fail to obligate funds within three years of the grant award. We are modifying this provision to address section 402(g)(1)(D) of SMCRA, as revised in the 2006 amendments, which mandates that State and Tribal share funds that are not spent within 3 years, or 5 years for funds distributed in FY 2008, 2009, or 2010, must be made available for expenditure as historic coal funds. 30 U.S.C. 1232(g)(1)(D). Our paragraph (a)(1) requires us to transfer any State share funds or Tribal share funds that uncertified States and Indian tribes do not expend within 3 years, or 5 years for FY 2008, 2009, or 2010 funds, from that State or Indian tribe to historic coal funds. We distribute transferred funds to uncertified States and Indian tribes at the next annual distribution using the prescribed historic coal formula described in § 872.22. In paragraph (a)(2), we explain that we hold any unused Federal expense funds, such as State emergency program funds, for distribution to any State or Indian tribe that needs them for the specific activity for which Congress appropriated the funds. Finally, in paragraph (3) we specify that unused funds of all other types are made available for inclusion in a grant to the State or Indian tribe for which we originally distributed the funds.

Paragraph (b) provides that we will transfer any State or Tribal share funds that have not been awarded in a grant within three years of the date we distributed them to you, or five years for funds distributed in FY 2008, 2009, or 2010, to historic coal funds in the same way that we transfer unused funds under paragraph (a)(1). We are adding this paragraph because we believe that funds that have not been requested and approved for award within 3 or 5 years of the distribution date are unneeded and should be transferred to other States and Indian tribes that can use them more efficiently. After consideration of the comments, we are adopting this section as proposed.

Responses to Comments

IMCC/NAAMLP commented that § 886.20(a) should say we ''may'' deobligate any unexpended funds after your grant is completed, rather than ''will.'' They say that deobligating the funds is a discretionary function rather than a statutory requirement. Moreover, they asserted that Treasury payments should not be subject to deobligation, and we should ensure that funds do not revert to Treasury. They concluded that if we work together with the States and Indian tribes to monitor the situation closely, provide maximum flexibility in designing payment protocols, and allow appropriate grant periods and applicable requirements, there should be no need for payments to revert to Treasury.

We respond that if Treasury funds are deobligated, they will not revert to Treasury because section 402(i)(4) of SMCRA specifies that Treasury funds remain available until expended. Similarly, moneys from the Fund, except for State and Tribal share and Federal expenses as provided in paragraphs (a)(1) and (a)(2), remain available to you. Paragraph (a)(3), as proposed, requires us to reaward any deobligated historic coal, minimum program make up or prior balance replacement funds to the same State or Indian tribe in another grant on request. So you will not lose access to these funds. We enthusiastically endorse the position that we work closely with you to ensure the most efficient use of grant funds and avoid deobligations.

We received a comment from IMCC/NAAMLP and one State on § 879.15 which we discuss here because it relates to this section and to the procedures that we must use for Federal funds. The commenters asserted that paying unused funds back to the Federal government then awarding them back to the State is unnecessary bureaucratic paper shuffling. We recognize that those controls impose additional processing costs. Our financial systems, however, are designed with internal controls to ensure that the systems function properly and to protect Federal funds against waste, fraud and abuse. If your grant's performance period has ended and you have unexpended funds, it is not an allowable cost to obligate more funds under the expired grant. In order for you to use the funds we must reaward them into a grant with a current performance period, and we cannot reaward the funds until we have deobligated them from the expired grant. We will work with you to minimize the needed paperwork and simplify the processing, possibly through offsetting cash drawdown actions.

One State supported our proposal in paragraph (a)(1) to transfer any State share or Tribal share funds which you do not expend within 3 years, or 5 years for FY 2008, 2009, or 2010 funds, to historic coal funds because they need more funding for high priority coal reclamation. The State also supported our proposal in paragraph (a)(2) that we hold and redistribute unused Federal expense funds because almost every year some State needs additional AML emergency funding and redistributing unused funds allows us to meet those needs. We appreciate these comments, and the final regulation includes these provisions as proposed.

What must I report? (§ 886.21)

We are deleting existing § 886.21 because that topic is addressed in § 886.12. We transferred existing § 886.23 in an effort to group related topics in a more logical manner. The existing paragraph (a) in § 886.23 required you to submit to us every year the reporting forms that we specified. We are replacing this paragraph with a requirement that each year you report to us the program performance and financial information that we specify. We are not establishing a uniform method for you to submit this information because allowing you to use various forms, formats, and methods to submit your annual reports will make it less of a burden on you.

The existing paragraph (b) combines two different reporting requirements by requiring you to submit an OSM–76 inventory form upon project completion and any other closeout reports we specify. We are clarifying this requirement by separating the AML inventory and grant closeout requirements. Paragraph (b) describes the reports you must provide us upon completion of each grant. These are final performance and financial reports, as well as property and any other reports that we specify. Paragraph (c) requires you to update the AML inventory upon completing each reclamation project. We are removing this item from the grant closeout requirements to emphasize that you must update the AML inventory as you complete each project rather than waiting until the grant is completed. After reviewing the comment, we decided to adopt this provision as proposed.

Responses to Comments

We received a comment from one State which disagrees with our conclusion in the preamble for paragraph (a) of this section that allowing a variety of forms and formats for reporting program and financial information will make it less of a burden for you. They believe there needs to be consistency in reporting because program and financial information sent to OSM from 26 States and Indian tribes using different forms, formats, or methods is not useful. We did not change the language of this section because we believe the requirement to report the ''performance and financial information that we specify,'' would allow us to standardize reporting forms if we were to decide that was appropriate. At this time, we believe our current position, originally based on recommendations from grantee staff, provides usable data which we standardize into our annual oversight reports, but we will continue to seek input from you on the most efficient ways to meet our information needs.

The State also expressed support of our proposal in paragraph (c) that you must update the AML inventory as each project is completed rather than waiting until the grant is completed. We agree with this commenter and did not change this provision in the final regulation.

What records must I maintain? (§ 886.22)

As proposed, this section covers all records related to your grant, including programmatic and accounting information. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What actions can OSM take if I do not comply with the terms of my grant? (§ 886.23)

As proposed, this section described circumstances when your grant could be subject to remedial actions or termination. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What procedures will OSM follow to reduce, suspend, or terminate my grant? (§ 886.24)

As proposed, this section described the procedures we would use to reduce, suspend, or terminate your grant. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

How can I appeal a decision to reduce, suspend, or terminate my grant? (§ 886.25)

As proposed, this section provided your administrative appeal rights if your grant is reduced, suspended, or terminated. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

When and how can my grant be terminated for convenience? (§ 886.26)

As proposed, this section describes the much simpler procedures for terminating a grant for convenience. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

What special procedures apply to Indian lands not subject to an approved tribal reclamation program? (§ 886.27)

As proposed this section describes special procedures applying to Indian lands not subject to an approved Tribal reclamation program. We did not receive any comments on this section. For the reasons explained in the preamble to the proposed rule, we are adopting it as proposed.

Part 887—Subsidence Insurance Program Grants

We proposed to make changes to this Part to add references to Indian tribes to clarify that they may choose to establish a subsidence insurance program under the same rules as States. We received no comments on our proposed changes to this part, and are adopting them as proposed.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is considered an ''economically significant regulatory action'' under the criteria of section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget. Based on the criteria for an ''economically significant regulatory action'' found in section 3(f), we have made a determination that:

a. The rule raises novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in the Executive Order.

b. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The rule will not materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. However, as discussed below, grants to States and Indian tribes have increased, as required by the provisions of the 2006 amendments.

d. The rule 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. The rule will align our regulations with statutory provisions contained in the 2006 amendments pertaining to the collection of reclamation fees and the distribution of money from the Fund and Treasury in the form of mandatory grants to States and Indian tribes. The provisions of the 2006 amendments have an annual effect on the economy of $100 million or more. Coal operators subject to the extension of the fee and the new rates received actual notice before they became effective. These new fees have already been collected for the quarters beginning October 1, 2007 and ending September 30, 2008. In addition, we have already distributed approximately $274 million in FY 2008 mandatory grants to the States and Indian tribes.

Assessment of Potential Costs and Benefits

Executive Order 12866 requires OSM to conduct an assessment of the potential costs and benefits of any regulatory action deemed significant under Executive Order 12866. OMB Circular A–4 provides guidance to Federal agencies on the development of a regulatory analysis. It requires us to identify a baseline because benefits and costs are defined in comparison with a clearly stated alternative. OMB has stated that ''this normally will be a 'no action' baseline: what the world will be like if the proposed rule is not adopted.'' OMB Circular A–4, Regulatory Analysis (Sept. 17, 2003). As previously stated, the new fee rates have gone into effect and are being paid and the grant distributions mandated by the 2006 amendments have been made for FY 2008. These statutory changes are already in effect. For comparison purposes, OSM will use as the ''no action baseline'' the fee rates paid by operators and grant distribution requirements for States and Indian tribes that would have been in effect if the 2006 amendments had not been signed into law. We will refer to this as the ''old law'' or the ''no action alternative.'' The second alternative we will analyze consists of the requirements pertaining to fee collections and grant distributions to States and Indian tribes established by the 2006 amendments. We will refer to

this as the 2006 amendments alternative.

The basic difference between the two alternatives is the cost to the coal operators and the Treasury and the resulting benefits quantified in terms of the acres of environmental problems that can be reclaimed. Under the old law, the fee rates that would have been in effect on October 1, 2007, would have been the rates established using the formula specified in our existing regulations at 30 CFR 870.13(b). Those fee rates would be paid for approximately 13–14 years. They would be established before the start of each fiscal year and would be based on estimates of coal production and the amount of the interest transferred to the CBF for that year. The fees for each year would have been structured to replace the amount of money transferred to the CBF at the beginning of the year (generally the amount of interest that the Fund earns that year, subject to a $70 million cap, with corrections for adjustments to previous transfers and differences between estimated and actual coal production in prior years). The purpose of the fee was to reimburse the Fund for the interest transferred to the CBF. Under the old law alternative, the money in the Fund would have been exhausted in approximately 13–14 years—after which time, no more money would have been available for reclamation projects and no interest would have been transferred to the CBF.

Under the old law, grants would have been made based on the amount of money appropriated each year by Congress. Uncertified States and Indian tribes would be required to use the money for AML reclamation projects. Certified States and Indian tribes would be required to use the money for noncoal reclamation as specified in existing § 875.15. Under existing § 875.15, certified States and Indian tribes could use any money that they received for reclamation projects involving the restoration of lands and water adversely affected by past mineral mining, projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices), and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

As explained in the preamble, the 2006 amendments both extended the reclamation fee for 14 years and provided for a two-step reduction in the amount of the fee rate from the rate originally established in 1977. The statutory fee rates were reduced by 10 percent from the levels established in 1977, for the period from October 1, 2007, through September 30, 2012. The fee rates will again be reduced by another 10 percent from the levels established in 1977 for the period from October 1, 2012, through September 30, 2021. The fee rates under 2006 amendments are specified in the rule at § 870.13. The fee rates for 2007–2012 range from 31.5 cents per ton down to 9 cents per ton.

While the rates established by the 2006 amendments are lower than the 1977 rates, they are higher than the rates that would have been established under existing § 870.13(b), which would have gone into effect had the 2006 amendments not been enacted into law. Fee rates under existing § 870.13(b) for years 2007–2012 were estimated to range as follow:

Fiscal year	Fees for non-lignite coal produced by surface methods (cents per short ton)	Fees for non-lignite coal produced by underground methods (cents per short ton)	Fees for lignite coal (cents per short ton)
2007	8.5	3.7	2.4
2008	8.5	3.6	2.4
2009	7.8	3.4	2.2
2010	7.3	3.1	2.1
2011	2.6	1.1	0.7
2012	2.0	0.9	0.6

In addition to the fee rate extension, the 2006 amendments also require that:

1. Once fully phased in, the majority of the distributions to States and Indian tribes of moneys annually collected from the reclamation fee are made outside of the appropriations process. 30 U.S.C. 1231(d).

2. All States and Indian tribes with approved reclamation programs are paid amounts equal to their portion of the unappropriated prior balance of State and Tribal share funds as of September 30, 2007. 30 U.S.C. 1240a(h)(1)(A). These payments are mandatory distributions from Treasury funds and are made in seven equal annual installments that began in FY 2008. 30 U.S.C. 1232(i)(2) and 1240a(h)(1)(C). Uncertified States and Indian tribes must use these prior balance replacement funds for the purposes of section 403 of SMCRA. 30 U.S.C. 1240a(h)(1)(D)(ii). Certified States and Indian tribes must use these payments for purposes established by their State legislature or Tribal council, ''with priority given for addressing the impacts of mineral development.'' 30 U.S.C. 1240a(h)(1)(D)(i).

3. Subject to certain limitations, to the extent premium payments and other revenue sources do not meet the financial needs of the UMWA health care plans, all unappropriated past interest earnings and all future interest earned by the Fund must be transferred to these plans, together with any remaining unappropriated balance in the RAMP allocation, which the 2006 amendments repealed. 30 U.S.C. 1232(h). In addition, the three UMWA health care plans are eligible to receive Treasury transfers to cover any remaining deficit, subject to certain limitations. 30 U.S.C. 1232(i).

In general, under the old law and the 2006 amendments, the type of coal reclamation problems that would be remediated, mainly by the uncertified States and Indian tribes, would be the most serious AML problems (Priority 1 and Priority 2 also referred to as ''high priority'' problems). High priority AML problems include:

- Clogged Streams;
- Clogged Stream Lands;
- Dangerous Piles or Embankments;
- Dangerous Highwalls;
- Dangerous Impoundments;
- Dangerous Slides;
- Hazardous or Explosive Gases;
- Hazardous Equipment or Facilities;
- Hazardous Recreational Water Bodies;
- Industrial or Residential Waste;

- Portals;
- Polluted Water: Agricultural/Industrial;
- Polluted Water: Human Consumption;
- Subsidence-Prone Areas;
- Surface Burning;
- Underground Mine Fires; and
- Vertical Openings.

Under the old law, certified States and Indian tribes were required to use grant money for noncoal reclamation. Under the 2006 amendments, certified States and Indian tribes must use prior balance replacement funds for purposes established by the State legislature or Tribal council, with priority given for addressing the impacts of mineral development. Exactly what these purposes will be is undetermined at this time.

In the rule, certified States and Indian tribes are allowed to use certified in lieu funds for any purpose they deem appropriate. We assume that States and Indian tribes use the money for the public good but the wide discretion given to the States and Indian tribes makes any meaningful discussion of the effects too speculative.

Summary of Costs and Benefits

The following two tables summarize the costs and benefits under the no action alternative and the 2006 amendments alternative.

Table 1 indicates the estimated costs associated with each alternative. Under the no action alternative, the cost to operators is approximately $612 million. This sum consists of the fees that operators would pay under our current regulations at § 870.13(b). Under the 2006 amendments alternative, the estimated cost is approximately $6.9 billion. This sum consists of: (1) The fees operators pay under the rates established by the 2006 amendments; (2) money from the general fund of the Treasury that we are required to transfer to certified and uncertified States and Indian tribes for their share of the prior unappropriated balance; and (3) Treasury funds that are transferred to certified States and Tribes as in lieu funds equal to 50% of fees collected on coal produced in their State or on Tribal lands. This sum does not include money that we pay to the UMWA under the 2006 amendments because those payments are not addressed in this rule.

TABLE 1—ESTIMATED COSTS ASSOCIATED WITH THE ALTERNATIVES FROM OCTOBER 1, 2007–SEPTEMBER 30, 2021

Alternatives	A	B	C	D
	Estimated costs to operators for fees paid under the old law from October 1, 2007 thru September 30, 2021 (the 1977 fee rates at § 870.13(a) terminate on September 30, 2007; new fee rates at § 870.13(b) sufficient to replenish interest transferred to CBF take effect)	Estimated costs to operators for fees paid under the 2006 amendments from October 1, 2007 thru September 30, 2021	Estimated costs to the Federal Treasury (for prior balance replacement funds and certified in lieu funds)	Estimated total costs
(1) No action or old law	$612 million			$612 million.
(2) 2006 Amendments		$4.1 billion	$2.8 billion	$6.9 billion.

Table 2 indicates the estimated benefits expressed in acres of land reclaimed. Column A indicates the estimated total amount of money available for reclamation under each alternative. Column B indicates acres of high priority sites that need to be reclaimed under each alternative. Column C indicates the estimated acres of high priority sites that can be reclaimed with the funds available under each alternative. In Column D, D1 indicates the estimated acres of high priority coal sites that would not be reclaimed under the no action alternative because of insufficient funds. D2 indicates the estimated additional reclamation that could be achieved under the 2006 amendments. For uncertified States and Indian tribes, the additional reclamation would be at Priority 1 and 2 sites, Priority 3 sites, and noncoal reclamation. For certified States and Indian tribes, the reclamation could be at newly discovered Priority 1, 2, and 3 coal sites, and noncoal reclamation. However, as previously discussed, under the 2006 amendments, certified States and Indian tribes may use prior balance replacement funds for purposes established by the State legislature or Tribal council, with priority given for addressing the impacts of mineral development; we are providing in the rule that they may use certified in lieu funds for any purpose. Therefore, the $1.981 billion dollars that will come from Treasury funds may be used for coal and noncoal reclamation but it also may be used for other undetermined purposes. We assume that certified States and Indian tribes use the money for the public good, as they have in the past, but the wide discretion given to the States and Indian tribes make any meaningful discussion of the actual benefits speculative.

TABLE 2—ESTIMATED BENEFITS EXPRESSED IN ACRES OF LAND RECLAIMED

Alternatives	A	B	C	D
	Amount of money estimated to be available for reclamation ($ rounded in millions)	P1 and P2 sites Acres identified with high priority environmental problems that need reclamation	Estimated number of acres of identified problems reclaimed with available funds	Estimated number of acres of land unreclaimed (D1) or additional reclamation possible after P1 and P2 sites completed (D2)
(1) No Action or Old Law	$2,110.4	210,379	157,937	(52,442).

TABLE 2—ESTIMATED BENEFITS EXPRESSED IN ACRES OF LAND RECLAIMED—Continued

Alternatives	A Amount of money estimated to be available for reclamation ($ rounded in millions)	B P1 and P2 sites Acres identified with high priority environmental problems that need reclamation	C Estimated number of acres of identified problems reclaimed with available funds	D Estimated number of acres of land unreclaimed (D1) or additional reclamation possible after P1 and P2 sites completed (D2)
1977 Fee Rates (§ 870.13(a)) terminate on September 30, 2007; new fee rates. (§ 870.13(b)) sufficient to replenish interest transferred to CBF take effect.	(Source: collections prior to September 30, 2007 plus interest earned on prior collections).			
(2) 2006 Amendments	$6,027.6	210,379	210,379	210,257
Uncertified States and Indian tribes	$4,045.7 (Source: prior balance replacement funds, 50% State share, 30% historic coal funds and 3% estimated minimum program funds).	208,131	208,131	60,284.
Certified States and Indian tribes	$1,981.9 (Source: prior balance replacement funds and certified in lieu funds).	2,248	2,248	149,973. (Under 2006 amendments, funds are not committed to reclamation).

Note: For activity beyond FY 2023, an additional estimated amount available for reclamation of $1.6 billion is projected to be used to reclaim an additional 106,000 acres.

As can be seen from the above tables, under the no action alternative the cost to industry would be approximately $612 million, but there would be approximately 52,442 acres of Priority 1 and Priority 2 coal sites left unreclaimed. Under the 2006 amendments alternative, the cost to industry would be substantially greater, approximately $4.1 billion, but that amount in combination with the $2.8 billion in Treasury funds would be sufficient to reclaim all Priority 1 and Priority 2 sites. In addition, there would be additional funds remaining which could be used for reclamation at Priority 3 sites, for noncoal reclamation projects, construction of public facilities, and for other purposes deemed appropriate by the State or Indian tribe. It should be noted that this analysis assumes that all funds are used for high priority coal reclamation.

In addition to the quantifiable benefits expressed in acres reclaimed, unquantifiable benefits also result. These include:

- Reduction or elimination in health and safety problems, which would benefit nearby residents;
- Reduction or elimination of adverse environmental effects such as acid mine drainage and erosion and sedimentation;
- Improved habitat for fish and wildlife;
- Increased employment opportunities for those employed by the reclamation projects;
- An increase in the number of potential land uses at these sites and a reduction or elimination of hazardous features that are often attractive but dangerous to outdoor recreationists; and
- General increase in the quality of life in nearby communities and adjacent property values.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that a Federal agency, when developing proposed and final regulations, consider the impact of its regulations on small entities. If a rule is expected to have a significant economic impact on a substantial number of small entities, the agency must prepare an initial regulatory flexibility analysis. If a rule is not expected to have a significant economic impact on a substantial number of small entities the agency is not required to perform an initial regulatory flexibility analysis and may certify in the rule that the rule would not have a significant economic impact on a substantial number of small entities under the RFA.

The Small Business Administration size standards for small businesses in the coal mining industry are established by the North American Industry Classification System Codes (NAICS). NAICS classifies the ''coal mining'' industry under Code 2121; subsets of this sector include ''Bituminous Coal and Lignite Surface Mining'' code 212111; ''Bituminous Coal Underground Mining'' code 212112; and ''Anthracite Mining'' code 212113. The size standards established for each of these categories is 500 employees or less for each business concern and associated affiliates. Data available from the U.S. Census Bureau and from the Mine Safety and Health Administration indicates that over 90 percent of those engaged in coal mining operations are considered small entities.

As previously stated, it is the 2006 amendments that require coal operators to pay reclamation fees. Those subject to the fees received individual letters informing them of the fee and the extension of time during which the fee must be paid. Over $200 million has already been collected. The rule merely reflects the extension of our statutory authority to collect reclamation fees for an additional fourteen years. Based on these facts, the Department of the Interior certifies that the rule would not have a significant economic impact on a substantial number of small entities under the RFA.

The administrative and procedural provisions in the rule are not expected to have an adverse economic impact on the regulated industry including small entities. The increased grant funding to States and Indian tribes required by the 2006 amendments is expected to provide increased contracting opportunities for firms, including small entities, to do reclamation-related work. Further, the rule is not expected to produce adverse effects on competition,

employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

The rule is considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act for the following reasons.

a. As discussed above under the heading *Executive Order 12866—Regulatory Planning and Review*, the provisions of the 2006 amendments have an annual effect on the economy of $100 million or more.

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

c. The rule would 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 for the reasons stated above.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. Contrary to the view of one commenter, nothing contained in this rule is a governmental action capable of interference with constitutionally protected property rights. Thus, a takings implication assessment is not required.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

We have reviewed the rule under the criteria specified in Executive Order 13132 and have determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rule does not preempt State law, it does not impose substantial direct compliance costs on State and local governments, and 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 required by section 6 of the executive order, we consulted with representatives of States and Indian tribes early in the process of developing the rule. In January, February, and May 2007, we met with representatives of States and Indian tribes with approved reclamation programs at meetings hosted by IMCC and NAAMLP to notify the States and Indian tribes of the 2006 amendments' changes to SMCRA and to seek their input on the amendments. IMCC and NAAMLP subsequently submitted joint written comments on specific provisions of the amendments. We considered these comments in developing the proposed rule. The consultations and concerns that were expressed are discussed above in ''II. Outreach, Guidance, and Comments.'' Based on input the Department received after issuance of the Solicitor's M-Opinion, one or more States may object to several provisions in these rules, but we believe that the 2006 amendments and other applicable statutes mandate adoption of these particular provisions. We do not have the option of adopting any other interpretation. As discussed above in ''IIIA. General Comments,'' we received comments on the proposed rule from 9 States and 1 Indian tribe as well as joint comments from IMCC/NAAMLP. We have considered all these comments in developing this final rule.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires that Federal agencies consult with potentially affected Indian Tribal governments before taking any actions (including promulgation of regulations) that may 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. In addition, section 5 of that order requires the agency to prepare a Tribal summary impact statement for regulations that impose compliance costs on Tribal governments or that preempt Tribal law. The summary statement must be included in the preamble to the final rule.

We have determined that this rule will have some effect on the three Indian tribes with AML programs, with changes in annual funding and increased discretion over the use of funds, but that this effect is not substantial. The rule does not impose compliance costs on Tribal governments or preempt Tribal law. Indian Tribal representatives were invited to informal meetings in January, February, and May of 2007, in which OSM met with State and Indian Tribal reclamation programs to get input on the 2006 amendments. Indian Tribal representatives are members of NAAMLP and had the opportunity to participate in the IMCC/NAAMLP comments on draft regulations in 2007 and on the proposed rule. One Indian tribe commented on the proposed rule, and we considered their comments in developing this final rule.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The revisions would not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

OSM sought comments on the collection of information contained in the AML Program proposed rule for modified Part 785. No comments were received from the public regarding the collection of information. The collection of information contained in this final rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control number 1029–0040. The expiration date for this collection in 30 CFR Part 785 is November 30, 2011. This collection estimates that the applicant burden is 5.3 hours, and the burden for State regulatory authorities is 3.4 hours per response. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You should direct comments regarding the burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, OSM,

Room 202 SIB, 1951 Constitution Ave., NW., Washington, DC 20240.

National Environmental Policy Act

OSM has determined that these regulations are categorically excluded from the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C), pursuant to Department Manual 516 DM 2.3A(2), section 1.10 of 516 DM 2, Appendix 1. In addition, we have determined that none of the ''extraordinary circumstances'' exceptions to the categorical exclusion applies.

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).

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 870

Abandoned Mine Reclamation Fund, Reclamation fees; Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 872

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Surface mining, Underground mining.

30 CFR Part 873

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Surface mining, Underground mining.

30 CFR Part 874

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 875

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 876

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 879

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Surface mining, Underground mining.

30 CFR Part 880

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 882

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 884

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 885

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 886

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 887

Abandoned Mine Reclamation Fund, Indian lands, Reclamation fees, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: October 14, 2008.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ For the reasons given in the preamble, we are amending 30 Chapter VII as set forth below:

PART 700—GENERAL

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

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Amend § 700.5, by revising the definition for the term ''Fund'' and adding definitions for the terms ''AML,'' ''AML inventory,'' ''Eligible lands and water,'' ''Emergency,'' ''Expended,'' ''Extreme danger,'' ''Left or abandoned in either an unreclaimed or inadequately reclaimed condition,'' ''Project,'' ''Reclamation activity,'' and ''Reclamation program'' in alphabetical order to read as follows:

§ 700.5 Definitions.

* * * * *

AML means abandoned mine land(s).

AML inventory means OSM's listing of abandoned mine land problems eligible to be reclaimed using moneys from the Abandoned Mine Reclamation Fund or the Treasury as appropriate.

* * * * *

Eligible lands and water means lands and water eligible for expenditures under title IV of SMCRA and this chapter. Eligible lands and water for reclamation or drainage abatement expenditures under the Abandoned Mine Land program contained in this chapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. However, lands and water damaged by coal mining operations after that date and on or before November 5, 1990, may also be eligible for reclamation if they meet the

requirements specified in § 874.12(d) and (e) of this chapter. Following certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified in § 875.14 of this chapter. For additional eligibility requirements for water projects, see § 874.14 of this chapter, and for lands affected by remining operations, see section 404 of SMCRA.

Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

* * * * *

Expended means that moneys have been obligated, encumbered, or committed by contract by the State, Tribe, or us for work to be accomplished or services to be rendered.

Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

* * * * *

Fund means the Abandoned Mine Reclamation Fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by section 401 of SMCRA.

* * * * *

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means, for Abandoned Mine Land programs, lands and water:

(1) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977, and November 5, 1990, as authorized pursuant to section 402(g)(4) of SMCRA, and on which all mining has ceased;

(2) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(3) For which there is no continuing reclamation responsibility under State or Federal laws, except as provided in sections 402(g)(4) and 403(b)(2) of SMCRA.

* * * * *

Project means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

* * * * *

Reclamation activity means the reclamation, abatement, control, or prevention of adverse effects of past mining by an Abandoned Mine Land program.

Reclamation program means a program established by a State or an Indian tribe in accordance with Title IV of SMCRA for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 3. The authority citation for part 724 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* and 31 U.S.C. 3701.

■ 4. Amend § 724.18 by revising paragraph (d) to read as follows:

§ 724.18 Payment of penalty.

* * * * *

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established by the U.S. Department of the Treasury for late charges on late payments to the Federal Government. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register** and on Treasury's Web site. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in § 870.23(a) through (f) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.21(c) of this chapter and processing and handling charges specified in § 870.21(d) of this chapter.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

■ 5. The authority citation for part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.,* 16 U.S.C. 470 *et seq.,* 16 U.S.C. 661 *et seq.,* 16 U.S.C. 703 *et seq.,* 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.,* and 16 U.S.C. 1531 *et seq.*

■ 6. Amend § 773.13 by revising paragraph (a)(2) to read as follows:

§ 773.13 Unanticipated events or conditions at remining sites.

(a) * * *

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

■ 7. The authority citation for part 785 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 8. Revise § 785.10 to read as follows:

§ 785.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.,* the Office of Management and Budget (OMB) has approved the information collection requirements of Part 785 and assigned it control number 1029–0040. The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of Public Law 95–87, which requires applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 785.25 [Amended]

■ 9. In § 785.25, remove paragraph (c).

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

■ 10. The authority citation for part 816 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 11. In § 816.116, revise paragraphs (c)(2)(ii) and (c)(3)(ii) to read as follows:

§ 816.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) * * *

(ii) Two full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this

section, the lands must equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) * * *

(ii) Five full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

■ 12. The authority citation for part 817 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 13. In § 817.116, revise paragraphs (c)(2)(ii) and (c)(3)(ii) to read as follows:

§ 817.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) * * *

(ii) Two full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing season of the last year of the responsibility period.

(c) * * *

(3) * * *

(ii) Five full years for lands eligible for remining included in a permit for which a finding has been made under § 773.15(m) of this chapter. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands must equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

PART 845—CIVIL PENALTIES

■ 14. The authority citation for part 845 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 15. In § 845.21, revise paragraph (b)(1) to read as follows:

§ 845.21 Use of civil penalties for reclamation.

* * * * *

(b) * * *

(1) Emergency projects as defined in § 700.5 of this chapter;

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

■ 16. The authority citation for part 846 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 17. Amend § 846.18 by revising paragraph (d) to read as follows:

§ 846.18 Payment of penalty.

* * * * *

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established by the U.S. Department of the Treasury for late charges on late payments to the Federal Government. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the **Federal Register** and on Treasury's Web site. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in § 870.23(a) through (f) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.21(c) of this chapter and processing and handling charges specified in § 870.21(d) of this chapter.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

■ 18. The authority citation for part 870 continues to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105–277, sections 1701–1710.

■ 19. Revise § 870.1 to read as follows:

§ 870.1 Scope.

This Part sets out our procedures to collect fees for the Fund and to report coal production.

■ 20. Amend § 870.5 as follows:

■ a. Revise the introductory text as set forth below; and

■ b. Remove the following definitions: ''Abandoned Mine Reclamation Fund or Fund'', ''Agency'', ''Allocate'', ''Eligible lands and water'', ''Emergency'', ''Extreme danger'', ''Indian Abandoned Mine Reclamation Fund or Indian Fund'', ''Indian reclamation program'', ''Left or abandoned in either an unreclaimed or inadequately reclaimed condition'', ''OSM'', ''Permanent facility'', ''Project'', ''Qualified hydrologic unit'', ''Reclamation activity'', ''Reclamation plan'', ''State Abandoned Mine Reclamation Fund or State Fund'', and ''State reclamation program''.

§ 870.5 Definitions.

As used in this Part—

* * * * *

■ 21. Revise § 870.10 to read as follows:

§ 870.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.,* the Office of Management and Budget (OMB) has approved the information collection requirements of Part 870 and the OSM–1 Form and assigned control number 1029–0063. The information is used to maintain a record of coal produced nationwide each calendar quarter, the method of coal removal, the type of coal, and the basis for coal tonnage reporting. Persons must respond to meet the requirements of SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 870.11 [Amended]

■ 22. Amend § 870.11 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

■ 23. In § 870.13, revise the heading of paragraph (a), revise paragraph (b) and add paragraph (c) to read as follows:

§ 870.13 Fee rates.

(a) *Fees for coal produced for sale, transfer, or use through September 30, 2007.*

* * * * *

(b) *Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012.* Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed.	(i) If value of coal is $3.15 per ton or more, fee is 31.5 cents per ton. (ii) If value of coal is less than $3.15 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is $1.35 per ton or more, fee is 13.5 cents per ton. (ii) If value of coal is less than $1.35 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is $4.50 per ton or more, fee is 9 cents per ton. (ii) If value of coal is less than $4.50 per ton, fee is 2 percent of the value.
(4) In situ coal mining fee	All types other than lignite	13.5 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	9 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

(c) *Fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021.* The fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed coal.	(i) If value of coal is $2.80 per ton or more, fee is 28 cents per ton. (ii) If value of coal is less than $2.80 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is $1.20 per ton or more, fee is 12 cents per ton. (ii) If value of coal is less than $1.20 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is $4.00 per ton or more, fee is 8 cents per ton. (ii) If value of coal is less than $4.00 per ton, fee is 2 percent of the value.
(4) In situ coal mining fee	All types other than lignite	12 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	8 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

■ 24. Revise §§ 870.14 through 870.17 to read as follows:

§ 870.14 Determination of percentage-based fees.

(a) If you pay a fee based on a percentage of the value of coal, you must include documentation supporting the claimed coal value with your fee payment and production report. We may review this information and any additional documentation we may require, including examination of your books and records. We may accept the valuation you claim, or we may determine another value of the coal.

(b) If we determine that a higher fee must be paid, you must pay the additional fee together with interest computed under § 870.21.

§ 870.15 Reclamation fee payment.

(a) You must pay the reclamation fee based on calendar quarter tonnage no later than 30 days after the end of each calendar quarter.

(b) Along with any fee payment due, you must submit to us a completed Coal Sales and Reclamation Fee Report (OSM–1 Form). You can file the OSM–1 Form either in paper format or in electronic format as specified in § 870.17. On the OSM–1 Form, you must report:

(1) The tonnage of coal sold, used, or transferred;

(2) The name and address of any person or entity who is the owner of 10 percent or more of the mineral estate for a given permit; and

(3) The name and address of any person or entity who purchases 10 percent or more of the production from a given permit, during the applicable quarter.

(c) If no single mineral owner or purchaser meets the 10 percent criterion in paragraphs (b)(2) and (b)(3) of this section, then you must report the name and address of the largest single mineral owner and purchaser. If several persons have successively transferred the mineral rights, you must include on the OSM–1 Form information on the last owner(s) in the chain before the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

(d) At the time of reporting, you may designate the information required by paragraphs (b) and (c) of this section as confidential.

§ 870.16 Acceptable payment methods.

(a) If you owe total quarterly reclamation fees of $25,000 or more for one or more mines, you must:

(1) Use an electronic fund transfer mechanism approved by the U.S. Department of the Treasury;

(2) Forward payments by electronic transfer;

(3) Include the applicable Master Entity No.(s) (Part 1–Block 4 on the OSM–1 Form), and OSM Document No.(s) (Part 1–upper right corner of the OSM–1 Form) on the wire message; and

(4) Use our approved form or approved electronic form to report coal

tonnage sold, used, or for which ownership was transferred to the address indicated in the Instructions for Completing the OSM–1 Form.

(b) If you owe less than $25,000 in quarterly reclamation fees for one or more mines, you may:

(1) Forward payments by electronic transfer in accordance with the procedures specified in paragraph (a) of this section; or

(2) Submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement in the same envelope with the OSM–1 Form to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 360095M, Pittsburgh, Pennsylvania 15251.

(c) If you pay more than $25,000 by a method other than an electronic fund transfer mechanism approved by the U.S. Department of the Treasury, you will be in violation of the Surface Mining Control and Reclamation Act of 1977, as amended.

§ 870.17 Filing the OSM–1 Form.

(a) *Filing an OSM–1 Form electronically.* You may submit a quarterly electronic OSM–1 Form in place of a quarterly paper OSM–1 Form. Submitting the OSM–1 Form electronically is optional. If you submit your form electronically, you must use a methodology and medium approved by us and do one of the following:

(1) Maintain a properly notarized paper copy of the identical OSM–1 Form for review and approval by our Fee Compliance auditors (in order to comply with the notary requirement in SMCRA); or

(2) Submit an electronically signed and dated statement made under penalty of perjury that the information contained in the OSM–1 Form is true and correct.

(b) *Filing a paper OSM–1 Form.* Alternatively, you may submit a quarterly paper OSM–1 Form. If you choose to submit your form on paper, you must do one of the following:

(1) Submit a properly notarized copy of the OSM–1 Form; or

(2) Submit the OSM–1 Form with a signed and dated statement made under penalty of perjury that the information contained in the form is true and correct. Under the unsworn statement option, you must sign the following statement: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

■ 25. In § 870.18, revise paragraph (b) to read as follows:

§ 870.18 General rules for calculating excess moisture.

* * * * *

(b) If OSM disallows any or all of an allowance for excess moisture, you must submit an additional fee plus interest computed according to § 870.21(a) and penalties computed according to § 870.21(c).

* * * * *

■ 26. Add new §§ 870.21 through 870.23 to read as follows:

§ 870.21 Late payments.

(a) Fee payments postmarked later than 30 days after the calendar quarter for which the fee was owed are subject to interest. Late reclamation fee payments are subject to interest at the rate established by the U.S. Department of the Treasury for late charges on payments to the Federal Government. The Treasury current value of funds rate is published annually in the **Federal Register** and on Treasury's Web site.

(b) We will charge interest on unpaid reclamation fees from the 31st day following the end of the calendar quarter for which the fee payment is owed to the date of payment. If you are delinquent, we will bill you monthly and initiate whatever action is necessary to collect full payment of all fees and interest.

(c) When a reclamation fee debt is more than 91 days overdue, a 6 percent annual penalty on the amount owed for fees will begin and will run until the date of payment. This penalty is in addition to the interest described in paragraph (a) of this section.

(d) For all delinquent fees, interest, and penalties, you must pay a processing and handling charge that we will set based upon the following components:

(1) For debts referred to a collection agency, the amount charged to us by the collection agency;

(2) For debts we processed and handled, a standard amount we set annually based upon similar charges by collection agencies for debt collection;

(3) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, but paid before litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(4) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(5) If not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(e) We will not charge prejudgment interest on any processing and handling charges.

§ 870.22 Maintaining required production records.

(a) If you engage in or conduct a surface coal mining operation, you must maintain up-to-date records that contain at least the following information:

(1) The tons of coal you produced, bought, sold, or transferred, the amount of money you received per ton, the name of person to whom you sold or transferred the coal, and the date of each sale or transfer;

(2) The tons of coal you used and your date of your consumption;

(3) The tons of coal you stockpiled or inventoried that are not classified as sold for fee computation purposes under § 870.12; and

(4) For in situ coal mining operations, the total Btu value of gas you produced, the Btu value of a ton of coal in a place certified at least semiannually by an independent laboratory, and the amount of money you received for gas sold, transferred, or used.

(b) We must have access to your records of any surface coal mining operation for review. Your records must be available to us at reasonable times.

(c) We may inspect and copy any of your books or records that are necessary to substantiate the accuracy of your OSM–1 Form and payments. If the fee is paid at the maximum rate, we will not copy information relative to price. We will protect all copied information as authorized or required by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

(d) You must maintain your books and records for 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) If you do not maintain or make available your books and records as required in this section, we will estimate the fee due under this Part through use of average production figures based upon the nature and acreage of your coal mining operation.

(1) We will assess the fee at the amount we estimate plus an additional 20 percent to account for possible error in our fee liability estimate.

(2) After you receive our fee liability estimate, you may request that we revise that estimate based upon your information. However, you must demonstrate that our fee liability estimate is incorrect. You may do this by providing adequate documentation that we find to be acceptable and comparable to the information required in § 870.19(a).

§ 870.23 Consequences of noncompliance.

If you do not maintain adequate records, provide us with access to records of a surface coal mining operation, or pay overdue reclamation fees, including interest on late payments or underpayments, we may take one or more of the following actions:

(a) Start a legal action against you;

(b) Report you to the Internal Revenue Service;

(c) Report you to State agencies responsible for taxation;

(d) Report you to credit bureaus;

(e) Refer you to collection agencies; or

(f) Take some other appropriate action against you.

■ 27. Revise part 872 to read as follows:

PART 872—MONEYS AVAILABLE TO ELIGIBLE STATES AND INDIAN TRIBES

Sec.

872.1 What does this Part do?
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872.10 Information collection.
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872.12 Where do moneys distributed from the Fund and other sources go?
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872.19 Are there any restrictions on how Indian tribes may use Tribal share funds?
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872.24 What are Federal expense funds?
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872.26 What are minimum program make up funds?
872.27 How does OSM distribute and award minimum program make up funds?
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872.29 What are prior balance replacement funds?
872.30 How does OSM distribute and award prior balance replacement funds?
872.31 Are there any restrictions on how you may use prior balance replacement funds?
872.32 What are certified in lieu funds?
872.33 How does OSM distribute and award certified in lieu funds?
872.34 Are there any restrictions on how you may use certified in lieu funds?
872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

Authority: 30 U.S.C. 1201 *et seq.*

§ 872.1 What does this Part do?

This Part sets forth procedures and general responsibilities for managing funds received under Title IV of the Surface Mining Control and Reclamation Act of 1977, as amended.

§ 872.5 Definitions.

As used in this Part—

Allocate means to identify moneys in our records at the time they are received by the Fund. The allocation process identifies moneys in the Fund by the type of funds collected, including the specific State or Indian tribal share.

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Indian Abandoned Mine Reclamation Fund or *Indian Fund* means a separate fund that an Indian tribe established to account for moneys we award under Parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the Indian Fund.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

State Abandoned Mine Reclamation Fund or *State Fund* means a separate fund that a State established to account for moneys we award under Parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the State Fund.

§ 872.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 872 and assigned it control number 1029–0054. The information is used to determine whether States and Indian tribes will be granted funds for reclamation activities. States and Indian tribes must respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 872.11 Where do moneys in the Fund come from?

Revenue to the Fund includes—

(a) Reclamation fees we collect under section 402 of SMCRA and Part 870 of this chapter;

(b) Amounts we collect from charges for use of land acquired or reclaimed with moneys from the Fund under Part 879 of this chapter;

(c) Moneys we recover through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under Part 882 of this chapter;

(d) Moneys we recover from the sale of lands acquired with moneys from the Fund or by donation;

(e) Moneys donated to us for the purpose of abandoned mine land reclamation; and

(f) Interest and any other income earned from investment of the Fund. We will credit interest and other income only to the Secretary's share.

§ 872.12 Where do moneys distributed from the Fund and other sources go?

(a) Each State or Indian tribe with an approved reclamation plan must establish an account to be known as a State or Indian Abandoned Mine Reclamation Fund. These funds will be managed in accordance with the OMB Circular A–102.

(b) Revenue for the State and Indian Abandoned Mine Reclamation Funds will include—

(1) Amounts we granted for purposes of conducting the approved reclamation plan;

(2) Moneys collected from charges for uses of land acquired or reclaimed with moneys from the State or Indian Abandoned Mine Reclamation Fund under Part 879 of this chapter;

(3) Moneys recovered through the satisfaction of liens filed against privately owned lands;

(4) Moneys the State or Indian tribe recovered from the sale of lands acquired under Title IV of SMCRA; and

(5) Such other moneys as the State or Indian tribe decides should be deposited in the State or Indian Abandoned Mine Reclamation Fund for use in carrying out the approved reclamation program.

(c) Moneys deposited in State or Indian Abandoned Mine Reclamation Funds must be used to carry out the reclamation plan approved under Part 884 of this chapter and projects approved under § 886.27 of this chapter.

§ 872.13 What moneys does OSM distribute each year?

(a) Under Title IV of SMCRA, each Federal fiscal year we must distribute to you, the States and Indian tribes with approved reclamation plans, the moneys listed in this section. We distribute all

Fund moneys and other moneys from the Treasury that have been designated for mandatory distribution. We provide information to you showing how we calculated your distribution. We distribute the following moneys:

(1) State share funds to uncertified States as described in § 872.14;

(2) Tribal share funds to uncertified Indian tribes as described in § 872.17;

(3) Historic coal funds to uncertified States and Indian tribes as described in § 872.21;

(4) Minimum program make up funds to eligible uncertified States and Indian tribes as described in § 872.26;

(5) Prior balance replacement funds to certified and uncertified States and Indian tribes as described in § 872.29; and

(6) Certified in lieu funds to certified States and Indian tribes as described in § 872.32.

(b) We calculate annual fee collections for coal produced in the previous Federal fiscal year on a net cash basis. This means that we use collections that are paid for the current Federal fiscal year to adjust fees that were overpaid or underpaid in prior fiscal years.

(c) We distribute any Congressionally-appropriated funds for grants to you out of the Federal expense funds when the appropriation becomes available.

(d) You may apply for any or all distributed funds at any time after the distribution using the procedures in Part 885 of this chapter for certified States and Indian tribes or Part 886 for uncertified States and Indian tribes.

§ 872.14 What are State share funds?

''State share funds'' are moneys we distribute to you from your State share of the Fund each Federal fiscal year under section 402(g)(1)(A) of SMCRA. Your State share of the Fund is 50 percent of the reclamation fees we collected from within your State (excluding fees collected on Indian lands) and allocated to you, the State, in the Fund for coal produced in the previous fiscal year.

§ 872.15 How does OSM distribute and award State share funds?

(a) To be eligible to receive State share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these State share funds to you as follows:

(1) We annually distribute State share funds to you as shown in the following table:

For the Federal fiscal year(s) beginning . . .	The amount of State share funds we annually distribute to you will be . . .
(i) October 1, 2007 and October 1, 2008	50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(ii) October 1, 2009 and October 1, 2010	75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iii) October 1, 2011 and continuing through September 30, 2022	100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iv) October 1, 2022 (fiscal year 2023)	The amount remaining in your State share of the Fund.

(2) We award these funds to you in grants according to the provisions of Part 886 of this chapter.

§ 872.16 Are there any restrictions on how States may use State share funds?

Yes. You may only use State share funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under Part 876 of this chapter;

(e) Land acquisition under § 879.11 of this chapter; and

(f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.17 What are Tribal share funds?

''Tribal share funds'' are moneys we distribute to you from your Tribal share of the Fund each Federal fiscal year under section 402(g)(1)(B) of SMCRA. Your Tribal share of the Fund is 50 percent of the reclamation fees we collected and allocated to you, the Indian tribe(s), in the Fund for coal produced in the previous fiscal year from the Indian lands in which you have an interest.

§ 872.18 How will OSM distribute and award Tribal share funds?

(a) To be eligible to receive Tribal share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these Tribal share funds to you as follows:

(1) We annually distribute Tribal share funds to you as shown in the following table:

For the Federal fiscal year(s) beginning . . .	The amount of Tribal share funds we annually distribute to you will be . . .
(i) October 1, 2007 and October 1, 2008	50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(ii) October 1, 2009 and October 1, 2010	75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iii) October 1, 2011 and continuing through September 30, 2022	100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iv) October 1, 2022 (fiscal year 2023)	The amount remaining in your Tribal share of the Fund.

(2) We award these funds to you in grants according to the provisions of Part 886 of this chapter.

§ 872.19 Are there any restrictions on how Indian tribes may use Tribal share funds?

Yes. You may only use Tribal share funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under Part 876 of this chapter;

(e) Land acquisition under § 879.11 of this chapter; and

(f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.20 What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program ?

Under section 402(h)(4)(B) of SMCRA, we will make available any moneys that remain allocated to RAMP and that were not appropriated or moved to other allocations before December 20, 2006, for possible transfer to the three United Mine Workers of America (UMWA) health care plans described in section 402(h)(2) of SMCRA.

§ 872.21 What are historic coal funds?

(a) ''Historic coal funds'' are moneys provided under section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in your State or on Indian lands in which you have an interest. Under the Surface Mining Control and Reclamation Act Amendments of 2006, which were enacted as Division C, Title II, Subtitle A of P.L. 109–432, each year we allocate and distribute 30 percent of annual AML fee collections for coal produced in the previous fiscal year plus 60 percent of any other revenue to the Fund as historic coal funds to supplement grants to States and Indian tribes.

(b) Historic coal funds also include moneys we reallocate under sections 401(f)(3)(A)(i), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA, including:

(1) The moneys we reallocate based on prior balance replacement funds distributed under § 872.29, which will be available to supplement grants beginning with Federal fiscal year 2023; and

(2) The moneys we reallocate based on certified in lieu funds distributed under § 872.32, which will be available to supplement grants in Federal fiscal years 2009 through 2022.

§ 872.22 How does OSM distribute and award historic coal funds?

(a) To be eligible to receive historic coal funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter;

(2) You cannot be certified under section 411(a) of SMCRA; and

(3) You must have unfunded Priority 1 and 2 coal problems remaining under sections 403(a)(1) and (2) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we distribute these moneys to you using a formula based on the amount of coal historically produced before August 3, 1977, in your State or from the Indian lands concerned.

(c) We annually distribute historic coal funds to you as shown in the following table:

For the Federal fiscal years beginning . . .	The amount of historic coal funds we annually distribute to you will be . . .
(1) October 1, 2007 and October 1, 2008	50 percent of the amount we calculate using the formula described in paragraph (b) of this section.
(2) October 1, 2009 and October 1, 2010	75 percent of the amount we calculated using the formula described in paragraph (b) of this section.
(3) October 1, 2011 and continuing through September 30, 2022	100 percent of the amount we calculate using the formula described in paragraph (b) of this section.
(4) October 1, 2022 (fiscal year 2023), and thereafter	100 percent of the amount we calculate using the formula described in paragraph (b) of this section until funds are no longer available or you have reclaimed your remaining Priority 1 and 2 coal problems.

(d) In any given year, we will only distribute to you the historic coal funds that you need to reclaim your unfunded Priority 1 or 2 coal problems. Your distribution of State or Tribal share funds under § 872.14 or § 872.17 plus your distribution of historic coal funds along with unused funds from prior allocations could be more than you need to reclaim your remaining high priority problems. If that occurs, we will reduce the historic coal funds we distribute to you to the amount that you need to fully fund reclamation of all your remaining Priority 1 or 2 coal problems.

(e) We award these funds to you in grants according to the provisions of Part 886 of this chapter.

§ 872.23 Are there any restrictions on how you may use historic coal funds?

Yes. You may only use historic coal funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under Part 876 of this chapter;

(e) Land acquisition under § 879.11 of this chapter; and

(f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.24 What are Federal expense funds?

''Federal expense funds'' are moneys available in the Fund that are not allocated or distributed as State share funds (§ 872.14), Tribal share funds (§ 872.17), historic coal funds (§ 872.21), or minimum program make up funds (§ 872.26). Congress must appropriate Federal expense funds before we may expend them.

§ 872.25 Are there any restrictions on how OSM may use Federal expense funds?

(a) We may use Federal expense funds only for the purposes in sections 402(g)(3)(A) through (D) and 402(g)(4) of SMCRA, which include the following:

(1) The Small Operator Assistance Program under section 507(c) of SMCRA (not more than $10 million annually);

(2) Emergency projects under State, Tribal, and Federal programs under section 410 of SMCRA;

(3) Nonemergency projects in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA;

(4) The Secretary's administration of Title IV of SMCRA and this subchapter; and

(5) Projects authorized under section 402(g)(4) in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA.

(b) We will not deduct moneys that we have annually allocated or distributed as Federal expense funds under sections 402(g)(3)(A) through (D) or (4) of SMCRA for any State or Indian tribe from moneys we annually allocate or distribute to a State or Indian tribe under the authority of sections 402(g)(1) or (5) of SMCRA.

(c) We expend moneys under the authority in section 402(g)(3)(C) of SMCRA only in States or on Indian lands where the State or Indian tribe does not have an abandoned mine reclamation program approved under section 405 of SMCRA.

§ 872.26 What are minimum program make up funds?

(a) ''Minimum program make up funds'' are additional moneys we distribute each Federal fiscal year to eligible States and Indian tribes to make up the difference between their total distribution of other funds and $3 million. The source of these funds is moneys in the Secretary's 20 percent share of the Fund that are authorized for mandatory distribution.

(b) To be eligible to receive funds under this section, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under Part 884 of this chapter;

(2) You cannot have certified under section 411(a) of SMCRA;

(3) The total amount you receive annually from State share funds (§ 872.14) or Tribal share funds (§ 872.17), historic coal funds (§ 872.21), and prior balance replacement funds (§ 872.29) must be less than $3 million; and

(4) You must need more than the total of funds you will receive from State or Tribal share, historic coal, and prior balance replacement funds to reclaim Priority 1 and 2 coal problems under sections 403(a)(1) and (2) of SMCRA in your State or on Indian lands within your jurisdiction.

(c) We will make funds available to the States of Missouri and Tennessee under this section to reclaim Priority 1 and 2 coal problems included in the AML inventory, provided each State has a reclamation plan approved under Part 884 of this chapter.

§ 872.27 How does OSM distribute and award minimum program make up funds?

(a) If you meet the eligibility requirements in § 872.26(b), we will distribute these minimum program make up funds to you as follows:

(1) We calculate your total distribution under this Part by first adding, in order, your prior balance replacement funds distribution (§ 872.29), your applicable State or Tribal share funds distribution (§ 872.14 or § 872.17), and your historic coal funds distribution (§ 872.21). If the sum of these funds is less than $3 million, we calculate the amount of minimum program make up funds to add to your distribution under this section to increase it to that level.

(2) For each of the Federal fiscal years 2007 through 2022, we add minimum program make up funds to your combined distribution of prior balance replacement, State or Tribal share, and historic coal funds as shown in the following table:

For each of the Federal fiscal years beginning . . .	The amount of minimum program make up funds we add to your distribution will be . . .
(i) October 1, 2007 and October 1, 2008	50 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(ii) October 1, 2009 and October 1, 2010	75 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(iii) October 1, 2011 and continuing through September 30, 2022	100 percent of the amount that we calculated should be added under paragraph (a)(1) of this section as long as you have at least $3 million of Priority 1 and 2 coal problems remaining.
(iv) October 1, 2022 and thereafter	to the extent funds are available, 100 percent of the amount that we calculated should be added under paragraph (a)(1) until you have less than $3 million of Priority 1 and 2 coal problems remaining.

(b) We award these funds to you in grants according to the provisions of Part 886 of this chapter.

§ 872.28 Are there any restrictions on how you may use minimum program make up funds?

Yes. You may only use minimum program make up funds for:

(a) Priority 1 and 2 coal reclamation under sections 403(a)(1) and (2) of SMCRA;

(b) Priority 3 reclamation that is part of Priority 1 or 2 coal reclamation under sections 403(a)(1) or (2) of SMCRA and § 874.13 of this chapter;

§ 872.29 What are prior balance replacement funds?

''Prior balance replacement funds'' are moneys we must distribute to you instead of the moneys we allocated to your State or Tribal share of the Fund before October 1, 2007, but did not distribute to you because Congress did not appropriate them. They come from general funds of the United States Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, we distribute prior balance replacement funds to you, the State or Indian tribe, for seven years starting in the Federal fiscal year beginning October 1, 2008.

§ 872.30 How does OSM distribute and award prior balance replacement funds?

(a) We distribute prior balance replacement funds to you as follows:

(1) In an amount equal to the aggregate, unappropriated amount allocated to you before October 1, 2007, under sections 402(g)(1)(A) or (B) of SMCRA;

(2) If you are, or are not, certified under section 411(a) of SMCRA; and

(3) Subject to § 872.35, in seven equal annual installments beginning with the 2008 Federal fiscal year which starts on October 1, 2007.

(b) We award these funds to you in grants according to the provisions of Part 885 of this chapter for certified States and Indian tribes or Part 886 of this chapter for uncertified States and Indian tribes.

(c) At the same time we distribute prior balance replacement funds to you under this section, we transfer the same amount to historic coal funds from moneys in your State or Tribal share of the Fund that were allocated to you before October 1, 2007. The transferred funds will be available for annual grants under § 872.21 for the Federal fiscal year beginning October 1, 2022, and annually thereafter. We will allocate, distribute, and award the transferred

funds according to the provisions of §§ 872.21, 872.22, and 872.23.

§ 872.31 Are there any restrictions on how you may use prior balance replacement funds?

(a) Yes. If you are certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for those purposes your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development.

(b) Yes. If you are not certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for the purposes in section 403 of SMCRA, which include:

(1) Reclamation of coal problems under § 874.12 of this chapter;

(2) Water supply restoration under § 874.14 of this chapter; and

(3) Maintenance of the AML inventory.

§ 872.32 What are certified in lieu funds?

''Certified in lieu funds'' are moneys that we distribute to you, the certified State or Indian tribe, in lieu of moneys allocated to your State or Tribal share of the Fund after October 1, 2007. Certified in lieu funds come from general funds of the United States Treasury that are otherwise unappropriated. Beginning with the 2009 Federal fiscal year which starts on October 1, 2008, we distribute certified in lieu funds to you under section 411(h)(2) of SMCRA.

§ 872.33 How does OSM distribute and award certified in lieu funds?

(a) You must be certified under section 411(a) of SMCRA to receive certified in lieu funds.

(b) If you meet the eligibility requirement in paragraph (a) of this section, we distribute these certified in lieu funds to you as follows:

(1) Starting in the Federal fiscal year that begins on October 1, 2008, we annually distribute funds to you based on 50 percent of reclamation fees received for coal produced during the previous Federal fiscal year in your State or on Indian lands within your jurisdiction;

(2) The funds we annually distribute to you are in lieu of moneys we otherwise would distribute to you from State share funds under § 872.14 or Tribal share funds under § 872.17 had you not been excluded from receiving those funds under section 401(f)(3)(B) of SMCRA; and

(3) Subject to § 872.35, we annually distribute certified in lieu funds to you as shown in the following table:

In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(i) October 1, 2008	25 percent of your 50 percent share of annual reclamation fee collections.
(ii) October 1, 2009	50 percent of your 50 percent share of annual reclamation fee collections.
(iii) October 1, 2010	75 percent of your 50 percent share of annual reclamation fee collections.
(iv) October 1, 2011, and thereafter	100 percent of your 50 percent share of annual reclamation fee collections.

(c) We award these funds to you in grants according to the provisions of Part 885 of this chapter.

(d) At the same time we distribute certified in lieu funds to you under this section, we transfer the same amount to historic coal funds and make those funds available for annual grants under § 872.21 that same Federal fiscal year. We allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

(e) We will distribute to you the amounts we withhold under paragraph (b) of this section in two equal annual installments. We will do this in Federal fiscal years 2018 and 2019.

§ 872.34 Are there any restrictions on how you may use certified in lieu funds?

There are no limitations or restrictions on the use of certified in lieu funds in the Surface Mining Control and Reclamation Act Amendments of 2006 which were enacted as Division C, Title II, Subtitle A of P.L. 109–432.

§ 872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

(a) In any fiscal year in which the amount of Treasury funds required to be transferred under §§ 872.30 and 872.33 of this chapter and under section 402(i)(1) of SMCRA exceeds the maximum annual limit of $490 million, we will adjust the amount of these payments to reduce them to the level of the cap. Each distribution or transfer for the FY will be reduced by the same percentage.

(b) We will not include amounts under section 402(h)(5)(A) as part of this calculation.

PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

■ 28. The authority citation for part 873 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 29. Revise §§ 873.11 and 873.12 to read as follows:

§ 873.11 Applicability.

The provisions of this part apply to funds awarded, as defined in § 872.5 of this chapter, under section 402(g)(6)(A) of SMCRA before its amendment on December 20, 2006, and their use by the States or Indian tribes for coal reclamation purposes after September 30, 1995.

§ 873.12 Future set-aside program criteria.

(a) Any State or Indian tribe may receive and retain, without regard to the limitation referred to in section 402(g)(1)(D) of SMCRA, up to 10 percent of the total of the funds distributed annually to such State or Indian tribe under sections 402(g)(1) and (5) of SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006. The State or Indian tribe must deposit all set-aside funds awarded into a special fund established under State or Indian tribal law. The State or Indian tribe must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(b) Moneys the State or Indian tribe deposited in the special fund account, together with any interest earned, are considered State or Indian tribal moneys.

PART 874—GENERAL RECLAMATION REQUIREMENTS

■ 30. The authority citation for part 874 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 31. Add § 874.5 to read as follows:

§ 874.5 Definitions.

As used in this Part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

■ 32. Revise §§ 874.10 and 874.11 to read as follows:

§ 874.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 874 and assigned it control number 1029–0113. This information is used to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 874.11 Applicability.

You must comply with the requirements in this Part for—

(a) Reclamation projects using moneys from the Fund;

(b) Reclamation projects using prior balance replacement funds provided to uncertified States and Indian tribes under § 872.29 of this chapter; or

(c) Coal reclamation projects by certified States and Indian tribes required to maintain certification under section 411(a) of SMCRA and the agreement required by §§ 875.13(a)(3) and 875.14(b) of this chapter to maintain that certification.

■ 33. Amend § 874.12 by revising paragraphs (c), (e), and (f) to read as follows:

§ 874.12 Eligible coal lands and water.

* * * * *

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund or any prior balance replacement funds provided under § 872.29 of this chapter may be used.

* * * * *

(e) An uncertified State or Indian tribe may expend funds made available under paragraphs 402(g)(1) and (5) of SMCRA and prior balance replacement funds under section 411(h)(1) of SMCRA for the reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraphs (a), (b), or (c) of this section that qualify as a Priority 1 or 2 site under section 403(a) of SMCRA.

(f) With respect to lands eligible under paragraph (d) or (e) of this section, moneys available from sources outside the Fund or that are ultimately recovered from responsible parties must either be used to offset the cost of the reclamation or transferred to the Fund if not required for further reclamation activities at the permitted site.

* * * * *

■ 34. Revise § 874.13 to read as follows:

§ 874.13 Reclamation objectives and priorities.

(a) When you conduct reclamation projects under this Part you may follow OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) and the expenditures must reflect the following priorities in the order stated:

(1) *Priority 1:* The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) *Priority 2:* The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(3) *Priority 3:* The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(ii) or (a)(2)(ii) of this section.

(b) This paragraph applies to State or Tribal share funds available under §§ 872.14 and 872.17 of this chapter and historic coal funds available under § 872.21 of this chapter. You may expend these funds to reclaim Priority 3 lands and waters, if either of the following conditions applies:

(1) You have completed all of the Priority 1 and Priority 2 reclamation in the jurisdiction of your State or Indian tribe; or

(2) The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects including past, current, and future Priority 1 or Priority 2 reclamation projects. Expenditures under this paragraph must either:

(i) Facilitate the Priority 1 or Priority 2 reclamation; or

(ii) Provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of your State or Indian tribe.

■ 35. Amend § 874.14 by revising the section heading and paragraph (a) to read as follows:

§ 874.14 Water supply restoration.

(a) Any State or Indian tribe that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under §§ 872.16, 872.19, 872.23, and 872.31 of this chapter for water supply restoration projects. For purposes of this section, ''water supply restoration projects'' are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For funds awarded before December 20, 2006, any uncertified State or Indian tribe may expend up to 30 percent of the funds distributed to it for water supply restoration projects.

* * * * *

■ 36. Revise § 874.16 to read as follows:

§ 874.16 Contractor eligibility.

To receive moneys from the Fund or Treasury funds provided to uncertified States and Indian tribes under § 872.29 of this chapter or to certified States or

Indian tribes for coal AML reclamation as required to maintain certification under section 411(a) of SMCRA, every successful bidder for an AML contract must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.

PART 875—CERTIFICATION AND NONCOAL RECLAMATION

■ 37. The authority citation for part 875 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 38. Revise the heading for Part 875 to read as set forth above:
■ 39. Add § 875.5 to read as follows:

§ 875.5 Definitions.

As used in this Part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

■ 40. Revise §§ 875.10 and 875.11 to read as follows:

§ 875.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 875 and assigned it control number 1029–0103. This information establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with SMCRA and the Omnibus Budget Reconciliation Act of 1990. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 875.11 Applicability.

(a) If you are a State or Indian tribe that has not certified under section 411(a) of SMCRA, you must follow these noncoal reclamation requirements when you use State share funds under § 872.16, Tribal share funds under § 872.19, or historic coal funds under § 872.23 to conduct reclamation projects on lands or water affected by mining of minerals and materials other than coal.

(b) If you are a State or Indian tribe that has certified under section 411(a) of SMCRA:

(1) you must use State or Tribal share funds distributed to you under section 402(g)(1) of SMCRA before October 1, 2007 in accordance with this part; and

(2) you may use prior balance replacement funds distributed to you under section 411(h)(1) of SMCRA, certified in lieu funds distributed to you under section 411(h)(2), or both to maintain certification as required by §§ 875.13 and 875.14. The noncoal reclamation requirements of this Part do not apply to the use of prior balance replacement funds or certified in lieu funds.

■ 41. Amend § 875.12 by revising paragraph (c) to read as follows:

§ 875.12 Eligible lands and water before certification.

* * * * *

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or by the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, moneys sufficient to complete the reclamation may be sought under Part 886 of this chapter;

* * * * *

■ 42. Amend § 875.13 by revising paragraph (a) introductory text and paragraph (a)(1) and by adding paragraph (d) to read as follows:

§ 875.13 Certification of completion of coal sites.

(a) The Governor of a State, or the equivalent head of an Indian tribe, may submit to the Secretary a certification of completion of coal sites. The certification must express the finding that the State or Indian tribe has achieved all existing known coal-related reclamation objectives for eligible lands and waters under section 404 of SMCRA or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion must contain:

(1) A description of both the rationale and the process used to arrive at the above finding for the completion of all coal-related reclamation under section 403(a)(1) through (3).

* * * * *

(d) The Director may, on his or her own initiative, make the certification referred to in paragraph (a) of this section on behalf of your State or Indian tribe if:

(1) Based upon information contained in the AML inventory, the Director determines that all coal reclamation projects meeting the priorities described in § 874.13(a) of this chapter in the jurisdiction of your State or Indian tribe have been completed; and

(2) Before making any determination, the Director provides the public an opportunity to comment through a notice in the **Federal Register**.

■ 43. Revise § 875.14 to read as follows:

§ 875.14 Eligible lands and water after certification.

(a) Following certification, eligible noncoal lands, waters, and facilities are those—

(1) Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status before August 3, 1977. However, for Federal lands, waters, and facilities under the jurisdiction of the Forest Service, the eligibility date is August 28, 1974. For Federal lands, waters and facilities under the jurisdiction of the Bureau of Land Management, the eligibility date is November 26, 1980; and

(2) For which there is no continuing reclamation responsibility under State or other Federal laws.

(b) If eligible coal problems are found or occur after certification, you must submit to us a plan that describes the approach and funds that will be used to address those problems in a timely manner. You may address any eligible coal problems with the certified in lieu funds that you have already received or will receive from § 872.32 of this chapter. You may also use the prior balance replacement funds received from § 872.29 of this chapter to address coal problems subsequent to certification. Any coal reclamation projects that you do must conform to sections 401 through 410 of SMCRA and Part 874 of this chapter.

■ 44. Revise § 875.16 to read as follows:

§ 875.16 Exclusion of certain noncoal reclamation sites.

(a) You, the uncertified State or Indian tribe, may not use moneys from the Fund or from prior balance replacement funds provided under § 872.29 of this chapter for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

(b) You, the certified State or Indian tribe, may not use moneys distributed from the Fund under section 402(g)(1) of

SMCRA for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

■ 45. Revise § 875.20 to read as follows:

§ 875.20 Contractor eligibility.

Every successful bidder for any contract by an uncertified State or Indian tribe under this Part, or for a contract by a certified State or Indian tribe to undertake noncoal reclamation using moneys distributed from the Fund under section 402(g)(1) of SMCRA, must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. This section does not apply to any contract by a certified State or Indian tribe that is not for coal reclamation.

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

■ 46. The authority citation for part 876 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 47. Revise § 876.10 to read as follows:

§ 876.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.,* the Office of Management and Budget (OMB) has approved the information collection requirements of Part 876 and assigned it control number 1029–0104. OSM will use the information to determine if the State's or Indian tribe's Acid Mine Drainage Abatement and Treatment Programs is in compliance with legislative mandate. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

■ 48. Revise § 876.12 to read as follows:

§ 876.12 Eligibility.

(a) Beginning December 20, 2006, any uncertified State or Indian tribe having an approved reclamation program may receive and retain, without regard to the limitation in section 402(g)(1)(D) of SMCRA, up to 30 percent of the total of the funds distributed annually to that State or Indian tribe under section 402(g)(1) of SMCRA (State or Tribal share) and section 402(g)(5) of SMCRA (historic coal funds). For funds awarded before December 20, 2006, any uncertified State or Indian tribe may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this section must be deposited into an acid mine drainage abatement and treatment fund established under State or Indian tribal law.

(b) Before depositing funds under this Part, an uncertified State or Indian tribe must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that moneys in the account may only be used for the abatement of the causes and treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units (as defined in paragraph (c) of this section) affected by coal mining practices.

(c) As used in paragraph (b) of this section, ''qualified hydrologic unit'' means a hydrologic unit:

(1) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(2) That contains lands and waters that are:

(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(d) After the conditions specified in paragraphs (a) and (b) of this section are met, OSM may approve a grant and the State or Indian tribe may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State or Indian tribal moneys.

§§ 876.13 and 876.14 [Removed]

■ 49. Remove §§ 876.13 and 876.14.

PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

■ 50. The authority citation for part 879 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 51. Revise § 879.1 to read as follows:

§ 879.1 Scope.

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by you, a State or Indian tribe with an approved reclamation program which has not certified completion of coal reclamation, or by us. It also provides for the management and disposition of lands acquired by the OSM, State, or Indian tribe.

■ 52. Add § 879.5 to read as follows:

§ 879.5 Definitions.

As used in this Part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

§ 879.10 [Removed]

■ 53. Remove § 879.10.

■ 54. Amend § 879.11 by revising paragraph (a) introductory text, paragraph (a)(2), paragraph (b), and paragraph (c) to read as follows:

§ 879.11 Land eligible for acquisition.

(a) We may acquire land adversely affected by past coal mining practices with moneys from the Fund. If approved in advance by us, you, an uncertified State or Indian tribe, may also acquire land adversely affected by past coal mining practices with moneys from the Fund or with prior balance replacement funds provided under § 872.29 of this chapter. Our approval must be in writing, and we must make a finding that the land acquisition is necessary for successful reclamation and that—

* * * * *

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. For the purposes of this paragraph, ''permanent facility'' means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(b) You, an uncertified State or Indian tribe, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds provided under § 872.29 of this chapter. We, OSM, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

(1) Before the approval of the acquisition, the reclamation program seeking to acquire the site will make a

finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of their reclamation program.

(2) Where an emergency situation exists and a written finding as set out in § 877.14 of this chapter has been made, we may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by us if the acquisition is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements in section 407(h) of SMCRA.

* * * * *

■ 55. Amend § 879.15 by revising paragraph (h) to read as follows:

§ 879.15 Disposition of reclaimed land.

* * * * *

(h) We will handle all moneys received under this paragraph as unused funds in accordance with § 886.20 of this chapter.

PART 880—MINE FIRE CONTROL

■ 56. The authority citation for part 880 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 57. Amend § 880.5, by adding paragraph (h) to read as follows.

§ 880.5 Definitions.

* * * * *

(h) *Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

PART 882—RECLAMATION ON PRIVATE LAND

■ 58. The authority citation for part 882 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 59. Revise § 882.10 to read as follows:

§ 882.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 882 and assigned it control number 1029–0057. This information is being collected to meet the mandate of section 408 of SMCRA, which allows the State or Indian tribe to file liens on private property that has been reclaimed under certain conditions. This information will be used by the regulatory authority to ensure that the State or Indian tribe has sufficient programmatic capability to file liens to recover costs for reclaiming private lands. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

■ 60. Amend § 882.13 by revising paragraph (a)(1) to read as follows:

§ 882.13 Liens.

* * * * *

(a) * * *

(1) A lien must not be placed against the property of a surface owner who did not consent to, participate in or exercise control over the mining operation which necessitated the reclamation work.

* * * * *

PART 884—STATE RECLAMATION PLANS

■ 61. The authority citation for part 884 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 62. Add § 884.5 to read as follows:

§ 884.5 Definitions.

As used in this Part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

■ 63. Revise § 884.11 to read as follows:

§ 884.11 State eligibility.

You, a State or Indian tribe, are eligible to submit a reclamation plan if you have eligible lands or water as defined in § 700.5 of this chapter within your jurisdiction. We may approve your proposed reclamation plan if you have an approved State regulatory program under section 503 of SMCRA, and you meet the other requirements of this chapter and SMCRA. The States of Tennessee and Missouri are exempt from the requirement for an approved State regulatory program by section 402(g)(8)(B) of SMCRA. The Navajo, Hopi, and Crow Indian tribes are exempt from the requirement for an approved regulatory program by section 405(k) of SMCRA.

■ 64. In § 884.13, revise the introductory text and paragraph (a) to read as follows:

§ 884.13 Content of proposed State reclamation plan.

You must submit each proposed State reclamation plan to the Director in writing. A proposed plan for a certified State or Indian tribe must include the designation described in paragraph (a) below and a commitment to address eligible coal problems found or occurring after certification as required in §§ 875.13(a)(3) and 875.14(b) of this chapter. A proposed plan for an uncertified State or Indian tribe must include the following information.

(a) A designation by the Governor of the State or the governing authority of the Indian tribe of the agency authorized to administer the State or Tribal reclamation program and to receive and administer grants under Part 885 or Part 886 of this chapter.

* * * * *

■ 65. Amend § 884.17 by revising the section heading and paragraph (b) to read as follows:

§ 884.17 Other uses by certified States and Indian tribes.

* * * * *

(b) Grant applications for uses other than coal reclamation by certified States and Indian tribes may be submitted in accordance with § 885.15 of this chapter.

■ 66. Add part 885 as follows:

PART 885—GRANTS FOR CERTIFIED STATES AND INDIAN TRIBES

Sec.

885.1 What does this Part do?
885.5 Definitions.
885.10 Information collection.
885.11 Who is eligible for a grant?
885.12 What can I use grant funds for?
885.13 What are the maximum grant amounts?
885.14 How long is my grant?
885.15 How do I apply for a grant?
885.16 After OSM approves my grant, what responsibilities do I have?
885.17 How can my grant be amended?
885.18 What audit, accounting, and administrative requirements must I meet?
885.19 What happens to unused funds from my grant?
885.20 What must I report?
885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?
885.22 When and how can my grant be terminated for convenience?

Authority: 30 U.S.C. 1201 *et seq.*

§ 885.1 What does this Part do?

This Part sets forth procedures for grants to you, a State or Indian tribe that has certified under § 875.13 of this chapter that all known coal reclamation problems in your State or on Indian lands within your jurisdiction have been addressed. OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) may be used if applicable.

§ 885.5 Definitions.

As used in this Part—

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

§ 885.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements for all Title IV grants and assigned clearance number 1029–0059. This information is being collected to obtain an estimate from you, the certified State or Indian tribe, of the funds you believe necessary to implement your program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through your obligations of funds. Certified States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 885.11 Who is eligible for a grant?

You are eligible for grants under this Part if:

(a) You are a State or Indian tribe with a reclamation plan approved under Part 884 of this chapter; and

(b) You have certified under § 875.13 of this chapter that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

§ 885.12 What can I use grant funds for?

(a) For all awards under this Part, you must use moneys for activities authorized in SMCRA and included in your approved reclamation plan or described in the grant application. In addition, you may use moneys granted under this Part to administer your approved reclamation program.

(b) You may use grant funds as established for each type of funds you receive. You may use prior balance replacement funds as provided under § 872.31 of this chapter. You may use certified in lieu funds as provided under § 872.34 of this chapter. You may use any moneys which may be available to you from the Fund for noncoal reclamation as authorized under section 411 of SMCRA and Part 875 of this chapter.

(c) You may use grant funds for any allowable cost as determined by the OMB cost principles in Circular A–87.

§ 885.13 What are the maximum grant amounts?

(a) You may apply at any time for a grant of any or all of the Title IV funds that are available to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under § 885.19 of this chapter.

(c) Funds for the current fiscal year are available for award after the annual fund distribution described in § 872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

§ 885.14 How long is my grant?

The performance period for your grant will be the time period you request in your grant application.

§ 885.15 How do I apply for a grant?

(a) You must use application forms and procedures specified by OSM.

(b) We award your grant as soon as practicable but no more than 30 days after we receive your complete application.

(c) If your application is not complete, we inform you as soon as practicable of the additional information we need to receive from you before we can process the award.

(d) You must agree to expend the funds of the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

§ 885.16 After OSM approves my grant, what responsibilities do I have?

(a) When we award your grant, we send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local organizations. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must ensure that any applicable laws, clearances, permits, or requirements are met before you expend funds for projects other than coal reclamation under Part 874.

(e) If you conduct a coal reclamation project under Part 874 of this chapter, you must not expend any funds until we have ensured that all necessary actions have been taken by you and us to ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits or requirements.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with Title IV grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

§ 885.17 How can my grant be amended?

(a) A grant amendment is a change of terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All requirements and procedures for grant amendments follow 43 CFR Part 12.

(d) We must award your amended grant agreement within 20 days of receiving your request.

§ 885.18 What audit, accounting, and administrative requirements must I meet?

(a) You must comply with the audit requirements of the OMB Circular A–133.

(b) You must follow procedures governing grant accounting, payment, records, property, and management contained in 43 CFR Part 12.

§ 885.19 What happens to unused funds from my grant?

All program grant funds are available until expended. If there are any unexpended funds after your grant is completed, we deobligate the funds when we close your grant. We make these unused funds available for re-award to the same certified State or Indian tribe to which they were

originally distributed. You may apply for unused funds whenever you choose to request them either in a new grant award or as an amendment to an existing open grant.

§ 885.20 What must I report?

(a) For each grant, you must annually report to us the performance and financial information that we request.

(b) Upon completion of each grant, you must report to us final performance and financial information that we request.

(c) You must use the AML inventory to maintain a current list of AML problems and to report annual reclamation accomplishments with grant funds.

(1) If you conduct reclamation projects, you must update the AML inventory for each reclamation project you complete as you complete it.

(2) We must approve any amendments to the AML inventory after December 20, 2006. We define ''amendment'' as any coal problems added to the AML inventory in a new or existing problem area.

§ 885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?

If you or your subgrantee materially fails to comply with an award, a reclamation plan, or a Federal statute or regulation, including statutes relating to nondiscrimination, we may take appropriate remedial actions. Enforcement actions and procedures must follow 43 CFR Part 12.

§ 885.22 When and how can my grant be terminated for convenience?

Either you or we may terminate the grant for convenience following the procedures in 43 CFR Part 12.

■ 67. Revise part 886 to read as follows:

PART 886—RECLAMATION GRANTS FOR UNCERTIFIED STATES AND INDIAN TRIBES

Sec.

886.1 What does this Part do?
886.5 Definitions.
886.10 Information collection.
886.11 Who is eligible for a grant?
886.12 What can I use grant funds for?
886.13 What are the maximum grant amounts?
886.14 How long will my grant be?
886.15 How do I apply for a grant?
886.16 After OSM approves my grant, what responsibilities do I have?
886.17 How can my grant be amended?
886.18 What audit and administrative requirements must I meet?
886.19 How must I account for grant funds?
886.20 What happens to unused funds from my grant?
886.21 What must I report?
886.22 What records must I maintain?
886.23 What actions can OSM take if I do not comply with the terms of my grant?
886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?
886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?
886.26 When and how can my grant be terminated for convenience?
886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?

Authority: 30 U.S.C. 1201 *et seq.*

§ 886.1 What does this Part do?

This Part sets forth procedures for grants to you, an uncertified State or Indian tribe, to reclaim eligible lands and water and conduct other activities necessary to carry out your approved reclamation plan. OSM's ''Final Guidelines for Reclamation Programs and Projects'' (66 FR 31250, June 11, 2001) may be used as applicable.

§ 886.5 Definitions.

As used in this Part—

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

§ 886.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of Part 886, and Forms OSM–47, OSM–49, and OSM–51, and assigned clearance number 1029–0059. This information is being collected to obtain an estimate from you the uncertified State or Indian tribe of the funds you believe necessary to implement your reclamation program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through State and Tribal obligations of funds. Uncertified States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 886.11 Who is eligible for a grant?

You are eligible for grants under this Part if:

(a) You are a State or Indian tribe with a reclamation plan approved under Part 884 of this chapter; and

(b) You have not certified that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

§ 886.12 What can I use grant funds for?

(a) You must use moneys granted under this Part to administer your approved reclamation program and to carry out the specific reclamation and other activities authorized in SMCRA as included in your reclamation plan or your grant application.

(b) We award grants for reclamation of eligible lands and water in accordance with sections 404 and 409 of SMCRA and §§ 874.12 and 875.12 of this chapter, and in accordance with the priorities stated in section 403 of SMCRA and § 874.13 of this chapter.

(c) You may use grant funds as established in this chapter for each type of funds you receive in your AML grant. You may use State share funds as provided in § 872.16 of this chapter; Tribal share funds as in § 872.19 of this chapter; historic coal funds as in § 872.23 of this chapter; minimum program make up funds as in § 872.28 of this chapter; prior balance replacement funds as in § 872.31 of this chapter; and Federal expense funds as in § 872.25 of this chapter and in the appropriation.

(d) You may use grant funds for acquisition of land or interests in land, and any mineral or water rights associated with the land, for up to 90 percent of the costs.

(e) You may use grant funds only for costs which are allowable as determined by OMB cost principles in Circular A–87.

§ 886.13 What are the maximum grant amounts?

(a) You may apply at any time for a grant of any or all of the program funds that are available to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution, less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under § 886.20 of this chapter.

(c) Funds for the current fiscal year are available for award after the annual fund distribution described in § 872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

§ 886.14 How long will my grant be?

(a) We approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of SMCRA and the approved reclamation plan.

(b) The grant period is normally for 3 years.

(c) We may extend the grant period at your request. We normally approve one extension for up to one additional year.

(d) The grant period for funding your administrative costs does not normally exceed the first year of the grant.

(e) We award grants containing State or Tribal share funds distributed to you in Fiscal Years 2008, 2009, or 2010 for a budget period of five or three years at your request.

§ 886.15 How do I apply for a grant?

(a) You must use application forms and procedures specified by OSM.

(b) We approve or disapprove your grant application within 60 days of receipt.

(c) If we do not approve your application, we inform you in writing of the reasons for disapproval. We may propose modifications if appropriate. You may resubmit the application or appropriate revised portions of the application. We process the revised application as an original application.

(d) You must agree to carry out activities funded by the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

(e) We do not require complete copies of plans and specifications for projects either before the grant is approved or at the start of the project. However, after the start of the project, we may review your plans and specifications at your office, the project site, or any other appropriate site.

§ 886.16 After OSM approves my grant, what responsibilities do I have?

(a) When we award your grant, we send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local agencies. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must not expend any construction funds until you receive a written authorization to proceed with reclamation on the individual project. Our Authorization to Proceed ensures that both you and we have taken all actions necessary to ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits, or requirements.

(e) You must enter coal problems in the AML inventory before you expend funds on design or construction activities for a site. We must approve any amendments to the AML inventory made after December 20, 2006. For purposes of this section, we define ''amendment'' as any coal problem added to the AML inventory in a new or existing problem area and any Priority 3 coal problem in the AML inventory that is elevated to either Priority 1 or Priority 2 status.

(1) For emergency projects conducted under section 410 of SMCRA, our finding that an emergency condition exists constitutes our approval for the abandoned mine lands problem to be entered into the AML inventory.

(2) We must approve amendments to the AML inventory for non-emergency coal problems before you, the State or Indian tribe, begin project development or design or use funds for construction activities. In projects where development and design is minimal, this approval may occur during the Authorization to Proceed process.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

§ 886.17 How can my grant be amended?

(a) A grant amendment is a change of the terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All procedures for grant amendments follow 43 CFR Part 12.

(d) We must approve or disapprove the amendment within 30 days of receiving your request.

§ 886.18 What audit and administrative requirements must I meet?

(a) You must comply with the audit requirements of the OMB Circular A–133.

(b) You must follow administrative procedures governing grant payments, property, and related requirements contained in 43 CFR Part 12.

§ 886.19 How must I account for grant funds?

You must do all of the following in accordance with the requirements of 43 CFR Part 12:

(a) Accurately and timely account for grant funds;

(b) Adequately safeguard all funds, property, and other assets and assure that they are used solely for authorized purposes;

(c) Provide a comparison of actual amounts spent with budgeted amounts for each grant;

(d) Request any cash advances as closely as possible to the actual time of the disbursement; and

(e) Design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 886.20 What happens to unused funds from my grant?

(a) If there are any unexpended funds after your grant is completed, we deobligate the funds when we close your grant. We treat unused funds as follows:

(1) We transfer any State share funds under § 872.14 of this chapter or Tribal share funds under § 872.17 that were not expended within three years of the date they were awarded in a grant, except five years for funds awarded in Fiscal Years 2008, 2009, and 2010, to historic coal funds, § 872.21 of this chapter. We distribute any funds transferred to historic coal in the next annual distribution in the same way as historic coal funds from fee collections during that fiscal year.

(2) We hold any unused Federal expense funds under § 872.24 of this chapter for distribution to any State or Indian tribe as needed for the activity for which the funds were appropriated.

(3) We make unused funds of all other types available for re-award to the same State or Indian tribe to which they were originally distributed. This includes historic coal funds under § 872.21 of this chapter, minimum program make up funds under § 872.26 of this chapter, and prior balance replacement funds under § 872.29 of this chapter.

(b) If you have any State share funds or Tribal share funds that were distributed to you in an annual distribution under § 872.15 or § 872.18

of this chapter but that were not awarded to you in grant within 3 years of the date they were distributed, or 5 years for funds distributed in Fiscal Years 2008, 2009, and 2010, we transfer the unawarded funds to the historic coal fund under § 872.21 of this chapter and distribute them in the next annual distribution.

§ 886.21 What must I report?

(a) For each grant, you must annually report to us the performance and financial information that we specify.

(b) Upon completion of each grant, you must submit to us final performance, financial, and property reports, and any other information that we specify.

(c) When you complete each reclamation project, you must update the AML inventory.

§ 886.22 What records must I maintain?

You must maintain complete records in accordance with 43 CFR Part 12. Your records must support the information you reported to us. This includes, but is not limited to, books, documents, maps, and other evidence. Accounting records must document procedures and practices sufficient to verify:

(a) The amount and use of all Title IV funds received; and

(b) The total direct and indirect costs of the reclamation program for which you received the grant.

§ 886.23 What actions can OSM take if I do not comply with the terms of my grant?

(a) If you, or your subgrantee, fail to comply with the terms of your grant, we may take one or more of the following remedial actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending your correction of the deficiency;

(2) Disallow (that is, deny both use of Federal funds and matching credit for non-Federal funds) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly reduce, suspend or terminate the current award for your program;

(4) Withhold further grant awards for the program; or

(5) Take other remedies that may be legally available.

(b) If we terminate your State regulatory administration and enforcement grant, provided under Part 735 of this chapter, for failure to implement, enforce, or maintain an approved State regulatory program or any part thereof, we will terminate the grant awarded under this Part. This paragraph does not apply to the States of Missouri or Tennessee under section 402(g)(8)(B) of SMCRA, or to the Navajo, Hopi and Crow Indian tribes under section 405(k) of SMCRA.

(c) If you fail to enforce the financial interest provisions of Part 705 of this chapter, we will terminate the grant.

(d) If you fail to submit reports required by this Part or Part 705 of this chapter, we take appropriate remedial actions. We may terminate the grant.

(e) If you fail to submit a reclamation plan amendment as required by § 884.15 of this chapter, we may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

(f) If you are not in compliance with all Federal statutes relating to nondiscrimination, including but not limited to the following, we will terminate the grant:

(1) Title VI of the Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 252 (42 U.S.C. 2000d *et seq.*). ''Nondiscrimination in Federally Assisted Programs,'' which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(2) Executive Order 11246, as amended by Executive Order 11375, ''Equal Employment Opportunity,'' requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR Part 60.

(3) Section 504 of the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, ''Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs.''

§ 886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?

We will use the following procedures to reduce, suspend, or terminate your grant:

(a) We must give you at least 30 days written notice of intent to reduce, suspend, or terminate a grant. An OSM official authorized to approve your grant must sign our notice of intent. We must send this notice by certified mail, return receipt requested. Our notice must include the reasons for the proposed action and the proposed effective date of the action.

(b) We must give you opportunity for consultation and remedial action before we reduce or terminate a grant.

(c) We must notify you in writing of the termination, suspension, or reduction of the grant. The notice must be signed by the authorized approving official and sent by certified mail, return receipt requested.

(d) Upon termination, you must refund to us that remaining portion of the grant money not encumbered. However, you may retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(e) You must not make any new commitments of grant funds after receiving notification of our intent to terminate the grant without our approval.

(f) We may allow termination costs as determined by applicable Federal cost principles listed in OMB Circular A–87.

§ 886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?

(a) Within 30 days of our decision to reduce, suspend, or terminate a grant, you may appeal the decision to the Director.

(1) You must include in your appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

(2) The Director must decide the appeal within 30 days of receipt.

(b) Within 30 days of a decision by the Director to reduce, suspend, or terminate a grant, you may appeal the decision to the Department of the Interior's Office of Hearings and Appeals. You must include in the appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

§ 886.26 When and how can my grant be terminated for convenience?

Either you or we may terminate or reduce a grant if both parties agree that continuing the program would not produce benefits worth the additional costs. We will handle a termination for convenience as an amendment to the grant to be approved by the OSM official authorized to approve your grant.

§ 886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?

(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations arising from past mining practices and begin reclamation of other areas

determined to have high priority on such lands.

(b) The Director is authorized to receive proposals from Indian tribes for projects that should be carried out on Indian lands subject to this section and to carry out these projects under parts 872 through 882 of this chapter.

(c) For reclamation activities carried out under this section on Indian lands, the Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian lands.

(d) If a proposal is made by an Indian tribe and approved by the Director, the Tribal governing body shall approve the project plans. The costs of the project may be charged against Federal expense funds under § 872.25 of this chapter.

(e) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

■ 68. The authority citation for part 887 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 69. Revise § 887.1 to read as follows:

§ 887.1 Scope.

This part sets forth the procedures for grants to you, a State or Indian tribe with an approved reclamation plan to establish, administer, and operate a self-sustaining individual State or Indian tribe administered program to insure private property against damages caused by land subsidence resulting from underground coal mining.

§ 887.3 [Removed]

■ 70. Remove § 887.3.

■ 71. Amend § 887.5 by revising the definition of ''Self-sustaining,'' removing the definition of ''State Administered'' and adding the definitions of ''reclamation plan or State reclamation plan'' and ''State or Indian tribe administered'' to read as follows:

§ 887.5 Definitions.

* * * * *

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and Part 884 of this chapter.

Self-sustaining means maintaining an insurance rate structure which is designed to be actuarially sound. Self-sustaining requires that State or Indian tribal subsidence insurance programs provide for recovery of payments made in settlement for damages from any party responsible for the damages under the law of the State or Indian tribe. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining must not preclude the use of funds from other non-Federal sources.

State or Indian tribe administered means administered either directly by a State or Indian tribe or for a State or Indian tribe through a State or Indian tribal authorized commission, board, contractor such as an insurance company, or other entity subject to State or Indian tribal direction.

■ 72. Revise §§ 887.10 through 887.13 to read as follows:

§ 887.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the OMB has approved the information collection requirements of Part 887 and assigned it control number 1029–0107. This information is being collected to support State and Indian tribal grant requests for moneys for the establishment, administration, and operation of self-sustaining State or Indian tribal administered subsidence insurance programs. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 887.11 Eligibility for grants.

You are eligible for grants under this Part if you are a State or Indian tribe with a reclamation plan approved under Part 884 of this chapter. If you are uncertified, you must have State share funds available under § 872.14 of this chapter or Tribal share funds available under § 872.17 of this chapter. If you have certified completion of coal reclamation under section 411(a) of SMCRA, you must have certified in lieu funds available under § 872.32 of this chapter, or prior balance replacement funds available under § 872.29 of this chapter if the State legislature or Tribal council has established this purpose.

§ 887.12 Coverage and amount of grants.

(a) You may use moneys granted under this Part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover your costs for services and materials according to OMB cost principles, Circular A–87. You may use eligible grant moneys to cover capitalization requirements and initial reserve requirements mandated by applicable State or Tribal law provided use of such moneys is consistent with the 43 CFR Part 12.

(b) You must submit a grant application under the procedures of Part 885 of this chapter for certified States and Indian tribes or Part 886 of this chapter for uncertified States or Indian tribes. Your application must include the following:

(1) A narrative statement describing how the subsidence insurance program is ''State or Indian tribe administered''; and

(2) A narrative statement describing how the funds requested will achieve a self-sustaining individual State or Indian tribe administered program to insure private property against subsidence resulting from underground coal mining.

(c) Grants awarded to you under this Part cannot exceed a cumulative total over the lifetime of the program of $3 million.

(d) You may not use grant moneys from the Fund for lands that are ineligible for reclamation funding under Title IV of SMCRA.

(e) Insurance premiums must be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with 43 CFR Part 12.

§ 887.13 Grant period.

The grant funding period must not exceed 8 years from the time we approve the grant. You must return any unexpended funds remaining at the end of any grant period to us according to 43 CFR Part 12.

■ 73. Revise § 887.15 to read as follows:

§ 887.15 Grant administration requirements and procedures.

The requirements and procedures for grant administration set forth in Part 885 of this chapter for reclamation grants to certified States and Indian tribes or in Part 886 of this chapter for reclamation grants to uncertified States and Indian tribes must be used for subsidence insurance funds in grants.

[FR Doc. E8–26458 Filed 11–13–08; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Friday,
November 14, 2008

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 2, 22, and 52
Federal Acquisition Regulation; Final Rules and Small Entity Compliance Guide

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2008–0003, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–29; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–29. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective date, see the document following this notice.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–29, FAR Case 2007–013. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

RULE LISTED IN FAC 2005–29

Item	Subject	FAR case	Analyst
I	Employment Eligibility Verification	2007–013	Murphy.

SUPPLEMENTARY INFORMATION: A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR Case 2007–013.

FAC 2005–29 amends the FAR as specified below:

Item I—Employment Eligibility Verification (FAR Case 2007–013)

This final rule implements Executive Order 12989, as amended June 6, 2008, and the selection of the Secretary for Homeland Security of the E-Verify system as the electronic system to be used for certain contractors and subcontractors as the means of verifying that certain of their employees are eligible to work in the United States. This final rule inserts a clause into Federal contracts that are above the simplified acquisition threshold and have a performance period of at least 120 days, committing Government contractors to use the U.S. Citizenship and Immigration Services' E-Verify system to verify that all of the contractors' new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States.

Exemptions include contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications. The final rule requires prime contractors to include the clause in subcontracts over $3,000 for services or for construction.

In exceptional circumstances, a head of the contracting activity, without power of redelegation, is authorized to waive the requirement to include the clause.

In response to public comments, the final rule significantly extends the timelines for registering, beginning to use the system for new and existing employees, and using the program to initiate verification of new hires.

Applicability to certain entities was limited in the following ways:

- Institutions of higher education need only verify employees assigned to a covered Federal contract.
- State and local governments and Federally Recognized Indian Tribes need only verify employees assigned to a covered Federal contract.
- Sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

In addition, the final rule exempts from verification requirements (a) employees who hold an active security clearance of confidential, secret, or top secret and (b) employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12. Contractors concerned with costs associated with identifying and separating existing employees assigned to a Federal contract, for the purpose of E-Verify, are provided the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract.

Dated: November 6, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular (FAC) 2005–29 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in the FAC 2005–29 is effective January 15, 2009.

Dated: November 5, 2008.

Linda W. Neilson,

Acting Deputy Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing (Defense Acquisition Regulations System).

David A. Drabkin,

Senior Procurement Executive & Deputy Chief Acquisition Officer, U.S. General Services Administration.

Dated: November 5, 2008.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E8–26906 Filed 11–13–08; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2005–29; FAR Case 2007–013; Docket 2008–0001; Sequence 1]

RIN 9000–AK91

Federal Acquisition Regulation; FAR Case 2007–013, Employment Eligibility Verification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require certain contractors and subcontractors to use the E-Verify system administered by the Department of Homeland Security, U.S. Citizenship and Immigration Services, as the means of verifying that certain of their employees are eligible to work in the United States.

DATES: *Effective Date:* January 15, 2009.

Applicability Date: Contracting Officers should modify, on a bilateral basis, existing indefinite-delivery/indefinite-quantity contracts in accordance with FAR 1.108(d)(3) to include the clause for future orders if the remaining period of performance extends at least six months after the final rule effective date, and the amount of work or number of orders expected under the remaining performance period is substantial.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–29, FAR case 2007–013.

SUPPLEMENTARY INFORMATION:

A. Background and Purpose

Employment Eligibility Verification Requirements

As explained more fully in the proposed rule, the Federal Property and Administrative Services Act of 1949 (FPASA), authorizes the President to ''prescribe policies and directives'' governing procurement policy ''that the President considers necessary to carry out'' that Act and that are ''consistent'' with the Act's purpose of ''provid[ing] the Federal Government with an economical and efficient'' procurement system. 40 U.S.C. 101, 121. On June 6, 2008, the President exercised this authority and the authority vested in him under section 301 of Title 3 of the United States Code in issuing Executive Order 13465 ''Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Nationality Act Provisions and the Use of an Electronic Employment Eligibility Verification System.'' 73 FR 33285, Jun. 11, 2008, amending Executive Order 12989 (signed February 13, 1996, published February 15, 1996 at 61 FR 6091), previously amended by Executive Order 13286 (signed February 28, 2003, published March 5, 2003 at 68 FR 10619). As amended, Executive Order 12989 now provides, at Section 5.(a), that ''Executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment of: (i) All persons hired during the contract term by the contractor to perform employment duties within the United States; and (ii) all persons assigned by the contractor to perform work within the United States on the Federal contract.'' The Executive Order also requires, at Section 5.(c), that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration ''amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the * * * employment eligibility verification responsibility * * * assigned to heads of departments and agencies under this order.''

On June 9, 2008, the Secretary of Homeland Security designated the ''E-Verify system, modified as necessary and appropriate to accommodate the policy set forth in the Executive Order * * * as the electronic employment eligibility verification system to be used by Federal contractors.'' (See 73 FR 33837, Jun. 13, 2008.)

This final rule responds to these requirements, and the Secretary's designation, by amending the FAR to require certain Federal contractors and subcontractors to use the E-Verify system (E-Verify) administered by the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) as the means of verifying that certain of their employees are authorized to work in the United States.

E-Verify Program

The E-Verify system, formerly known as the Basic Pilot/Employment Eligibility Verification Program, is an Internet-based system operated by DHS USCIS, in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. E-Verify represents the best means currently available for employers to verify the work authorization of their employees.

Before an employer can use the E-Verify system, the employer must enroll in the program and agree to the E-Verify Memorandum of Understanding (MOU) required for program participants. The terms of the MOU are established by USCIS and are not negotiated with each participant. In consenting to the MOU, employers agree to abide by current legal hiring procedures and to ensure that no employee will be unfairly discriminated against in the use of the E-Verify program. Violation of the terms of the MOU by the employer is grounds for termination of the employer's participation in the E-Verify program.

Current law (8 U.S.C. 1324a(b)) requires all employers in the United States to complete an Employment Eligibility Verification Form (Form I–9) for each newly hired employee to verify each employee's identity and employment eligibility. Under this final rule, Federal contractors will additionally enter the worker's identity and employment eligibility information into the E-Verify system, which checks that information against information contained in SSA, USCIS and other Government databases.

SSA first verifies that the name, social security number (SSN), and date of birth are correct and, if the employee has stated that he or she is a U.S. citizen, confirms U.S. citizen status through its databases. If the system confirms identity and U.S. citizenship, and there are no other indicators that the information is not correct, SSA confirms employment-eligibility. USCIS also verifies through database checks that any non-U.S. citizen employee is in an employment-authorized immigration status.

If the information provided by the worker matches the information in the SSA and USCIS records, no further action will be required. E-Verify procedures require only that the employer record on the Form I–9 the

verification identification number and the result obtained from the E-Verify query or print a copy of the transaction record and retain it with the Form I–9.

If SSA is unable to verify information presented by the worker, the employer will receive an ''SSA Tentative Nonconfirmation'' notice. Similarly, if USCIS is unable to verify information presented by the worker, the employer will receive a ''DHS Tentative Nonconfirmation'' notice. Employers can receive a tentative nonconfirmation notice for a variety of reasons, including inaccurate entry of information by the employer into the E-Verify Web site, and changes in the worker's name or immigration status that the worker has not updated in the SSA database searched by the E-Verify system. If the individual's information does not match the SSA or USCIS records, the employer must provide the worker with a written notice generated by the E-Verify system, called a ''Notice to Employee of Tentative Nonconfirmation''. The worker must then indicate on the notice whether he or she contests or does not contest the finding reflected in the tentative nonconfirmation that he or she appears unauthorized to work, and both the worker and the employer must sign the notice.

If the worker chooses to contest the tentative nonconfirmation, the employer must print a second notice generated by the E-Verify system, called a ''Referral Letter,'' which contains information about resolving the tentative nonconfirmation, as well as the contact information for SSA or USCIS, depending on which agency was the source of the tentative nonconfirmation. The worker then has eight Federal Government workdays to visit an SSA office or call USCIS to try to resolve the discrepancy. Under the E-Verify MOU, if the worker contests the tentative nonconfirmation, the employer is prohibited from terminating or otherwise taking adverse action against the worker while he or she awaits a final resolution from the Federal Government agency. If the worker fails to contest the tentative nonconfirmation, or if SSA or USCIS is unable to resolve the discrepancy, the employer will receive a notice of final nonconfirmation and the worker's employment may be terminated.

Participation in E-Verify does not exempt the employer from the responsibility to complete, retain, and make available for inspection Forms I–9 that relate to its employees, or from other requirements of applicable regulations or laws. However, the following modified requirements apply by reason of the employer's participation in E-Verify: (1) Identity documents used for verification purposes must have photos (except as discussed below with respect to accommodations); (2) if an employer obtains confirmation of the identity and employment eligibility of an individual in compliance with the terms and conditions of E-Verify, a rebuttable presumption is established that the employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of the individual; (3) the employer must notify DHS if it continues to employ any employee for whom the employer has received a final nonconfirmation, and the employer is subject to a civil money penalty between $500 and $1,000 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) if an employer continues to employ an employee after receiving a final nonconfirmation and that employee is subsequently found to be an unauthorized alien, the employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of Immigration and Nationality Act (INA) section 274A(a); and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

Further information on registration for and use of E-Verify can be obtained via the Internet at *http://www.dhs.gov/E-Verify*.

E-Verify Basis and Development

1. Legislative History

Laws pertaining to the control of illegal immigration have received serious attention from Congress and the Executive Branch since at least the early 1950s. Chief among the legislative approaches to these problems has been the proposed establishment of penalties for the employment of undocumented aliens and related laws requiring the verification of employment authorization. See INA Section 274(a), codified at 8 U.S.C. 1324(a). The House of Representatives Report filed with the Immigration Reform and Control Act of 1986 (IRCA), found at 1986 U.S. Code Cong. and Adm. News, p. 5649, clearly describes the basis for that legislation:

> This legislation seeks to close the back door on illegal immigration so that the front door on legal immigration may remain open. The principal means of closing the back door, or curtailing future illegal immigration, is through employer sanctions. The bill would prohibit the employment of aliens who are unauthorized to work in the United States because they either entered the country illegally, or are in an immigration status which does not permit employment. U.S. employers who violate this prohibition would be subject to civil and criminal penalties. Employment is the magnet that attracts aliens here illegally or, in the case of nonimmigrants, leads them to accept employment in violation of their status. Employers will be deterred by the penalties in this legislation from hiring unauthorized aliens and this, in turn, will deter aliens from entering illegally or violating their status in search of employment. The logic of this approach has been recognized and backed by the past four administrations * * *. Now, as in the past, the Committee remains convinced that legislation containing employer sanctions is the most humane, credible and effective way to respond to the large-scale influx of undocumented aliens. While there is no doubt that many who enter illegally do so for the best of motives—to seek a better life for themselves and their families—immigration must proceed in a legal, orderly and regulated fashion. As a sovereign nation, we must secure our borders.

H.R. Rep. No. 99–682(I), 99th Cong., 1st Sess. 46 (1986), 1986 U.S. Code Cong. & Admin. News, p. 5649. INA Section 274A, as established by IRCA, thus prohibits any ''person or other entity'' from knowingly hiring, or knowingly continuing to employ, any unauthorized alien. INA section 274A(b) provides for an ''Employment Verification System,'' which requires that employers attest, after examination of documentation presented by the employee, that the person being hired, recruited or referred for employment is not an unauthorized alien. INA section 274A also provides for the assessment of civil monetary penalties and cease and desist orders against any employer that has knowingly hired or continued to employ an unauthorized alien, or that has failed to comply with the employment verification system mandated by INA section 274A(b). 8 U.S.C. 1324a(e)(4)–(e)(5).

Employers who engage in a ''pattern or practice'' of violating the prohibition against illegal employment of unauthorized workers may face criminal sanctions. INA section 274A(f), 8 U.S.C. 1324a(f). DHS U.S. Immigration and Customs Enforcement (ICE) investigates complaints of potential violations of INA section 274A by inspecting employment eligibility verification forms maintained by employers with respect to their current and former employees, and compelling the production of evidence or the attendance of witnesses by subpoena. 8 U.S.C. 1324a(e)(2); 8 CFR 274a.2(b)(2).

Development of E-Verify

E-Verify provides a modern means of verifying employment authorization information in addition to the traditional I–9 process. When Congress established the paper-based employment verification system in 8 U.S.C. 1324a(b), it directed the President to evaluate that system's security and efficacy and implement necessary changes, subject to congressional oversight. 8 U.S.C. 1324a(d). Congress also authorized the President to establish demonstration projects designed to strengthen the employment verification system. 8 U.S.C. 1324a(d)(4).

The first demonstration project, in 1992, included the Telephone Verification System (TVS) pilot program—a predecessor to the E-Verify system. 69 Interpreter Releases 702 (June 8, 1992); 515 (Apr. 27, 1992). In 1996, Congress established the Basic Pilot program—now called E-Verify—as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Public Law 104–208, Sections 401–405, 110 Stat. 3009–655–3009–666 (1996) (8 U.S.C. 1324a note).

On August 10, 2007, the Acting Director of the Office of Management and Budget instructed agencies to encourage their existing and future contractors to use E-Verify and attached a letter that DHS had sent to its major contractors encouraging their use of E-Verify and emphasizing E-Verify's ability to help contractors comply with immigration law. See ''Memorandum for the Heads of Departments and Agencies M–07–21,'' Stephen S. McMillin, Acting Director, Office of Management and Budget (August 10, 2007) (*http://www.whitehouse.gov/omb/memoranda/fy2007/m07-21.pdf*) attaching ''Letter from Paul A. Schneider, Under Secretary for Management'' (Aug. 10, 2007). The OMB Memorandum also announced that the Federal Acquisition Regulatory Council was developing appropriate Governmentwide regulatory coverage to apply E-Verify to Federal contractors. It also indicated that by October 1, 2007, all Federal departments and agencies should begin verifying their new hires through E-Verify.

Compliance Requirements for Federal Contractors

The Executive branch has long recognized that the instability and lack of dependability that afflicts contractors that employ unauthorized workers undermines overall efficiency and economy in Government contracting. The first formal expression of this policy is found in Executive Order 12989, signed by President Clinton in February 1996. (See 61 FR 6091, Feb. 15, 1996.) That Order, which pre-dated Congress's enactment of IIRIRA authorizing what is now the E-Verify program, found that the presence of unauthorized aliens on a contractor's workforce rendered that contractor's workforce less stable and reliable than the workforces of contractors who do not employ unauthorized aliens:

> Stability and dependability are important elements of economy and efficiency. A contractor whose work force is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose work force is more stable. It remains the policy of this Administration to enforce the immigration laws to the fullest extent, including the detection and deportation of illegal aliens. In these circumstances, contractors cannot rely on the continuing availability and service of illegal aliens, and contractors that choose to employ unauthorized aliens inevitably will have a less stable and less dependable work force than contractors that do not employ such persons. Because of this Administration's vigorous enforcement policy, contractors that employ unauthorized alien workers are necessarily less stable and dependable procurement sources than contractors that do not hire such persons. I find, therefore, that adherence to the general policy of not contracting with providers that knowingly employ unauthorized alien workers will promote economy and efficiency in Federal procurement.

Executive Order 12989 (preamble), 61 FR 6091. This finding is as applicable today as it was in 1996. The Government is aware, in particular, of recent instances where Federal Government contracts have been disrupted when the contractor's employees were identified as unauthorized workers. See, *e.g.*, Tami Abdollah, ''2 Sentenced for Hiring Illegal Migrants; Golden State Fence Executives Get Probation and Fines, and the Company is Ordered to Forfeit $4.7 Million in Profits,'' Los Angeles Times, March 29, 2007, (detailing the criminal prosecution of two Federal Contractor company executives for hiring illegal workers that resulted in a guilty plea; judgment of probation and combined $300,000 in fines for the two individuals in addition to the forfeiture of $4.7 million in company profits the company reaped by employing unauthorized immigrant workers); Karen Lee Ziner, ''3 at Bianco Plant Indicted on Immigration Charges,'' Providence Journal Bulletin, August 4, 2007, at A3 (reporting the indictment of company president along with two managers for ''conspiring to harbor and hire illegal immigrants'' to work on Government contracts valued over $200 million); Mark Bowes, ''U.S. Immigration Agents Arrest 33: Workers at Richmond Site of New Federal Courthouse Alleged to be Here Illegally,'' Richmond Times Dispatch, May 8, 2008, at B3 (reporting the arrest of 33 alleged illegal immigrant workers employed by a Federal contractor during a raid by immigration authorities at the construction site of a future Federal courthouse in Richmond, Virginia); Giovanna Dell'Orto, ''Illegal Immigrants Arrested at Military Bases,'' Press-Register, January 20, 2007, at B12 (publishing an article on the arrest of roughly 40 illegal immigrant workers over a three day period that were hired by Federal contractors to work at three different military bases including Fort Benning in Georgia and the Marine Corp Base Quantico in Virginia); Rob Bell, ''Mills Manufacturing Corporation Raided by ICE,'' Western Carolina Business Journal, August 15, 2008 (reporting that immigration officials raided a Federal defense contractor and arrested 57 illegal immigrant workers).

Consistent with the President's authority under FPASA, and to ''ensure the economical and efficient administration and completion of Federal Government contracts,'' Executive Order 12989 instructed the Attorney General of the Department of Justice to investigate to determine whether a contractor or an organizational unit thereof is not in compliance with the INA employment provisions, transmit that determination to the contracting agency and have the head of the contracting agency pursue debarment or other such action as may be appropriate under the FAR. (See Executive Order 12989, Sections 3 and 4.) With the establishment of the DHS, the Attorney General's investigative authority transferred to the Secretary of Homeland Security. See Executive Order 13286, Sec. 19, (Feb. 28, 2003), 68 FR 10623. Thus, as early as 1996, agencies were instructed to use provisions within the FAR to support economical and efficient Federal Government contracting by avoiding doing business with contractors that employ unauthorized workers.

On June 6, 2008, President Bush issued Executive Order 13465, amending Executive Order 12989 by adding an electronic employment eligibility verification requirement to strengthen the long-standing Executive branch policy of furthering economical and efficient contracting through only contracting with Federal contractors who employ persons in the United States who are authorized to work in the United States. Executive Order 13465 echoes the findings and conclusions stated in Executive Order 12989 and

builds upon the ''economy and efficiency'' justifications for the 1996 Executive Order in light of the significant advances in the technology for employment eligibility verification that have been made since the issuance of Executive Order 12989. As amended, Executive Order 12989 now states:

> It is the policy of the Executive branch to use an electronic employment verification system because, among other reasons, it provides the best available means to confirm the identity and work eligibility of all employees that join the Federal workforce. * * * I find, therefore, that adherence to the general policy of contracting only with providers that do not knowingly employ unauthorized alien workers and that have agreed to utilize an electronic employment verification system designated by the Secretary of Homeland Security to confirm employment eligibility of their workforce will promote economy and efficiency in Federal procurement.

Executive Order 12989, as amended by Executive Order 13465, 73 FR 33285.

Executive Order 12989, as amended, further specifically directs the agency heads of DoD, GSA and NASA to implement this policy through amendments to the FAR. Executive Order 13465 at Section 3, 73 FR 33286. Accordingly, the Councils amend the FAR in this final rule in accordance with the President's direction, pursuant to his authority under FPASA to ''prescribe policies and directives'' governing Federal procurement that are consistent with the Act's aim of providing the Federal Government with an economical and efficient procurement system. 40 U.S.C. 101, 121.

B. Final Rule

Summary of the Elements of the Proposed Rule That Are Retained in the Final Rule

This final rule inserts a clause into Federal contracts committing Government contractors to use the USCIS E-Verify System to verify that all of the contractors' new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States. Consistent with the requirements first set forth in the proposed rule, the final rule—

1. Exempts contracts that are for—

- Commercially available off-the-shelf (COTS) items; and
- Items that would be COTS items but for minor modifications.

2. Requires inclusion of the clause in subcontracts over $3,000 for services or for construction.

3. Requires contractors and subcontractors to use E-Verify to confirm the employment eligibility of all existing employees who are directly performing work under the covered contract.

4. Applies to solicitations issued and contracts awarded after the effective date of the final rule in accordance with FAR 1.108(d). Under the final rule, Departments and agencies should, in accordance with FAR 1.108(d)(3), amend—on a bilateral basis—existing indefinite-delivery/indefinite-quantity contracts to include the clause for future orders if the remaining period of performance extends at least six months after the effective date of the final rule.

5. In exceptional circumstances, allows a head of the contracting activity to waive the requirement to include the clause. This authority is not delegable.

The rule is written to apply the above requirements in a manner that will ensure effective compliance by the contractor community, and is reasonably limited in certain circumstances to minimize the burden on participants in the Federal procurement process.

Changes Adopted in the Final Rule

Below is a summary of changes made to the final rule:

1. Significantly Extended Timelines—The final rule amends the proposed rule to permit Federal contractors participating in the E-Verify program for the first time a longer period—90 calendar days from enrollment instead of 30 days as initially proposed—to begin using the system for new and existing employees. The final rule also provides a longer period after this initial enrollment period—30 calendar days instead of 3 business days—for contractors to initiate verification of existing employees who have not previously gone through the E-Verify system when they are newly assigned to a covered Federal contract. Contractors already enrolled and using the program as Federal contractors will have the same extended timeframe to initiate verification of employees assigned to the contract, but the time limits will be measured from contract award date instead of from the contractor's E-Verify enrollment date. With regard to verification of new hires, a contractor that has already been enrolled as a Federal contractor for 90 calendar days or more will have the standard 3 business days from the date of hire to initiate verification of new hires. Those contractors that have been enrolled in the program for less than 90 calendar days will have 90 calendar days from the date of enrollment as a Federal contractor to initiate verification of new hires.

2. Covered Prime Contract Value Threshold—The final rule requires the insertion of the E-Verify clause for prime contracts above the simplified acquisition threshold ($100,000) instead of the micro-purchase threshold ($3,000).

3. Contract Term—The final rule clarifies that the E-Verify clause need not be inserted into prime contracts with performance terms of less than 120 days.

4. Institutions of Higher Education—The final rule modifies the contract clause so that institutions of higher education need only verify employees assigned to a covered Federal contract.

5. State and Local Governments and Federally Recognized Indian Tribes—Similarly, under the final rule, State and local governments and Federally recognized Indian tribes need only verify employees assigned to a covered Federal contract.

6. Sureties—Under the final rule, sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

7. Security Clearances and HSPD–12 credentials—The final rule exempts employees who hold an active security clearance of confidential, secret or top secret from verification requirements. The rule also exempts employees for which background investigations have been completed and credentials issued pursuant to the Homeland Security Presidential Directive (HSPD)–12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' which the President issued on August 27, 2004.

8. All Existing Employees Option—The final rule provides contractors the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract. A contractor that chooses to exercise this option must notify DHS and must initiate verifications for the contractor's entire workforce within 180 days of such notice to DHS.

9. Expanded COTS-related exemptions for:

- Bulk cargo—The rule will not apply to prime contracts for agricultural products shipped as bulk cargo that would otherwise have been categorized as COTS; and
- Certain services associated with the provision of COTS items or items that would be COTS items but for minor modifications.

10. Allows the Head of the Contracting Activity to waive E-Verify requirements after contract award,

either temporarily or for the period of performance.

11. Definitions:

• Employee assigned to the contract—The final rule clarifies that employees who normally perform support work, such as general company administration or indirect or overhead functions, and that do not perform any substantial duties applicable to an individual contract, are not considered to be directly performing work under the contract.

• Subcontract and subcontractor—Adds definitions derived from FAR 44.101.

B. Response to Comments Received on the Notice of Proposed Rulemaking Docket

The Department of Defense (DoD), General Services Administration (GSA) and National Aeronautics and Space Administration (NASA) published a notice of proposed rulemaking (NPRM) in this action on June 12, 2008. (See 73 FR 33374.) The NPRM directed the submission of comments to the Federal eRulemaking portal, *http://www.regulations.gov*, as well as by facsimile and by mail to the FAR Secretariat, with reference to FAR Case 2007–013, Docket 2008–0001; Sequence 1, on or before August 11, 2008. The agencies received more than 1,600 public comments on the proposed rulemaking from individuals, organizations, corporations, trade associations, chambers of commerce and Government entities.

Comments submitted to the docket for this rulemaking were distributed relatively evenly among various issues, with concerns about the Government's authority to promulgate the rule and questions about the DHS's and SSA's collective ability to administer the rule receiving the greatest number of comments. Eleven commenters stated that the 60-day public comment period was inadequate to evaluate, research, and prepare responses to a complex proposed rule. Those commenters asked the Councils to extend the comment period to allow more time to research and respond to the proposed rule.

The Councils declined to extend the public comment period after concluding that the period was adequate. The current web-based E-Verify system, which has been active and available to employers since 2004, has been the subject of significant public scrutiny, including in public hearings before Congress. This has, over time, disseminated considerable information about the program to the public. As a result, most commenters did not request additional time to gather information and submit comments, and those that did request additional time failed to raise novel or difficult issues that could have justified an extension. Moreover, the comments received more than adequately provided substantial information on which the Councils could make a final decision. Accordingly, the Councils do not believe that there is a basis for extending the comment period related to this rule.

Support for the Rule

Comment: More than 600 commenters wrote in support of the proposed rule and strongly urged its adoption. One commenter noted that it has been illegal for more than 20 years, *i.e.*, since 1986, to hire an individual who is not authorized to work in the United States. Another commenter, who identified himself as a 30-year Human Resources professional, stated that this E-Verify system is not too burdensome for employers. A third commenter said that the ''E-Verify program WORKS!'' and that he has found it to work accurately 100 percent of the time.

The majority of these commenters expressed overall support for the Executive Order's instruction for Federal agencies to contract with employers that use E-Verify to check the employment eligibility of all persons performing work on Federal contracts and of all persons hired by the contractor. Some commenters applauded E-Verify because it will establish a level playing field and prevent some employers from obtaining a competitive advantage by exploiting unauthorized workers for lower pay. Many commenters noted that—for 22 years—it has been against the law to hire workers who are not authorized to work in the U.S. This is not a new requirement, they say; it merely puts some teeth into the existing law. Other commenters observed that E-Verify will help stem the problem of identity theft by requiring employers to check photo identification.

Response: The Councils appreciate these supportive comments for use of E-Verify in the Federal Government procurement system, but note that application of the system in this context is not meant to regulate immigration, but to provide the Federal Government with stable and dependable contractors which, ultimately, results in a more economical and efficient procurement system.

Requests for a More Comprehensive Solution

Comment: A number of commenters suggested that merely requiring the use of the E-Verify system by Federal contractors was not a comprehensive solution. They strongly advocate ''fixing'' the ''broken'' immigration system. Some commenters see the solution as giving people a path to legal status, others see it as providing ''tangible solutions for the over 7 million undocumented workers in our economy,'' some see it as enabling swifter and earlier access to work permits, and still other commenters advocate improved ICE auditing teams. One commenter claims that, ''[w]hile employer sanctions and a mandatory employment document verification system may be an appropriate part of an effective immigration reform package, standing alone they only exacerbate the problems they are ostensibly designed to address.''

Response: Comprehensive immigration reform is beyond the scope of this rulemaking and was not the purpose of Executive Order 12989, as amended. The mandate given to the FAR Councils was to implement the President's Executive Order of June 6, 2008, as a means of creating a more economical and efficient Federal Government procurement system. The employment of persons unauthorized to work in the U.S. has been against the law for 22 years. Completion of the Form I–9 is still required of all employers and this rule does not change that requirement. This rule merely provides a more convenient, faster, and more consistent means of determining whether an individual is, or is not, authorized to work in the U.S. to establish greater stability and dependability among the Federal contractor workforce.

Authority

1. Immigration Statutes

a. Voluntary Participation in E-Verify

1. *Comment.* Many commenters challenge the Councils' authority to promulgate the Rule, arguing that the insertion of a clause into Federal contracts that commits Federal contractors to use E-Verify conflicts with the congressional intent expressed in the IIRIRA that participation in E-Verify be ''voluntary.'' Some commenters further argue that the E-Verify program is de facto mandatory because contractors who elect not to enter into Federal contracts on account of E-Verify will go out of business.

Response: The Councils disagree. Section 402(a) of IIRIRA states, in relevant part, that ''the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program.'' 8 U.S.C. 1324a note,

Section 402(a). On its face, this statutory limitation applies only to the Secretary of Homeland Security and does not apply to the President or the Councils. Because the requirement to insert the contract clause set forth in this rule comes from a presidential action, Executive Order 12989, as amended, and from this rulemaking undertaken by the Councils, it is not a requirement imposed by the Secretary of Homeland Security and therefore does not run afoul of section 402(a) of IIRIRA.

Moreover, acceptance of a Federal procurement contract is, by definition, a voluntary act. The rule sets forth a performance requirement to be included as a contract clause in contracts entered into or negotiated anew after the effective date of the rule. In *AFL–CIO* v. *Kahn,* the D.C. Circuit Court of Appeals, sitting en banc, rejected the claim that the Carter Administration's insistence that Federal contractors agree to comply with wage and price controls rendered those controls ''mandatory'' in violation of the Council on Wage and Price Stability Act (COWPSA). 618 F.2d 784 (D.C. Cir. 1979). The Kahn Court analogized the procurement requirement at issue to ''those Federal programs that offer funds to State and local governments on certain conditions. The Supreme Court has upheld such conditional grants, observing on one occasion through Justice Cardozo that 'to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties.' '' *AFL–CIO* v. *Kahn,* 618 F.2d at 794 (quoting *Steward Machine Co.* v. *Davis,* 301 U.S. 548, 589–590 (1937)). According to the D.C. Circuit:

> Any alleged mandatory character of the procurement program is belied by the principle that no one has a right to a Government contract. As the Supreme Court ruled in *Perkins* v. *Lukens Steel Co.,* ''[The] Government enjoys the unrestricted power * * * to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases.'' Those wishing to do business with the Government must meet the Government's terms; others need not.

AFL–CIO v. *Kahn,* 618 F.2d at 794. If a contractor chooses to do business with the Federal Government, then the Federal Government can, and routinely does, impose contract performance requirements. Where, as with this rule, such requirements are imposed through contract terms included in contracts, a contractor's agreement to abide by those terms of the agreement is not ''involuntary.''

2. *Comment:* Many commenters suggested that IIRIRA and the INA limit the types of employers which can be required to participate in the Basic Pilot Program. These commenters asserted that the proposed rule's promulgation of a contract clause committing Federal contractors to use E-Verify violates the congressional intent behind IIRIRA, because Federal contractors are not one of the classes of employers which can be required to participate in Basic Pilot. Some commenters suggested that Congress consciously chose to exclude Government contractors from the subset of employers for which participation in Basic Pilot would be mandatory. Many commenters also asserted that, because of this alleged violation of congressional intent, the Administration lacks the constitutional authority to promulgate this policy through Executive Order or through this rulemaking.

Response: The Councils disagree. IIRIRA requires participation in E-Verify by certain employers, including Executive departments and the legislative branch, as well as employers found to have violated INA section 274A. There is nothing in the text of IIRIRA that prohibits the President, acting pursuant to separate statutory authority, from requiring additional classes of employers to participate in E-Verify as a condition of contracting with the Federal Government. Nor is there any indication in the legislative history to suggest that Congress ever specifically considered and rejected a proposal to include Federal contractors in the E-Verify program. Here, the President has acted within his authority under FPASA and 3 U.S.C. 301 and issued an Executive Order to improve the dependability and stability of the Federal contractor workforce by requiring Federal agencies to contract with businesses that electronically verify the employment eligibility of their employees. In his Executive Order, the President tasked the Secretary of Homeland Security with designating an appropriate electronic verification tool and charged the FAR Councils with the responsibility to promulgate a rule to implement the requirements of the Executive Order. The Secretary of Homeland Security and the FAR Councils have acted in accordance with the President's directive, issued as an exercise of his authority under FPASA, and in so doing, neither the Secretary nor the Councils have taken any action in conflict with IIRIRA. Congress merely prohibited the Secretary of Homeland Security from requiring participation in E-Verify by other persons or entities, and this rule does not violate that prohibition, as described above.

b. Existing Employees

Comment: Many commenters asserted that because IIRIRA created the Basic Pilot program as a tool to confirm employment eligibility of newly hired employees, the contractual requirement—announced by Executive Order and implemented through this rulemaking—that existing employees assigned to Government contracts be verified (or re-verified) through E-Verify is contrary to law.

Response: The Councils disagree. Executive Order 12989, as amended, instructs executive departments and agencies to require, as a condition of contracting, that the contractor agree to use an electronic employment eligibility verification system ''to verify the employment of * * * all persons assigned by the contractor to perform work within the United States on the Federal contract.'' This Executive Order is based on the President's exercise of his authority under FPASA to prescribe policies that promote economy and efficiency in federal contracting. 40 U.S.C. 101, 121.

The Basic Pilot statute does not prohibit the verification of existing employees' work eligibility called for by this presidential directive. The Basic Pilot statute lays out a set of procedures that employers using the system must follow ''in the case of the hiring (or recruitment or referral) for employment in the United States. * * *'' IIRIRA section 403(a). The statute also sets out the parameters for the ''employment eligibility confirmation system'' that the Secretary of Homeland Security must establish. IIRIRA section 404. Nothing in either of these sections, however—or in any other part of the Basic Pilot statute—prohibits the use of the confirmation system for existing employees or prohibits the President, acting pursuant to separate statutory authority, from requiring federal contractors to use the confirmation system for existing employees as a condition of contracting with the federal government.

c. Congressional Notification

Comment: Commenters noted that IRCA requires the Administration to notify Congress before implementing any changes to the employment verification system ''established under subsection (b) of [INA section 274A].'' INA section 274A(d)(1), (d)(3). These commenters suggest that this rulemaking amounts to such a change, and that it may not be implemented without notice to Congress called for in section 274A(d)(3).

Response: The Councils disagree. This rule instructs Federal contracting officers to insert the specified clause into future Federal contracts, thereby committing Federal contractors to use the E-Verify system as specified in the rule. It does not, however, constitute a change to ''the requirements of subsection (b)'' of INA section 274A, which established the paper-based Form I–9 employment verification process. The I–9 process that all employers must follow at the time of hire continues to apply to Federal contractors without any change. This rule, and the Executive Order on which it is based, promotes economy and efficiency in Federal contracting by assisting employers to avoid employment of unauthorized workers and by limiting the risk that Federal contracts performed in the United States will be staffed by persons unauthorized to work in the United States.

2. Executive Order Authority

Comment: As noted above, many commenters challenged the President's authority to issue the Executive Order under FPASA. These commenters suggested that Executive Order 12989 does not promote ''economy'' and ''efficiency'' in Government contracting, and that the Executive Order is therefore not supported by FPASA's statement that the President may enact procurement regulations which further those two ends. Commenters also contended that the main purpose of the Executive Order is to advance a social policy—a strengthening of the immigration enforcement relating to employment in the United States—in a way that is contrary to congressional intent, and that the President's power recognized by FPASA cannot be employed by the Executive Branch to advance policies that conflict with the statutes passed by Congress.

Response: These challenges to the legal authority for Executive Order 12989 are outside the scope of this rulemaking. The Councils note, however, that Executive Order 12989 falls well within the established legal bounds of presidential directives regarding procurement policy. FPASA authorizes the President to craft and implement procurement policies that further the Act's statutory goals of promoting ''economy'' and ''efficiency'' in Federal procurement. See, *e.g.*, *UAW-Labor Employment & Training Corp.* v. *Chao,* 325 F.3d 360, 366 (D.C. Cir. 2003) (affirming authority of the President under FPASA to require federal contractors, as a condition of contracting, to post notices informing workers of certain labor law rights); *Kahn,* 618 F.2d at 792–793 (upholding an Executive Order implementing procurement wage and price controls, noting need for a ''nexus'' between those wage and price controls and procurement economy and efficiency). The fundamental ''economy and efficiency'' principles underlying the Executive Order were first articulated in the original Executive Order 12989, issued in February 1996, which concluded that contracting with employers who hire unauthorized workers in violation of the INA undermines the economy and efficiency of the Federal procurement system. The 1996 Executive Order imposed debarment penalties on contractors found to have violated the immigration laws, and was never found by a court to be inconsistent with FPASA, the INA, or IRCA. Executive Order 13465 amends Executive Order 12989 to use new employment verification technology in order to advance the same goal of ensuring a stable and dependable Federal contractor workforce and more economical and efficient Federal Government contracting. See 73 FR 33285 (''This order is designed to promote economy and efficiency in Federal Government procurement. * * * I find * * * that adherence to the general policy of contracting only with providers that do not knowingly employ unauthorized alien workers and that have agreed to utilize an electronic employment verification system designated by the Secretary of Homeland Security to confirm the employment eligibility of their workforce will promote economy and efficiency in Federal procurement.'') The President has determined that this rule will produce net economy and efficiency gains in Federal procurement.

The Councils also disagree with assertions that the proposed rule is a veiled attempt to modify immigration policy under the guise of procurement regulation. This rule implicates immigration, but does so in a permissible manner. The President may, under FPASA, promulgate procurement policies and directives touching upon policy matters beyond Government contracting, so long as there is a sufficiently close ''nexus'' between the policy or directive and the promotion of economy and efficiency in Federal procurement. See *Chao,* 325 F.3d at 366–67; *Kahn,* 618 F.2d at 792; *Chamber of Commerce* v. *Reich,* 74 F.3d 1322, 1337 (D.C. Cir. 1996) (''[T]he President, in implementing the Procurement Act, may * * * draw upon * * * secondary policy views * * * that are directed beyond the immediate quality and price of goods and services purchased.''). In this case, the ''nexus'' is explained at some length in the text of Executive Order 13465. (See 73 FR 33285.)

3. The MOU Requirement

Comment: One commenter specified that ''[t]he inclusion of an MOU in addition to, or as a supplement to, the contract performance requirements, is contrary to contract formation law in that it might create a separately enforceable (and potentially conflicting) obligation between the parties beyond the scope of the contract and could create confusion and result in problems with contract administration and/or lead to the submission of contract claims.''

Response: The Councils do not concur with these comments. The requirement in this clause for the contractor to comply with the requirements of a secondary agreement is no different than any other contract term that requires adherence to a standard or a specification. The clause merely requires adherence to the conditions of the MOU as part of the contractor's performance duties. The terms of the E-Verify MOU are readily available to the public, and were included in the docket of this rulemaking on the *www.regulations.gov* Web site so that commenters on this rule would have the opportunity to review and take into consideration the proposed terms of that agreement in providing comments on this rulemaking. Potential contractors have adequate advance notice of the ancillary agreement with which they must comply.

4. Consistency With Other Federal Regulations

a. FAR Guiding Principles

Comment: Several commenters claim that the proposed rule contradicts many of the guiding principles used in the creation of the FAR, including (1) minimizing administrative operating costs, (2) conducting business with integrity, fairness, and openness, and (3) promoting competition.

Response: Commenters claim that administrative operating costs can include start-up, implementation, training, and maintenance costs; and the Councils agree. All of these costs were included, and evaluated, in the Regulatory Impact Analysis (RIA) released with the proposed rule. Some adjustments have been made to the RIA as a result of comments received in response to the proposed rule, and they are addressed in the Regulatory Flexibility Analysis section of this rule. Commenters claim that there are also

other direct and indirect costs to employers who use E-Verify—employers may perceive foreign-born workers as more expensive to employ than native-born workers due to the database inaccuracies. Commenters claim that resolving tentative nonconfirmations and correcting employee records costs time and money and affects other resources. In claiming that the costs associated with the proposed rule do not minimize administrative costs, however, the commenters overlook the costs already incurred by contractors as a result of the I–9 process mandated by the INA, and they overlook the gains in stability and reliability of the Federal contractor workforce that contractors' use of E-Verify will produce.

The Councils also disagree with the claim by some commenters that the proposed rule fails to advance integrity, fairness, and openness in the way business is conducted. While Government-commissioned reports have found some employer abuse of the program, discriminatory behavior and other such prohibited employment practices is not encouraged by the E-Verify system. Use of E-Verify cannot prevent all such illegal action, but the record created by use of the system does make it more difficult for an employer engaged in discrimination to conceal its unlawful behavior. If any employer engages in discriminatory practices, such abuses should be reported to the appropriate Federal and State agencies responsible for enforcement of the anti-discrimination laws.

Commenters claim that the proposed rule does not encourage competition because the harmful impact on small businesses (many of which are minority-, immigrant-, or family-owned) is disproportionate and makes the playing field for small businesses more uneven. The claim of a disproportionate impact on small businesses is addressed elsewhere in this rule (see the Regulatory Flexibility Analysis section of this rule). However, the Councils believe that there is an impact on competition, and it believes that the impact is positive rather than negative. Use of the E-Verify system will make it more difficult for firms to gain a competitive edge by hiring unauthorized workers at lower pay.

b. DHS Regulations

Comment: One commenter asserted that the proposed rule's requirement to re-verify certain employees violates existing DHS regulations.

Response: As the commenter did not identify the specific DHS regulations allegedly violated, this comment is not susceptible to a response. Other commenters have made similar assertions that E-Verify is contrary to law and the Councils have addressed these specific concerns. The Councils are not aware of any DHS regulation violated by this final rule.

c. Verification of Federal Employees

Comment: Several commenters noted that OMB has directed all Federal departments and agencies to use E-Verify on their newly-hired employees, but not on their existing employees. These commenters asserted that the proposed rule is inconsistent with that OMB decision, because the rule requires Federal contractors to use E-Verify on not only new hires but also on existing employees working on Federal contracts, and argue that Federal contractors should not be held to a higher verification standard than is applied to the Executive branch.

Response: The Councils disagree. The rule is consistent with the policy announced in Executive Order 12989 requiring the Executive branch to contract with employers that agree to use E-Verify for their employees who are working on a covered Federal contract. The aim of the Executive Order is to promote economy and efficiency in Federal procurement by ensuring stable and dependable Federal contractors.

Furthermore, Federal employees are required to undergo background checks pursuant to HSPD–12, which mandates that a person must be suitable (minimum of a national agency check with inquiries (NACI)) in order to be issued an HSPD–12 card. HSPD–12 requires certain credentialing standards prior to issuing personal identity verification cards. These standards include verification of name, date of birth, and social security number (among other data points) against Federal and private data sources. The Councils agree that the degree of scrutiny applied to individuals granted HSPD–12 credentials provides sufficient confidence that any such person is likely truthful about his or her authorization to work in the United States that additional investigation through E-Verify is not necessary.

d. Appropriate Scope of Regulations

Comment: One commenter suggested that the proposed rule's goal was to ''protect U.S. workers''—one that is beyond the scope of that which can rightfully be pursued under procurement authorities.

Response: The Councils do not agree with the premise of this comment. The goal of the proposed rule is not to ''protect U.S. workers.'' Rather, the goal of the rule is to implement Executive Order 12989, which aims to promote economy and efficiency in the Federal procurement system by ensuring that the Federal Government does not do business with contractors that hire or employ unauthorized aliens, thereby promoting the stability and dependability of contractor workforces and minimizing the potential for disruption to federal contracts. The President is well within his authority under FPASA to require the agencies to promulgate this rule, which has a clear nexus to promotion of economy and efficiency in Federal contracting, even if it might also have other impacts. Chao, 325 F.3d at 366 (affirming authority of the President under FPASA to require federal contractors, as a condition of contracting, to post notices informing workers of certain labor law rights.)

Relationship With States

1. States Prohibiting Mandatory Use

Comment: Several commenters requested that the Administration clarify the effects of the proposed rule on employers conducting Federal Government contracting business in locations where State and/or local law prohibits the use of E-Verify. One of these commenters specifically asked if the requirements of the proposed rule would function as an affirmative defense in actions brought against employers which use E-Verify in contravention of State/local law. Two other commenters suggested that the proposed rule be modified to provide E-Verify participation waivers to employers located in States prohibiting E-Verify enrollment, to allow such employers to participate in Government contracting without violating State law.

Response: The Councils decline to provide an exemption to the E-Verify term in contracts covered by this rule for employers located in States that prohibit E-Verify enrollment, because such state and local laws would be preempted by Executive Order 12989, as amended, and by these rules implementing the Order. The Councils note that an Illinois state statute prohibiting use of E-Verify by employers within that state is currently in litigation, as a result of a lawsuit filed by DHS arguing that the state statute is preempted by Federal law. The state has agreed not to enforce its statute pending the final resolution of the litigation.

2. Other States

Comment: Two commenters noted that they are concerned that the proposed rule's requirement that certain existing employees undergo E-Verify

verification could ''embolden'' States and localities to require the same type of verification for employees working under State/local contracts. These commenters fear that such an expansion would complicate employment verification legal requirements, to the detriment of both employers and employees.

Response: The commenters concerns are speculative and, in any case, State and local government action is outside the scope of this case.

E-Verify System

1. E-Verify Procedural Issues

a. Burdensome

Comment: One commenter stated that the E-Verify enrollment process is cumbersome and difficult and that USCIS support for employers trying to enroll has been inconsistent and ineffective. Three commenters felt that tentative nonconfirmations and the subsequent efforts to resolve them place additional burdens on employers and employees alike. Two other commenters state that costs associated with E-Verify are burdensome to employers. One commenter considered that the vast scope of coverage in the proposed rule is contrary to the ''economy and efficiency'' argument that justified issuance of the rule, as compared to other labor requirements attached to procurement.

Response: The Councils have narrowed the coverage to the extent possible yet still meeting the purpose of the Executive Order. The Councils are not charged with administration of the E-Verify program and this process is not within its rulemaking authority or the scope of this final rule. The Councils have considered the burdens and costs associated with E-Verify in the RIA and Regulatory Flexibility Analysis.

The E-Verify registration process is an automated process that uses a registration wizard to assist employers in determining which access method will best suit their company needs. Once that is decided, the individual registering the company is required to enter the company contact information, including the number of company locations for which E-Verify will be used and the address of these locations. Within 24 hours, that individual will receive an email from E-Verify that includes their username and password which they will use to log on to the system. In mid-FY08, the E-Verify program launched a registration reengineering effort aimed to streamline the E-Verify registration process and shift to a profile based registration system. The program has been working with various stakeholders to determine and address the biggest concerns with the process, and hopes to conduct focus groups on ideas for improvement. The program has also undertaken a Plain Language Initiative, designed to simplify the language associated with the program and to update the materials associated with the program once the new verbiage has been finalized. Within this effort, the program also intends to conduct focus groups to determine the best response to various word choices.

With regard to the burdens or costs to employers to register and participate in E-Verify, DHS has informed the Councils of a report entitled the ''Findings of the Web Basic Pilot Evaluation'' that was prepared by Westat in September 2007. The report may be found at *http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf*. The report found that 96 percent of long-term users indicated that E-Verify was not burdensome. The Westat report also stated that approximately 97 percent of long-term users reported that the indirect set-up and system maintenance costs were either no burden or only a slight burden and that the majority of employers reported that they spent $100 or less in initial set-up costs. The Councils recognize that costs to employers will vary depending on employer characteristics and practices.

b. Data Accuracy

Comment: Numerous commenters focused their concerns primarily on the reliance of the E-Verify system on DHS and SSA databases that contain high percentages of errors. Many commenters, in particular, specifically call out the reported 4.1 percent error rate of the Social Security Administration's database as a large source of inaccurate data. Several commenters stated concern that DHS databases are not updated in real-time.

Many commenters also believe the inaccurate data in the database leads to the misidentification of workers and to denial of employment for work-authorized individuals, especially naturalized citizens and foreign-born authorized workers. Many commenters stated concerns that naturalized citizens or foreign-born authorized workers are considerably more likely to receive erroneous tentative nonconfirmations than native-born U.S. citizens. One commenter questions the 0.5 percent ''error rate'' claimed by E-Verify when the system is based on SSA databases with a 4 to 5 percent error rate.

One commenter feels data entry or ''human'' errors on the part of employers are of concern as well since they cannot be completely eliminated. Many commenters feel this issue especially affects employees with nontraditional or complex names.

Response: The improvements made to E-Verify over the last few years have decreased the incidence of data mismatches, which is referred to as a ''tentative nonconfirmation'' in the E-Verify program, and often referred to as the ''error rate'' by the public. DHS and SSA continue to analyze and implement improvements to reduce data mismatches as part of ongoing management of the E-Verify program. The majority of mismatches are with SSA data, since the SSA database is the only source for citizen data, against which the large majority of E-Verify queries are run. Instances of data inaccuracies include name changes due to marriage or divorce not reported to SSA, or, in the case of naturalized U.S. citizens, unreported changes in citizenship status. Most citizenship status mismatches that resolve as ''work authorized'' do involve naturalized citizens who have failed to notify SSA of their change in citizenship status. To reduce the number of SSA mismatches due to this situation, USCIS developed an automated check against the USCIS naturalization database for U.S. citizen new hires and provided employees who receive an SSA citizenship status mismatch notice the option of calling DHS directly to resolve it rather than resolving the mismatch with an in-person visit to an SSA field office. This has significantly reduced the burden of resolving tentative nonconfirmations for naturalized citizens. The changes went into effect in May 2008, and preliminary data show a 30 percent decrease in the number of SSA tentative nonconfirmation for naturalized citizens.

It is important to clarify that if the E-Verify program issues an initial mismatch to an employee, the employer cannot fire, prevent from working, or withhold or delay training or wages for that employee during the mismatch process. All employees receiving an initial mismatch are given the opportunity to contest to ensure that every employee who has a work authorized status is not prevented from working. All employees must be given the opportunity to contest and correct their records.

The Government recognizes the concerns over the SSA Office of the Inspector General Congressional Response Report (2006) estimates that 4.1 percent of their NUMIDENT database may contain discrepancies that could potentially affect 12.7 million individuals. The E-Verify program,

however, provides due process for correcting any errors with SSA, which will help to reduce the NUMIDENT discrepancies over time and provides an opportunity for an individual to correct an error they may not have been aware of otherwise. The E-Verify MOU makes clear that employers are prohibited from discharging, refusing to hire, or assigning or refusing to assign to federal contracts employees because they appear or sound ''foreign'' or have received tentative nonconfirmations. If an employee elects to challenge a tentative nonconfirmation, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. Employers are further notified that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Moreover, the MOU states that violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it may contact the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) at 1–800–255–8155 or 1–800–237–2515 (TDD).

The ability to identify and fix any errors will help them maintain accurate records with SSA, which is beneficial to them in the future, particularly when applying for SSA benefits. The report also indicates that the majority of the discrepancies (64 percent) in the Numident are in the ''Death Indication'' field, which would not affect new hires. However, the E-Verify program can detect instances in which an individual is fraudulently using the SSN of a deceased person to gain unauthorized employment.

In response to data entry error, the independent report by Westat does state that employee and employer data entry errors cannot be completely eliminated but the E-Verify program has worked to minimize and catch those errors before verification query results are returned. In September 2008 E-Verify instituted a pre-mismatch typographical error check that asks the employers to double-check the information they entered into the system with the employee's documents in the case of a mismatch. Preliminary data show that this enhancement has reduced SSA mismatches by 30 percent. In response to the issue of employees with nontraditional or complex names, the system provides guidance to employers on the system page where the name is entered into the field. There is a box that appears when an employer scrolls over the name field and there is also a help button next to the field that opens up a document that provides detailed guidance on how to enter complex surnames such as multiple last names or hyphenated names.

c. Technology Issues

Comment: Many commenters stated that the E-Verify system remains a paper-based system which still requires a contractor to complete the paper Form I–9 after analyzing up to 25 different documents that an employee could present and is not an entirely electronic system. One commenter stated that the system should provide an electronic export or reporting functionality for Case Verification Numbers. They state that the transfer of the verification case number to paper or on-line I–9 forms is now a manual, case-by-case ''pen and paper process'' that would fail under high volume. Another commenter stated concern over the degree of knowledge the personnel managing the toll free E-Verify phone number has on the myriad of complex immigration documentation and state that the USCIS National Customer Service (NCS) lines have been unable to provide accurate and timely information which can lead to confusion, multiple calls, and case resolution delay.

Response: Completion of the Form I–9 is required regardless of whether an employer is a participant in E-Verify. DHS rules permit the completion and storage of the I–9 electronically rather than on paper. See *e.g.*, 8 CFR 274a.2(a)(2). E-Verify provides Form I–9 support materials for employers on the system's website including the Form I–9, in English and Spanish, and the Handbook for Employers, Instructions for Completing the Form I–9 (M–274), as well as many immigration-related materials such as a Guide to Selected Travel Documents. The Councils and DHS recognize the preference some employers have to utilize electronic sources for required paperwork, and DHS is continually working towards more paperless systems, but is still within that process.

With respect to telephone inquiries, the E-Verify program has a Tier system when addressing phone calls. While most calls go directly to the first level, Tier One, for general program information or employer questions, there is a system in place to escalate calls to other Tiers depending on the complexity of the case. The program has subject matter experts on staff to address phone calls that require further attention. For cases that they are unable to resolve, USCIS has a Special Case Resolution unit in the Washington, DC Headquarters office that the cases can be referred to for further review. The average wait time is less than 20 seconds for a phone call to transfer from Tier 1 to Tier 2 and calls to the program are currently answered within 0.2 minutes or 12 seconds on average. The E-Verify program has substantially increased its customer service and program staff over the past two years in an effort to work with employers and ensure that every question or difficulty that arises is addressed.

In any specific case where additional time may be needed to address an issue or research the case information before a verification query can be resolved, it is important to note that the employer would receive a ''case in continuance'' response and cannot take any adverse action on an employee during this time.

DHS and SSA are constantly exploring ways to make the system more efficient and effective. However, the suggestion made here, that the system can be made totally web based so that individuals receiving a tentative nonconfirmation could prove that some factor generating the nonconfirmation was in error, is unrealistic. Generally, SSA requires documented proof of the factors that might be in question, SSN, date of birth, name, citizenship; and that the documents used be originals. The documents used to prove these elements (driver's licenses, birth certificates, etc.) are subject to forgeries, which are much easier to detect when a human being inspects original documents. Use of photocopies or fax copies, which would be necessitated by a totally Web based process, would make the process much more susceptible to fraud.

If an employee believes that s/he has been discriminated against during the employment eligibility verification process, he or she should contact OSC at 1–800–255–7688 or 1–800–237–2515 (TDD). Employers that have questions relating to the anti-discrimination

provision should contact OSC at 1–800–255–8155 or 1–800–237–2515 (TDD).

d. Photo Identification

Comment: Many commenters stated that there is an estimated 11 percent of the population that does not have a Government-issued photo identification. Some of those same commenters also stated that studies have indicated members of minority populations such as African Americans, Latinos, Women, and Senior Citizens are less likely to have photo identification as well as many lawfully present immigrants such as refugees and asylees. These commenters also state that there are situations where an individual may have the right to work but has not yet received a physical Employment Authorization Document (EAD) and that the proposed rule fails to make exceptions for cases where photo identification has been lost or destroyed due to crime, accidents, natural disasters, or other causes.

Response: The Councils recognize the concerns of the commenters in regard to the percentage of the U.S. population that do not have photo identification, but note that there is no evidence from the extensive operations of the E-Verify program to date that this has been a significant problem. There are also cases and studies that find a far lower percentage of individuals lack a photo identification, at least in the context of evaluating photo identification requirements for voting. See *Indiana Democratic Party* v. *Rokita*, 458 F.Supp.2d 775, 803 (S.D. Ind. 2007), *aff'd sub nom. Crawford* v. *Marion County Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 128 S.Ct. 1610, 553 U.S. —— (2008); see also *Voter IDs Are Not the Problem: A Survey of Three States*, American University Center for Democracy and Election Management, January 9, 2008, found at *http://www.american.edu/ia/cdem/pdfs/VoterIDFinalReport1-9-08.pdf* (finding that 1.2% of registered voters lacked a government issue photo identification). Photographs serve a unique and essential function and significantly minimize the opportunities for document fraud, unlike fingerprints, by allowing a contractor to immediately compare the picture embedded in the document against the employee. IIRIRA Sec. 403(a)(2)(A)(ii), 8 U.S.C. 1324a note, thus requires photo identification from employees of employers participating in the E-Verify program. In order to be consistent with these standards, the E-Verify MOU requires all employees of Federal contractors participating in E-Verify to present a photographic identification document.

Moreover, the documentation requirement is a basic requirement for the I–9 process that has to be completed regardless whether or not the employer is in E-Verify. The E-Verify photo identification requirement does limit the scope of acceptable ''List B'' identification documents somewhat, but we are not aware of a basis to conclude that the non-photo identity documentation that is currently permitted for the I–9 is broadly available to, or used by the referenced populations. In other words, the effect of limiting the non-photo documents would appear to be marginal.

USCIS has taken substantial steps to expedite EAD issuance, especially for refugees and asylees. The non-photo List B documents are not normally available to aliens who need EADs in any case. Those that reasonably might be available, especially the driver's license, contain photographs and thus are acceptable for E-Verify. Thus, this is not really an E-Verify issue per se; rather, it is a general issue about the I–9 compliance that employers are responsible for whether or not they participate in E-Verify.

To address situations of lost or stolen documents, the DHS regulations permit temporary presentation of a receipt for the application for a replacement document, and this is permissible for E-Verify employers as well as those just using the paper I–9.

For the six commenters who assert that employees need to show an EAD, the Councils note that there is no requirement to states that if an employee has an EAD card they must provide it for purposes of the Form I–9. Employees may choose to provide any approved List B document with a photo for the purpose of verification through E-Verify. It is true that many aliens who apply for an EAD card would not normally have List C evidence of work authorization and thus cannot comply with Form I–9 requirements until they receive the EAD. But this is a concern generally applicable to Form I–9 compliance and E-Verify participation would not affect it one way or another.

e. SSN Number

Comment: One commenter noted that the SSN is not required for the Form I–9.

Response: The Form I–9 (Rev. 06/05/07) states ''[p]roviding the Social Security number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify).'' Additionally, providing an SSN to employers is generally necessary to comply with the IRS statutes and regulations that already require every employee in the United States to have an SSN.

f. Privacy

i. System Security

Comment: Several commenters suggested that E-Verify has ongoing system security problems that jeopardize the privacy and security of individuals' personal information. These comments focused on (1) general concerns with DHS, and more generally the U.S. Government, in the handling of personal information, and (2) general concerns about the potential for cyber attacks.

Response: The Councils disagree with these comments. Any database of personal information would be attractive to hackers or cyber attacks. That is why USCIS has developed a robust security program to protect the Verification Information System (VIS), the technical system that supports the E-Verify program, from such attacks. This security program fully complies with Federal Information Security Management Act (FISMA) requirements and has been certified and accredited as secure. The security measures in place include among other things both strong and limited access controls, transmission encryption, and extensive audit logging. Accordingly, the Councils have no reason to believe that these systems are not secure enough to ensure the effectiveness of the rule.

ii. Privacy Protections

Comment: A number of comments stated that E-Verify does not adequately protect the privacy of individuals' personal information. These comments focused on (1) general concerns with E-Verify handling of personal information, (2) specific concerns about potential for employer misuse of E-Verify for pre-screening and other misuse, (3) specific concerns about the potential for misuse of E-Verify by those falsely claiming to be employers, and (4) specific concerns with E-Verify relying on external databases.

Response: The Councils disagree in part with these comments. Several comments addressed non-specific privacy concerns about the handling of personal information. USCIS fully appreciates the significant responsibilities of handling this large amount of personal information. DHS, and specifically the E-Verify program, has developed a robust privacy program to not only ensure that the privacy of this information is respected but also to ensure that the public is made aware of

how their information is being treated. There is a dedicated staff of privacy professionals who work at the operational, tactical, and strategic planning levels and every significant change to E-Verify is documented in a system of records notice (SORN) or privacy impact assessment, as appropriate. USCIS continuously seeks to improve security and privacy protections as the E-Verify program develops.

Several commenters noted that E-Verify could be misused by employers, either by pre-screening applicants or by treating differently employees who have received a tentative nonconfirmation. The Westat report suggests that this indeed does take place. Unfortunately, some employers do not follow the requirements and guidelines for participating in E-Verify. Those requirements and guidelines address these concerns in several ways. First, E-Verify is educating employees and job applicants about how E-Verify should work and what their options are to address perceived misuse or abuses of the program. To this end, the E-Verify MOU requires that E-Verify informational posters be placed in the work site where employees can see them. These posters provide employees with a concise statement of their rights and contact information for submitting complaints regarding misuse and abuse of the program. In addition, E-Verify conducts outreach to educate employers and the general public about the program. Moreover, E-Verify requires user training and testing in addition to providing users with guidance on the appropriate use of the E-Verify program. Finally, USCIS has developed a monitoring and compliance capability to assist in identifying when an employer may be misusing the E-Verify program.

Several commenters noted that E-Verify does not currently screen employers who register with E-Verify, therefore it is possible that some may not be actual employers, but rather groups or individuals seeking to ''phish'' E-Verify to validate personal information for identity theft purposes. E-Verify does capture information on employers and, as part of the program's monitoring and compliance activities, researches on an ad hoc basis whether E-Verify users are actually employers. E-Verify has sought authority to verify employer authenticity directly from other Government sources but has not, as of yet, received that authority. Last year, in particular, the Administration sought a statutory change to the current prohibition on Internal Revenue Service sharing of Employer Identification Number data with other Government agencies, such as USCIS. In advance of such a statutory change to that prohibition, USCIS is currently undertaking a robust reengineering of the employer registration process, including exploring ways of verifying the authenticity of employers registering for E-Verify.

Finally, commenters noted that E-Verify relies to a large extent on databases external to DHS. The commenters questioned the integrity of the data in these external databases and specifically recommended that they be made to provide full Privacy Act protections without being exempt from any of the Privacy Act requirements. The SORN and privacy impact assessments for VIS, the underlying E-Verify system, can be found at the DHS Privacy Office Web site *http://www.dhs.gov/privacy*. The SORN and privacy impact assessments describe more fully what information is collected and how it is used, protected, and shared. The particular Privacy Act exemptions and the extent to which the external source systems apply the Privacy Act vary based on the type of system and reason for collection. USCIS has asserted no Privacy Act exemptions and fully embraces the Privacy Act protections for the E-Verify VIS. E-Verify fully appreciates that because it is making such significant decisions based on information over which it does not have direct authority, it must be very careful to ensure that these decisions are made as accurately as possible. E-Verify will often check more than one database for verification of a single data element acknowledging that data may occasionally be wrong. In any event, individual employees are not deemed unauthorized to work as long as they are contesting a tentative nonconfirmation from E-Verify.

iii. Identity Theft

1. *Comment:* Several commenters addressed E-Verify's current ability to combat identity theft. One commenter stated that there is no rational relationship between the E-Verify mandate on Federal contractors and the aim of having more efficient and dependable procurement sources because E-Verify does not prevent identity theft. The same commenter also stated a concern that the use of E-Verify would encourage identity theft. Another commenter stated that E-Verify could not prevent the hiring of unscrupulous workers because it does not check identity. A third commenter stated that E-Verify is inadequate because it does not prevent identity theft.

Response: The Councils disagree. E-Verify has had remarkable success preventing those from maintaining employment who are not authorized to work in the United States. When Congress established E-Verify, one of its goals was to prevent employment of those who are not authorized to work by detecting document fraud during the hiring process. Information matching and the photo identification requirement, while not airtight, are parts of this process. When an individual has presented fraudulent documents to an employer, the E-Verify program is more likely to identify that fact than the paper I–9 process and, is thus an improved process in relation to document fraud.

Criticism has arisen from E-Verify's limited ability to detect identity theft, *i.e.*, when legitimate documents are presented but have been stolen from another individual. A concern also has been stated that identity theft may increase as more employers use the E-Verify program. The Councils note that E-Verify was not established to prevent identity theft, but increasingly has the effect of doing so.

First, while document fraud requires some level of ingenuity, identity theft requires far more ingenuity. E-Verify continually forces unauthorized workers to resort to more and more difficult methods to obtain unauthorized employment. USCIS anticipates that this increased burden and the increased danger of involvement in identity theft criminality causes a significant number of unauthorized workers not to seek employment with employers who use E-Verify.

Second, E-Verify introduced a photo screening capability (''photo tool'') into the verification process in September 2007. When an employer is presented with an employment authorization card or permanent residence card during the Form I–9 documentation process, the employer can match the photo on the documents to the photo which appears on the computer screen during the E-Verify process because the two should be the identical photo. Fifteen million photographs are contained within the USCIS databases. This has led to instances where employees who have either used photo substituted documents or have created entirely counterfeit documents have been identified. USCIS is currently in discussions with the Department of State to add United States passport and visa photographs to the E-Verify process as well. It is USCIS's long-term goal that the E-Verify photo screening process will be able to verify photos on all identity documents that an employee may present during the Form I–9

process. The photo tool has identified numerous cases of document and identity fraud and prevented unauthorized workers from gaining employment. Accordingly, the Councils consider the E-Verify process superior to the current I–9 process for identifying and deterring document fraud and identity theft.

2. *Comment:* Many commenters stated a concern that E-Verify's inability to prevent identity theft leaves employers that use E-Verify vulnerable to sanctions. Additionally, many commenters stated that the threat of penalties resulting from the use of E-Verify or pressure to comply with the system would encourage employers to forego hiring certain workers.

Response: The Councils disagree with these comments. As explained above, the E-Verify system makes an employer more, not less, able to prevent document fraud and identity theft. If a Federal contractor participating in the program obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program the contractor will have the benefit of establishing a rebuttable presumption that the contractor has not violated INA 274A(a)(1)(A) with respect to the hiring. See 8 U.S.C. 1324a, note, Sec. 402(b). Moreover, no Federal contractor participating in the E-Verify program can be held civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the E-Verify system. *Id.* at 403(d). USCIS and ICE may also use law enforcement discretion in relation to specific instances of good faith operation of the program. Accordingly, the Councils do not view the stated concern over employer sanctions resulting from identity theft as an impediment to implementing this final rule.

With respect to the comments regarding selective hiring, an evaluation of the E-Verify program, publicly available on the Internet at *http://www.dhs.gov/E-Verify* under ''Program Highlights''/''Findings of the Web-Based Basic Pilot [E-Verify] Evaluation—September 2007,'' included an analysis of employer's confidence in hiring certain workers with information collected directly from E-Verify employers. Most employers who use E-Verify stated that they are neither more nor less willing to hire immigrants. When use of the program was reported as impacting employer hiring practices, employers almost always stated that the provision of an additional means to determine work authorization through E-Verify resulted in increased confidence and security in the employee's work status and therefore, made the employer more likely to hire immigrants.

3. *Comment:* One commenter stated that DHS needs to reduce the number of documents acceptable to prove authorization to work to reduce identity theft and confusion. The same commenter also stated that E-Verify does not have the ability to determine if an SSN is being run through its system multiple times.

Response: The number of documents acceptable for demonstrating authorization to work is governed by the INA and by the regulations on the Form I–9. The E-Verify program requires documents with a photograph when the employee presents a ''List B'' document for Form I–9 purposes. See 8 U.S.C. 1324a note, Sec. 403(a)(2)(A)(ii). The requested change to further restrict the documents that may be used for the Form I–9 or for E-Verify would be better directed to DHS than to the Councils, and is outside of the scope of this rulemaking.

E-Verify is fully capable of detecting multiple uses of SSNs. Through the USCIS Monitoring and Compliance unit, steps are taken to identify those instances where suspected fraud has occurred and corrective action is taken where appropriate. Additional methods to combat identity theft, including methods to determine if a single SSN is being used in different geographic locations, are under investigation with a focus on suspected or clearly identified fraudulent use of SSNs, based on the number of times and geographic areas in which a number has been used. The Councils note that an employee could have more than one job, in different locations.

g. Communications

Comment: A professional association commented that certain materials should be made available prior to enrollment (*e.g.*, user manual) and that E-Verify should create a list of items for employers.

Response: Currently, E-Verify does provide many materials on the program's Web site at *http://www.dhs.gov/E-Verify* including the E-Verify Users Manual, a ''How Do I Use E-Verify'' guide, and a copy of the E-Verify MOU among other informational materials. E-Verify continues to engage in employer outreach to further educate employers regarding their responsibilities under the program.

2. User Liaison Organizations and Other Assistance to Contractors

Comment: One industry association requested establishment of a user liaison organization to solicit, assess, and prioritize with the user community implementation of needed system enhancements and corrective actions.

A university requested establishment of an E-Verify Ombudsman to assist with the expected higher than average error rates for foreign nationals on college and university campuses.

Another university commented that DHS should provide Federal funding assistance to employers for initial setup of record retention capabilities and staff training and initial and ongoing verification of expenses.

Response: DHS has informed the Councils that it is continually looking at ways to improve the E-Verify system, and believes that support is already provided to employers in a consistent and effective way. E-Verify provides general assistance through information found on the Web site and trained staff to address questions before or during the registration process in addition to continued support after an employer registers as an E-Verify participant. The MOU provides points of contact. The program also goes beyond this general support to provide presentations and system demonstrations to individuals or groups such as employers, Federal, State and local governments, community-based organizations, and various industry associations. The E-Verify program has participated in outreach events designed to provide information to the public and interested stakeholders regarding the program. The program conducts demonstrations, participates in conferences and outreach events, hosts webinars for interested parties, and created public awareness campaigns nationally and on the web and on radio, print and billboard in the states of Arizona, Georgia, Mississippi, and the metro Washington, DC area. The E-Verify Outreach branch has coordinated closely with the Small Business Association since April 2008 to conduct outreach events to ensure specific concerns relating to small businesses are heard and addressed.

With regard to the request for financial assistance, the Westat evaluation reports that the majority of employers reported that they spent $100 or less for initial setup costs for E-Verify and a similar amount annually for operating the system. There is no additional record retention beyond Form I–9 requirements, with the exception of those employers who are presented with green cards (I–551s) or EADs (I–767) and need to retain photocopies of these documents for the photo tool as long as they are retaining the Form I–9.

3. Staffing

a. SSA and DHS Staffing for E-Verify

Comment: Many commenters raised various concerns over the overburdening of both SSA and DHS if E-Verify is expanded. Many commenters commented that the rule would overwhelm DHS and SSA as neither organization is adequately staffed to deal with the increased number of tentative nonconfirmations expected. Some of these commenters wrote that there is a substantial difference between the current number of E-Verify employers and the number of E-Verify employers that would use the system as a result of the rule. Those commenters were concerned with the scalability of staff to handle the increased number of employers.

Response: The Councils disagree with these comments. DHS (and its predecessor agencies) and SSA have worked closely for more than a decade to improve the E-Verify process. Since SSA does not receive appropriated funding for E-Verify, it is reimbursed by DHS for labor costs associated with resolving mismatches with SSA field offices. These costs include salaries and overhead for SSA field office employees who resolve mismatches in the field, and salaries and overhead for SSA employees who staff the SSA 1–800 number to answer calls from employees and employers. DHS has worked hard to decrease E-Verify related work undertaken by SSA field offices.

In May 2008, the E-Verify program launched the inclusion of naturalized citizen data as part of the initial E-Verify check. E-Verify now automatically performs an initial query to check information against the USCIS naturalization databases for all U.S. citizen new hires. In the short time since this new routine was put into place, E-Verify tentative nonconfirmations for naturalized citizens have decreased by 30 percent. In the event a naturalized citizen receives a SSA tentative nonconfirmation due to citizenship status, that individual now also has the option of calling DHS to reconcile the citizenship status mismatch rather than physically visiting SSA. DHS's efforts in this area will further reduce the number of E-Verify mismatches for naturalized citizens, thus reducing the instances of ''walk-ins'' to SSA offices for naturalized citizens.

Many commenters in addressing this issue did so in terms of a nationwide mandatory expansion of E-Verify to all employers and cited statistics that would apply to such an expansion. It is likely that SSA would need to increase its own workforce to meet the demands of a nationwide mandatory system that would be used by approximately 7 million employers. However, the SSA reports that the numbers of employers and the workloads associated with this FAR rule would be far less than they would be under a nationwide mandatory system. This is especially true given the recent improvements made to the E-Verify system and the effect those have had in reducing the numbers of people contacting SSA.

b. Effect on Other Agency Functions

Comment: Some commenters were specifically concerned with the effect that the rule would have on SSA's ability to fulfill its primary mission of administering benefits.

Response: Since E-Verify uses a system separate from other SSA verification services, increases in E-Verify queries would have no effect on disability claims. As stated above, SSA and DHS are sufficiently staffed to handle E-Verify, therefore there should be no adverse impact on carrying out any of the other core functions of these agencies.

4. System Technology Issues

Comment: Many commenters suggested that the E-Verify program would be unable to handle the increased strain on its system, and specifically on the transactional database. Several of those commenters stated that the requirement to check all new hires will overwhelm the current system and lead to an increase in workforce disruption. Several other commenters argue that E-Verify is ill-equipped to handle a vast increase in users, queries, transactions, and communications volumes. Some commenters suggested that the E-Verify program and its system needs further study of its capabilities and needed functionalities, that problems with the present technology have not been addressed, that the requirements of the rule would require major E-Verify system changes, and that the system is unable at present to handle the anticipated increases in usage absent the rule. Another commenter was concerned with the availability of an Internet-based system in the event of a natural disaster that would inhibit the ability of an affected company to access a computer and Internet access to use E-Verify.

Response: The commenters are correct that the FAR rule is expected to significantly add to the number of queries run through the E-Verify system. However, many commenters in addressing this issue did so in terms of a nationwide mandatory expansion of E-Verify to all employers and cited statistics that would apply to such an expansion. Based upon their exaggerated projections, the commenters assert that there is a high probability that disputes will not be resolved in a timely manner. But the numbers of employers and workloads associated with this FAR rule would be far less than they would be under a nationwide mandatory system, and they would not be difficult to absorb. The Councils, in consultation with DHS and SSA, are confident that the system will be able to accommodate the required greater volume of enrollments and queries within the time allotted. The Verification Information System (VIS), which is the database that supports E-Verify, underwent vigorous load testing in July 2007 in partnership with the SSA data systems. Those tests conclusively showed that the existing VIS will scale to meet even the most demanding current estimate of VIS operation, considering peak volumes for both queries and registrations. Currently, VIS is capable of handling 40 million queries annually. The testing found that the E-Verify system has the capacity to accommodate at least 240 million queries annually, four times the projected 60 million new hire queries per year that would result from mandatory E-Verify legislation applicable to all U.S. employers. It is also worth noting that the employer registration process is automated, and testing indicates that E-Verify is capable of handling up to 145,500 registrations per day, well over the estimated 4,000 per day that would occur under a nationwide all U.S. employer use scenario.

As of September 13, 2008, over 85,500 employers representing over 446,000 sites are registered for E-Verify. This calendar year, approximately 10 percent of all new hires nationwide have been run through the E-Verify system. In fiscal year 2008 to date, E-Verify has run over 6.2 million new hires through the program, which is nearly double the 3.2 million new hires run through the program in all of fiscal year 2007. Both SSA and DHS agree the current system is more than adequate to handle the volume increase associated with the FAR rule.

With respect to comments regarding contingency plans in the event of a failure of information technology systems in a natural disaster, the Councils believe that the agencies and the Government generally have standards and requirements for such circumstances. USCIS and SSA are required to follow Federal Government policies and procedures related to

information technology continuity of operations and emergency planning. In any event, section 403(a)(3)(B) and the MOU provide for an extension of the three day period if E-Verify systems are down.

5. Other Impacts on Society

a. Macroeconomic Impact

Comment: Many commenters, notably community organizing groups and religious societies, an agricultural employer, trade associations, a human resources society and several individual employers stated that the rule will have a ''devastating effect'' on the United States economy, will lead to increased discrimination and an unwillingness to hire workers who look or sound foreign, and will lead contractors who need workers to hire them ''off the books.'' One commenter stated that ''the economic impact of this regulation could be devastating to the point where agriculture in the United States will cease to operate as it does today.'' In this same vein, several commenters stated that this is not an appropriate time for this rule, given a recent ''meltdown'' of the American economy, the mortgage crisis, and the resulting difficulties currently faced by United States employers and employees.

Response: The Councils consider these comments as outside of the scope of this rulemaking. The Councils are implementing a directive from Executive Order 12989 that Federal contractors agree to use an electronic eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of all persons hired during a contract term by a contractor to perform employment duties within the United States and of all persons assigned by the contractor to perform work within the United States on the Federal contract. Decisions related to the potential impact of this directive on the entirety of the United States economy or on individual sectors within the United States economy are not delegated to or exercised by the Councils in this rulemaking.

Moreover, these comments obviously assume that the existing Form I–9 process does not verify employment authorization, and that there will be a significant change in the number and type of employees found authorized to work in the United States with the implementation of E-Verify for Federal contractors. This should not be the case. E-Verify is merely a better means of verifying the work eligibility of the Federal contractor workforce. The Councils are not persuaded that permitting a less effective verification system to continue for the purpose of maintaining a status quo in which illegal employment is common is a valid reason not to implement the system as to all Federal contractors when a more effective system is available that will create a more stable and dependable cadre of Federal contractors.

As to driving employers to hire more illegal workers ''off the books,'' the Councils' position is that all Federal contractors are bound to comply with Federal, State and local laws, and that they should continue to do so should they wish to continue to contract with the Federal Government.

b. Religious and Disability Accommodation

Comment: One commenter stated that requirements to access the Internet violate some religious tenets, making the rule discriminatory. Other commenters indicated that the requirement that employees present a photographic identification unduly burdens certain religious beliefs. Another commenter requested confirmation that the E-Verify system would accommodate persons with visual disabilities.

Response: While the Councils remain sensitive to the concerns of different religious groups, they must balance those concerns against the need to have stable and dependable Government contracting and to minimize document fraud in the E-Verify program in support of that goal. In particular, photographs serve a unique and essential function and significantly minimize the opportunities for document fraud, unlike fingerprints, by allowing a contractor to immediately compare the picture embedded in the document against the employee. IIRIRA Section 403(a)(2)(A)(ii), 8 U.S.C. 1324a note, thus requires photo identification from employees of employers participating in the E-Verify program. In order to be consistent with these standards, the E-Verify MOU requires all employees of Federal contractors participating in E-Verify to present a photographic identification document.

The Councils recognize that there may be occasions where U.S. citizens assert that religious beliefs preclude their being photographed and, as a result, they may not be able to present the required photographic documentation. The E-Verify program complies with all applicable civil rights laws and will provide accommodations where appropriate, as required by law, on a case-by-case basis.

DHS is also implementing other processes and procedures to accommodate religious beliefs and disabilities, as required by law, in relation to the E-Verify program. These include telephonic means of verifying employment authorization. These alternative employment authorization verification methods will permit compliance with E-Verify while accommodating user religious beliefs and disabilities.

c. Employment Discrimination

1. *Comment:* One commenter stated that E-Verify creates grave risks for immigrant women, particularly those who are victims of domestic violence, human trafficking, sexual assault and other criminal activity to the extent the program requires employers to enter the name, SSN and other identifying information of each employee into the E-Verify database, which is then available to the public. The commenter alleged that, as such, E-Verify does not adhere to Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA) confidentiality provisions.

Response: The Councils agree that the E-Verify program should be conducted in compliance with all Federal laws, rules and regulations related to privacy and confidentiality of personally identifiable information. USCIS and the SSA do comply with all of those requirements in the administration of E-Verify program. Contractors are required by MOU to safeguard confidential information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the employer who are authorized to perform the employer's responsibilities under the E-Verify MOU. The Councils direct the commenter to the E-Verify program systems of records notice published by USCIS in accordance with the Privacy Act for more information regarding the program's collection and use of personally identifiable information. 73 FR 10793, Feb. 28, 2008.

2. *Comment:* A Federal Government agency requested that the Councils supplement the proposed rule and that USCIS supplement the proposed MOU to add a specific reference to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. Section 2000e (1964), as amended, when discussing relevant prohibitions against illegal discrimination.

Response: USCIS has supplemented the MOU to add specific reference to Title VII. The Councils supplement the statements in the preamble to the NPRM to clarify that Title VII, as well as INA

Section 274B, 8 U.S.C. 1324b, prohibits unlawful discrimination against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin. Such illegal practices can include selective verification or use of E-Verify in a manner not provided for in paragraph 16 of the MOU; discharging, refusing to hire, or assigning or refusing to assign to Federal contracts qualified employment eligible employees because they appear or sound ''foreign''; and premature termination of employees based on tentative nonconfirmations. As such, Title VII applies to all employment actions not otherwise protected by IIRIRA Section 403(d), 8 U.S.C. 1324a note, or precluded by other law.

3. *Comment:* Several commenters expressed concern that the photo identification requirements in the proposed rule will result in lawfully present immigrants and U.S. citizens being terminated from or denied employment because they cannot present photo identification.

Response: The Councils disagree with the premise of this comment. There is no requirement that an employer terminate an employee who cannot present photo identification. The MOU will be amended to instruct contractors to contact USCIS regarding possible accommodation. The contractor is prohibited from taking adverse employment action against the employee until the contractor receives a final nonconfirmation.

4. *Comment:* Many commenters, and in particular immigrants rights advocates, religious associations, employers, unions, chambers of commerce, and employer groups commented that verification through the use of E-Verify will result in increased disparate treatment employment discrimination. Some of these commenters speculate that contractors will give preference in hiring and assignment of work to applicants they believe ''look like'' U.S. citizens and discriminate against applicants who sound or dress ''foreign'' or have ''foreign sounding'' names.

Several commenters stated that use of E-Verify will lead to disparate impact discrimination claims because approximately 10 percent of foreign-born U.S. citizens receive tentative nonconfirmations for work eligibility versus 0.1 percent for native-born U.S. citizens.

Response: The Councils oppose unlawful discrimination in any form and, in particular, unlawful discrimination that undermines the intent and purpose of this E-Verify final rule. As was stated above, contractors who use the E-Verify system to unlawfully discriminate against individuals in hiring or employment violate Title VII, as well as INA Section 274B, and are subject to civil penalties and termination of participation in the E-Verify program after suspension and debarment procedures. Such illegal practices can include selective verification; discharging, refusing to hire, or assigning or refusing to assign to Federal contracts to qualified employment eligible employees because they appear or sound ''foreign''; and premature termination of employees based on tentative nonconfirmations. Contractors are protected from civil or criminal liability under IIRIRA Section 403(d), 8 U.S.C. 1324a note, when taking actions in good faith reliance on information provided through the E-Verify confirmation system. This, however, does not permit contractors to unlawfully discriminate against applicants or employees in other aspects of the employment relationship.

The Councils are not aware of any opportunity to discriminate in use of the E-Verify system that is any greater than the potential for discriminating against employees in application of the Form I–9 process. Contractors may also unlawfully select out candidates for employment because of foreign sounding names or other ''foreign'' characteristics because they do not believe those employees will be able to complete the I–9 process. There is thus no reason to believe that the E-Verify program will spur any greater disparate treatment discrimination than the current Form I–9 process. See *Chicanos Por La Causa, Inc. et al.* v. *Napolitano et al.*, Civil No. 07–17272, 2008 WL 4225536 at *8 (9th Cir. 2008) (''Congress requires employers to use either E-Verify or I–9, and appellants have not shown that E-Verify results in any greater discrimination than I–9.'').

With respect to comments related to disparate impact claims potentially arising from differing tentative nonconfirmation issuance rates for foreign-born U.S. citizens and U.S.-born citizens, the Councils agree that DHS and SSA should improve their database administration to help alleviate all instances of tentative nonconfirmations. As one commenter observes, ''myriad reasons'' account for errors in the SSA database, including clerical errors made by agency employees and an employer's or a worker's own errors when completing Government forms. Moreover, an error may stem from a name change due to marriage, divorce, or naturalization. An error may also come from the misuse of an SSN by an unauthorized worker. There are thus many legitimate nondiscriminatory reasons why these databases might produce a greater percentage of tentative nonconfirmations for one group of persons than another. However, these tentative nonconfirmations can be contested and resolved prior to final confirmation or nonconfirmation of employment eligibility. Contractors must agree not to take an adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing a verification request unless the contractor obtains knowledge (as defined in 8 CFR 274a.1(l)) that the employee is not work authorized. A tentative nonconfirmation, or the finding of a photo non-match, does not establish and cannot be interpreted by the contractor as evidence that the employee is not work authorized. Accordingly, the tentative nonconfirmation provided by the DHS and SSA databases does not necessarily lead to an employee's termination from employment or any other adverse action. In fact, the employee is protected from such actions during the process. The Councils therefore do not view the possibility of disparate impact claims as an impediment to issuing this final rule.

The MOU

1. Need for the MOU

Comment: One commenter urged that the proposed rule be modified to make explicit its linkages to the required MOU. Another commenter suggested that the proposed rule, and all prime- and sub-contracts issued under the proposed rule, should set forth with specificity the sanctions and enforcement protocols provided for by the MOU. One commenter suggested that MOU use is not necessary, and that the new contract clause created by this rulemaking should be sufficient to detail E-Verify's compliance requirements.

Response: The Councils do not agree. As noted above, the purpose of the FAR clause is solely to require contractors to agree to use E-Verify and to specify when the program will be used. The clause is not intended to duplicate the E-Verify program's internal terms of use. Those program use requirements are appropriately addressed under the MOU. DHS has statutory responsibilities and law enforcement authorities that are addressed under the MOU and those responsibilities and authorities are inappropriate to address either in the FAR or in a contract clause. For the same reasons that industry and Federal standards are not required to be incorporated in full into each contract

that requires adherence to them, it is not necessary to incorporate the E-Verify MOU requirements in each covered contract. Incorporating by reference laws, regulations, industry standards, and other FAR clauses is normal practice in Federal contracting.

2. Public Comments on the MOU

Comment: One commenter asserted that the public should be afforded an opportunity to comment on the provisions in the E-Verify MOU.

Response: The Councils placed the proposed MOU reflecting the program participation requirements for Federal contractors into the public docket, and discussed the requirements under that document in the preamble of the proposed rule. See 73 FR 33376–77. In response, the Councils received many comments related to the MOU in general and as to specific provisions within the MOU, which are addressed in greater detail later in this section. Accordingly, commenters were afforded an opportunity to comment on the provisions of the MOU and, in fact, did provide such comments to the Councils. A final version of the MOU will be available on the E-Verify Web site *http://www.dhs.gov/E-Verify*.

3. Specific MOU Provisions

1. *Comment:* Three commenters expressed concern with provisions of the draft MOU regarding those employers who may one day wish to become Federal contractors. One commenter commented that employers will be terminated from E-Verify for technical violations of the (MOU) thereby becoming an obstacle to an employer's later participation in Federal contracts. Another comment stated that those employers who are not currently Federal contractors will not be permitted to query existing workers thereby harming the interests of those employers who may be preparing to enter the Federal marketplace. A comment observed that greater clarity is needed with respect to when termination or suspension can be invoked. One commenter commented that the FAR rule materially changes the MOU between USCIS, SSA and companies participating in E-Verify. A university suggested that the employer have the ability to resolve DHS tentative nonconfirmations on behalf of their employees.

Response: The Councils agree that employers who seek to obtain their first Federal contract may be at some disadvantage in relation to employers who already hold Federal contracts covered by this rule, since the new entrant would face the start-up costs associated with running E-Verify queries of its existing workforce that the already-established contractor has previously incurred. The Councils note, however, that this small ''barrier to entry'' is no different from the myriad other such ''barriers'' that new contractors must face to come into compliance with the unique requirements for Federal contracting that are codified in the FAR.

USCIS retains its authority to investigate violations of the E-Verify program. DHS and SSA may terminate a contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency will refer the contractor to a suspension or debarment official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222–54. If the contractor is suspended or debarred as a result of the MOU termination, the contractor will not be eligible to participate in E-Verify during the period of its suspension or debarment. If the suspension or debarment official determines not to suspend or debar the contractor, then the contractor must reenroll in E-Verify.

The Councils appreciate the recommendations of the commenter with respect to the ability of employers to resolve a tentative nonconfirmation on behalf of those employees whose work authorization stems from J–1, H–1B or O–1. The system is designed to give the employee the responsibility to handle their own case to reduce employer burden, allow the employee to maintain their own documents regarding their status and protect employee privacy. Additionally, it is important to note that the responsibility of providing documents for employment eligibility purposes is on the employee. The instructions accompanying Form I–9 currently require employees to present original documents. Placing the burden on the employee to resolve tentative nonconfirmations is consistent with the requirement that the employee provide documents establishing his or her employment eligibility. Privacy concerns, including confidentiality related to certain visa status, preclude employers from resolving tentative nonconfirmations on behalf of employees. Nothing prohibits an employer from assisting an employee with this process at the request of the employee.

2. *Comment:* One commenter stated that the language referencing the ''rebuttable presumption'' that an Employer has not violated Section 274 (a)(1)(A) of the Immigration and Nationality Act exists only in the draft MOU and not in the FAR rule and that the MOU must be altered to include additional time for cases involving an SSA no match.

Response: The commenter is correct that certain provisions mentioned by the commenter do not exist in the current clause contained in the rule. This is not required by the FAR. With respect to the recommendation that the MOU be changed to allow additional time for addressing SSA ''no-match'' cases, the comment appears to confuse the time allotted under the MOU to contact SSA (or DHS) to start resolving a mis-match with the time allotted under DHS's no-match rule for an employee to complete the process of resolving a mis-match.

3. *Comment:* A building trade's association commented that several provisions of the draft FAR MOU is using the same disclaimer language as previous versions of the MOU and that that language has not been subjected to judicial review.

Response: The commenter is correct that the provisions of the draft MOU have not been subjected to judicial review. However, the provisions contained in that draft MOU closely follow language in MOUs currently in use by over 80,000 employers, which have gone unchallenged over the life of the program, and which have been drafted consistent with the controlling law related to the E-Verify program.

4. *Comment:* A chamber of commerce commented that current employees of Federal contractors should be allowed to opt out of work prior to being verified in E-Verify.

Response: The rule does not seek to tell employers which current employees they should assign to Federal contract work, or what privileges or rights employees may have relating to which tasks they are assigned in their workplace. Unless there is something in the specific contract relating to that, that is an internal business and labor management decision for the contractor to make subject to its normal processes and requirements. Therefore, it would be inappropriate to include provisions relating to employees ''opting out'' of work on Federal contracts.

a. Reporting Change in Status

Comment: There is no comment listed for this topic but the Councils nonetheless address this issue in the response below.

USCIS does not require that employees report a change in status to E-Verify. E-Verify is able to determine whether an employee is work authorized using numerous databases without receiving information directly from an employee. Once an employee has been verified through E-Verify, he or she does not need to be re-verified in E-Verify until employed by a new employer.

A related matter is the Form I–9. If the document presented by an employee (who indicated that he or she is an alien authorized to work) when completing the Form I–9 has expired, the employer is required to update the Form with the new document establishing that employee's work authorization. The new document should be listed under Section 3 (''Updating and re-verification'') of the Form I–9. The Employer may opt instead to complete a new Form I–9 with the new document.

b. Resolution of Tentative Nonconfirmations

Comment: Five commenters indicated that they were concerned that a tentative nonconfirmation might not be resolved within the time allotted by E-Verify. Of those, four commenters commented that employees had insufficient time to resolve a tentative nonconfirmation particularly if the employees are in remote areas that lack access to transportation and to a nearby SSA office. The other commenter also expressed concern that an SSA tentative nonconfirmation could not be resolved in 90 days.

Response: Under the program rules for E-Verify, after a tentative nonconfirmation has been generated, the employer must provide that notice to the employee. Once the employee actually receives the tentative nonconfirmation and decides to contest it, the employer initiates a referral through the E-Verify system. Once a case is referred, then the employee has eight Federal Government work days to contact the appropriate agency. He or she can do so by simply contacting SSA or DHS. Once the employee has initiated the process of contesting the tentative nonconfirmation, the employee may continue working until the case has been resolved.

The Councils believe that providing the employee with eight days is a sufficient amount of time for the employee to contact SSA or DHS to begin working out any discrepancy, even taking into account remote locations. It is important to note that the eight-day timeframe in the E-Verify program rules is the time allotted for the employee to initiate the process of resolving his or her tentative nonconfirmation—not the time allotted for a tentative nonconfirmation to be finally resolved. Most SSA tentative nonconfirmations are resolvable within two days, and DHS statistics show that SSA resolves 96.6 percent of cases within 7 days of the date the individual first contacts SSA. In a few cases, the SSA has extended the time period in order to allow for the employee sufficient time to obtain a required document.

With respect to employees who reside in remote locations, it is important to note that employees who receive a tentative nonconfirmation from DHS are not required to visit a USCIS office. Moreover, in most cases, a DHS tentative nonconfirmation can be resolved over the phone using a toll-free number. In an effort to make the process simpler for many employees living in remote areas, DHS has made system enhancements to E-Verify. As a result, in most instances, naturalized U.S. citizens who receive a tentative nonconfirmation from the SSA are no longer required to personally visit a SSA office. Naturalized citizens are now able to contact DHS directly (over the phone). USCIS believes that this process will greatly limit the number of employees who must make personal visits to a SSA office thereby easing the burden on those who are in remote locations.

The Councils also note that these comments relate to a previous E-Verify process that has since been replaced by a more efficient one. It is true that at one time, the way an employer verified that a tentative nonconfirmation was successfully resolved was to re-query the system. However, beginning in October 2007, SSA and DHS began using a new automated system known as EV–STAR to provide automated feedback to employers concerning the status and resolution of any tentative nonconfirmations received by employees. Since that time, there has been no need for employers to re-query the system.

c. Due Process

Comment: An immigrant rights advocacy group and a union commented that workers have insufficient due process procedures in place to allow them redress. One commented that there are insufficient judicial remedies in place to provide relief to an aggrieved employee.

Response: The Councils recognize the due process concerns raised by the commenters, but believe that the processes in place with the E-Verify system provide adequate opportunity for employees to contest and resolve any issues that arise. E-Verify, through the MOU and its internal practices and procedures, which are published on the E-Verify program Web site, has provided a system that protects the rights of employees while providing the means to verify the work authorization status of those persons. The MOU prohibits the Employer from discharging, refusing to hire, or assigning or refusing to assign to federal contracts employees because they appear or sound ''foreign'' or have received tentative nonconfirmations. The Employer is further warned in the MOU that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. The MOU agreed to by the Employer also states that violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the employee believes that s/he has been discriminated against, he or she should contact OSC at 1–800–255–7688 or 1–800–237–2515 (TDD). Employers that have questions relating to the anti-discrimination provision should contact OSC at 1–800–255–8155 or 1–800–237–2515 (TDD). Concerns regarding the judicial remedies are better framed to other offices within the Executive and legislative branches of Government.

The E-Verify program offers employees who receive a tentative nonconfirmation the opportunity to contest the finding and clarify their records with either SSA or DHS. This is a form of due process protection. If an employee does contest the tentative nonconfirmation and is not able to clarify his or her record with additional documentation, he/she will be issued a final nonconfirmation. Employers or employees may contact the E-Verify program if additional time is needed to provide such documentation or if they believe a final nonconfirmation was received in error. The E-Verify program may delay a final nonconfirmation finding on a case by case basis in those cases where employees have experienced delays in receiving needed documentation that will help prove their employment eligibility, and the program will work with the employer and/or employee to research the case and identify the reason for the final nonconfirmation.

The E-Verify program is committed to protecting the rights of employees who feel that they have been discriminated against or who believe they have

erroneously received a tentative nonconfirmation. On the E-Verify Web site, on all tentative nonconfirmation letters that employees receive, and in the MOU that E-Verify users sign when joining the program, E-Verify provides the contact information to OSC. In addition, E-Verify registered employers are also required to display two posters which apprise the employees of their rights and how to contact the OSC in the event of perceived discrimination: (1) The ''You Should Know Your Rights and Responsibilities under E-Verify'' poster produced by USCIS and (2) the ''Employee Rights Poster'' produced by the OSC. Once a complaint has been made, the Office of Special Counsel is able to investigate any case brought to its attention. The Councils believe that these due process protections are sufficient to ensure that the E-Verify system promotes economical and efficient Federal Government contracting.

Content of FAR Rule

1. Definitions (22.1801 and 52.222–54(a))

a. ''Assigned to the Contract'' and ''Directly Performing the Work''

Comment: Several commenters commented that there is no guidance as to how to identify an employee who is ''directly performing'' work under a contract and expressed concerns that this could result in inconsistent application of the rule and disagreements over which existing employees must be run through the E-Verify system.

One employer suggested that ''directly performing work under a contract'' be clarified to mean a person customarily performing more than 50 percent of his/her time in direct support of the covered contract or multiple covered contracts.

A university commented that the proposed rule is too unclear as to how to treat overhead employees who perform some work that benefits a contract and requests that the Councils clarify this situation.

Many other commenters expressed concern over whether the E-Verify requirement applies to employees who are only tangentially involved with covered contracts. Specifically, they inquired whether agreements to provide service, support, or maintenance on an ''as needed'' basis would be covered even if employees would spend only a small portion of their time on these contracts. Commenters also asked whether employees working to prepare a bid or proposal be covered.

One commenter requested clarification as to whether the requirement to verify current employees on covered projects extends beyond those working exclusively at project sites, or whether it extends to others working off-site but dedicated exclusively to the covered project. The commenter suggested that the regulations must provide a high degree of specificity on this issue, as the costs and employment administration ramifications are significant.

Response: The Councils have removed the definition of ''assigned employee'' and provided instead a definition of ''employee assigned to the contract'' because that is the term used in the final rule. The revised definition makes it clear that an employee is not considered to be directly performing work under the contract if the employee normally performs support work, such as indirect or overhead functions, and does not perform any substantial duties under the contract. The Councils do not believe it is appropriate to try to establish a mathematical definition of an assigned employee. Contractors will instead have to interpret the definition stated in the final rule as it applies to various individual situations.

The Councils note that it is immaterial whether services are provided intermittently or for only a small portion of an individual employee's time as long as the work is done in the United States in direct support of a contract. However, tangential involvement, if it is in terms of indirect involvement instead of directly working on a contract, does not necessarily trigger the E-Verify requirement. For example, a mailroom clerk who delivers mail to a program office supporting a contract as well as to all other offices served by the mailroom, would not be required to go through the E-Verify process. Other non-FAR requirements, however, would necessitate that the employer vet the mailroom clerk at hiring through the I–9 process.

The Councils also note that working on a proposal, as opposed to working on an awarded contract, does not constitute work under the contract in question and would not trigger E-Verify requirements.

There is nothing in the definition of ''employee assigned to the contract'' that would imply that it makes a difference where that employee is working, as long as it is in the United States.

b. ''Commercially Available Off-the-Shelf (COTS) Item''

Comment: Various commenters advised that the definition of COTS items was not sufficiently clear with respect to ''bulk cargo.'' Several commenters sought clarification that the rule would not be applicable to their products because they believed their products qualify under the definition of COTS. These commenters recommended that the Councils make clear that the rule would not apply to the items they believed to be COTS. Specifically, the commenters asked that the final rule clarify the definition of COTS so that packaged agricultural products are clearly excluded from the definition of bulk cargo so as to avoid deliveries of fruit and other food stuffs from being considered ''bulk cargo'' and therefore outside of the definition of COTS items.

Response: The Councils concur and have amended the final rule in response to these comments to clarify the definition of COTS to explain that a cargo subject to ''mark or count'' is not bulk cargo. Nearly all food and agricultural products should fall within the definition of COTS. The only likely exceptions would be bulk shipments of grains in ship holds. The final rule has added an exception for bulk cargo as well as COTS items.

c. ''Contract'' and ''Contractor''

1. *Comment:* Commenters requested that the Councils define ''contract'' to exclude agreements that are not governed by the FAR, such as grants and cooperative agreements.

Response: The Councils do not concur with this request. The FAR already defines the term ''contract'' and the term does not include grants or cooperative agreements. A grant or cooperative agreement that is not governed by the FAR is not required to include the clause in this rule.

2. *Comment:* Several commenters suggested that the Councils more clearly define the term ''contractor'' to exclude subsidiaries of a parent where the parent holds the contract but the subsidiaries do not.

Response: Whoever signs a contract is the contractor. Only the legal entity that signs the contract and is bound by the performance obligations of the contract is covered by this E-Verify term. If ambiguity remains, this issue will have to be handled on a case-by-case basis consistent with traditional FAR principles.

3. *Comment:* One commenter was concerned about the effect of mergers upon implementation of the E-Verify program.

Response: If a novation agreement takes place, then the merged entity becomes the contractor. Otherwise, there is no impact.

d. ''Subcontract'' and ''Subcontractor''

Comment: A number of commenters, in addressing the proposed rule's subcontractor flowdown requirement, expressed concern as to the definition of ''subcontract'' and ''subcontractor'' and the extent to which the rule might apply to their activities. This was a concern common to agricultural and dairy interests. Two agricultural associations noted that there are numerous sales and supply arrangements that may or may not fall within the rule's coverage. There are direct sales by a producer of an agricultural commodity; direct sales by a packing operation that obtains fruits or vegetables or other commodities from other producers and then sells the product directly to the Government; sales by a broker or handler of agricultural products who purchases the products from a producer or producers but who directly contracts with the Government; and processors of agricultural products that purchase them from producers and sell them to the Government after processing them. One commenter requested clarification that farmers providing food for canning are not ''subcontractors'' and that truckers hauling processed food are not subcontractors for purposes of application of this clause.

In addition, it was noted that the proposed rule does not adequately address the distinct marketing characteristics of agricultural cooperatives. Several commenters pointed to the distinction between farmer cooperatives and their farmer members and referred to court decisions highlighting this distinction.

Another commenter stated that many employers hold contracts with delivery companies, suppliers, maintenance companies, and others who may perform work in support of the Federal contract, and noted that it was unclear from the proposed rule whether these subcontractors would also be required to enroll in E-Verify.

Response: With respect to agricultural and dairy products, the referenced items appear to fall within the definition of COTS or bulk cargo. COTS suppliers would not be subject to the E-Verify requirements because they are supplies, which are not covered at the subcontract level. With respect to the comment regarding potential coverage of delivery companies, suppliers, maintenance companies, and others who may perform work in support of the contract, it was determined that the existing FAR definitions of subcontractor when read in conjunction with previous applicability discussions would address the concerns noted above. The Councils have amended the rule at 22.1801 and the clause at 52.222–54 to include the definitions ''subcontract'' and ''subcontractor,'' found at FAR 44.101.

e. ''Period of Performance'' vs. ''Life of Contract''

Comment: One commenter requested that the ''Period of Performance'' should be defined as ending on the date that delivery is complete. Another commenter questioned the use of the term ''life of the contract'' in the preamble to the proposed rule.

Response: The Councils do not agree. The term ''period of performance'' is used throughout the FAR and various contracts further refine the definition of that period individually for that contract. In general, the period of performance would start at the award date of the contract and extend through the date delivery is complete, unless otherwise specified in the contract. The period of performance does not extend to the date of contract closeout. The Councils concur that for the sake of consistent terminology, the term ''period of performance'' is the correct term to express the required period of required compliance with E-Verify, not ''life of the contract.''

f. Distinction Between Products and Services

Comment: One commenter stated that the rule should make a clearer distinction between products and services.

Response: The Councils do not concur with this comment. Contracts for services are clearly defined in Part 37 of the FAR.

2. Mandatory Enrollment (22.1802 and 52.222–54(b)(1)(i))

a. Noncompliant Employers Only

Comment: Several commenters stated that the rule should be restricted in its applicability only to contractors who have engaged in the knowing employment of unauthorized foreign nationals or who have shown that they routinely shirk their obligations under I–9 procedures, such as those who receive multiple ''no-match'' letters demonstrating that their concern for the work eligibility of their workforce may be lacking. Alternatively, the commenters recommended application of E-Verify only to verify employees whose work eligibility may be in question due to receipt of a ''no-match'' letter.

Response: The Executive Order 12989, as amended, does not authorize such a limited approach. In any event, restricting the applicability of the rule to employers who routinely shirk their obligations would not foster the stability and dependability across the entire Federal contractor community in the manner envisioned by Executive Order 12989. Using E-Verify at the beginning of the contract should reduce the number of ''no match'' letters received by the employer later in the process.

b. Non-Citizens

Comment: Another commenter suggested that contractors should only verify non-citizen employees using E-Verify to reduce employer burden.

Response: Executive Order 12989, as amended, directs the Councils to implement the President's procurement policy through a FAR rule that requires federal contractors to agree, as part of their contract performance, to verify all new hires without differentiating between citizens and non-citizens. Modifying the rule to require verification only of non-citizens would not satisfy the requirements of this presidential directive. Moreover, the Councils believe that verifying only those who do not claim to be U.S. citizens would be discriminatory and would not meet the ultimate goal of fostering a more stable and dependable Federal contractor workforce.

Verifying only those employees who attest to work-authorized alien status would defeat the basic purpose of E-Verify and this rule. E-Verify is designed to guard against identity and immigration fraud in the paper-based I–9 process, which may take the form of false claims of U.S. citizenship backed up with either false or fraudulently obtained driver's licenses, birth certificates, social security cards and/or other Form I–9 documentation other than DHS immigration status documents. An alien-only verification system would not only fail to deter this kind of fraud, but it would encourage it.

Using E-Verify only for non-citizens would likely violate the anti-discrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b, which prohibits discrimination with respect to hiring, firing, or recruitment or referral for a fee, on the basis of national origin or, for certain classes of protected individuals, on the basis of citizenship status. Employers may not treat individuals differently on the basis of national origin, and U.S. citizens, recent permanent residents, temporary residents, asylees and refugees are protected from citizenship status discrimination. This anti-discrimination provision is enforced by OSC. If an employee believes that he or she has been discriminated against during the employment eligibility verification

process, he or she should contact OSC at 1–800–255–7688 or 1–800–237–2515 (TDD). Employers that have questions relating to the anti-discrimination provision should contact OSC at 1–800–255–8155 or 1–800–237–2515 (TDD).

c. Increase in Program Abuse

Comment: Several commenters were concerned that mandatory use will increase abuse of the program. One commenter stated that preliminary reports from Arizona's mandatory use of E-Verify suggest that some employers are violating the terms of the MOU and engaging in illegal employment practices such as verifying existing employees, rather than verifying only new hires and that they are doing so in a discriminatory way. The commenters believed that implementation of the proposed rule will exacerbate the situation regarding discriminatory use of the program. Also, some commenters claimed that employers do not understand the ways in which E-Verify is to be implemented in the workplace, and that as a result they take mistaken actions, such as firing workers when they are not required to do so (or are prohibited from doing so).

Response: The rule is clear in its requirements to verify existing employees. All who are assigned to a contract must be verified. This provides no latitude for discrimination. Also, the E-Verify program MOU will actually serve to reduce confusion over employer responsibilities when workers are in the process of clearing up questions as to their authorization to work in the United States. The MOU gives clear descriptions that prohibit employers from firing workers during that period or from taking other adverse actions.

To address employer abuse and/or fraud, the E-Verify program has created a Monitoring and Compliance unit that can detect, deter, and remedy improper use of the system. The Monitoring and Compliance unit also works to safeguard personal privacy information; prevent the fraudulent use of counterfeit documents; and refer instances of fraud, discrimination, and illegal or unauthorized use of the system to enforcement authorities. Once fully staffed, the E-Verify's Monitoring and Compliance unit will carry out its mission by educating employers on compliance procedures and guidelines and providing assistance through compliance assistance calls. The unit will also conduct follow-up with desk audits and/or site visits to unresponsive employers if necessary, and refer cases of fraud, discrimination, and illegal use to the OSC or ICE, as appropriate. The Monitoring and Compliance unit will also monitor system usage to identify when registered employers have not used the system within an appropriate time period given the size of the organization.

3. Application to Employees (22.1802(b)(2) and (c), and 52.222–54(b))

a. All New Hires During Period of Performance of the Contract

Comment: Several commenters suggested that it is inappropriate to require an entire company to be subject to E-Verify for all new hires when the company has only a small number of Federal contracts that comprise a small proportion of its business. They argued that the proposed rule is an overbroad use of the procurement authority to cover new hires that are not associated with performance of a contract and stated that the rule should apply only to new hires at a work site that is performing a contract.

Response: Applying the duty to verify all new hires of the entire organization of the contractor is a requirement of Executive Order 12989, as amended. If the requirement were limited only to new hires at locations doing Government work, the rule would be impractical and too easy to undermine by transferring employees from non-contracting work sites to contracting work sites. Not all hires of a contractor are hired through the location where they work. It is very common for a contractor to hire through a central site that has no connection to various work sites. In addition, there are few Federal contractors who have segregated their workforces in the manner suggested in the comments. Modern technology, most notably email, has broadened and facilitated doing work in multiple dispersed locations through a national and even international network of collaborators. Thus, defining the work site would be too unwieldy for an effective rule, making enforcement of this aspect of the rule too difficult and too easy to misinterpret or undermine.

With respect to providers with few Government contracts, the rule does include an exception for COTS to recognize that COTS providers will generally be predominantly commercial, with only a small proportion of business with the Government, as well as exceptions for institutions of higher education; State and local governments and governments of Federally recognized Indian tribes; and for sureties performing under a takeover agreement.

b. Existing Employees Assigned to the Contract

i. No Verification

Comment: Many commenters requested that the rule eliminate the requirement for verification of employment of existing employees assigned to the contract. One commenter states that there is no policy reason why Federal contractors should be so radically different from all other employers who participate in the program. More detailed reasons for opposition to verification of existing employees are also separately addressed in the following paragraphs.

Response: The Councils do not agree with this approach. The final rule reflects the requirements stated in Executive Order 12989, as amended, that the FAR incorporate a rule that will require verification of all existing employees assigned to a contract. Verification of existing employees who work under contracts is a critical element of this rule, and the elimination of that aspect of the rule would be contrary to the Executive Order.

ii. Burdensome To Track Which Employees Have Been Verified

Comment: Many commenters were concerned about the burden of identifying employees assigned to the contract, including time and money required to develop new systems. For example:

- One commenter observed that assigned employees may work on several projects at once and it is burdensome to require them to be tracked to determine which ones have been verified by E-Verify.
- Another commenter stated that the chance of a single employee being ''dedicated'' to a single contract—whether for a private customer or a Government agency—is the rare exception in a large company. A large, multi-jurisdictional company will be challenged to identify which employee in fact ''directly performs work'' under a covered contract.
- Another commenter recommended verifying all employees at all hiring sites.
- Another commenter stated that in normal circumstances it will impose considerable burdens and take months, if not years, to put in place the required tracking processes.
- Several university commenters stated that these requirements would impose significant financial and organizational burdens on all affected employers, including substantial costs associated with developing new software systems.

• Another commenter stated that employers would need to create a new process for screening current employees and a process for tracking which employees already have been through the E-Verify screening process every time an employee is assigned to work on a Federal contract.

Response: With regard to tracking which employees have been verified, the Councils do not believe this is a problem that warrants a change to the proposed rule. Modern personnel and payroll systems identify numerous qualifications and attributes for each employee. It is a minor effort to add one more attribute to those already included in the accounting and payroll systems. For example, each employee is typically identified against a wage rate, security level, FLSA coverage or not, vacation records, professional qualifications, labor category, etc. Personnel/payroll systems that track these sorts of data typically permit ready modification and expansion in the number and type of attributes that are tracked. It is typically a simple operation to add an attribute to such a system.

Further, contractors can recover associated costs incurred to comply with this program in their proposed prices as they already do with other overhead costs. However, the Councils recognized that the task of identifying which employees are assigned to the contract may be more problematic for some employers. Should the employer find the task of identifying which employees have been assigned to the contract and tracking those employees who have already been verified unduly burdensome, the Councils have amended the rule consistent with Section 8. (a) of Executive Order 12989 to permit a contractor to verify its entire workforce.

iii. Conflicts Between Public and Private Contracts

Comment: Several commenters stated that employers are currently prohibited from using E-Verify to confirm the employment eligibility of existing employees not assigned to a Federal contract. They believe that the proposed rule therefore poses potential problems for firms that hold both public and private contracts.

Response: The current MOU required to be signed by all employers that register for E-Verify does prohibit the use of E-Verify to confirm the employment eligibility of existing employees. Upon promulgation of this rule, however, there will be a revised MOU with requirements applicable to Federal contractors. The revised MOU does not contain the same prohibition on verification of existing employees as to Federal contractors, because the Executive Order and this final rule require the use of E-Verify to confirm the employment eligibility of existing employees who are assigned to Federal contracts. If a contractor that was already using E-Verify enrolls in E-Verify as a Federal contractor, then that contractor may need to sign a new MOU, which will allow the use of E-Verify for existing employees.

iv. Selective Verification Issues

Comment: Some human resources organizations stated that selective screening verification of existing employees increases an employer's exposure to allegations of discrimination based on document abuse, citizenship status discrimination, national origin discrimination or other characteristics protected by Title VII and the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b. Another commenter questioned whether employers might register or bid for contracts only so they can verify existing employees.

Response: The requirement to ensure that any employee who is assigned to work directly on a contract in the United States is, in fact, authorized to work in the United States is not discriminatory as that term is defined by Title VII and case law. However, the Councils agree that it is appropriate to limit as much as possible opportunities for unscrupulous companies to abuse the E-Verify system. That is why the rule clearly specifies which employees must be verified by the employer. It is also important to note that OSC investigates allegations of national origin and citizenship status discrimination in the workplace, as well as demands for additional documentation in the employment eligibility verification process (''document abuse'') and retaliation under the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b. The E-Verify MOU makes clear that an employer may not use E-Verify procedures for pre-employment screening of job applicants. In addition, an employer cannot verify only certain employees selectively—for example on the basis of perceived national origin—and may be subject to penalties under the anti-discrimination provision of the INA if it prescreens employees on the basis of perceived national origin or citizenship status.

With regard to an employer bidding on a Government contract just to use E-Verify to verify existing employees, the employer would not be authorized to verify existing employees unless the contract was actually awarded to that contractor.

v. Permitting Multiple Alternatives

Comment: Another commenter requested that if the proposed current employee verification system is to remain a part of these regulations, the Councils should provide an option for employers in the regulations so that they can adopt a compliance method that meets objectives with the least disruption or cost to contractor operations. Suggested examples included allowing an employer to verify all employees at all hiring sites, all employees at any hiring site that services a covered contract, or only those employees assigned to work on the contract.

Response: Consistent with Section 8.(a) of Executive Order 12989, as amended, which requires implementation of the Order ''in a manner intended to minimize the burden on participants in the Federal procurement process,'' the Councils have included a provision in the final rule permitting contractors a voluntary alternative: The option to verify all existing employees of the contractor, provided the contractor initiates verification within 180 days of notifying DHS of its decision to verify its entire workforce. The Councils believe that this alternative best prevents opportunities for discrimination or the appearance of discrimination, relative to other possible alternatives, while potentially reducing the burden of compliance for some contractors.

vi. Workforce Stability

Comment: Several commenters stated that requiring verification of current employees will severely impact workforce stability due to expected errors, delays, and other disruptive effects such as employer misuse of tentative nonconfirmations. The commenters stated that the decision to extend the E-Verify requirement to existing employees actually undermines the FAR Council's stated view that the Federal Government's procurement interests are advanced by a stable workforce with less turnover. The commenters claim that subjecting existing employees to E-Verify is guaranteed to exacerbate, rather than alleviate, the posited problem of instability and turnover in the workforces of Federal contractors and subcontractors.

Response: The Councils do not concur. The Councils consider that the additional time allowed in the final rule should alleviate the commenters'

concerns regarding expected errors, delays, and other disruptive effects. The Councils do not believe that the concerns that E-Verify will exacerbate instability and turnover in the workforce are well founded, assuming that employers are currently complying with existing law and only employing individuals who are actually authorized to work in the United States.

vii. Employees Hired After November 6, 1986

Comment: A university commenter believed that the proposed rule is applicable to all employees hired after November 6, 1986. The commenter stated that its concerns are magnified by the proposal in the proposed rule that the E-Verify program be extended to all employees hired after November 6, 1986 and that this requirement greatly expands the cost and process burden on employers far beyond the current pilot program.

Response: The commenter is mistaken about the requirements of the proposed rule. The proposed rule was not to be applicable to all employees hired after November 6, 1986. However, because of concerns by some contractors that determining and tracking employees assigned to the contract is too difficult, the final rule does provide an option to contractors to verify all employees hired after November 6, 1986.

c. All Employees of the Contractor

Comment: Several commenters believe that the contractor might have to verify all existing employees to achieve compliance and recommended that the rule should provide additional flexibility to allow this. Some employers may find it easier to verify all existing employees and new hires, rather than attempt to distinguish between those who are and who are not working on Federal contracts, thus ensuring compliance. Another company commented that it would be very burdensome to create a mechanism to identify ''assigned employees'' under a process accounting system because no one individual charges to a particular job (contract).

Response: The Councils agree with these comments and have amended the proposed rule. In situations where a contractor does not believe it has an economical or efficient way to identify employees who perform work principally under a particular contract, or if the contractor believes it is more efficient to verify all employees, the final rule will give the contractor the option to initiate verification of the employment eligibility of all existing employees, within 180 days, rather than limiting the employees who can be verified only to those who are assigned to work under a contract. This approach is entirely at the option of the contractor.

The Council notes that the great majority of ''process accounting'' would be under COTS contracts, which are exempt from the rule.

Job order costing—work is broken into jobs; each job is tracked separately.	*E.g.*, auto mechanics, carpenters, painters, print shops, computer repair.
Process costing—a large quantity of identical or similar products are mass produced.	*E.g.*, auto assembly plants, hot dog manufacturing, any large mechanized production facility.

Each cost accounting system gathers and reports on the same information. The method used depends on the needs of the business. Process costing traces and accumulates direct costs, and allocates indirect costs, through a manufacturing process. Costs are assigned to products, usually in a large batch, which might include an entire month's production. Eventually, costs have to be allocated to individual units of product.

Accordingly, the final rule will permit a contractor to choose between two alternative approaches. The rule will permit the Federal contractor to choose either to run only existing employees who are assigned to the contract and all new employees through E-Verify, or to run all existing employees and all new employees of the company through E-Verify.

d. Need for Re-Verification

Background: It is important to distinguish what commenters mean by re-verification. They may mean re-verification of employees who have been verified by a system other than E-Verify, or they may mean re-verification of employees who have been verified through E-Verify, by another employer or by the same employer. Each of these types of re-verification will be separately addressed.

i. Re-Verification of Existing Employees

Comment: Many commenters stated that the requirement of re-verification of existing employees working on Federal contracts is unnecessary because those employees who have been hired after November 6, 1986, have already been through the employment eligibility verification (I–9) process. For example, one commenter asked the Councils to eliminate the requirement to use E-Verify for employees assigned to work on contracts because such employees who were hired after November 1986 will have already been through an employment eligibility verification process.

The following are some of the objections raised to re-verification for employees whose I–9s were completed long ago:

- A contractor may have accepted documents to demonstrate identity (drivers' licenses) or work authorization (passports or green cards) that have now expired.
- Until 2007, it was permissible for naturalized U.S. citizens to present certificates of naturalization to prove work eligibility, and many employees chose to use these forms in the I–9 process. Those certificates are not usable as part of the E-Verify process.
- The I–9 process does not require an employee to provide an SSN, but E-Verify does require it. The contractor will have to devise a process to collect and authenticate SSNs for many employees, especially those who started as foreign national legal immigrants, who were not required to have a number when they started work.
- The E-Verify process requires a picture identification document.

Another commenter remarked that the money spent re-verifying employees who are assigned to work directly on a Federal project would be much better spent in fundamental research being conducted by the commenter.

Response: Executive Order 12989, as amended, requires the re-verification of existing employees assigned to the Federal contract, even if the employees were screened previously using the I–9 process. The E-Verify process is expected to achieve a much higher level of accuracy in verification than was achieved under the I–9 process alone; E-Verify has built-in tools for accessing databases to further verify the employment eligibility of an employee, whereas the documents submitted by employees under the I–9 process were probably subjected to very little additional verification if they looked acceptable on their faces.

With respect to the process for re-verifying existing employees, the draft MOU contemplated and addressed the

matters raised by the commenter. Employers may use a previously completed Form I–9 as the basis for initiating E-Verify verification of an assigned employee as long as that Form I–9 complies with the E-Verify documentation requirements and the employee's work authorization has not expired, and as long as the employer has reviewed the Form I–9 with the employee to ensure that the employee's stated basis for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Form I–9 does not comply with the current E-Verify requirements, or the employee's basis for work authorization has expired or changed, the employer shall complete a new I–9. If the Form I–9 is otherwise valid and up-to-date but reflects documentation (such as a U.S. passport or Form I–551) that expired subsequent to completion of the Form I–9, the Employer shall not use the photo screening tool, subject to any additional or superseding instructions that may be provided on this subject by USCIS. While in some cases these procedures will place on employers and employees the initial burden of completing a new Form I–9, they are designed to avoid the greater burden of unnecessary tentative nonconfirmations resulting from the use of stale data to run E-Verify queries.

Some contractors that are submitting an E-Verify query for a current employee may be put in the position of asking that employee to produce an I–9 document that is different from what was presented during the initial I–9 process. It is important that contractors not engage in illegal discrimination during this process, such as by selectively requesting or rejecting documents during the verification or reverification process with the purpose or intent of discriminating against employees on the grounds that they appear or sound foreign. See 8 U.S.C. 1324b. If an employee believes that he or she has been discriminated against during the employment eligibility verification process, he or she should contact OSC at 1–800–255–7688 or 1–800–237–2515 (TDD). Employers that have questions relating to the anti-discrimination provision should contact OSC at 1–800–255–8155 or 1–800–237–2515 (TDD).

In addition, it is not technically correct that certificates of naturalization were acceptable until 2007. They were taken off the acceptable document list in the regulations in 1997, but DOJ and then DHS had a policy not to enforce violations of this regulation until it updated the Form I–9 instructions to reflect this change, which did not happen until 2007. With respect to SSNs, the Councils do not anticipate that the commenter or other employers should have significant difficulty obtaining their current employees' SSNs, as they already should have these on file for other business purposes.

ii. Re-Verification of Employees Verified by Another Employer

Comment: One commenter believed that employees covered by a collective bargaining unit should not have to be re-verified each time they switch to a new company, *e.g.*, in the construction business.

Response: The commenter's point appears to relate to the existing statutory provision regarding employment pursuant to a collective bargaining agreement in section 274A(a)(6)(A) of the INA, which provides that in certain cases a subsequent employer is deemed to have complied with the Form I–9 requirements by virtue of verification by another employer within the agreement. If a previous employer within such an arrangement has completed the Form I–9 and E-Verify, a subsequent employer does not have to reverify, as long as the employment is within the scope of the statutory provision.

iii. Re-Verification of Employees Already Verified by the Contractor

Comment: Many commenters were concerned about the requirement to re-verify an existing employee when the employee is assigned to work on a contract. One commenter concluded that by mandating that Federal contractors verify or re-verify existing employees each time they are assigned to work on a new contract, the proposed rule too radically restructures the E-Verify program, making it unmanageable and unworkable for employers.

Response: The proposed rule clearly stated that a contractor is not required to perform additional employment verification using E-Verify for any employee whose employment eligibility was previously verified through E-Verify by that contractor. It is not necessary to run the employee through the E-Verify program again each time the employee is assigned to work on a new contract. When, however, an existing employee is assigned to a contract and that employee has not previously been verified through the E-Verify system, then that employee must be processed through E-Verify at the time of assignment to work on the contract. The end result of this procedure is that for any single company, no employee, whether existing or newly hired, needs to be verified through the E-Verify system more than once.

In addition, the Councils have revised the final rule to exempt employees who hold an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual. The rule also exempts employees for which background investigations have been completed and credentials issued pursuant to HSPD–12, promulgated by the President on August 27, 2004.

4. Time Periods (52.222–54(b))

Background: The proposed rule set forth the following timeframes:

Timeframe	Start point	Required action
Within 30 calendar days	After contract award	Enroll in E-Verify.
Within 30 calendar days	After enrollment	Initiate verification of employees assigned to the contract at time of enrollment.
Within 3 business days	After date of assignment to the contract; or	Initiate a verification of each assigned employee who is assigned to the contract after enrollment in the E-Verify program.
Within 30 calendar days	Of the award of the contract.	

1. *Comment:* Many commenters were concerned that the timeframes provided were insufficient for compliance. These commenters requested longer timeframes because employers would need to develop complex systems to track and report employees. Among the various recommendations:

- Extend the registration period to 90 days after contract award, to allow time for orderly transition and provide time for employers.

• Permit larger organizations to implement E-Verify in stages across worksites;
• Allow a 6-month phase-in period to allow for registration, training and implementation and verification;
• Add a 90-day transition period before a contractor must begin verifying employees, after the date of contract award.
• Provide a time period to initiate verification of assigned employees that is no less than 60 days from enrollment and 30 days from assignment to a contract, respectively.
• Extend the phase-in period applicable to verification of existing employees for employers who are already signed up for E-Verify. Three days is not long enough to change systems to handle verification of existing employees.

Response: The Councils carefully considered all the requested extensions and concur that some of the timeframes need to be extended. The Councils recognize that some of the periods for contractor action in the proposed rule did not all allow sufficient time. The Councils have substantially extended various periods to permit contractors more latitude on when they must begin verifying employees.

The Councils also noted concerns that the requirements for a contractor that is already enrolled as a Federal contractor in E-Verify were not clear. These requirements were only addressed in the policy section of the proposed rule, not in the clause. Nor did the proposed clause specify whether the enrollment referred to was as a non-Federal contractor or as a Federal contractor (which will become important as the implementation of the rule progresses). The Councils have added specific instructions applicable to contractors already enrolled as Federal contractors in E-Verify and amended the time periods in the clause by which the contractors must have taken various actions.

The Councils have simplified the policy section and added more details in the clause. The changes in time periods in the final rule are summarized as follows:

• After new enrollment in E-Verify as a Federal contractor, 90 days to initiate verification of new employees within three business days of hire. This allows a contractor time to set up a new system, or modify an existing system from the non-Federal to the Federal form of E-Verify.
• 90 days (instead of 30) to initiate verification of existing employees after enrollment into the program (or after contract award, if already enrolled as a Federal contractor). Contractors will likely have to make adjustments to current employee information systems to be able to identify employees assigned to the contract and to track whether employees have been vetted through E-Verify. 90 days after award of a contract that contains the clause should be sufficient for this.
—Thereafter, verify the employee 30 days (instead of 3) after an employee is assigned to work under a contract.
—180 days for initiation of verification of all existing employees (if chosen at the option of the contractor).

The Councils did not extend the 30-day period to enroll in E-Verify. Very few commenters argued that this timeframe was insufficient. The Councils also considered that employers already enrolled on the Federal E-Verify program should not need additional time to continue verification of new employees within three business days of hire. The Councils also did not make amendments to timeframes that are required by the MOU rather than the FAR clause.

2. *Comment:* One commenter suggested that E-Verify should provide employers with an option to mark that an SSN has been ''applied for'' when foreign nationals are waiting on SSN cards that could take weeks to receive. Another commenter expressed concern over the fact that SSNs are not required on the Form I–9 and the SSN is the basis for the electronic verification.

Response: DHS has informed the Councils that the MOU will be amended to provide that notating the Form I–9 satisfies ''initiating verification'' in the narrow situations where (1) the employee has applied for an SSN from SSA and is waiting to receive a SSN; and (2) the employee has requested an accommodation from the photo identification requirement from the E-Verify program and is in the process of resolving the issue. The employer still has an obligation to work in good faith to follow through on that process and ultimately verify the employee with the system.

5. Threshold for Applicability in Prime Contracts (22.1803(b))

Comment: A number of commenters requested an increase in the dollar threshold for applicability of the clause. Commenters state that there is no rationale for the $3,000 threshold.

• For example, several commenters proposed increasing the dollar threshold for applicability of the proposed contract clause from the micro-purchase threshold of $3,000 to the simplified acquisition threshold of $100,000. One of these commenters stated that the applicability standard should be proportionate to its requirement.

• Another commenter proposed raising the threshold from $3,000 to $50,000.

Response: The Councils have raised the threshold for inclusion of the clause in a prime contract from the micro-purchase threshold to the simplified acquisition threshold. The statute at 41 U.S.C. 427 directs the FAR to provide for simplified acquisition procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold. In order to promote simplified processes for such small acquisitions, the Councils have revised the final rule to exempt all prime contract awards under the simplified acquisition threshold from application of this rule.

According to *Federal Procurement Data System* (FPDS) data, during FY 2007, there were approximately 2.8 million contract awards (new contracts, not orders) Governmentwide totaling approximately $9 billion for which the basic contract value were less than or equal to the simplified acquisition threshold ($100,000) each. This is less than 3 percent of total obligations made during FY 2007. Therefore, the exclusion of such low dollar value contracts should have minimal impact on achieving the objectives of the Executive Order, while being of great benefit to small businesses, since acquisitions below the simplified acquisition threshold are generally set aside for small business.

In addition, the Councils have added to the final rule a threshold relating to length of the period of performance of the contract. Since contractors have 30 days to enroll in E-Verify and another 90 days to initiate verification of employees, the Councils concluded that it was not practical to require compliance with the clause in contracts that have a period of performance of less than 120 days.

6. Subcontractor Flowdown (22.1802(b)(4) and 52.222–54(e))

Comment: Analysis of the comments relating to the subcontractor flowdown requirements (22.1802(b)(4) (22.1802(c) in proposed rule) and 52.222–54(e)) discloses five general concerns from a broad range of commenters.

a. Definitions

For concerns relating to the definitions of ''subcontract'' and ''subcontractor,'' see G.1.d.

b. Flowdown Thresholds

Comment: Various commenters recommended limitation of subcontract flowdown as follows:

- The flowdown threshold of $3,000 is extraordinarily low, and that an explanation and justification for this dollar threshold should be provided to the public.
- Raise the threshold to $10,000 and make it applicable only to first tier subcontractors whose subcontracts meet the stated criteria, consistent with the flowdown requirement for the annual EEO–1 report and affirmative action obligations under Executive Order 11246 and Section 503 of the Rehabilitation Act.
- Raise the threshold to $100,000.
- If the flowdown requirement is maintained, limit it to (1) first tier subcontractors, or (2) subcontracts valued at more than the threshold for obtaining cost or pricing data under FAR 15.403–4, currently $650,000.
- Remove the flowdown requirement or, at a minimum, limit it to major subcontracts exceeding $5 million.

Response: The Councils do not agree. Although the selection of the appropriate threshold is always somewhat subjective, unless specified by statute or Executive order, rulemakers seek to achieve balance between achieving the policy objectives and not unduly burdening smaller subcontracts. With respect to subcontract actions, the flowdown is already limited by the proposed rule to only subcontracts for construction and for services. These types of subcontracts often involve lower dollar amounts and increasing the threshold would leave too high a portion of the targeted subcontracts not covered by the rule. There is no particular logic that would tie this threshold to EEO reporting, the simplified acquisition threshold (which applies only to prime contracts), or the cost or pricing data threshold. There is no compelling reason to either eliminate or limit the flowdown requirement since the obligation to include the clause at 52.222–54(f) is not any more burdensome than many other flowdown requirements, and the objectives of the Executive Order 12989, as amended, will not be adequately met without extensive subcontractor flowdown. The Councils have therefore maintained the subcontractor flowdown for services and construction to all tiers of subcontracts above the threshold of $3,000.

c. Period of Performance

Comment: One commenter urged that consideration be given to recognizing that an early finishing subcontractor or supplier to a Federal prime construction contractor should not, without exception, be bound to the duration of the prime contract.

Response: When flowing down the clause to the subcontractor, it would be effective only for the duration of the subcontract. By the very nature of subcontract to prime contract, many subcontracts are of shorter duration than the prime contract. However, the Councils decided not to extend the 120-day limitation on flowdown. The period of performance of the subcontract is not within the control of the Government. If the subcontractor does not have any subcontract running longer than 30 days, the subcontract term would end before the subcontractor would be required to register with E-Verify. However, if the subcontract period runs beyond 30 days, the subcontractor would be required to enroll in E-Verify, and if the subcontractor continues to receive subcontracts it will be obligated to begin using E-Verify for its new hires.

d. Prime Contractor Responsibility for Subcontractor Violations

Comment: There was broad concern raised by commenters (covering the service, construction, educational, transportation, and agriculture sectors) regarding the extent to which a prime contractor may be held accountable for violations by its subcontractors. A number of commenters suggested that the prime contractor's flowdown obligation was too difficult to monitor. One commenter noted, for example, that subcontractors do not have privity of contract with the Government, thus they are not normally required to be identified in a Government contract as a party. There was substantial concern among these commenters with respect to the prime contractor's compliance assurance responsibilities. Specifically, these comments focused on the extent to which the prime contractor is responsible for subcontractor failure to comply with the contract obligation to use the E-Verify program. Many commenters questioned how a prime contractor could monitor subcontractor compliance and the extent to which a prime contractor would be accountable for a lower tier subcontractor's non-compliance.

Many commenters argued that the prime contractors' flowdown responsibilities should be limited to ensuring that the clauses are included in their subcontracts and that their subcontractors should be responsible for initiating the E-Verify enrollment process and carrying through with use of E-Verify for employee verification. As an exception to this general consensus, one commenter suggested that it would be appropriate to require prime contractors to obtain written assurances from contractors that they are complying with all Federal rules, including verification of employment eligibility.

Response: The Councils believe that prime contractors are responsible for all aspects of contract performance including subcontract requirements. The methods used to assure compliance are also the responsibility of the prime and the subcontractor. The contractor should perform general oversight of subcontractor compliance in accordance with the contractor's normal procedures for oversight of other contractual requirements that flow down to subcontractors. Prime contractors are not expected to monitor the verification of individual subcontractor employees. Nor is the prime contractor responsible for the subcontractor's hiring decisions. However, the prime contractor is responsible for ensuring by whatever means the contractor considers appropriate, that all covered subcontracts at every tier incorporate the E-Verify clause at 52.222–54, Employment Eligibility Verification, and that all subcontractors use the E-Verify system.

Further, these roles and responsibilities are adequately addressed in the Federal Contractor MOU. Accordingly, the MOU contains a provision that the employer (prime contractor and subcontractors alike) acknowledge that compliance with the MOU is a performance requirement under the terms of the Federal contract or subcontract and that the employer consents to the release of information relating to compliance with its verification responsibilities under the MOU to contracting officers or other officials authorized to review the employer's compliance with Federal contracting requirements.

The Councils consider that it would be an unnecessary information collection to impose a requirement that the prime contractor obtain written assurances from subcontractors that they are complying with all Federal rules, including verification of employment eligibility.

e. Notice to Subcontractors

Comment: One commenter recommended that the proposed clause impose a requirement for a prime contractor, and any higher-tier subcontractor, to provide a notice along with its requests for bids from prospective subcontractors and suppliers on the Federal construction

contract. Such notice should make explicit to prospective subcontractors and suppliers that the prime contract is subject to the proposed new FAR Subpart 22.18 (Employment Eligibility Verification) and that the requirements of the proposed new clause (FAR 52.222–54, Employment Verification) will be imposed on a subcontractor at any tier, if the subcontract falls within the reach of proposed new FAR 22.1802(b)(4).

Response: The Councils do not endorse the need for a separate notice to subcontractors, apart from the notice that is provided by flowing down the clause to the appropriate subcontractors. Many requirements flow down to subcontractors, and it is the responsibility of the subcontractor to review all requirements associated with the requests for bids or proposals. However, the Contractor may write such a notice.

7. Waiver (22.1802(d))

Comment: The proposed rule allows the head of the contracting activity to waive the clause requirement in exceptional cases. Several commenters noted that the proposed rule did not define the term ''exceptional cases'' and proposed that a definition and/or standards for using the waiver be added to the final rule. One commenter proposed that the term be defined to include national security emergencies, natural disasters, acts of terrorism against the United States, urgent military war fighter needs, and FAA emergencies.

Response: The term ''exceptional cases'' is intentionally not defined in the rule in order to allow the head of a contracting activity the flexibility to use this waiver as unique situations arise within each agency. Each head of the contracting activity will be accountable to the agency leadership to appropriately balance the needs of the agency and the policies and goals of the Executive Order 12989.

8. Safe Harbor

Comment: Public comments indicated numerous concerns over the mechanics and operability of the E-Verify system. Specifically, employers expressed concerns about potential litigation that could be brought against them as they rely on E-Verify to verify not only newly hired employees, but also to verify existing employees. For example, one commenter cited the legal risk in the event that an unauthorized worker erroneously verified by E-Verify is later found to have committed identification fraud and was therefore improperly employed. Likewise, some companies fear litigation from employees who are fired as a result of the E-Verify process and file claims of wrongful discharge because E-Verify provided wrong answers in the verification process.

Several commenters believed that the revised MOU for E-Verify leaves employers to face any such legal liability on their own. Article V, ''Parties'' paragraph E of the revised MOU reads: ''Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.''

Other companies claimed that they enjoy immunity as a result of the language in the MOU that states ''no person or entity participating in a pilot program authorized [by IIRIRA] shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.'' This immunity language was also repeated in the preamble to this rule. However, there is concern that these immunity provisions may not apply to situations where an adverse employment action is taken against an existing employee.

As a result of these litigation concerns, commenters requested that the rule provide protection from both DHS enforcement actions, as well as discrimination lawsuits, if employees are terminated after the employers have properly complied with program requirements. They recommended that provisions be included in the rule that would indemnify the employer with full disclosure of this indemnification to the employee. As one commenter stated, the rule should be revised to provide a safe harbor that explicitly protects contractors and subcontractors from penalties or other reprisals under state law related to the use of the E-Verify system. The commenter recommended that the preamble immunity language be inserted into the regulatory text as a clear safe-harbor to make it clear that it applies to all employees.

Response: The applicable statute, section 403(d) of IIRIRA, provides broad legal protection to employers participating in E-Verify. The MOU language in Article V. E. only clarifies that the Government does not guarantee any level of legal protection under this or any other statute to employers, and will not defend or indemnify claims that may be brought against employers.

The E-Verify statute (IIRIRA Section 403) does not distinguish between new hires and existing employees in the immunity protections it provides employers. IIRIRA section 403(d). The Councils find that the statutory protection from liability for actions taken by employers in good faith reliance on information provided by the E-Verify system provides sufficient protection.

Issues with respect to compliance with E-Verify and adverse actions taken as a result of such actions are the responsibility of DHS and not the contracting officer. Therefore, the proposed safe harbor language is not appropriate for inclusion in the FAR.

9. Enforcement and Sanctions for Non-Compliance

Comment: Several commenters requested clarification in the rule of how MOU violations would warrant contract sanctions, and if so, what procedures for contract suspension or termination would apply in that circumstance.

Response: USCIS retains its authority to investigate violations of E-Verify program. DHS may terminate a contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS terminates a contractor's MOU, DHS will refer the contractor to a suspension or debarment official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222–54. If the contractor is suspended or debarred as a result of the MOU termination, the contractor will not be eligible to participate in E-Verify during the period of its suspension or debarment. If the suspension or debarment official determines not to suspend or debar the contractor, then the contractor must re-enroll in E-Verify.

10. Process for Resolving Disputes About Applicability of the Clause

Comment: One commenter expressed concern that a decision about what contracts are required to include the clause will be left entirely within the discretion of the contracting officer. The commenter was concerned that the presumption would be in favor of including the clause even though it is not required with certain types of contracts, such as those for purchase of COTS items. The commenter was concerned that there is no method for disputing the applicability of the clause.

Response: The Councils do not concur with the commenter's concerns. As an initial matter, the contracting officer's conclusions about whether the clause applies will be informed by what the Government is acquiring with the contract. The contracting officer will take into consideration whether the contract is for services or supplies, and whether the supplies are COTS items. The contracting officer will then evaluate whether any applicable exceptions apply such that compliance with E-Verify is not required. Therefore, the Councils do not agree with the commenter's statement that the contracting officer has ''complete discretion'' to decide whether the E-Verify clause will be inserted in the contract.

Further, the Councils do not agree that it is necessary to develop dispute resolution procedures, because appropriate procedures already exist in the FAR. If a contractor disagrees with a contracting officer's conclusion about the applicability of the clause in advance of award, the contractor may obtain review by submission of a protest to the Contracting Officer, Agency Head or GAO in accordance with FAR Part 33.

- FAR 33.101, Protest, defines a protest as a ''written objection by an interested party to * * * [a] solicitation or other request by an agency for offers for a contract for the procurement of property or services.''
- FAR 33.102(a) states that upon receipt of a protest, the contracting officer ''shall consider all protests and seek legal advice * * *'' The requirement to seek legal advice after receipt of a protest ensures that the contracting officer's conclusion about applicability will be reviewed.

If a contractor's disagreement with the contracting officer's conclusion about the applicability of the clause arises after award and during administration of the contract, the process for resolving the dispute is set forth in FAR 33.202, Contract Disputes Act of 1978. Again, upon receipt of a claim, FAR 33.211 requires the contracting officer to ''secure assistance from legal and other advisors.'' The FAR also requires the contracting officer to seek input from other agency officials, including that of agency counsel, and therefore the contracting officer's conclusion about the applicability will be legally reviewed.

Despite commenter's statements, the FAR specifies when the E-Verify requirement shall be included in a contract and the FAR also provides a method for resolving disputes about applicability, both pre-award and during contract performance. (See also H.3.f. on applicability at the subcontract level.)

C. Applicability of FAR Rule

1. Commercial Items

a. Commercial Items Exemption

Comment: Several commenters recommended that the rule should exempt all commercial items, not just COTS items, claiming that such a change would be consistent with procurement reforms facilitating government access to commercial products and services.

Response: The Councils do not concur with this comment. The final rule intentionally covers commercial item contracts that are not for COTS items. The intent of the rule was to cover as many contractors and contractor employees consistent with the mandate in Executive Order 12989. The only reason COTS items are exempt is because the Councils believe that COTS providers may choose not to do business with the Government rather than changing their practices to use E-Verify. The Councils concluded that this could result in an unacceptable reduction in the Government's access to items it needs in order to operate. On the other hand, contractors who provide commercial items that are not COTS items are providing commercial products that are custom-made for the Government or services that are categorized as commercial items. These contractors have decided to be part of the Government marketplace. These contractors have established procedures and sometimes created organizations designed to do business with the Government. The Councils determined that the requirement for these contractors to use E-Verify would not be sufficient to drive them from the Government market. Also, to the extent such a business incurs added cost to comply with the E-Verify contract clause, it is free to include that added cost in its proposed contract prices, but will be required to take into account the pricing practices of its competitors if it wishes to be awarded the contract.

b. Exempt COTS-Related Services

Comment: Various commenters pointed out that COTS suppliers typically sell services along with their COTS items and that the exemption of COTS items from the rule would not be adequate unless it also exempts related services. COTS suppliers who must provide services along with their COTS items would gain no benefit from the COTS exemption if the services are not also exempt.

One commenter requested that the Councils add services to the definition of COTS.

Response: The Councils concur in part with this comment. Although the definition of COTS is statutory and does not include services, the Councils agree that the clause should not apply to certain types of services:

- The services must be procured at the same time as the COTS item is procured.
- The services may be provided only by the COTS item supplier. That will eliminate services provided by other contractors who are in the service business. By covering the COTS provider services, the Councils intend to reduce the regulatory burden for companies who provide only COTS items that do not require use of E-Verify. The services must be performed only on or for the COTS item. This means that we do not exempt services that are ''custom.''
- Third, the services must be typical or normal for the COTS provider.

c. Applicability of COTS Exception to Food Products

Comment: Several commenters representing various agricultural interests commented that the rule will have far reaching and detrimental effects on the agriculture industry, most particularly growers and harvesters. Examples of sectors of the agriculture industry that were highlighted as problematic are: Fruit growers, fruit harvesters, suppliers of fruit to Federal school lunch programs, and distributors of fruit. These commenters wanted to make sure that the rule was not intended to apply to them or, if it was intended to cover them, they requested that it be made inapplicable to them.

Response: The Councils do not believe that any of the examples of agricultural products cited by these commenters would be covered by the rule as originally proposed or as promulgated in this final rule.

First, all food products described by the commenters would fall under the definition of commercially available off-the-shelf (COTS) items or a minor modification to a COTS item, which are exempt from the clause. COTS items are defined as ''any item of supply'' (food is an item of supply) that is ''a commercial item'' (the foodstuffs described by the commenters are commercial items) ''offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace'' (the foodstuffs described by the commenter meet these standards).

Secondly, most of the concerns relayed by the commenters centered on the growers and harvesters. Neither the proposed rule nor the final rule require flowdown of the clause to subcontractors which provide supplies such as food. The only subcontracts that are covered by this rule are services or construction subcontractors. In the unlikely event that a contractor enters a contract with the Government for food products that do not meet the definition of a COTS item or a minor modification of a commercial item, the subcontractors who sold the food to that contractor (farmers, or harvesters or distributors) are not required by this rule to have the contract clause in their subcontracts. This means that they are not covered by the rule when they are subcontractors because no subcontracts for supplies are covered by the rule for any subcontractor. The only providers of supplies who are covered by this rule are prime contractors, not subcontractors. The Councils purposely excluded all subcontracts for supplies from application of this rule for many of the same reasons that prompted the concerns of the agriculture industry commenters.

Nevertheless, the Councils have further modified the COTS-related exception to address these concerns. The exception in the clause prescription at 22.1803 for COTS-related items has been expanded also to exempt items that would be COTS items but for being bulk cargo. By incorporating this expanded exception for COTS-related items, the Councils intend to exempt foodstuffs such as grains, oils, produce and all other agricultural products shipped as bulk cargo, to the extent they are otherwise classified as COTS items.

d. Acquisitions of Commercial Items Under the FAR

Comment: Several commenters requested that the final rule make it clear that the rule applies only to commercial acquisitions under the FAR. According to these commenters, many grant recipients and State and local governments may incorrectly assume the rule applies to them. One comment also sought clarification of whether the rule would apply to a carnival operator hired to provide services on a military installation.

Response: The Councils do not concur. There are several parts to this question, addressing both the application of the rule to commercial items and the question of acquisitions under the FAR versus ''non-acquisitions.''

- The commenters misunderstand the applicability to commercial items. The rule does not apply only to commercial items. It applies to both non-commercial and commercial items (although COTS items are excluded).
- An exception has been added to permit State and local governments to limit their use of E-Verify only to employees assigned to the contract (allowing them to exclude new hires not assigned to the contract).
- Also, the requirements to use E-Verify only occur when a contract includes the FAR clause. There is no mechanism for the FAR to require insertion of the clause in any grants or contracts that use non-appropriated funds that are not covered by the FAR. Whether the clause would apply to a contractor providing carnival services will depend on several factors; the location of the contract performance alone will not be determinative, unless the contract is performed outside the United States.

2. Small Business

a. Unfair Impact on Small Business

Comment: Many commenters were concerned that E-Verify may impose significant and costly administrative requirements on small business, and that the rule will have a disproportionate adverse impact on small business.

- For example, one commenter noted that few small businesses have specific human resource departments to manage the increased workload, and many more lack the necessary equipment to run the program.
- Another commenter noted that small businesses do not have the luxury of large staffs to prevent lost productivity while employees resolve tentative nonconfirmations.
- Commenters suggested that small businesses may also face accessibility issues, such as lack of access to high-speed internet.
- The SBA Office of Advocacy stated that small businesses may lack the financial resources and human capital to adapt their technology infrastructure systems to changing requirements being imposed by the Federal Government.
- The SBA Office of Advocacy also noted that small business Federal contractors operate on very thin profit margins and these types of technology systems require capital outlays that cannot be easily recouped by passing the cost to the client and are costly to the small business owner.
- Another commenter stated that small companies that do not have the means to set up systems and staffing with adequate training to monitor nonconfirmations may find themselves at risk for noncompliance.
- Some comments argued that the burden is even greater on small businesses that are subcontractors. SBA Office of Advocacy expressed concern that the compliance cost burden on small business subcontractors could be disproportionate, because such businesses have fewer contracts among which they can spread the cost of doing business.

Some of these commenters were concerned that some small businesses would not have the resources to implement E-Verify and may therefore exit the Government market. For example, one commenter noted that E-Verify requires both infrastructure and an investment of employee expertise. Small businesses that do not have the resources to implement may decide not to pursue Government contracts. Further, a small business council was concerned that to stay competitive, small businesses would not be able to pass the extra costs of E-Verify on to the Government, and will therefore be deterred from bidding.

Several commenters expressed concern about the detrimental effect that loss of participation by small businesses will have on the Government and the taxpayers. One commenter noted that through the loss of competition by small businesses, the Government loses out on the innovative ideas of small businesses that exit the market. Another commenter stated that the Federal sector will lose the benefit from the ''ingenuity and flexibility'' that small businesses bring to the table.

Several commenters noted that Congress has expressed concern about the potential impact of E-Verify on small businesses. For example, various commenters cited to the mandated study of impact on small business in H.R. 6633, a bill passed by the House of Representatives that would have extended the E-Verify program for another 5 years.

Response: The Councils do not agree that this rule imposes an unfair burden on small businesses. The economic analysis found that total compliance costs increase as the size of the contractor increases. For example, a 10-employee firm may only need one person trained to execute E-Verify queries, but a 100-person firm may need 2 or 3 employees trained in E-Verify. However, when compliance costs are considered as a percent of revenue, the impact on smaller contractors is greater than the impact on larger contractors since smaller firms have less revenue available. The Small Business Administration publication The Impact of Regulatory Costs on Small Firms (2005) shows that on a per employee

basis, smaller firms have a larger regulatory compliance cost burden than larger firms. The SBA study states: ''On a per employee basis, it costs about $2,400, or 45 percent, more for small firms to comply than their larger counterparts.'' Consequently, the results of the economic analysis that show a relatively higher regulatory impact burden on the smaller entities than the larger entities are not unusual or specific to this final rule.

The requirement for entities (both large and small) to enroll in E-Verify only applies to contractors and subcontractors who choose to perform certain work for the Federal Government. Presumably, entities which do not receive the desired return on revenue to justify the expense of participating in E-Verify would choose not to be a Federal contractor or subcontractor.

It has been the law since 1986 that all employers must verify the eligibility of new hires to work in the United States. E-Verify provides a tool that will make this verification easier and more reliable. Although the E-Verify system does require the employer to have access to some equipment such as a computer, Internet access, a printer, and either a scanner, photo copier, or a digital camera, the Councils believe that this equipment is not prohibitively expensive. Almost all small businesses doing business with the Government would already have such equipment or be able to readily acquire it. The equipment for a small business to implement E-Verify need not be particularly sophisticated or complex.

H.R. 6633, which has been passed by the House allows 2 years for the GAO study of the impact of E-Verify Pilot Program on small businesses, including specific details on small entities operating in States that have mandated the use of E-Verify. The bill has not been passed by the Senate, but it does not request that any implementation of E-Verify be suspended pending completion of the study. In addition, Congress reauthorized E-Verify and appropriated $100 million for the program for fiscal year 2009 in the Consolidated Security, Disaster Assistance, and Consolidated Appropriations Act, 2009, Public Law 110–329 (Sept. 30, 2008), without requiring this study, and it does not appear that there will be any additional legislative developments on E-Verify in the 110th Congress.

The Councils have endeavored to limit the impact of this rule on small businesses by raising the threshold of applicability of the clause to contracts in excess of the simplified acquisition threshold. As a result of this change, a substantial quantity of contracts below that threshold will be exempt from the E-Verify clause, and will be available to small business contractors that do not wish to participate in the program. Since the FAR currently requires set-aside of contracts below the simplified acquisition threshold for small business participation, contracting opportunities that do not necessarily require E-Verify use will remain available for small businesses.

b. Small Businesses Exemptions

Comment: Various commenters suggested exemption or waiver for some or all small businesses. For example:

- Exempt all small businesses: The SBA Office of Advocacy recommended that, until better data is available, small businesses should be exempted from the requirements of the rule. Another commenter recommended consideration of exempting all small businesses that qualify under the size standards established by SBA.
- Exempt small businesses with less than 15 employees: One commenter recommended that the applicability standard should be proportionate to its requirements and suggested that this rule should follow E.O. 13201, under which the Notice of Employee Rights Concerning Payment of Union Dues does not apply to contractors with less than 15 employees.
- Exempt small businesses with less than 75 employees: Several commenters recommended exemption for businesses with less than 75 employees. One commenter asserted that small enterprises do not have the administrative capacity to comply with this contract clause. Another commenter stated that applying the new verification requirements only to locations employing at least 75 individuals full-time would allow for sufficient personnel to manage the system and ensure compliance and consistency.
- Waive the requirement for certain small businesses: Several commenters recommended waivers for certain small businesses for which compliance with the system would be burdensome.

Response: The goal of this rule is to apply verification broadly, to the extent feasible and consistent with Executive Order 12989, in order to enhance the stability of Government contractors' and subcontractors' workforces and to assist them in compliance with the immigration laws of the United States. Nonetheless, the Councils have inserted certain dollar and contract duration thresholds for applicability and have provided specific exceptions because the Councils have concluded those thresholds and exceptions are consistent with their mandate to implement Executive Order 12989 in a way best calculated to improve the efficiency and economy of the Federal contracting system. The Councils do not believe providing exemptions for small businesses based on the number of employees will further that goal and note that other revisions, discussed above, will likely ease the burden on small businesses.

c. Alternatives To Lessen the Burden on Small Businesses

Comment: Various commenters suggested other ways to reduce the burden on small businesses that participate in E-Verify under this rule, for example:

- Allow small businesses more time to initiate the clearance process for new assigned employees (see G.4).
- Raise the thresholds to the simplified acquisition threshold (or other thresholds more than $3,000).

Response: Most of these comments are discussed elsewhere in the report in more detail. The Councils have agreed to the above modifications to the E-Verify rule which will lessen the burden on small businesses, as well as other revisions, such as:

- Lengthening other time periods for compliance (See G.4).
- Applying a period of performance of 120 days (See G.5).

In addition, the USCIS E-Verify Program's outreach office has coordinated closely with the Small Business Administration since April 2008 to conduct outreach events to ensure specific concerns relating to small businesses are heard and addressed.

3. Agriculture

a. Applicability to Agricultural Cooperatives

Comment: Some commenters asked if the agricultural cooperative is the prime contractor under a FAR contract, whether the grower member is considered the prime contractor as well for purposes of checking the status of grower employees. Commenters also asked whether the answer would be the same when the agricultural cooperative is a marketing cooperative.

Response: The Councils have made clear in the final rule that virtually all food products are COTS and COTS contracts are exempt from the rule. Therefore, the Councils believe these concerns have been addressed.

However, there are various types of cooperatives, and many are corporations. Some cooperatives buy the

agricultural product from the grower and resell to the Government. In this case, the grower is a subcontractor and would be exempt from the rule because—

- This involves a supply rather than a service; and
- Supplies are exempt from subcontract flowdown.

Other cooperatives involve pooling arrangements that are not subcontracts, but rather under which there is one prime contract between the Government and the cooperative (on behalf of the growers). In this case the answer is more difficult. If the growers are considered prime contractors for other purposes of Government contracting, then they would be so for purposes of E-Verify application. If, on the other hand, the cooperative alone is the prime contractor, then the growers are not the prime contractor. Applicability of the clause to each contract and different types of agricultural producers is a fact-based analysis that cannot be definitively answered by the Councils.

b. Rural Farms

Comment: Some commenters pointed out that many growers are small farms located in remote rural areas. Many farms hire seasonal workers at field sites that are not in an office, and so electronic or telephonic use of E-Verify is not readily available to the employer. In addition, employer and employees are not near the Social Security office.

Response: The Councils have made clear in the final rule that virtually all food products are exempt from the requirements of this rule. The commenters concerns about access to technology necessary to use E-Verify or the remote location of the contractor have been raised by other commenters as well and addressed in this rule.

The Councils believe that most entities involved in Federal contracting at any level, or their designated agents, will have access to basic office equipment such as a telephone, computer, and internet access. The employer is not required to visit the Social Security office; only the employee must visit if an SSA tentative nonconfirmation is received, and he or she is afforded eight Federal Government working days in which to contact SSA or USCIS. As noted above, when the employee is a naturalized citizen, the employee may choose to call USCIS directly to resolve a citizenship-based tentative nonconfirmation, rather than visit the SSA office. DHS tentative nonconfirmations can be handled with a telephone call rather than a personal visit.

c. Implementation During Harvest

Comment: Some commenters stated that implementing the rule in some agriculture sectors will be unworkable because of the rapid pace required for harvest. Seasonal laborers will move out to another job long before employer is able to obtain verification of employment status. Seasonal laborers need to work on harvesting/packing, not traveling to and spending time at the Social Security office.

Response: The Councils have made clear in the final rule that virtually all food products are exempt.

d. Government Sales

Comment: Some commenters noted that the increased costs, and risks of losing large percentage of workforce, would be too great for some growers to continue selling to the Government. Increased grower costs and less competition would increase the Government's costs. If food growers stop selling to the Government, commenters claim that foreign countries will become the source of food for U.S. servicemen and school children.

Response: The Councils have made clear in the final rule that virtually all food products are exempt, therefore the concerns expressed by the commenters have been addressed.

e. Agricultural Employees

Comment: One commenter noted that the Westat study data on recently enrolled users showed that recently enrolled users were more likely than long-term users to have a small percentage of foreign born employees. This is different from U.S. agricultural employers, where according to a recent USDA study, over a third of hired farm workers do not have citizenship status, and of those 90 percent list Mexico as the birth country.

Response: The FAR Council notes that agricultural employees are more likely to have immigration issues than most other kinds of employees. Nevertheless, because of the exception for COTS, non-agricultural employers are much more likely to be covered by the electronic verification requirements of the rule.

f. Shift to Foreign Agricultural Growers

Comment: One commenter noted that prime contractors might not want to hire U.S. agricultural growers as subcontractors because of wanting to avoid E-Verify problems. Also, the prime contractors might force subcontractors to use E-Verify even when the FAR would exempt the subcontract.

Response: The E-Verify clause does not flow down to subcontracts for supplies. A subcontractor for supplies that has an E-Verify clause in the subcontract should contact the prime contractor or next higher tier subcontractor that included the clause. If unable to obtain resolution, the subcontractor may contact the contracting officer for assistance in resolving the issue.

4. Institutions of Higher Education; State and Local Governments and Governments of Federally Recognized Indian Tribes; and Sureties

a. Institutions of Higher Education

Comment: Seven universities and two associations opposed the application of the rule to educational institutions. In general, the universities supported efforts to encourage improvements to compliance with requirements to demonstrate work authorization and citizenship, but recommend an exemption for research and higher education institutions, arguing that the rule would impose an unnecessary financial and administrative burden. The commenting associations predicted that including academic institutions within the scope of this rule would place stress on the E-Verify system.

The several commenters emphasized various aspects of the interrelated problems that universities face, as follows:

- One of the largest universities contended that E-Verify is difficult to use and that the proposed rule underestimates the time and resources required by an organization of its size to implement E-Verify, and its impact on U.S. citizens and lawful permanent residents.
- Another university described its use of a ''sponsored pool accounting system'' to facilitate frequent changes in researchers' and staff members' funding sources, and how its separation of contract administration and human resources processes complicates E-Verify's clearance procedure.
- Another university that employs a large number of foreign nationals claimed to have a strong program to monitor work authorizations. It stated that the added procedural burden on the university and its employees will hamper its ability to attract highly sought foreign nationals, impacting the quality of its research programs.
- Another estimated that modifying its existing employment eligibility monitoring system to comply with the proposed 3-day clearance requirement would cost $1 million because new processes would need to be implemented outside the payroll system it currently uses. In addition, the

commenter claimed that employee relations issues would be a major impact, and notes that Federal contracts are only 2 percent of its business.

• Another university described universities as low-risk employers because their international population is already subject to oversight through the Federal visa approval processes and their own internal recruitment and other mechanisms.

• Another university was most explicit about the other internal mechanisms that reduce the vulnerability of educational institutions to immigration violations. According to this comment, research organizations operate in an environment of strict regulation and control, including export control and intellectual property as well as immigration and employment requirements. These contribute to their high level of regulatory compliance and they rarely encounter problems with document fraud or with employees lacking proper documentation of their employment authorization.

• Another university also recommended exempting universities from the proposed contract term, but also expressed concerns about the impact on grants and cooperative agreements as well. (Grants and cooperative agreements are not covered by FAR, so the requirements do not in fact apply.)

• One association cited, as an example of potential stress on the E-Verify system's resources, the fact that the University of California employs approximately 170,000 faculty and staff. The demand on system resources at a university is subject to annual spikes at the beginning of the academic terms, according to another association. Association commenters were also concerned about the potential impact of this rule on international personnel at colleges and universities who face delays in securing SSNs. Its members report that many international employees were incorrectly denied SSNs by the SSA. According to these commenters, many who eventually received SSNs did so only after repeated interventions by institutions and after a process that took, in many cases, several months. These delays may be as long as some student workers or staff members are employed by the institution. Such individuals can be employed in a range of positions, from short-term work-study jobs in smaller offices to long-term research projects in large laboratories. The commenters claimed that delays resulting from E-Verify use could jeopardize both the individuals and employers.

Response: The Councils do not find the comments about value, accuracy, or capacity of the E-Verify system to be bases to exempt educational institutions from the rule, for reasons addressed elsewhere in this final rule. Moreover, other Government contractors also attract a foreign talent base that supports U.S. science and technology capabilities.

However, the Councils recognize that coverage of a large number of educational institutions was not anticipated in the proposed rule. These entities have a large number of students with intermittent employment, which may complicate these institutions' efforts to comply with E-Verify requirements. Most Federal funding of universities is in the form of Federal grants, and there are relatively few Federal contracts, but under the proposed rule, a single contract could be sufficient to require an entire university to use E-Verify for all its new hires.

The Councils are also concerned that including universities under this broad rule may increase incentives for academic institutions to insist on grant funding rather than agreeing to enter into contracts. This would increase costs and performance risks to the Federal Government.

Accordingly, the Councils have reduced the burden on institutions of higher education by revising the applicability of the E-Verify requirements to cover only those employees assigned to a Government contract. In order to focus this exception, it is limited to institutions of higher education as defined at 20 U.S.C. 1001(a).

b. State and Local Governments and Governments of Federally Recognized Indian Tribes

Comment: One commenter was concerned about whether the rule might be misconstrued when applied to contracts under the Randolph-Sheppard Program. The concern was whether the State licensing agency, which signs the contract with the Federal Government on behalf of the blind entrepreneur would be required to enroll in E-Verify.

Response: The State licensing agency would be considered the contractor, but the Councils have decided that State and local Governments, as well as the Governments of federally recognized Indian tribes, should only be required to use E-Verify to verify the employment eligibility of employees assigned to the Government contract. The clause would be included in the contract, however, and would flow down to covered subcontractors for services or construction, including the blind entrepreneurs under Randolph-Sheppard.

c. Sureties

Comment: A sureties association requested a *de minimis* exception. Government construction contracts require that contractors obtain performance and payment bonds in accordance with the Miller Act, 40 U.S.C. 3131 *et seq.* A performance bond secures the contractor's performance in the event of a default. If the construction contractor defaults, the surety steps in to complete the contract using one of three methods.

• Sureties can enter into a takeover agreement with the Government and then the surety completes the project using a completing construction contractor.

• The second method involves the surety obtaining bids for completion of the project after which the Government contracts with the winning bidder to complete the project.

• The third method permits the surety to reimburse the Government for the excess costs incurred by the Government to pay a completing contractor.

The first method, where surety enters into a takeover agreement directly with the Government, is frequently selected. Sureties are concerned that if the rule applies to sureties who enter into takeover agreements, then many sureties will select one of the other options to avoid the cost of complying with the FAR rule. Additionally, issuing performance bonds on Federal construction contracts is often a very small portion of each surety's business because the sureties often sell other types of insurance such as auto, homeowners and general liability. If the FAR rule applies to all employees performing activities unrelated to bonds as well as new hires of the surety after the effective date of the takeover agreement, sureties may conclude that it is too expensive to enter into takeover agreements. The commenter also noted that when a surety enters into a takeover agreement with the Government, the actual work of completing the construction project is performed by a construction contractor hired by the surety and not by the surety itself. The sureties requested a *de minimis* exception ''under which companies whose contracts with the Federal Government are a small portion of the company's total revenues need only verify the eligibility of employees involved with the contract.''

Response: The Councils, while not agreeing to an across-the-board *de minimis* exception, have individually

considered the issues and agree that an exception applicable to sureties is appropriate. E-Verify use will not be necessary unless a surety provides a performance bond, the contractor defaults and the surety subsequently enters into a takeover agreement with the Government to complete the project. Prompt completion of construction projects using the most appropriate method available is a priority and it is not in the Government's interest to create an obligation that will discourage sureties from entering into a takeover agreement with the Government if such an agreement is appropriate. Therefore, E-Verify compliance will apply only to those employees of the surety directly assigned to the takeover agreement and to the construction contractor(s) that are hired by the surety. The full clause requirements will flow down to the construction subcontractors.

5. Financial Institutions

1. *Comment:* Several commenters recommended that banks and other financial institutions whose contracts are limited to serving as issuing and paying agents for U.S. savings bonds and savings notes or being insured by the FDIC should be excluded from the e-verification requirement. One commenter requested similar treatment for financial institutions that are parties to financial agency agreements (FAAs) with the Federal Government because FAAs are not subject to the FAR. This commenter stated that FAAs explicitly state: ''This FAA is not a Federal procurement contract and is therefore not subject to the provisions of the Federal Property and Administrative Services Act (41 U.S.C. Sections 251–260), the Federal Acquisition Regulations (48 CFR Chapter 1), or any other Federal procurement law.''

Response: Agreements or activities performed by financial institutions that are not subject to the FAR are not required to comply with the E-Verify provisions and clauses of the FAR.

2. *Comment:* One commenter requested clarification that the rule applies to ''contracts in which a Federal agency is purchasing goods or services, and does not apply to companies who purchase goods or services from the Federal Government.''

Response: Contracts for purchase of goods by companies from the Federal Government are not subject to the FAR and therefore are not required to comply with the E-Verify provisions and clauses in the FAR.

6. Hospitality Industry

Comment: One commenter commented on the difficulty of applying E-Verify to hotel employees. This commenter stated that it is impossible to determine beforehand which specific employee would be interacting with a guest, since many of the individual interactions are initiated by the guest and could involve one of many possible employees in each instance. Further, hotels do not have segregated areas for Government employees nor do they assign specific employees to serve Government employees. This situation is further complicated by the fact that employers are specifically prohibited from screening existing employees through E-Verify, except for those employees assigned to the Government contracts.

Response: First, the revision to the proposed rule that will make the clause inapplicable to contracts that will have a period of performance of less than 120 days may eliminate almost all hotel contracts from being subject to the rule. Second, the decision to allow contractors the option of using E-Verify for all existing employees, rather than just those assigned to the contract, will likely resolve any remaining issue.

7. Other

a. Security Clearances

Comment: Several commenters recommended that the rule permit employees who hold security clearances or HSPD–12 identification to be an equivalency for use of E-Verify.

Response: HSPD–12 mandates that a person must be suitable (minimum of a national agency check with inquiries (NACI)) in order to be issued an HSPD–12 card. Specifically, HSPD–12 imposes certain credentialing standards prior to issuing personal identity verification cards, including verification of name, date of birth, and social security number (among other data points) against Federal and private data sources. The Councils agree that the degree of scrutiny applied to individuals granted HSPD–12 credentials provides sufficient confidence that any such person is likely truthful about his or her authorization to work in the United States that additional investigation through E-Verify is not necessary.

With regard to security clearances, the degree of scrutiny applied to individuals granted security clearances also provides sufficient confidence that any such cleared person is likely truthful about his or her authorization to work in the United States that additional investigation through E-Verify is not necessary if the security clearance is active.

b. Hiring Halls and Intermittent Work

Comment: One commenter requested clarification about how new hires are impacted if they are not full time employees, such as ''hiring hall'' laborers hired for short time work on a specific project.

Response: The INA requires employers to verify the work eligibility of all new hires. There is no exception for short-term or part-time employment, as long as the situation involves ''employment'' as defined in 8 CFR 274a.1(h). When the employer completes the Form I–9 process, it should also use E-Verify to verify employment eligibility. If the employment is for less than three days, the I–9 must be completed at the time of hire, as opposed within the three days after hire that is allowed for longer-term employment. In either situation, the E-Verify query must be initiated when the I–9 process is completed. In addition, there is an existing statutory provision regarding employment pursuant to a collective bargaining agreement in section 274A(a)(6)(A) of the INA, which provides that in certain cases a subsequent employer is deemed to have complied with the Form I–9 requirements by virtue of verification by another employer within the agreement. If a previous employer within such an arrangement has completed the Form I–9 and E-Verify query, a subsequent employer does not have to reverify, as long as the employment is within the scope of the statutory provision.

c. Applicability To Change Orders and Material Modifications

Comment: Various commenters requested that the rule should specifically clarify whether and how the new requirements would apply to change orders or material modifications entered into after the effective date of the regulations on base contracts that were entered into before the regulations take effect. Another commenter recommended that the rule should be revised to specifically disallow inclusion of this E-Verify clause in such amendments, so that existing contractors are allowed to complete their current contracts under the same terms that were initially agreed upon.

Response: Inclusion of the E-Verify clause in change orders or material modifications will be implemented on a bilateral basis.

D. Implementation Schedule

1. Effective Date

a. More than 30 Days After Publication of the Rule

Comment: Several commenters asked that the effective date be some time more than the usual 30 days after publication of the final rule.

- Some commenters asked for an extension, but did not ask for a specific time period.
- Many commenters asked for 120 days after publication.
- Some universities and a personnel council asked for a minimum of 180 days. One commenter justified this because it needed time to hire and train new staff to use E-Verify, time to develop new processes to support compliance, and time to evaluate equipment and computer software upgrades.

Response: The rule will be effective on January 15, 2009. The timelines for initial verifications have been increased. In the proposed rule, verification queries on new and existing employees assigned to the contract had to be initiated within 30 calendar days of enrollment; whereas in the final rule it will be 90 calendar days.

Also note that the burden on some of the commenters (agriculture and education in particular) will not be as severe as the commenters expected. Agriculture will mostly be unaffected, due to the COTS exception. Institutions of higher education will be able to choose to only verify the existing employees and new hires that are assigned to the contract. The impact on sureties has also been minimized.

b. Congressional Action

Comment: Several commenters felt the final rule should not be published until Congress reauthorized the E-Verify program, which at the time was set to expire in November 2008. Another commenter wanted Congress to study the rule, or enact comprehensive immigration reform. One commenter suggested that a one year postponement would give an opportunity for Congress to consider the consequences of a mandatory program.

Response: Congress reauthorized E-Verify and appropriated $100 million for the program through the end of fiscal year 2009 in the Consolidated Security, Disaster Assistance, and Consolidated Appropriations Act, 2009, Public Law 110–329 (Sep. 30, 2008). If in the future Congress fails to extend E-Verify and the program is terminated, the rule will need to be reconsidered at that time. Otherwise, the Councils must implement the Executive Order 12989, as amended.

c. Finalization of the ''No-Match'' Rule

Comment: One commenter asked that the effective date be delayed until the ''no-match'' rule is finalized. It pointed out that the 2007 proposed rule regarding safe-harbor steps associated with SSA's no-match program would provide up to 90 days for employers to resolve discrepancies within their records.

Response: The Councils disagree. As an initial matter, DHS's No-Match Rule has been finalized with the publication of the Supplemental Final Rule on October 28, 2008. More significantly, the comment confuses two separate and independent programs. The DHS No-Match Rule provides guidance to employers that receive a no-match letter from SSA on how to conduct appropriate due diligence and settle questions raised by the no-match letter regarding the work authorization of employees identified by the letter. Employers that follow the steps set forth in DHS's No-Match Rule are guaranteed a safe harbor from the use of the no-match letter as evidence of the employer's violation of INA section 274A.

d. Finalization of the Revised MOU and Training

Comment: One commenter noted that DHS needed to finalize the MOU prior to the effective date of the FAR rule. Another commenter expanded upon this point to assert that DHS needs to finalize the E-Verify Web site, training materials, and program manual prior to the effective date of the FAR rule. A chamber of commerce wanted DHS to undertake a nationwide program to educate and train contractors prior to the rule's effective date.

Response: The Councils concur that implementation of the final rule must coincide with finalization of the MOU and other necessary systems revisions. The Councils expect that the MOU and other DHS systems and procedures will be ready in time for the effective date of the final rule.

e. Establishment of a Post-Final Nonconfirmation Process

Comment: One commenter, citing its experience with E-Verify, asked that DHS adopt processes for a post-final nonconfirmation process, initiated by either the employee or the employer, so that performance of contracts is not hampered by unnecessary termination of work-authorized employees.

Response: Under E-Verify rules, an employee must be permitted to continue working until a final nonconfirmation is issued. After the final nonconfirmation, if the employer has grounds to believe the final nonconfirmation is in error, the employer may still allow the employee to work, but the employer must inform DHS of its decision to retain the worker, and if the worker is later found to be unauthorized, the employer will be subject to a rebuttable presumption that the employer knowingly employed an illegal alien. See IIRIRA Section 403(a)(4)(C). Employers or employees may contact the E-Verify program if additional time is needed to provide such documentation or if they believe a final nonconfirmation was received in error. The E-Verify program may delay a final nonconfirmation finding on a case by case basis in those cases where employees have experienced delays in receiving needed documentation that will help prove their employment eligibility, and the program will work with the employer and/or employee to research the case and identify the reason for the final nonconfirmation.

f. Inaccuracies in the DHS and SSA Data Bases Are Fixed

Comment: Several commenters asked the rule be delayed until DHS and SSA fixed alleged inaccuracies in their data, which could stem from name changes, incorrect data entry, and delayed citizenship status updates.

Response: Some of these inaccuracies cannot be fixed until the employee takes steps to correct the problem, and the employee will discover the problem when the employer initiates a verification query and receives a tentative nonconfirmation. The actual numbers of inaccuracies can only be estimated, and the estimates vary significantly according to the estimator. As noted above, DHS has implemented several improvements to the E-Verify system to avoid tentative nonconfirmation responses resulting from out-of-date citizenship data. The Councils do not agree that the rule should be delayed.

g. Implementation of the Westat Report Recommendations

Comment: One commenter recommended that the Westat report recommendations be implemented before the E-Verify system is expanded.

Response: DHS's continues to improve and further develop the E-Verify system. Many of the Westat recommendations have already been implemented. There is no need to delay the rule.

h. GAO Study Completed

Comment: Some commenters asked that the rule be postponed until GAO completed its study called for under the pending five-year re-authorization legislation. One commenter felt the studies mandated by H.R. 6633 (if enacted) might offer insights on ways to strengthen the program. The first study is an examination of the causes of tentative nonconfirmations, and the second is an assessment of the impacts on small businesses.

Response: The Councils have decided not to postpone the rule. H.R. 6633, which has been passed by the House of Representatives, allows two years for the GAO study of the impact of E-Verify Pilot Program on small businesses, including specific details on small entities operating in States that have mandated the use of E-Verify. The bill has not been passed by the Senate, but it does not request that any further implementation of E-Verify be held up pending completion of the study. In addition, Congress reauthorized E-Verify and appropriated $100 million for the program through the end of fiscal year 2009 in the Consolidated Security, Disaster Assistance, and Consolidated Appropriations Act, 2009, Public Law 110–329 (Sep. 30, 2008), without requiring this study, and it does not appear that there will be any additional legislative developments on E-Verify in the 110th Congress.

2. Phased Transition

a. General

Comment: One commenter suggested that because of the existing ''error rates'' and capacity concerns, the Government should take a more measured or phased approach in increasing E-Verify participation, rather than implementing a rule that will encompass almost all Government contractors within a very short period. Another commenter argued that USCIS indicated the current issues could be adequately addressed in four to five years, which suggests that neither DHS nor SSA anticipated that the agencies would be required to immediately implement full coverage for all contractors at one time and instead contemplated a more realistic implementation period of anywhere from four to five years.

Response: The Councils have decided that a delay in the implementation of the rule is not necessary. DHS and SSA have stated that they are ready to handle full implementation.

b. Four-Phase Transition

Comment: One commenter recommended a four-step phase-in—

- New employees of prime contractors;
- New employees of subcontractors; following this, the Councils should evaluate the success of the program for new employees before proceeding to:
- Existing employees of a prime contractor assigned to a new Federal contract; and then
- Existing employees of new subcontractors.

Response: The Councils must implement the Executive Order expeditiously. The time periods for verification have been lengthened, to ease the burden on employers.

c. From Largest to Smallest Contractors or Contracts

Comment: Several commenters recommended phased implementation, over periods of up to 7 years, based on number of employees of the contractor, or the number of employees required to effectuate the contract.

- The first year of the program would be for the largest noncommercial contracts, and gradual rollout over the next four years in descending order of size, measured by the number of employees who would be required to effectuate the contract.
- Apply the first year to contractors and subcontractors with 2,000 or more employees. Do not count harvest-time employees as if they were year-round employees in measuring the number of employees for a phase-in.

Response: The Councils do not expect agricultural employers to be significantly affected by this rule, because of the COTS exemption. Implementation of the suggested phase-in would be very difficult, and the Councils have decided against this proposal. The dollar threshold exception for prime contracts has been raised to $100,000 (which will especially help small business) and the verification deadlines lengthened.

d. By Agency

Comment: One commenter suggested a phase-in over a period of time or perhaps by agency.

Response: The phase-in by agency is an interesting suggestion. However, the Councils do not believe it is necessary to phase-in by time or agency. DHS and SSA are prepared to support implementation of this rule as revised.

3. Applicability to Indefinite Delivery/Indefinite Quantity Contracts

a. Existing IDIQs

Background: The proposed rule's preamble stated that the proposed rule: ''Applies to solicitations issued and contracts awarded after the effective date of the final rule in accordance with FAR 1.108(d).'' Under the final rule, Departments and agencies should, in accordance with FAR 1.108(d)(3), amend existing indefinite-delivery/indefinite-quantity (IDIQ) contracts to include the clause for future orders if the remaining period of performance extends at least six months after the effective date of the final rule and the amount of work or number of orders expected under the remaining performance period is substantial.

1. *Comment:* One commenter suggested that not applying the rule to existing IDIQ contracts would enable a more even rollout of the program.

Response: The Councils have been advised that DHS and SSA are prepared to process E-Verify queries of contractor employees subject to the rule, including those performing under existing IDIQ contracts.

2. *Comment:* The same commenter objected to applying the rule to existing IDIQ contracts because companies made business decisions to bid on these contracts initially without contemplating the significant cost that will be incurred as a result of this new requirement.

Response: The contracts would be modified on a bilateral basis. The contractor will be able to decide whether it wishes to accept the clause. There can be no unilateral imposition of the clause on any pre-existing IDIQ contract without the contractor's consent.

b. Cost Recovery for Modified Contracts

Comment: Two commenters asked for the rule to spell out the amount contractors would receive to implement compliance on existing IDIQ contracts.

Response: The FAR does not normally spell out the amount of consideration it expects the Government to pay on a contract negotiation. This is a contract-by-contract issue determined by individual contracting officers.

c. Meaning of ''Substantial''

Comment: One commenter asked the Councils to define ''substantial work'' or ''substantial number of orders.''

Response: The interpretation of ''substantial'' will be within the discretion of the contracting officer. The normal use of the word applies.

d. Meaning of IDIQ Contract.

Comment: One commenter stated that the FAR proposed rule would require re-verifying all employees currently employed under ''indefinite delivery/indefinite quantity'' contracts, and that most university Federal grants are multiyear agreements under which

thousands are employed. Another commenter discussed a multiyear contract it had with HHS to provide social services on a national level to victims of human trafficking, where HHS paid for services, up to a certain amount, and for a fixed period, to victims of trafficking on a per capital basis. This commenter asserted that—

- Its contract was not IDIQ;
- A contract extension is not a new contract; and
- A Federal contract for the provision of mainly social services to victims of trafficking is not an IDIQ contract.

Response: The commenters may be somewhat confused about what a FAR IDIQ contract is. A grant is not an IDIQ contract; grants are not covered by the FAR. A contract for social services to victims of trafficking might be an IDIQ contract. The contract itself will say whether it is an IDIQ contract; if so it would contain an IDIQ clause, such as 52.216–22 ''Indefinite Quantity.'' IDIQ contracts are described in the FAR at Subpart 16.5, especially at 16.504.

E. Regulatory Flexibility Analysis and/or EO 12866/Regulatory Impact Analysis/ Paperwork Reduction Act

1. Benefit Analysis Issues

Comment: Several commenters believe this rule will increase the Government's cost of doing business because many contractors will pass back to the Government their costs of using E-Verify. Also, commenters claim that this rule will mean fewer businesses will want to bid on Government contract work.

Response: The Councils concur that this rule may result in additional compliance costs for contractors, and these additional costs could be passed back to the Government. However, Executive Order 12989, as amended, requires that contractors use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility. The President has found that Executive Order 12989 ''is designed to promote economy and efficiency in Federal Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose workforce is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose workforce is more stable.'' Consequently, the President has made the finding that the increased economy and efficiency to the Government as a result of this rule outweighs the cost of the rule.

2. Cost Estimates

a. On Contractor

1. *Comment:* Commenters, including the SBA Office of Advocacy, argue that the Initial Regulatory Flexibility Analysis (IRFA) did not consider all of the relevant costs. They state that profit margins vary by industry, and even very low compliance costs could be significant for some businesses. For example, in the architecture and engineering contracting environment, the maximum allowable profit margin is six percent. Commenters also claim that the analysis did not consider costs such as the social welfare cost or the cost of penalties and lawsuits.

Response: The IRFA fully complied with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA compared estimated compliance costs for four distinct sizes of small business (10, 50, 100, and 500 employees) to the respective revenue of these businesses, using information obtained from the Small Business Administration.

The Councils do not agree that a compliance cost burden of 0.03 percent of revenue could typically be regarded as a significant economic impact. The Councils further disagree that it would be appropriate to add additional cost factors such as the ''upcoming three percent mandatory IRS withholding'' when these costs are not direct compliance costs of the rule.

With regard to the full social welfare cost of the rule, Regulatory Flexibility Analyses are only to include the direct impacts of a regulation on a small entity that is required to comply with the regulation. *Mid-Tex Electric Coop.* v. *FERC,* 773 F.2d 327, 340–343 (D.C. Cir. 1985) (holding indirect impact of a regulation on small entities that do business with or are otherwise dependent on the regulated entities not considered in RFA analyses). See also *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 869 (D.C. Cir. 2001) (In passing the Regulatory Flexibility Act, ''Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy. * * * [T]o require an agency to assess the impact on all of the nation's small businesses possibly affected by a rule would be to convert every rulemaking process into a massive exercise in economic modeling, an approach we have already rejected.''). See, also, Regulatory Flexibility Improvements Act, Hearing before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, on H.R. 682, 109th Cong., 2nd Sess. (2006), at 13 (Statement of Thomas Sullivan, Chief Counsel for Advocacy, Small Business Administration, testifying on the RFA by noting that ''the RFA * * * does not require agencies to analyze indirect impacts.'').

2. *Comment:* A commenter stated that OMB guidelines direct agencies to account for all regulatory (*i.e.*, non-budgetary) costs and that, in general, costs that are not within the discretion of an agency to avoid or prevent are properly attributable to the statute, and an agency may assign them accordingly. The commenter further stated that, nevertheless, all regulatory (*i.e.*, non-budgetary) costs must be accounted for and must be included in the IRFA.

Response: The commenter has confused the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), with the requirements of other administrative reviews. For example, the commenter is apparently suggesting that the IRFA should comply with OMB Circular A–4 and Executive Order 12866. These analyses are not required by the RFA, nor are they mandated for this rule under any other provision of law. The internal, managerial nature of this and other similarly-worded Executive Orders has been recognized by the courts, and actions taken by an agency to comply with the Executive Order are not subject to judicial review. *Cal-Almond, Inc.* v. *USDA,* 14 F.3d 429, 445 (9th Cir. 1993) (citing *Michigan* v. *Thomas,* 805 F.2d 176, 187 (6th Cir. 1986)). Although the requirements of the RFA analysis is fairly compatible with many of the analytical requirements under OMB guidance, the comments invoking Executive Order 12866 and OMB Circular A–4 standards to identify alleged deficiencies in the IRFA are misplaced.

3. *Comment:* A commenter stated that, upon hiring a new worker or upon assigning an employee to Federal contract work, and running the employee against E-Verify, the employer who receives a tentative nonconfirmation for an employee must continue to pay and train the new employee, only to possibly find out later that the worker cannot resolve the nonconfirmation and must be terminated. According to the commenter the IRFA should have taken these costs into account.

Response: The economic analysis included a cost of $5,000 in termination and replacement expenses for each authorized employee that is terminated or resigns employment due to this rule. This $5,000 estimate is meant to include the full range of the direct costs of termination, such as administrative expenses and training costs.

4. *Comment:* The SBA Office of Advocacy claimed that the economic analysis did not distinguish between prime small business contractors and small business subcontractors and that there is a disproportionate compliance cost burden on small business subcontractors.

Response: It is not clear how the direct cost of complying with the rule would materially differ depending on whether the contractor was a prime contractor or a subcontractor. The commenter did not give any specific examples of how a subcontractor's direct compliance costs would differ from a prime contractor's direct compliance costs.

5. *Comment:* The SBA Office of Advocacy stated that some contractors in the construction or manufacturing industries, for example, can have hundreds of employees and still be considered small. The commenter claimed that it is doubtful that DHS' $419 figure is an accurate statement of the costs of the rule to these small businesses.

Response: The economic analysis did not state the cost to a contractor with ''hundreds of employees'' would be $419. The economic analysis presented information showing how the rule would impact four sizes of small entities (10, 50, 100, and 500 employees) by comparing their estimated compliance costs to their respective revenues. The estimate of $419 was for a contractor with ten employees. The economic analysis estimated the compliance cost to a company with 500 employees to be $8,964, so the Councils agree with the commenter that a contractor with hundreds of employees would be expected to incur more than $419 in compliance costs.

6. *Comment:* The SBA Office of Advocacy stated that if, after reviewing the comments received regarding its RFA certification, the FAR Council has reason to believe that it can no longer certify that the proposed rule will not have a significant economic impact on a substantial number of small entities, then the FAR Council should examine feasible alternatives that would lessen the burden on small entities. In that event, the commenter stated that the FAR Council should also publish an IRFA detailing those alternatives, describing the scope and impacts of the proposed rule on small entities, and provide another opportunity for small businesses to comment prior to publication of the final rule.

Response: The Councils did prepare an Initial Regulatory Flexibility Analysis. The Councils did not certify that the rule would not have a significant economic impact on a substantial number of small entities. For the final rule, the Councils have prepared a Final Regulatory Flexibility Analysis. The proposed rule, at 73 FR 33379, explained the alternatives that were considered in order to minimize the impact of the rule on small entities. The Councils have considered additional alternatives in the FRFA based on public comments.

7. *Comment:* Many commenters argued that the assumption contained in the economic analysis that the costs related to unauthorized workers, such as the turnover and replacement costs and lost productivity costs due to the employment of unauthorized workers ''are attributable to the Immigration and Nationality Act, not to the Federal Acquisition Regulation'' would be true only if the Immigration and Nationality Act imposed on employers a continuing duty, post-hire, to investigate the immigration status of existing employees. The commenters are of the opinion that the Act imposes no such duty, and that Congress deliberately decided against imposing such a duty when it enacted IRCA in 1986. They argue that an employer who is currently employing unauthorized employee Jane Roe, after having hired her in 2002 in full accordance with I–9 procedures, and who has no knowledge or suspicions as to Roe's immigration status, is not breaking any law and is not illicitly avoiding any cost of doing business by keeping Roe in its employ without periodically investigating her status. Therefore, the commenters conclude that any new regulation that would force the employer to investigate Roe and acquire the knowledge that would require the employer to terminate her and replace her would impose a cost on the employer.

Response: The Immigration and Nationality Act expressly prohibits employers from knowingly continuing to employ an alien who is not authorized to work in the United States. INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2). How an employer obtains knowledge of an employee's illegal status is immaterial—employers that have actual or constructive knowledge of their employees' illegal work status are statutorily obligated to cease their employment, and any costs that result are attributable to the statute, not to this rulemaking.

The commenters suggest that they would not have discovered the illegality but for their compliance with this rule, and that the consequences of their discovery should be accounted as a cost of this rule. This argument appears to rest on the belief that the INA's prohibition on illegal employment applies only until the employee has filled out the Form I–9. While it may be that many employers have taken a misguided ''see no evil'' approach under which they hope to avoid learning inconvenient truths about the legal status of their existing workforce, that is not an approach that is countenanced by the INA.

While the cost of terminating or replacing unauthorized workers cannot properly be considered a cost of this rule, some turnover involving legal workers that are unable or unwilling to resolve their tentative non-confirmations can be counted as a cost of the rule. Such turnover costs for legal workers were estimated in the IRFA and Final Regulatory Flexibility Analysis (FRFA).

8. *Comment:* A commenter stated that the economic analysis assumes that the employee would bear the cost of driving to SSA, ''but it will be the employer who likely will bear the salary cost of that time.'' In addition, the commenter believed that contractors and subcontractors will suffer far larger lost opportunity and productivity costs than those included in the economic analysis.

Response: The Councils disagree with the commenter. The economic analysis actually assumes the employer would incur a lost productivity cost 100% of the time an authorized employee needed to visit SSA to resolve the tentative non-confirmation and used ''fully-loaded'' wages to estimate lost productivity. A fully-loaded wage includes such benefits as retirement and savings, paid leave (vacations, holidays, sick leave, and other leave), insurance benefits (life, health, and disability), legally required benefits such as Social Security and Medicare, and supplemental pay (overtime and premium, shift differentials, and nonproduction bonuses). The Councils used data from the Bureau of Labor Statistics in order to estimate the fully-loaded wage. Nevertheless, in practice we believe some employers may not incur lost productivity or opportunity cost if the employee takes personal time to resolve their non-confirmations. Also, to the extent employers have the capability to plan around employee absences and other employees are available, the productivity losses estimated in the economic analysis could be higher than what employers may actually incur. Given the fact that the economic analysis estimated a lost productivity cost 100 percent of the time an authorized employee needed to visit SSA at the fully loaded wage rate for a full eight hour day, the Councils

do not believe that the lost-productivity cost estimate for going to SSA is unreasonable.

9. *Comment:* Commenters stated that the economic analysis did not allocate costs for the time required for employers to identify covered employees and manage compliance with E-Verify. For new employees, commenters noted that these costs are admittedly nominal, as new employees are self-identified, and the E-Verify process goes hand-in-hand with the I–9 process already required. But the commenters stated that this is not the case for current employees because—

- To comply with current employee requirements, the employer must first take steps, through performance file review or manager interviews, to determine which employees are subject to the current employee obligation;
- Once the covered employees are identified, the employer must then ascertain if an E-Verify query is required, by checking E-Verify or I–9 records to see if a prior query was obtained;
- If not, the employer must then proceed to obtain the information necessary to conduct an E-Verify query for all such employees.

Response: The rulemaking requires existing employees assigned to the contact to be vetted through E-Verify. The economic analysis accounted for the marginal cost of the time it would take to execute the queries for the existing employees; however, the Councils agree that additional time should be added to account for the time needed to identify the covered existing employees.

Contractors will incur an opportunity cost of time to determine which of their existing employees will actually need to be vetted. After those employees have been identified, the contractor will review the employee's previously completed I–9 form to see if the I–9 complies with the terms of E-Verify enrollment. If the I–9 meets the criteria for E-Verify enrollment, the human resources specialist is expected to contact (by telephone for example) the employee to ensure that the information on the existing I–9 is still accurate (such as the stated basis for work authorization).

Some commenters appear to have assumed that each I–9 required a ''face-to-face'' meeting between the employee and a company representative. A ''face-to-face'' meeting may not be necessary if the I–9 does not need to be updated. Contractors will not normally need to spend several minutes with each employee discussing the need to confirm their Form I–9 information. For example, many contractors may send out an e-mail to their employees or otherwise communicate to alert them that human resources may be contacting them in the future to validate the information on their I–9. However, there will be occasions when a face-to-face meeting will have to be arranged between the human resources specialist and an employee (to review E-Verify acceptable work authorization documents for example). Assuming an average of 20 minutes for a human resources specialist to review an existing I–9 and either call an employee to validate this I–9 or meet with the employee to review documents and an employee's average opportunity cost of 10 minutes to discuss the I–9 information, the RIA will be updated. In addition, the RIA will include an assumption that 10 percent of the time a second 20 minute contact (phone call or meeting) between the employee and human resources specialist could be necessary to resolve any additional I–9 issues related to E-Verify.

10. *Comment:* A commenter stated the economic analysis estimates 3.5 million Government contractor employees will be required to be vetted through E-Verify in 2009. Using the Government's own estimate, the commenter stated that about 370,000 employees will be terminated even though they are legally entitled to work in the United States.

Another commenter stated that in the economic analysis of the proposed rule, the assumption is made that 3.8 million employees of Federal contractors will be required to be run through E-Verify as a result of this rule for the first year the rule is in effect. Based on prior statements by DHS, the commenter notes that two percent of these workers will ultimately be fired because of their inability to resolve a tentative non-confirmation with the SSA or DHS. Thus the commenter calculates that, as a conservative estimate, approximately 70,000 lawfully authorized workers will be fired as a result of this rule.

Response: The economic analysis estimated that two percent of the cases where the tentative non-confirmation was not resolved could potentially result in an authorized worker either choosing to resign instead of working diligently to resolve the tentative non-confirmation or the employee being terminated. The economic analysis indicated that 5.3 percent of the time there was a tentative non-confirmation that was not resolved. Multiplying 2 percent times 5.3 percent equals 0.106 percent. In order to estimate the number of authorized employees that choose to get employment elsewhere or otherwise do not resolve the tentative non-confirmation (for whatever reason), multiply the 3,831,992 employees vetted through E-Verify times 0.106 percent to get 4,060 authorized employees, not the 370,000 stated by the one commenter, nor the 70,000 ''fired'' as stated by the other commenter.

11. *Comment:* A commenter stated the RIA subtracted 10 percent of contract dollar volume but did not provide any basis for that assumption.

Response: Page 21 of the RIA stated that 10 percent was the approximation for contracts with no work performed in the U.S. The *Federal Procurement Data System—Next Generation* was the source of that information.

12. *Comment:* A commenter stated the economic analysis assumes that labor turnover at Government contractors mimics the annual labor turnover rates in private industry. Multiplying the calculated number of employees (1.5 million) by 1.4 yields 2.2 million contractor employees, a number that is compounded at a 5 percent annual rate for future years. The commenter stated that this appears to be a reasonable first approximation because contractors are not burdened by civil service rules that effectively forbid employee termination. The problem is that this assumption is logically inconsistent with the previous assumption that contractor labor and Government labor earn the same wages and salaries. The commenter concludes that, if this were true, turnover in Government employment would be no different than private sector turnover.

Response: The economic analysis stated ''in order to adjust for turnover we assumed an annual turnover rate of 40.7 percent as the Bureau of Labor Statistics (BLS) estimated the annual turnover rate for all industries and regions in 2006 at 40.7 percent.'' We disagree that it is ''logically inconsistent'' to assume for the purposes of the economic analysis that Federal Government contractors have a turnover rate that is equivalent to the turnover in ''all industries and regions'' in the U.S. It is not entirely clear if the commenter believes the turnover rate used in the economic analysis is too high or too low as the commenter did not suggest a specific turnover rate that should be used in place of the 40.7% rate used in the economic analysis.

According to the BLS publication *Job Openings and Labor Turnover: January 2007* (which is the same source used for the 40.7% turnover estimate), the turnover rate for the federal government was 25%. It is very possible that the turnover rate for the federal government contract workforce more closely resembles the 25% turnover in the federal workforce than the 40.7% ''all

industries and regions'' turnover rate used in the economic analysis and that we have overestimated the number of employees vetted through E-Verify. However, there are more factors involved with turnover than simply pay. For example, the perceived increased job security of federal employment compared with the private sector likely influences the federal turnover rate. Also, the pension a federal employee receives is based on age and years of service and likely serves to encourage federal workers who have accrued significant amount of federal service not to leave federal employment. Many federal employees also choose to work for the federal government in order to serve the public good. Consequently, we did not feel it was appropriate to assume that federal contractor turnover rate was equivalent to the federal government turnover rate since there are nonwage considerations involved with job turnover. If federal contract employees do have a turnover rate closer to the federal government of 25% rate than the 40.7% estimated in the analysis, the amount of turnover and number of employees vetted through E-Verify have been overestimated in the economic analysis and the costs of the rule are therefore an overestimate.

13. *Comment:* A commenter stated the RIA includes what is described as an uncertainty analysis, but in fact it consists of merely a numerical sensitivity analysis with respect to two assumptions: (1) The number of contractors and subcontractors affected by mandatory E-Verify; and (2) the number of contractor and subcontractor employees that would be vetted through mandatory E-Verify. The commenter stated that ''[t]he product of this 'uncertainty analysis' is a series of impressive looking, but substantively and presentationally misleading color graphs.'' The commenter also claimed that this analysis violates Office of Management and Budget's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (2002); Notice and Republication.

Response: The Regulatory Flexibility Act does not require any sensitivity analysis or uncertainly analysis be performed in an IRFA. However, the RIA provided a sensitivity analysis simply to show how the costs of the rule could change if the primary estimates of two key cost drivers were varied. First, the sensitivity analysis varied the number of employees that are vetted through E-Verify (holding all else constant) and determined how the overall cost of the rule would change. Secondly, the sensitivity analysis varied the number of covered contractors and subcontractors (holding all else constant) that have to be enrolled into E-Verify and determined how the overall cost of the rule would be impacted. Finally, the sensitivity analysis varied both the number of employees and the number of contractors simultaneously in order to get an overall sense of how uncertainty in these two key variables impacts the overall cost.

The model developed by the Councils to estimate the number of employees vetted through E-Verify included variables that were informed by professional judgment. Such variables include the contract percentage for labor (26 percent), overhead (26 percent), material expenses (26 percent), general and administrative (12 percent), subcontractors (20 percent), and the average wage of a Federal contract worker ($66,705). (Some of these figures are percentages of others.) Changes in any of these variables would impact the estimate of the number of employees vetted through E-Verify. As the estimate of the number of employees vetted through E-Verify is directly influenced by these variables, we believe it is useful to show how the overall costs of the rule could change if the number of employees vetted changed. The Councils continue to believe its estimate of the number of employees vetted through E-Verify is reasonable; but the sensitivity analysis does show how the costs would change if the number of employees estimated were varied by 50 percent using a triangular distribution.

The estimate of the number of primary contractors within the scope of the rule is based on a query of the *Federal Procurement Data System-Next Generation* and is not based on a professional estimate. However, the number of covered subcontractors that are not otherwise a prime contractor is not available and this variable is a professional estimate. The sensitivity analysis shows how the costs would change if the number of covered contractors estimated were varied by 25 percent using a triangular distribution. Both the 25 percent and 50 percent ranges used in the sensitivity analysis were selected based on professional judgment.

14. *Comment:* A commenter disagreed with the Fiscal Year 2007 estimate that 3,475,730 employees will be vetted through E-Verify. The commenter believes that the Government is assuming that 75 percent of a contractor's employees will be assigned to a contract while only 25 percent will not. The commenter knows of many large employers and with few exceptions the portion of their revenue derived from Federal contracts is significantly less than 25 percent. The commenter believes many more employees will be vetted through E-Verify than has been estimated by the Government. Thus the commenter concluded that the costs have been understated.

Response: The Councils agree that there are numerous businesses which contract with the Federal Government but derive a relatively small portion of their revenue from the Federal Government. However, there are also many contractors that have enough Federal contracting business that they have organized themselves into business units that concentrate on Federal contracting sales. The estimate takes into account both businesses that do both relatively little Federal contracting and those that do extensive Federal contracting.

Many commenters appear to be interpreting the term ''contractor'' in an overbroad fashion. Only the legal entity that signs the contract is bound by the E-Verify obligation, not necessarily all affiliates or subsidiaries of that entity. Each contractor has the ability to organize or incorporate itself as it chooses, and questions of whether certain entities are a part of the contracting legal entity can only be answered in specific factual contexts.

Regarding the commenter's belief that the number of employees vetted through E-Verify is understated, there were several assumptions made when conducting the economic analysis that may mean the actual number of employees vetted has been overestimated. The proposed rule does not apply to any employees hired prior to November 6, 1986, as these employees are not subject to employment verification under INA section 274A, 8 U.S.C. 1324a. The economic analysis did not remove any of these workers from the estimate of the number of employees vetted.

In addition, several States have laws that already require varying degrees of E-Verify use. There are also Federal contractors that have already chosen to enroll in E-Verify that do not operate in a State with an E-Verify requirement. Since many Federal contractors are already enrolled in E-Verify or operate in a State with an E-Verify requirement, these contractors have already incurred many of the enrollment costs of this rulemaking and their newly hired employees would be vetted through E-Verify even absent this rulemaking. The economic analysis did not reduce the cost estimate to account for the costs of

employers who have already enrolled in E-Verify.

Furthermore this final rule has narrowed the scope of those required to be vetted through E-Verify. For example, the final rule clarifies that the E-Verify requirement does not apply to prime contracts with performance periods of less than 120 days and raises the threshold for prime contractors to the simplified acquisition threshold ($100,000) instead of the micro-purchase threshold ($3,000). However, the estimate of the number of employees vetted through E-Verify has not been reduced. We believe for these reasons the cost estimates are not understated.

15. *Comment:* Other commenters, including the SBA Office of Advocacy, that believed that the number of contractors that will be vetted through E-Verify has been underestimated criticize the fixed factors (*e.g.*, 26 percent for labor) used in the economic analysis as well as the estimate that the number of subcontractors is assumed to equal 20 percent of the number of prime contractors. One commenter claims that the estimates used by the Councils are not based on ''empirical data'' and that the economic analysis was not explicit regarding how these factors were determined.

Response: The dollar value of the contracts estimated to be within the scope of the rule was found by querying the *Federal Procurement Data System* and does not rely on an estimate by the Councils. Instead of simply providing a ''top-level'' estimate, the Councils developed a model to estimate the number of employees that would be expected to be vetted through E-Verify. The factors utilized (*e.g.*, 26 percent for labor) are all multiplied against the estimated dollar value of contracts. When describing the percentage estimates used to estimate factors utilized, the economic analysis specifically stated ''we understand these assumptions are rough and we welcome public comment providing more precise information.'' However, the commenters have not provided better information.

We note that the analysis required by the Regulatory Flexibility Act need not produce statistical certainty. The law requires that the Councils ''demonstrate a 'reasonable, good-faith effort' to fulfill [the RFA's] requirements.'' *Ranchers Cattlemen Action Legal Fund,* 415 F.3d 1078, 1101 (9th Cir., 2005). See also *Associated Fisheries of Maine* v. *Daley,* 127 F.3d 104, 114–15 (1st Cir. 1997). The IRFA and economic analysis produced by the Councils in this rulemaking meet that standard. The assumptions underlying the economic analysis are reasonable, and the Councils have utilized the best data available to produce the IRFA and the economic analysis. We continue to believe the estimates we provided are reasonable.

16. *Comment:* A commenter stated that over 54 million people are currently employed by companies that work on Government contracts (commenter cited *Wall Street Journal Examines How Federal Government Use of Contract Workers Contributes to Number of Uninsured U.S. Residents,* Wall Street Journal, 26 March 2008). The commenter assumed an 8 percent error rate for E-Verify, and claimed that as many as 432,000 legal employees could have their employment disrupted.

Response: The article cited by the commenter stated there were ''5.4 million Federal service-contract workers'' not the 54 million contract workers cited by the commenter. We note that the 5.4 million estimate may include contracts that are not covered by the rule. For example, the scope of the rule excludes contracts that do not include any work that will be performed in the United States.

The Councils disagree that 432,000 legal employees will have their employment disrupted. The economic analysis stated there was a 5.8 percent tentative non confirmation rate. Multiplying 3,831,992 employees by 5.8 percent equals 222,256 employees (who are both authorized and unauthorized) that would receive a tentative non-confirmation under the projections in the economic analysis. Current experience with E-Verify shows that about 0.5 percent of employees successfully take steps to resolve the tentative non-confirmation, which equals 19,160 authorized employees who may be required to resolve a tentative nonconfirmation.

17. *Comment:* The SBA Office of Advocacy stated that the Regulatory Planning and Review section of the rule states that the rule will impact 168,324 businesses. The commenter further stated that the regulatory flexibility analysis states that there will be 162,125 small businesses affected by the rule. The commenter concludes that the public is left to assume that there are 162,125 small business with prime contracts and subcontracts. The commenter cites data from the Small Business Administration that in FY 2006 agencies awarded $60,703,667,336 to small business subcontractors. The commenter calculates that if this amount were distributed to 162,125 small business subcontractors it would mean that each business received on the average a contract valued at $375,000. However, the commenter noted that DHS cites the average annual revenue of a ten-person firm as approximately $1.4 million.

Response: The estimate of 168,324 contractors impacted is the FY09 annual estimate. However, the 162,125 small business subcontracts is not an annual estimate. As noted in the proposed rule at 73 FR 33378, ''while there are no reliable numbers for subcontracts awarded to small businesses, the Dynamic Small Business database of the Central Contractor Registration—a database of basic business information for contractors that seek to do business with the Federal Government—gives a number of 324,250 small business profiles that are registered. Assuming that 50 percent of these small businesses contract with the Federal Government at either the prime or subcontract level, then that number is 162,125 small businesses.'' Registration with the Central Contractor Registration (CCR) does not mean the small business is currently or ever will be a Federal contractor; it simply means the registrant seeks to do business with the Federal Government. Consequently, dividing 50 percent of the small business CCR registrants (162,125 small businesses) by the FY 06 SBA estimate of $61 billion in small business contract awards may yield $375,000, but the meaning of that statistic is not clear.

As explained in the economic analysis, the estimate of average annual revenue of $1.4 million for a ten-person firm is based on data from the Small Business Administration. We have no reason to believe this data from SBA is unreliable. We assume many small businesses have revenue from sources other than Federal Government contracts. The economic analysis also made no claim that a ten-person firm was the average size of a small business that received a Federal contract. Rather, it presented information on how the rule would impact four sizes of small entities (10, 50, 100 and 500 employees) by comparing their estimated compliance costs to their estimated respective revenues.

18. *Comment:* Commenters noted that, in order to comply with the E-Verify MOU, employers agree to only accept ''List B'' documents listed on the Form I–9 that contain a photo. Commenters stated that the cost of obtaining a photo ID for those employees should be included as a cost of this rule. In addition, commenters stated that 11 percent of U.S. citizens do not currently have a photo ID and cited the Brennan Center for Justice's report entitled ''*Citizens Without Proof, A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo*

Documentation, Brennan Center for Justice, New York School of Law, November 2006.''

Response: The cost of obtaining a photo ID should be included as a cost of the regulation, and it has been added into the economic analysis. However, the Councils do not agree that 11 percent of the employees covered by the requirements of the rule might not have a photo ID.

The entire study cited by the commenter was only three pages and did not include many details such as survey methodology and how the results were determined. In addition to the Brennan survey cited by the commenter, a publicly available American University study entitled ''*Voter IDs Are Not the Problem: A Survey of Three States*'' was reviewed. (American University Center for Democracy and Election Management, January 9, 2008. *http://www.american.edu/ia/cdem/pdfs/VoterIDFinalReport1-9-08.pdf*). This survey of 2,000 registered voters in Indiana, Maryland, and Mississippi determined that, overall, only 1.2 percent of the total respondents lacked Government-issued photo identification. Comparing the results of the American University study with the Brennan survey shows there appears to be considerable disagreement among the estimates of the percentage of Americans without a photo ID.

However, it is not clear how either the results of the Brennan study or the American University study is definitive for the purposes of the final rule's economic analysis. The rulemaking is regulating federal contractors. The universe of federal contractors is not directly comparable to either the population of ''voting-age American citizens'' (the Brennan survey sample) or ''registered voters'' (the AU study sample). Both the ''voting-age American citizen'' and ''registered voter'' populations by definition include people not in the workforce.

Consequently, the final economic analysis will assume 0.5 percent of workers vetted through E-Verify will need to obtain a photo ID and that employers will incur an eight-hour opportunity cost so that the employees can obtain a photo ID.

19. *Comment:* Commenters believed that the costs of implementing the rule are underestimated.

Response: The Councils agree in part, and have reviewed the economic analysis with the E-Verify program and have increased certain enrollment and training time cost estimates in the economic analysis for those contractors that enroll in E-Verify. Additional costs have been added for employers to identify those existing employees that need to be vetted through E-Verify. Consequently, the estimated implementation costs have increased for the final rule relative to the costs estimated for the proposed rule. Another category of implementation costs was added to the economic analysis. This category, called ''Miscellaneous Implementation Costs,'' is estimated to be an additional 10 percent of the total calculated implementation costs (such as employer enrollment, reviewing and updating the I–9's of existing employees, the purchase of a computer) to cover costs companies may incur to execute the rulemaking requirements, such as planning.

20. *Comment:* A commenter stated that the proposed rule requires contracting officers to modify covered existing indefinite quantity/indefinite delivery (IDIQ) contracts to add the proposed E-Verify contract clause. Commenters believe the RIA excludes the cost of modifying these IDIQs and that the Government will need to engage in negotiations with these IDIQ contractors. In addition, the commenter believes the Government will owe ''consideration'' to the contractors in exchange for agreeing to include the E-Verify contract clause. The commenter believes, based on the professional estimate of a former Federal procurement official, that the number of existing IDIQ contracts that would need to be modified is approximately 10,000.

Response: The Councils agree that the economic analysis did not include the cost of modifying these IDIQ contracts, but disagree regarding the extent of the cost burden of these modifications. For the purpose of the economic analysis, the commenter's estimate that 10,000 existing contracts will need to be modified was used. However, extensive ''negotiations'' between the Government and the contractors are not expected. The final economic analysis uses a two-hour opportunity cost of time for the contractor to process the modification and have discussions with the Government, if needed.

The **Federal Register** does not normally spell out the amount or type of consideration the Government expects to pay on a contract negotiation. This is a contract-by-contract issue determined by individual contracting officers. This is a pass-through cost to the Government. However, due to the statutory preference for multiple award IDIQs and the resultant competitive pressures, the Councils expect that the amount of consideration required at time of contract modification would be negligible.

21. *Comment:* A commenter disagrees with the estimate of the average wage of a Federal contractor used in the economic analysis. The commenter notes that the economic analysis assumed the average yearly salary a Federal Government employee earns ($66,705) is a reasonable proxy for the average annual salary of a Federal contractor and noted that, according to the Bureau of Labor Statistics, the average wage rate in the U.S. is approximately $40,000. The commenter believed that the average salary a Government contractor earns is less than the average salary a Federal employee earns and the BLS estimate of $40,000 is a better approximation of Federal contractor pay than the $66,705 used in the economic analysis. The commenter concludes that the consequence of the annual salary of Federal contractors being overestimated is an underestimate of the number of contract employees and an underestimate of the costs of mandatory E-Verify.

Response: The Councils do not have data that shows the average wage of a contract employee on a Federal contract. Consequently, we had to rely on our extensive knowledge of Federal contracts and our knowledge of the personnel who perform work on those contracts to inform our estimate of a reasonable wage rate of a Federal contractor.

The Councils continue to believe the average U.S. wage rate of approximately $40,000 annually is a poor proxy for the average Federal contractor wage. As explained in the economic analysis, the average educational attainment level of the average Federal Government employee is significantly higher than the educational attainment level of the general U.S. workforce. In addition, according to the Bureau of Labor Statistics, ''Although the Federal Government employs workers in every major occupational group, workers are not employed in the same proportions in which they are employed throughout the economy as a whole * * * The analytical and technical nature of many Government duties translates into a much higher proportion of professional, management, business, and financial occupations in the Federal Government, compared with most industries. Conversely, the Government sells very little, so it employs relatively few sales workers.'' (see *http://www.bls.gov/oco/cg/cgs041.htm*).

As a result of the higher Government educational level, which is driven by the higher proportion of professional, management, business, and financial occupations in Government when

compared to the U.S. workforce, the U.S. workforce's average annual $40,000 salary can not reasonably be used as a proxy for the work the Federal Government is required to perform. The Councils believe the average wage rate for employees performing the work the Federal Government is required to perform is certainly higher than the U.S. average wage rate and based on our experience with contracts we continue to believe that $66,705 is a reasonable approximation of the average Federal contractor's annual salary. This estimate is an approximation and the actual wage rate of a Federal contractor could be higher or lower than our estimate. The economic analysis includes a sensitivity analysis that shows how the cost of the regulation changes based on increases or decreases in the number of employees being vetted through E-Verify.

We further note there is some credible information that shows Federal Government employees are significantly underpaid when compared to similar private sector occupations. For example, according to the Federal Salary Council, ''Federal employees make an average of 23 percent less than their private sector counterparts.'' (see *http://www.govexec.com/story_page.cfm?articleid=38212&ref=rellink*). While we did not increase the $66,705 average Federal Government salary upward by 23 percent to account for this ''pay gap'' when estimating the wage of Federal Government contractors, commenters should be aware of this information.

22. *Comment:* A commenter provided wage survey data that established the prevailing rate for many occupations covered under the McNamara O'Hara Service Contract Act and the Davis Bacon Act for seven specific job titles. The commenter provided hourly and annual wage rates for the jobs: Accounting Clerk I, Data Entry Operator I, Cook I, Food Service Worker, Janitor, Laborer, Grounds Maintenance, Computer Operator I. The commenter noted that the wage rates for the seven specific occupations (selected by the commenter) were much less than the $66,705 average wage rate used in the economic analysis.

Response: While the Councils do not dispute that there are specific occupations in which Federal contractors make less than the average wage rate of $66,705 used in the analysis, the higher proportion of professional, management, business, and financial occupations in the Federal Government, compared to the U.S. workforce, means the work the Federal Government performs requires a relatively higher educated workforce that earns more than the national average.

23. *Comment:* A commenter stated that the economic analysis begins with a figure for the number of prime Government contractors in 2007 and assumes that this number will increase at a 5 percent compound annual rate over the study period. No justification is provided for this assumption.

Response: The economic analysis noted that it is difficult to project the number of contractors over the ten-year period of analysis (FY 2009–FY 2018) due to the number of variables that could influence the amount of Government spending and the amount of that spending that would be used to purchase contract support. The Councils continue to believe that a 5 percent growth rate is a reasonable assumption.

24. *Comment:* The SBA Office of Advocacy stated that the proposed rule does not allow small businesses to fully assess the impact of the rule because the economic analysis lacks transparency. The commenter argues that the economic analysis in the docket is problematic from a methodological point of view because the proposal includes only the number of contracts in FY06, total value of contracts in FY06, and the total value of contracts in FY07. The commenter concludes that the remainder of the analysis amounts to a series of behavioral assumptions that are neither substantiated nor justified.

Response: The Councils disagree that the economic analysis is problematic or that it lacks transparency. The write-up, accompanying tables, and sample calculations show exactly how the costs were calculated. In addition, the economic analysis included a section that showed how small entities of various sizes (10, 50, 100, and 500 employees) would be impacted by the specific cost categories of the rule (start-up and training costs, verification costs, authorized employee replacement cost) and compared those costs to the estimated revenue of companies in those respective sizes in order to get an idea of the economic impact of the rule on those sizes of small entities.

The economic analysis did use FY 2006 data to estimate the number of contractors, but as explained in the economic analysis, the number of real dollars spent on Federal contracts remained nearly the same in FY 2006 and FY 2007. The commenter did not provide any information to show why our assessment was incorrect or unreasonable, but just asserted that it was ''problematic.'' While there is not ''empirical data'' to support every assumption in the economic analysis, the use of professional judgment is accepted practice when conducting IRFAs. The IRFA requested comments in the section of the analysis that explained very methodically how the number of employees impacted were modeled and invited more precise information from the public to inform our model. None was received.

25. *Comment:* The SBA Office of Advocacy stated that the total number of contracts is derived by making various assumptions, such as assuming that subcontractors have a 20 percent share, there are 20 percent new contracts per year, and that the total number of contracts grows at five percent per year. The commenter states if any of these assumptions were to change the total number of contracts in the analysis would be affected. The commenter further states the proposal does not indicate where the percentages came from.

Response: Page 19 of the economic analysis stated ''The 20 percent estimate of covered subcontractors is a ''best guess'' provided by Government contracting professionals.'' Page 20 states ''* * * the Federal Government does not have an estimate of the total number of assigned employees that perform work on Government contracts or an estimate of the number of new hires at a covered contractor or subcontractor. In order to estimate the number of employees that will be vetted through the E-Verify system, we must make a series of assumptions that allow us to estimate the amount of contract labor being purchased by the Government and then convert the amount of labor being purchased into Full Time Equivalent positions (FTE's).'' Pages 21 through 23 explain the calculations and clearly label which numbers are estimates.

The Councils agree that changes in these assumptions would change the number of contractors and the number of personnel vetted through E-Verify. The economic analysis includes an appendix that shows how the cost of the rule would change if the number of contractors and the number of employees vetted through E-Verify change.

26. *Comment:* A commenter stated that the rule should consider the cost of the rule on businesses that make a business decision not to do business with the Federal Government due to the rule.

Response: The Councils agree, but we note that under the Regulatory Flexibility Act, the economic analysis need only include the direct impact of a regulation on a small entity that is required to comply with the regulation. Nevertheless, the analysis provided

under the requirements of EO 12866 and the Regulatory Flexibility Act implicitly takes this potential impact into account. The analysis is conducted under the assumption that every federal contractor and subcontractor would choose to incur the cost of the rulemaking and continue to do business with the Federal Government. Businesses may choose not to incur the cost of compliance with this rule, but would presumably only do so were the cost of compliance higher than avoiding doing business with the government. In such cases, the analysis would actually have overestimated the impact of the rule.

27. *Comment:* A commenter believes the *Federal Procurement Data System-Next Generation* (FPDS–NG), the source for the estimate of the number of FY 2006 prime contractors in the economic analysis, contains inaccurate data. The commenter believes the use of data from the FPDS–NG in the economic analysis is ''questionable'' and that the number of contractors in FPDS–NG is underreported.

Response: The Councils disagree. FPDS is the comprehensive web-based tool for agencies to report contract actions. It collects, processes, and disseminates official data on Government contracts. It is therefore the best available source of data on Government contract actions.

28. *Comment:* A commenter stated that multiple people would need to be trained to run the E-Verify checks and estimated that it would take ''3 to 4 hours of time for one person to register, understand the MOU and take the tutorial.'' The commenter questioned estimates contained in the economic analysis such as: The ten-minute registration process, the training time needed for the different types of E-Verify Users (Corporate Administrator and General User 1.5 hours and Program Administrator 2.5 hours; Program Administrators and General Users would also incur 0.5 hours of recurring training), and the estimate of the amount of time needed to review the MOU. The commenter further noted that the economic analysis assumed that to sign the MOU would take 30 minutes for a Human Resources Manager; if a General Manager reviews the MOU (assumed to be 40 percent of the time) the General Manager's review would add another 30 minutes, and if an attorney reviewed the MOU (assumed to be 25 percent of the time), the attorney's review would add another one hour. The commenter did not believe these estimates were accurate for a multinational corporation.

Response: The burden estimates used in the economic analysis are assumed to reflect an average burden for all contractors that enroll in E-Verify. Experiences of one company or a specific group of companies may not accurately reflect the burden at the typical contractor. However, the E-Verify program office has reviewed the commenter's comments and has agreed that some of the estimates used in the economic analysis should be increased.

The economic analysis assumed that a human resources manager would take 0.5 hours to read and sign the MOU; that estimate has been increased to 1.5 hours. Also, the hours for attorney review are being increased from 1 hour to 2 hours, and the estimate for a general manager review will be raised from 0.5 hour to 1 hour. Note that in many companies, especially the smaller entities; the human resources manager is the same person as the general manager. We have assumed that, even though there is no requirement for more than one person to be involved with registering the company and signing the MOU, there may be multiple personnel involved in some instances.

The initial training hours for the corporate administrator have been increased from 1.5 hours to 2 hours, the program administrator initial training hours have been raised from 2.5 hours to 3 hours, and the general user initial training hours are increased from 1.5 hours to 2 hours.

The 30-minute estimate for annual recurring training for the program administrator and general user will be increased to a full hour for each. This ''recurring training'' includes time to review new additions to the user manual.

In summary, while it could take three to four hours to register, understand the MOU, and take the tutorial, these activities only occur when the contractor initially enrolls. Staff later registered by the contractor as general users and program administrators will only need to take the tutorial to begin utilizing the E-Verify system.

29. *Comment:* Commenters believed that on-going compliance obligations have been understated. The commenters stated that calculations did not include an analysis of coping with the constantly changing program. Commenters argue that—

- Every time the MOU changes, E-Verify employers will have to analyze whether they need to sign a new MOU;
- Every time the manual changes, employers will need to spend time reviewing what has changed, whether it impacts them, and how to accommodate any required changes; and
- Every time the photo tool changes and expands, all E-Verify organizations will need to train their staff and change their processes accordingly and then will need to audit compliance with the new standards.

The commenters consider that this on-going compliance obligation is compounded by the fact that a large employer cannot simply distribute the information provided by the Government about legal changes, because each change must be translated into materials specific to the employer's processes and procedures.

Response: We disagree with the characterization that E-Verify is a burdensome, constantly changing program. The September 2007 Westat report found that ''The vast majority of [E-Verify] employers (96 percent of long-term users) disagreed or strongly disagreed that the tasks required by the system overburden their staff.'' (pg. 65) The report also stated that approximately 97 percent of long-term users found the indirect set-up and maintenance costs associated with the system were either no burden or only a slight burden (pg. 106). DHS does not require employers to sign a new MOU when there is a change to the program. Currently, upon logging onto E-Verify, users are greeted with a message board that contains all new enhancements to the system and any applicable policy changes. The message board contains a full archive of all messages in the event that the employer has not logged on to the E-Verify system in several months. Of all the recent enhancements to the program, only the addition of the Photo Tool required E-Verify users to complete additional training. This action was atypical. This additional training was an unusual requirement for the program as changes to the program do not typically require mandatory training. The analysis includes a full hour of ''on-going'' training each year so that the user can keep current on any changes to E-Verify.

Federal contractors who happen to be currently enrolled in E-Verify will be required to take a tutorial refresher that addresses the verification of existing employees. However, the economic analysis assumed that none of the Federal contractors were currently enrolled in E-Verify and consequently estimated the costs for the full training module, not for the refresher module. To the extent that the contractor is an existing E-Verify user, the economic analysis likely overestimates the training burden.

30. *Comment:* A commenter noted the challenges and costs of resolving tentative nonconfirmations are understated. Commenter states that, for its members, consistency and

compliance are critical and must be built into the process from day one. This is especially important for implementing tentative nonconfirmation procedures. Based upon the experience of its members that are E-Verify users, the commenter believes the RIA estimates are grossly understated. One large multinational employer provided the following data on its experience with E-Verify when it was hiring many student interns between January 1, 2008 and May 22, 2008. Out of 598 queries submitted, it received tentative nonconfirmation notices on 92 or 15.38 percent. Out of the 83 DHS tentative nonconfirmations (the remainder were SSA tentative nonconfirmations), about 80 percent of those tentative nonconfirmations required personal attention to resolve, at a great cost to the employer and the impacted foreign nationals.

Response: While the RIA estimated that 5.1 percent of the employees would receive SSA tentative nonconfirmations; the employer in the example only received 9 SSA tentative nonconfirmations (if 83 were DHS tentative nonconfirmations) out of 598 total queries. This is 1.5 percent, or significantly less than the 5.1 percent estimated in the RIA.

However, the Councils agree with the commenter that the RIA estimate of ten minutes to complete the tentative nonconfirmations should be increased. The Councils believe ten minutes is a reasonable estimate solely for the time needed to review the tentative nonconfirmation notice with the employee and for the employee to decide if he/she want to contest the tentative nonconfirmation. If the employee decides to contest the tentative non-confirmation, it should take an additional ten minutes for the employer to print out and provide the referral notice to the employee; this additional time is being added to the estimate.

The employee must then contact the appropriate Government office within eight Federal working days. The employer is not required to spend any additional time on the resolution process until the employee has resolved the case with the appropriate Federal agency. This time commitment is part of the verification process followed by all E-Verify users and is not unique to Federal contractors.

31. *Comment:* A commenter noted that its members report that corrections at the SSA usually take in excess of 90 days. The members report that employees must wait four or more hours per trip, with repeated trips to SSA frequently required to get their records corrected. The members also report that policies for handling this, *e.g.*, does the employee get paid time off to go to SSA, must be consistent and fair. One member reports that its biggest issue actually happens *after* an employee gets his or her record corrected by SSA. At that point, the member states that the employer must spend weeks waiting in limbo. According to the employer, E-Verify instructed this employer to check the record weekly because it was still not clearing even after SSA fixed the error. The commenter notes that when this occurs, the employer and employee are left in an awkward predicament because nothing happens—no approval is issued, no new tentative nonconfirmation is issued, and no final nonconfirmation is issued.

Response: First, this rule does not require that the employer compensate the employee for time away from work. Next, the September 2007 Westat report concluded that ''[m]ost case study employees who had received tentative nonconfirmations reported no costs associated with resolving the finding * * *.'' (pg. 101) Data capture methods instituted for E-Verify with the new electronic secondary process at SSA show that the vast majority of SSA tentative nonconfirmations (94.9 percent) are resolved within 24 hours of contacting the SSA Field Office.

32. *Comment:* A commenter stated that a number of the commenter's members have made arrangements to electronically deliver tentative nonconfirmations, and they inform the commenter that it is not unusual for 24 hours to pass before the tentative nonconfirmation even reaches the employee. The commenters state that where companies conduct some of their E-Verify queries in-house and outsource other queries to a third party, the amount of time needed to discuss a tentative nonconfirmation will vary depending on who submitted the query.

Response: A 24-hour or longer delay in passing a tentative nonconfirmation notice to an employee does not impact the eight-day timeframe for contacting DHS or SSA. The employee must be given the tentative nonconfirmation notice in advance of an employer referring a case to DHS or SSA. The employer must review the tentative nonconfirmation notice with the employee and ask the employee whether he/she chooses to contest the tentative nonconfirmation. If the employee chooses to contest the tentative nonconfirmation, the employer will then go back into the E-Verify system and initiate the referral in the system, which begins the eight-day period.

33. *Comment:* One commenter disagreed with the economic analysis regarding the one-minute estimate to resolve a final nonconfirmation.

Response: The one-minute period estimated for resolution of a final nonconfirmation refers solely to the time it takes for an employer to close the case in the E-Verify system, not the external processes the employer may take in response to a final nonconfirmation. The economic analysis includes a $5,000 termination and replacement cost for an authorized employee who leaves employment with the employer (the employee is terminated or resigns). The cost of replacing unauthorized workers is attributed to the cost of current immigration law and is not considered to be a cost of this rule.

34. *Comment:* Commenters stated that the eight-day timeframe provided to employees for resolving a discrepancy is likewise inadequate. They state that—

- When an employer receives a tentative non-confirmation, the employer must notify the employee and provide him or her with an opportunity to contest that finding;
- If the employee contests, he or she then has eight business days to visit an SSA office or call USCIS to try to resolve the discrepancy; and
- Eight business days does not provide enough time for many employees to visit an SSA office, particularly in cases where the employee is working on a remote jobsite potentially hundreds of miles away from the closest SSA office and/or where transportation is not readily available.

Therefore, the commenter suggested amending the requirement to allow employees thirty business days to try to resolve the discrepancy with SSA or DHS.

Response: An employee who receives a tentative nonconfirmation is given eight Federal Government work days to contact the appropriate agency. After visiting SSA, or placing a phone call to DHS, the applicable agency must also provide a response to the employee within two days.

The E-Verify statute (404(c) of IIRIRA) sets forth the design parameters for the secondary confirmation system. It states that the Secretary of Homeland Security shall specify a secondary verification system capable of providing a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. USCIS experience in administering the program shows that 95 percent of secondary verifications are completed within 2 days. In order for the system

to comply with the statutory specifications, USCIS allows eight working days for the employee to visit SSA or contact DHS.

In cases where additional time may be required for resolving the discrepancy with SSA or DHS, the employer will receive a message through E-Verify called ''Case in Continuance,'' which may extend beyond the ten-day resolution period. During this time, the employer may not take action against the employee while the employee is resolving his or her case.

35. *Comment:* A commenter from an institution of higher education expected that most rejections will involve non-immigrant post-doctoral associates and fellows who have already undergone careful scrutiny in obtaining a visa to enter the United States.

Response: The Immigration Reform and Control Act of 1986 (IIRCA) requires all employers to verify the identity and work authorization of any employee working in the U.S. by having the employee complete a Form I–9. While nonimmigrant post-doctoral associates and fellows have already obtained a visa to enter the U.S., this does not alleviate the employer of its responsibility under IRCA. In addition, the fact that an alien has been issued a visa has nothing directly to do with whether the alien is work-authorized in the United States, as millions of aliens who are issued visas and admitted to the United States in B, F or certain other nonimmigrant categories are not authorized to be employed in this country.

36. *Comment:* The SBA Office of Advocacy was concerned about its ability to successfully complete the on-line tutorial, required by the MOU that contractors will be required to sign. The commenter states that, while the proposed rule acknowledges the tutorial, it does not acknowledge the requirement that a proficiency test at the end of the tutorial needs to be taken and a 71 percent pass rate achieved. The commenter is concerned about the cost implications to an employer who does not pass the test, stating that the costs involved have more dimensions than just the opportunity cost.

Response: The E-Verify program knows of no situation in the history of the program where an employer was ultimately unable to participate because it could not pass the mastery test. The cost and burden associated with the tutorial is more than adequate to also cover the mastery test as well.

Employers are able to retake the mastery test as many times as is necessary to pass. Taking the tutorial and the mastery test is a requirement to use the system and run verification queries. Those responsible for running queries (and passing the mastery test) are not always the same as those who have signed the MOU on behalf of the entire company.

37. *Comment:* Commenters stated that not all contractors have computers at all sites at which they engage in hiring. Consequently, they conclude that they will incur costs to computerize and establish Internet accessibility for every facility at which they hire employees. Given the mobile nature of traveling carnivals and circuses, as well as the sporadic availability of Internet access in some rural areas, the commenter does not believe that all employers can have reliable Internet access or even regular access to a computer while traveling to conduct business. Being mobile, the carnival industry would face additional costs associated with transporting this equipment from location to location.

Response: It would be unusual for a Federal Government contractor not to have Internet access and a computer. Still, employers have the option of using an outside company or vendor to run their queries. Through this method of using E-Verify, the third party engages in an MOU with the DHS and SSA on behalf of its client. Employers could also seek out other sources of Internet access, such as a public library. While the commenter offered no specific information on the increased marginal cost of transporting a laptop computer and printer, it does not appear to be significant.

The economic analysis estimated that two percent of contractors did not have a computer or Internet connection at their hiring site. The economic analysis stated ''If we do not receive comments indicating that covered Federal contractors or subcontractors would need to purchase a computer and/or internet connection, we may eliminate this category of costs in the final rule.'' As such comments were received, that cost will be included in the final rule.

38. *Comment:* Commenters noted the E-Verify MOU requires the employer to make photocopies of certain documents, and to print certain documents if a tentative non-confirmation occurs. The commenters stated that the analysis fails to consider the additional cost of printing and copying equipment an employer must acquire and maintain at each hiring site under the rule. Further, the commenters noted that the E-Verify MOU requires, under certain circumstances, that the employer either scan certain documents provided by the employer for electronic submittal to DHS or use an express mail account. The commenters stated that the added cost of a scanner—wherever employees are hired—is not considered by the analysis.

Response: The economic analysis will add additional printing costs to the analysis. The analysis will add the cost of an ''all-in-one'' printer/copier/scanner/fax machine for the contractors that may need to purchase a computer. The economic analysis had already considered certain photocopying costs. However, the printer/copier/scanner/fax machine that is being included provides an alternative (such as scanning a document) to photocopying documents.

39. *Comment:* The SBA Office of Advocacy stated that contractors will be required to sign a MOU that is an agreement between them, the SSA, and USCIS. The commenter stated that the proposed rule provides the contractor with an opportunity to negotiate the terms of the MOU and that the cost of compliance includes a line item for the contractor's attorney to read the MOU. The commenter recommended that the cost of compliance should recognize the cost for an attorney to negotiate an acceptable MOU.

Response: The terms of the MOU are not negotiable.

40. *Comment:* A commenter stated that the rule does not take into account the costs businesses would incur as a result of ''erroneous nonconfirmations'' that result from E-Verify database inaccuracies. The commenter stated that Government-commissioned reports, congressional testimony, and other evidence support its opinion about the unreliability of the E-Verify program. The commenter also stated that the recent reauthorization of the program by the U.S. House of Representatives specifically acknowledged this fact by requiring further study by the GAO of the erroneous tentative nonconfirmation rate.

Response: The Westat report in 2007 found that the erroneous tentative nonconfirmation rate for all workers from October 2004—March 2007 was 0.6 percent. (Westat report pg. 57, table) This means that 0.6 percent of workers that were found work-authorized by the system initially received a tentative nonconfirmation during the verification process. A system that correctly verifies authorized workers as work-authorized 99.4 percent of the time cannot reasonably be termed ''unreliable.'' Further, the economic analysis did estimate the cost to employers of resolving the tentative nonconfirmations.

41. *Comment:* A commenter stated that there are no reliable figures to report the number of erroneous final nonconfirmations because there is

currently no process in place to appeal such an outcome. The commenter submits that most employers will simply fire individuals with a final nonconfirmation report from E-Verify.

Response: Employers or employees may contact the E-Verify program if additional time is needed to provide such documentation or if they believe a final nonconfirmation was received in error. The E-Verify program may delay a final nonconfirmation finding on a case by case basis in those cases where employees have experienced delays in receiving needed documentation that will help prove their employment eligibility, and the program will work with the employer and/or employee to research the case and identify the reason for the final nonconfirmation. Where an employer or employee has questions about a final nonconfirmation, DHS or SSA can place such cases ''in continuance'' for resolution by either SSA or DHS.

42. *Comment:* A commenter states that according to a June 7, 2008, Government Accountability Office Report, the existing electronic verification systems in place at DHS and SSA are frequently unable to provide the ''instant'' verification that E-Verify is supposed to provide. The commenter quotes this report as finding that in eight percent of the cases, ''[r]esolving these nonconfirmations can take several days, or in a few cases even weeks.'' June 7, 2008 GAO Report, ''Electronic Verification: Challenges Exist in Implementing a Mandatory Electronic Verification System,'' p. 3. The commenter states that the delays are attributable to several factors, including USCIS's failure to promptly update its database when it receives new citizenship information. The commenter claims that, in those circumstances, an authorized worker will be terminated under the proposed rule even if he or she promptly attempts to correct the database error.

Response: Employees are not penalized if their case requires additional time to resolve. As long as they contact the appropriate agency within the required eight-day timeframe and begin the process of contesting a tentative nonconfirmation, they must be permitted to continue working until their case is resolved.

Contrary to the commenter's assertions, DHS does update its database when immigrants are naturalized as citizens. However, when naturalized employees properly state that they are citizens, their information is verified against the SSA database, which may not yet reflect their naturalized status. USCIS implemented a change to the E-Verify system in May 2008 to re-check against DHS naturalization databases any citizens that SSA cannot verify because of a citizenship mismatch. This change prevents naturalized citizens from receiving a tentative nonconfirmation if their information is available in the more current DHS database. However, new citizens remain responsible for updating their records with SSA when they are naturalized.

Moreover, the E-Verify MOU makes clear that employers are prohibited from discharging, refusing to hire, or assigning or refusing to assign to federal contracts employees because they appear or sound ''foreign'' or have received tentative nonconfirmations. The MOU also notifies an employer that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of the employer's participation in E-Verify. If the employee believes that he or she has been discriminated against, he or she should contact OSC at 1–800–255–7688 or 1–800–237–2515 (TDD). Employers that have questions relating to the anti-discrimination provision should contact OSC at 1–800–255–8155 or 1–800–237–2515 (TDD).

43. *Comment:* A commenter stated that the FAR Council says that the only currently employed lawful workers who will be casualties of its proposed rule are those who ''choose not to take the steps necessary to resolve a tentative nonconfirmation,'' and who thereafter are fired. 73 FR at 33377. The commenter states that that assertion is premised on the notion that there are no errors in the relevant databases that cannot be quickly corrected in the eight-day period provided for in the Proposed Rule. The commenter contends that that notion is undeniably false—as the GAO Report makes clear when it says that it sometimes takes ''weeks'' to correct an error under the E-Verify system.

Response: The commenter appears to misunderstand the eight-day period under the E-Verify program for an employee with a tentative nonconfirmation to contact SSA or DHS. Employees are not expected to resolve their tentative nonconfirmations within eight days—they are only required to contact the appropriate agency within that timeframe in order to challenge the tentative nonconfirmation. The economic analysis does assume there could be some authorized employees who are terminated, but this should occur only under unusual circumstances. The authorized worker has an economic incentive to ensure his/her information properly matches SSA's records both to preserve his/her job and to ensure the employee receives full credit for contributions made into Social Security. The analysis estimated that 2 percent of the 5.3 percent unresolved tentative nonconfirmation cases ($2\% \times 5.3\% = .106\%$) represent an authorized employee who either resigned or was terminated.

44. *Comment:* A commenter stated that, so far this year, the commenter has initiated nearly 1,400 new-hire queries through E-Verify and anticipates that new-hire queries will approximate 3,000 a year. The commenter states that its E-Verify tentative non-confirmation rate far exceeds the estimated rate of non-confirmations published by E-Verify and USCIS. The commenter notes that all of its tentative nonconfirmations have ultimately been cleared by E-Verify as work authorized, but only after significant investment of time and money.

Response: Employers' tentative nonconfirmation rates will vary depending on the makeup of their workforces. While the majority of SSA tentative nonconfirmations are resolved within ten days, E-Verify does accommodate employees whose cases cannot be resolved within that timeframe provided that they have contacted SSA and have followed all of the requirements.

USCIS continues to partner with SSA in the implementation of the E-Verify program, especially in diminishing database errors and resolving mistaken final nonconfirmations. It is the responsibility of individual citizens to update their records with SSA; this includes the most common updates of name change due to marriage and change in citizenship status due to the naturalization process.

45. *Comment:* A commenter stated that mandating contractors to use the Basic Pilot/E-Verify program will not eliminate the U.S. economy's demand for unauthorized workers. According to the commenter, contractors who need workers will continue to hire them ''off the books.''

Response: The INA prohibits hiring or continuing to employ aliens whom the employer knows are not authorized to work in the United States. INA section 274A(a)(1), (a)(2). Any employment of aliens whom the employer knows are not authorized to work in the United States is a violation of the law. We disagree with the implication that

employers will find a way to violate the law anyway, so lax enforcement of the law is in the U.S. economy's best interest.

46. *Comment:* A commenter stated that smaller businesses may find it financially more difficult to comply with Executive Order 12989. According to the commenter, the proposed rule indicates that the costs of participation in the E-Verify program will likely include startup registration costs, opportunity costs of the time spent on training, opportunity costs of the time spent on employee verification, productivity costs when employees need to leave work to visit SSA/USCIS to correct information, and employee turnover costs. The commenter quotes statistics drawn from a survey of employers who have used the system to demonstrate that the startup process for E-Verify can be burdensome.

Response: The statistics reported by the commenter in the example from page 60 of the September 2007 Westat report are incorrectly drawn from the table in the report. In fact, 72.9 percent of employers disagreed with the statement ''the on-line registration process was too time consuming''; only 13.4 percent agreed with the statement (of which 2.4 percent strongly agreed). Also, 75.9 percent of employers surveyed disagreed with the statement ''the on-line tutorial was hard to use,'' an additional 21.2 percent of employers surveyed strongly disagreed with the statement, only 2.8 percent agreed (of which 0.2 percent strongly agreed). Finally, 67.9 percent of employers disagreed with the statement ''the tutorial takes too long to complete;'' only 21.6 percent of employers agreed (of which 3.8 percent strongly agreed). The statistic on the importance of passing the mastery test and the perceived burden was correctly drawn from the table.

System set up and maintenance costs are a concern for the program and especially their impact on smaller employers. Therefore, questions on these costs have been and will continue to be asked in the independent evaluations of the program. The statistics cited in the example are accurately quoted from the Sept. 2007 Westat report, however, it must be noted that the average start-up and maintenance costs are calculated from a very widely skewed distribution of cost data. As stated on pg. 104 of the Westat report, ''Eighty-four percent of employers that used the Web Basic Pilot for more than a year reported spending $100 or less for start-up costs, and 75 percent said they spend $100 or less annually to operate the system. However, 4 percent of long-term users said they spend $500 or more for start-up costs, and 11 percent spent $500 or more annually for operating costs.'' The report does not segregate the employers that reported a high level of cost into large and small employers. However, the report does state on page 106 that ''[n]ot surprisingly, maintenance costs were higher for employers that verified employees at multiple locations than for those that verified at only one location ($1,653 versus $490).'' So, to the extent that small employers are less likely to verify employees at multiple widely distributed locations, their costs would be expected to be lower than the average provided in the report.

Separate from this final rule, the E-Verify program is working to identify and address issues that may result in an employee not fully understanding the opportunity to contest an initial mismatch, *e.g.*, the Plain Language Initiative. The program currently provides program materials in English and Spanish and is currently working to produce documents in nine additional languages.

47. *Comment:* Commenters stated that the RIA assumes that 2 percent of authorized workers for whom E-Verify generates a tentative nonconfirmation will not resolve their records to the Government's satisfaction. Commenters believe that failing to resolve a tentative nonconfirmation leads inexorably to a final nonconfirmation, which results in employee termination. The commenters note that the RIA claims that these workers ''choose not to resolve the non confirmation,'' but no evidence is provided showing that the lack of records resolution is the result of worker choice. Furthermore, the commenters note that the RIA does not explain why workers would intentionally choose a path that leads to termination. The commenters believe that a more plausible explanation is that these workers have unusually difficult problems to resolve or they are less capable than their peers at navigating multiple Government bureaucracies or they are marginal workers for whom the burden of resolving records exceeds the gain from remaining in the formal labor market. Whatever the cause(s), the commenters believe E-Verify will be responsible for these terminations and the RIA acknowledges this and includes, as a cost to employers, the additional recruitment and training that are required to replace these employees. However, commenters believe the RIA ignores the opportunity cost of termination to the employees themselves. The $10 billion present value cost estimate should be understood as a lower-bound for the true social cost of forced unemployment of authorized workers.

Response: The Councils disagree that there will be any significant ''forced unemployment'' cost caused by this rule on authorized workers. If the E-Verify program issues a tentative non confirmation to an employee, the employer cannot fire, prevent from working, or withhold or delay training or wages for that employee during the resolution process. All employees receiving tentative nonconfirmations are given the opportunity to contest and correct their records.

A limited case study in the 2007 Westat report notes that ''Most employees reported positive experiences correcting their paperwork with SSA or USCIS'' and ''Overall, employees who contested SSA findings did so quickly: The record review showed an average of only 2.1 days between the referral to SSA and the date the SSA representative signed the referral letter (if one was provided to the employee)'' (Appendix E pages E–13 and E–14). This 2.1 day average time to resolve a tentative non-confirmation suggests the resolution process is not an unreasonably difficult burden for those that choose to utilize the process.

As there is no law that compels an authorized worker to resolve a tentative non-confirmation, the Councils believe it is reasonable to add a cost for an employer to replace an authorized worker who does not resolve the tentative non-confirmation. For the purpose of the economic analysis, the Councils assumed that 2 percent of the 5.3 percent unresolved tentative non-confirmations were authorized workers leaving employment with the employer ($2\% \times 5.3\% = .106\%$). The employer would incur employee replacement (turnover) costs whether the authorized employee resigned or was terminated. Due to the economic incentive to ensure one's records are correct with SSA and to continue employment, it would be a very unusual circumstance for an authorized worker not to work diligently to resolve the tentative non-confirmation.

We disagree with the commenter's assertion of a ''$10 billion'' present value cost estimate of ''forced unemployment.'' The commenter's $10 billion estimate is apparently premised upon assuming a 15 year period of analysis of ''forced unemployment'' and a ''disemployment rate'' of ''1.060%.'' We assume the ''disemployment rate'' used by the commenter was meant to be the ''.106%'' estimate in the RIA for the proposed analysis of people who are authorized to work but either resign or

are terminated for failure to resolve the tentative non-confirmation. If true, this would cause an order of magnitude error in the commenter's calculations. Also, the economic analysis assumed the 2% replacement rate for authorized workers who do not resolve their tentative non-confirmations included any and all reasons an authorized employee potentially leaves employment, such as voluntary resignation.

Finally, the E-Verify program knows of no information that supports the commenter's assertion that workers who do not resolve their tentative non-confirmations have ''unusually difficult problems to resolve, or they are less capable than their peers at navigating multiple government bureaucracies, or they are marginal workers for whom the burden of resolving records exceeds the gain from remaining in the formal labor market.''

48. *Comment:* Commenters stated the RIA extrapolates to a coerced population of Federal contractors from the current E-Verify population, which consists of volunteers. In this case, the commenters believed volunteers are likely to be firms for which participation in the program is actually beneficial. The commenters concluded, if this were the only criterion for participation, then they would expect data from these firms to be ''better'' than data the Government will obtain once it makes participation mandatory.

Response: The economic analysis used actual information regarding the E-Verify authorization process (*i.e.*, percentage of tentative non-confirmations, percentage of final nonconfirmations, etc.) generated by the entities that were using the E-Verify program during October 2006–March 2007 in order to estimate costs.

The rate of tentative non-confirmations, percentage of final nonconfirmations, and other operational statistics may be different for entities that choose to be Federal contractors than for the existing E-Verify population, but there is no evidence to support the theory that data from the existing E-Verify enrollees would be ''better'' (lower tentative nonconfirmation rates) than data the Government will obtain once additional Federal contractors join E-Verify. We note there are many states that currently require certain employers to participate in E-Verify. For example, Arizona and Mississippi are currently requiring all employers to enroll in E-Verify and authorize the work status of newly hired employees. Also, Idaho, Minnesota, and North Carolina require state government agencies to vet newly hired state employees through E-Verify.

In fact, there is data that suggests there could be fewer tentative non-confirmations among the federal contractor population than in the general population. The September 2007 Westat report stated on page 41 (note that E-Verify was formerly known as ''Basic Pilot''): ''* * * establishments registering for the Web Basic Pilot differ significantly from employers not enrolled in the program. More specifically, pilot participants tend to be larger than most establishments, have higher proportions of foreign-born employees, and be more concentrated in certain industries and locations.'' The report also stated, ''* * * it appears currently that citizens are underrepresented in the Web Basic Pilot program compared to the nation. Since citizens are more likely than noncitizens to be authorized automatically and less likely to get an erroneous tentative nonconfirmation, it is reasonable to expect that a program that verifies all new hires nationally would have a higher percent verified automatically and a lower erroneous tentative nonconfirmation rate than is currently the case, if nothing else changes.'' (pg. 134) Consequently, we could reasonably expect that tentative non-confirmation rates for federal contractors could be lower than the rates experienced by current E-Verify enrollees.

49. *Comment:* A commenter stated that the calculations from the sample should be treated with caution because the sample consisted of a six-month season that did not include Spring- and Summer-hires. The commenter further stated that seasonal workers would be covered by E-Verify but are excluded from this sample. In addition, the commenter stated that if a Federal agency had proposed to collect data from volunteer E-Verify participants and use them to predict results from a mandatory E-Verify program, the Office of Management and Budget would have been compelled by law and its own regulations to disapprove the information collection on the ground that it lacked practical utility (commenter cited in footnote 24—''OMB's information collection rule forbids it from approving a statistical survey 'that is not designed to produce valid and reliable results that can be generalized to the universe of study.' '' See 5 CFR 1320.5(d)(2)(v); 60 FR 44988.

Response: The Council agrees a full year's worth of data would provide a better indicator of the likely impacts of the final rule. Therefore, for the final rule's economic analysis, a full 12 months of data are used, instead of the six months used in the proposed rule's economic analysis. However, given that the economic analysis did not conduct a ''statistical survey,'' the commenter's purpose in stating that the economic analysis did not comply with OMB ''statistical survey'' guidelines is not clear.

50. *Comment:* The SSA provided additional information regarding the marginal cost of the rule to SSA.

Response: The economic analysis will be revised to incorporate the cost estimates provided by SSA. For example, the economic analysis estimated the cost to SSA in FY09 to be $622,699, while the SSA estimated its FY09 costs to be $1,023,294.

b. On Federal Acquisition Workforce

Comment: A commenter stated that the proposed rule assumes only $1,547,194 in costs that the Federal Government will incur in 2009 as ''operating costs from each query that an employer executes'' and ''resolving tentative nonconfirmations.'' According to the commenter, the proposed rule has not considered costs associated with contracting officer time and effort.

Response: Contracting officer duties under the final rule consist almost exclusively of inserting the clause into appropriate solicitations and contracts. The marginal effort associated with that duty is so slight as to be practically immeasurable. Further, there is no reason to believe that additional contracting officers will need to be hired due to the impact of this rulemaking.

3. Reasonable Alternatives

Comment: The SBA Office of Advocacy suggested that the Administration should examine feasible alternatives to the proposed rule, if comments received indicate that the proposed rule would have a significant economic impact on a substantial number of small businesses. Another commenter wrote that the Administration's analysis of reasonable alternatives is flawed for failure to take into account all reasonable alternatives, and for failure to adequately address the lone alternative taken into account.

Response: The Council has considered all reasonable alternatives, as addressed herein and in the FRFA, and has adopted all the alternatives that fulfill the objective of the Executive Order.

4. Paperwork Reduction Act

Comment: An immigration lawyers association commented that the proposed rule violated the Paperwork Reduction Act by imposing an additional information collection

burden on employers and because employers who fail to keep such records will face significant liability.

Response: The Councils recognized in the proposed rule that the rule contains information collection requirements over and above the burden hours already approved for the E-Verify System. 73 FR 33379. The Councils have requested and received approval from OMB for this new information collection requirement. Accordingly, the information collection requirements of this rule fully comply with the requirements of the Paperwork Reduction Act.

F. Final Regulatory Flexibility Act Analysis

This Section F constitutes the Final Regulatory Flexibility Act Analysis (FRFA), as required by the Regulatory Flexibility Act, 5 U.S.C. 604. The issues covered here are also addressed in detail in the Regulatory Impact Analysis for FAR Case 2007–013, available at *http://www.regulations.gov.*

This final rule implements Executive Order, 12989, as amended, to enhance the stability and dependability of Federal Government contractor workforces by requiring them to use the USCIS' E-Verify system as the means for verifying employment eligibility of certain employees.

The Councils expect this rule to impact nearly every small entity in the Federal contractor base. However, the direct cost this rule imposes does not appear 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.* Nevertheless, the Councils have not formally certified the rule as not having a ''significant economic impact on a substantial number of small entities,'' as allowed under section 605(b) of the Regulatory Flexibility Act.

In addition to the costs of this final rule, the Councils expect this rule to carry certain benefits to employers in that it provides an economical, web-based method for performing verification of employment eligibility of employees, improving the reliability of the employment verification procedures employers are already required to perform. Federal contractors' participation in E-Verify is also expected to reduce the likelihood that contractors will discover, long after the fact, that they have hired unauthorized aliens, thereby sparing contractors the cost of terminating and replacing employees not authorized to work under Federal immigration law after resources have been expended on the training of those employees.

In addition, a number of changes have been made in the final rule to lessen the impact on small businesses; they should also benefit large businesses in reduced compliance costs. Specifically, the timelines have been significantly extended (see Section B., ''Changes Adopted in the Final Rule'', paragraph 1., ''Significantly Extended Timelines'', for the precise changes); the threshold for prime contracts has been raised from $3,000 to the simplified acquisition threshold ($100,000); contracts with a performance period of less than 120 days are exempted; the COTS-related exemption has been expanded (see Section B., ''Changes Adopted in the Final Rule'', paragraph 9., ''Expanded COTS-related exemptions for:'' of this rule); contractors are offered the option of using E-Verify on all existing employees so as to eliminate the necessity of segregating employees performing directly on a Federal Government contract from those who are not; and contractors may exempt employees with an active, current security clearance or for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD) 12.

Executive Order 12989, as amended, prohibits Federal agencies from contracting with companies that knowingly hire employees not eligible to work in the United States and instructs Federal agencies to contract with companies that agree to use an electronic employment verification system to confirm the employment eligibility of their workforce. The E-Verify System is the best available means for contractors and subcontractors to verify employment eligibility. Consequently, this final rule is being promulgated to institute a contractual requirement for contractors and subcontractors to utilize E-Verify as the means of verifying that (1) all new hires of the contractor or subcontractor and (2) all employees directly engaged in performing work under covered contracts or subcontracts are eligible to work in the United States. The final rule adds a new FAR Subpart 22.18 and a new clause.

The prohibition against Federal agencies contracting with companies that knowingly hire employees not eligible to work in the United States has existed since 1996. Virtually all employers in the United States, including Federal Government contractors and subcontractors, are prohibited from hiring an individual without verifying his or her identity and authorization to work and from continuing to employ an alien whom they know is not authorized to work in the United States (section 274A(a) of the Immigration and Nationality Act of 1952, as amended (INA), 8 U.S.C. 1324a; 8 CFR part 274A). Many aliens, including lawful permanent residents, refugees, asylees, and temporary workers petitioned by a U.S. employer, are authorized to work in the United States (see 8 CFR 274a.12, listing classes of work-authorized aliens).

The new contractual requirement to use the E-Verify System will enhance the Government's procurement system by decreasing the employment of unauthorized aliens in the Government's supply chain and thereby fostering a more stable and dependable Federal Government contracting community.

This rule will impact many small entities in the Federal contractor base. Major exceptions are contractors providing commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications, entities that enter into contracts with a value less than $100,000, and subcontractors that provide supplies rather than services or construction. In Fiscal Year 2006, there were over 100,000 small businesses that received direct Federal contracts. While there are no reliable numbers for subcontracts awarded to small businesses, the Dynamic Small Business database of the Central Contractor Registration—a database of basic business information for contractors that seek to do business with the Federal Government—gives a number of 324,250 small business profiles that are registered. Assuming that 50% of these small businesses contract with the Federal Government at either the prime or subcontract level, then that number is 162,125 small businesses.

The Councils have placed in the public docket a detailed Regulatory Impact Analysis of the compliance requirements of this rule. Generally, employers will incur opportunity cost of the time their employees will spend complying with the requirements of the regulation. Employees will need to be trained in order to be able to operate the E-Verify system, as well as spending time on processing employee verifications. Employers will incur start-up costs from enrolling in the E-Verify program, including costs such as reviewing and updating USCIS Form I–9 (Employment Eligibility Verification) for existing employees and potentially a cost to modify an existing personnel or payroll system to be able to record the E-Verify status of their employees. We believe a small number of employers may need to purchase a computer,

internet connection, and printer for their hiring site. Certain employee replacement (turnover) costs may also be incurred due to this regulation.

In order to further inform our understanding of the economic impact of this rule on small entities, we considered hypothetical contractors with 10, 50, 100, and 500 employees and estimated the economic impact of the rule on those four sizes of entities in their initial year of enrollment. The initial year a contractor enrolls in E-Verify is expected to be the year with the highest compliance cost, as the contractor is incurring both the start-up costs of enrolling in E-Verify as well as the majority of the costs of vetting its existing employees through the E-Verify system.

The estimated average direct cost of this rule to a contractor with 10 employees is $1,254 in the initial year. For a contractor with 50 employees, the estimated average direct cost of participating in E-Verify is $3,163 in the initial year. For a contractor with 100 employees, the estimated initial-year impact is $5,615. A contractor with 500 employees is expected to have an initial year impact of $24,422. This level of direct cost burden is well under 1% of the expected annual revenue of these four sizes of entities and does not appear to represent an economically significant impact on an average direct cost per contractor basis. To the extent that some small entities incur direct costs that are significantly higher than the average estimated costs, those employers may reasonably be expected to face a significant economic impact.

As discussed previously, the Councils do not consider the cost of complying with preexisting immigration statutes to be a direct cost of this rulemaking. Thus, while some employers may find the costs incurred by replacing employees that are not authorized to work in the United States to be economically significant, those costs of complying with the Immigration and Nationality Act are not direct costs attributable to this rule.

In addition, the requirement for entities (both large and small) to enroll in E-Verify only applies to contractors and subcontractors that choose to perform certain work for the Federal Government. When an entity's leadership determines that participating in E-Verify would impose a significant economic impact on the operation, the leadership must make a business decision whether the revenue generated by doing business with the Federal Government would provide a financial return sufficient to justify the cost of such participation in E-Verify. Presumably, entities that do not receive the desired return to justify the expense of participating in E-Verify would choose not to be a Federal contractor or subcontractor.

The SBA Office of Advocacy claims that the initial analysis did not consider costs such as the social welfare cost or the cost of penalties and lawsuits. However, the IRFA fully complied with the requirements of § 603 of the Regulatory Flexibility Act. The IRFA compared estimated compliance costs for four distinct sizes of small business (10, 50, 100, and 500 employees) to the respective revenue of these businesses, using information obtained from the Small Business Administration, and identified a compliance cost burden of 0.03 percent of revenue for the small entity with 10 employees. The Councils do not agree that 0.03 percent would typically be regarded as a significant economic impact. Further, with regard to the full social welfare cost of the rule, regulatory flexibility analyses need not include anything other than the direct costs of a regulation on a small entity that is required to comply with the regulation.

The SBA Office of Advocacy believes that the Councils underestimated the number of contractors that will be vetted through E-Verify and criticizes the fixed factors (*e.g.*, 26 percent for labor) used in the economic analysis, as well as the estimate that the assumption that the number of subcontractors is 20 percent of the number of prime contractors. It claims that the estimates the Councils used are not based on ''empirical data'' and that the economic analysis was not explicit regarding how these factors were determined. The Councils respond that the dollar value of the contracts within the scope of the rule was found by querying the Federal Procurement Data System and does not rely on an estimate by the Councils. Instead of simply providing a ''top-level'' estimate, the Councils developed a model to estimate the number of employees that would be expected to be vetted through E-Verify. The factors utilized (*e.g.*, 26 percent for labor) are all multiplied against the estimated dollar value of contracts. When describing the percentage estimates used to estimate factors utilized, the economic analysis specifically stated ''we understand these assumptions are rough and we welcome public comment providing more precise information.'' However, no better information was provided in the comments. The SBA Office of Advocacy encouraged the FAR Council to revisit the economic analysis as more data become available. The Councils will consider reviewing this aspect of the economic analysis once the final rule has been in effect and useful data becomes available.

The Councils are unaware of any duplicative, overlapping, or conflicting Federal rules. There are current requirements for all employers, not just Federal contractors and subcontractors, to verify the employment eligibility of their newly hired employees. These requirements have existed since 1986. Arguably related rules include DHS's ''No-Match'' rule, which provides guidance to employers on how best to respond to the Social Security Administration's (SSA) no-match letters, through which employers are alerted annually about their employees whose names and Social Security numbers submitted on tax forms do not match up to the information in the SSA's database. Although this ''No-Match'' rule concerns the SSA's letters generated from one of the data sources used by the E-Verify system, the ''No-Match'' rule is not directly associated with use of the E-Verify System. The two rules interact insofar as use of E-Verify—and the resulting strengthening of Federal contractors' employment verification processes—is expected to reduce the incidence of SSA ''No-Matches'' in the Federal contract workforce resulting from the employment of unauthorized alien workers. But the ''No-Match'' rule is designed to assist employers to ensure that their entire existing workforce remains work-authorized, while this amendment to the FAR is designed to ensure that unauthorized aliens are not brought into the Federal Government's contractor workforce.

In addition to the alternatives discussed above in the response to public comments—particular, the section entitled ''Small Business,'' and its subsections including ''Alternatives to Lessen the Burden on Small Businesses''—the Councils considered the following alternatives in order to minimize the impact on small business concerns:

- Whether to exempt small businesses entirely from the requirement to use E-Verify. The SBA Office of Advocacy was concerned that small businesses do not have the financial resources and human capital to adapt their technology infrastructure systems to rapidly change requirements being imposed by the Federal Government. The Councils limited the applicability of this rule to small businesses by raising the dollar threshold, limiting flowdown, exempting COTS suppliers, and in various other ways discussed throughout this notice.

• How to limit the compliance costs for small businesses. The SBA Office of Advocacy noted that small business Federal contractors operate on very thin profit margins and the types of technology systems necessary here require capital outlays that cannot be easily recouped by passing the cost to the client and are costly to the small business owner. Although the E-Verify system does require the employer to have access to some equipment such as a computer, Internet access, a printer, and either a scanner, photo copier, or a digital camera, the Councils believe that this equipment is not prohibitively expensive. Almost all small businesses doing business with the Government would already have such equipment or be able to readily acquire it. The equipment for a small business to implement E-Verify need not be particularly sophisticated or complex. The Councils have made every effort to limit the cost of compliance.

• How to limit appropriately the burden of compliance on subcontractors. The SBA Office of Advocacy is concerned that there is disproportionality in the compliance cost burden on small business subcontractors because there are fewer avenues and fewer contracts among which the small businesses can spread the cost of doing business. The final rule adds a number of exemptions that will ease the burden on small business and large business contractors; for example, contractors will have the option of verifying all existing employees, not just those performing directly on the contract. This eliminates the need to develop a system to identify employees assigned to the contract.

• Whether to require E-Verify participation as a preaward eligibility requirement rather than as a postaward contract performance requirement. The rule is distinct from the existing E-Verify program, in that it would require E-Verify queries to be performed on certain existing employees of a contractor, and the Councils believe that the obligations created by the rule should be codified as a postaward contract performance requirement.

• Whether the use of E-Verify should be required for existing employees of the contractor who are assigned to work under the Government contract or should be limited only to the new hires of the contractor. Executive Order 12989, as amended, instructs Federal contracting agencies to contract with employers that agree to use E-Verify to confirm the work eligibility of their existing employees assigned to work on Federal contracts. The Councils decided that requiring employment eligibility confirmation of all workers assigned to a new Government contract was most consistent with Executive Order 12989 and with the Federal Government's own obligation to use E-Verify when hiring Federal employees, and it would most effectively ensure that the Federal Government does not indirectly exploit an illegal labor force.

• Whether to require contractors to use E-Verify only for new hires that would be assigned to work under a Government contract and exclude all other new hires of the contractor from the E-Verify requirement. Executive Order 12989, as amended, instructs Federal contracting agencies to contract with employers that agree to use E-Verify for all new hires of the contractor. The Councils decided that requiring contractors to use the E-Verify program as part of standard hiring practices would simplify employment verification, and conforms with the requirements of Executive Order 12989 and with a principal goal of the rule—to ensure that the Federal Government does business with companies that do not employ unauthorized aliens.

• Whether the use of E-Verify should be required for all prime contracts or only for those contracts that do not call for COTS items or items that would be COTS items but for minor modifications, as defined at FAR Part 2 (containing the definition of a commercial item). Because COTS suppliers, by definition, do not specialize in serving the Federal Government, and because the Government might lose access to COTS suppliers if they determine the cost of complying with the rule outweighs their gains from Government business, the Councils decided not to require the use of E-Verify for COTS items and items that would be COTS items but for minor modifications. As noted above, the Councils expanded the reach of this exception for COTS items in response to comments received on the proposed rule.

• Whether the requirements of the rule should flow down to all subcontracts or should be limited to subcontracts for services or construction. The Councils determined to apply the rule only to subcontracts for commercial or noncommercial services, including construction. It does not apply to subcontracts for material or to subcontracts less than $3,000.

G. Statutory and Regulatory Requirements

Executive Order 12866

Executive Order 12866, ''Regulatory Planning and Review,'' directs agencies and the Office of Management and Budget (OMB) to determine whether a regulatory action is ''significant'' and therefore subject to review by OMB and subject to the analyses directed by that Executive Order. 58 FR 51735, October 4, 1993, as amended. The Councils have determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), because there is significant public interest in issues pertaining to immigration and because this is an economically significant rule pursuant to this Executive Order. Accordingly, this final rule has been submitted to OMB for review.

This is a major rule under 5 U.S.C. 804.

A Regulatory Impact Analysis that more thoroughly explains the assumptions used to estimate the cost of this final rule is available in the docket as indicated under **ADDRESSES**. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. A summary of the cost and benefits of the final rule follows:

In the initial fiscal year the rule is expected to be effective (fiscal year 2009), the Councils estimate that there will be approximately 168,624 contractors and subcontractors that will be required to enroll in E-Verify due to this rule and that there will be an additional 3.8 million employees vetted through E-Verify. In the initial year, the cost of the final rule at 7% net present value is approximately $245.4 million, and, over the ten-year period of analysis (2009–2018), the cost of the final rule is approximately $1,105.4 million. In the initial year, the cost of the final rule at 3% net present value is approximately $254.9 million, and, over the ten-year period of analysis (2009–2018), the cost of the final rule is $1,336.5 million. Compliance costs from participating in the E-Verify program fall into the following general categories, and Table 1 below provides a summary of the costs:

• *Startup Costs:* Employers must register to use the E-Verify system and sign a Memorandum of Understanding with USCIS and SSA. Employers will also incur costs such as reviewing and updating USCIS Form I–9 (Employment Eligibility Verification) for existing employees and potentially a cost to modify an existing personnel or payroll system to be able to record the E-Verify status of their employees. A very small number of employers may need to purchase a computer, internet connection and printer for their hiring site if that hiring site does not already have internet access.

• *Training:* Employees who use the E-Verify system are required to take an on-line tutorial. While USCIS does not charge a fee for this training, employers will incur the opportunity cost of the time the employee spends on the training, as the employee's time could have been spent on other activities.

• *Employee Verification:* Employers will incur the opportunity cost of the time spent entering data into E-Verify and, if the employee receives a tentative nonconfirmation, employers would inform the employee and spend time closing out the case after resolution of the tentative nonconfirmation. In addition, the employer would incur lost productivity when an employee needs to be away from work to visit SSA to correct his/her information. As estimated, the employee would bear the cost of driving to SSA.

• *Employee Replacement (Turnover) Cost:* There may be a small percentage of workers who are authorized to work in the U.S. and who receive a tentative nonconfirmation but do not take the steps necessary to resolve it (despite the strong economic incentives to do so). The Councils cannot predict why an authorized employee would not work diligently to resolve the tentative nonconfirmation, given the incentives to do so, but we believe the economic analysis should reasonably account for such a possibility. Assuming that a small number of authorized employees would not resolve their tentative nonconfirmations, and would either resign or be terminated, is simply a conservative analytical assumption in light of the fact that there is no law compelling employees to resolve their tentative nonconfirmations; thus, employers may incur some additional costs due to having to replace a small number of authorized employees. To the extent that the accompanying E-Verify rulemaking results in the termination or resignation of a worker authorized to work in the U.S., those associated employee replacement costs would be considered to be a cost of the rule. However, the termination and replacement costs of unauthorized workers are not counted as a direct cost of this rule because current immigration law prohibits employers from hiring or continuing to employ aliens whom they know are not authorized to work in the U.S. The termination and replacement of unauthorized employees will impose a burden on employers, but INA section 274A(a), 8 U.S.C. 1324a(a), expressly prohibits employers from hiring or continuing to employ an alien whom they know is not authorized to work in the United States. Accordingly, costs that result from employers' knowledge of their workers' illegal status are attributable to the Immigration and Nationality Act, not to the FAR rule.

• *Federal Government Cost:* The Government will incur operating costs from each query that an employer executes and will also incur costs from resolving tentative nonconfirmations.

TABLE 1—10 YEAR COST OF FINAL RULE

[7% present value]

Year	Employer			Employee	Government	Total
	Startup costs	Authorized employee replacement cost	Verification cost	Verification cost	Verification cost	
2009	$188,138,945	$15,041,464	$37,836,372	$2,436,863	$1,928,888	$245,382,532
2010	72,368,319	7,798,427	19,616,690	1,263,415	998,560	102,045,411
2011	71,015,802	7,652,663	19,250,187	1,239,831	979,895	100,138,378
2012	69,688,407	7,509,622	18,890,355	1,216,654	961,579	98,266,617
2013	69,443,845	7,369,253	18,537,018	1,193,865	943,606	97,487,587
2014	68,145,775	7,231,511	18,190,724	1,171,588	925,973	95,665,570
2015	66,872,076	7,096,345	17,850,716	1,149,689	908,670	93,877,497
2016	65,621,976	6,963,703	17,516,996	1,128,187	891,691	92,122,553
2017	65,041,291	6,833,541	17,189,537	1,107,092	875,028	91,046,490
2018	63,825,632	6,705,812	16,868,275	1,086,406	858,677	89,344,803
Total	800,162,068	80,202,341	201,746,869	12,993,591	10,272,566	1,105,377,436

Because unauthorized workers are at risk of being apprehended in immigration enforcement actions, contractors who hire them will necessarily have a more unstable workforce than contractors who do not hire unauthorized workers. Given the vulnerabilities in the I–9 system, many employers that do not knowingly employ illegal aliens nevertheless have unauthorized workers, undetected, on their workforce.

This rule will promote economy and efficiency in Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor with a less stable workforce will be less likely to produce goods and services economically and efficiently than will a contractor with a more stable workforce. Because of the Executive Branch's obligation to enforce the immigration laws, including the detection and removal of illegal aliens identified through worksite enforcement, contractors that employ illegal aliens cannot rely on the continuing availability and service of those illegal workers. Such contractors inevitably will have a less stable and less dependable workforce than contractors that do not employ such persons. Where a contractor assigns illegal aliens to work on Federal contracts, the enforcement of Federal immigration laws imposes a direct risk of disruption, delay, and increased expense in Federal contracting. Such contractors are less dependable procurement sources, even if the contractors did not knowingly hire or knowingly continue to employ unauthorized workers.

Contractors that use E-Verify to confirm the employment eligibility of the workforce are much less likely to face immigration enforcement actions and are generally more efficient and dependable procurement sources than contractors that do not use that system to verify the work eligibility of their workforce. Rigorous employment verification through E-Verify will also help contractors confirm the identity of the persons working on Federal contracts, enhancing national security at less expense to the Government than it would cost for contractors to obtain more rigorous security clearances that may not be otherwise required by their contracts. This is likely to be particularly beneficial where contractors operate at sensitive national infrastructure sites.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any information collection requests in a final rule. It is estimated that this rule will increase the information collection burden hours already approved for the E-Verify Program. The OMB control number for the currently approved E-Verify Program Information Collection Request is 1615–0092.

Although the E-Verify Program has a currently approved Paperwork Reduction Act clearance, we are seeking OMB approval on the proposed amendments to the current OMB approved collection. The purpose of this notice is to allow 60 days for public comments on the amendments to the E-Verify Program collection of information, not on the amendments to the FAR rule. Comments on the amendments to the E-Verify Program should be submitted no later than January 13, 2009. This process is conducted in accordance with 5 CFR 1320.10.

When submitting comments on the information collection, they should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of Information Collection for the E-Verify System (OMB Control Number 1615–0092):

a. *Type of information collection:* Revision of currently approved information collection.

b. *Title of Form/Collection:* E-Verify Program.

c. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. OMB Control Number 1615–0092; U.S. Citizenship and Immigration Services.

d. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary respondents are business or other for-profit entities, small business, or other organizations. The E-Verify Program allows employers to electronically verify the eligibility status of newly hired employees. Certain Federal contractors and subcontractors will also be required to perform queries on existing employees assigned to the contract.

e. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Implementation: 125,015 at 0.86 hours per response.

Training: 521,134 at 2.26 hours per response.

ID/IQ Contracts: 3,333 at 2.00 hours per response.

Initial Query: 4,094,955 at 0.12 hours per response.

Secondary Query: 195,329 at 1.94 hours per response.

For implementation, it is estimated that the number of responses per respondent will be 17. For all others, the number of responses per respondent will be one.

f. *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 3,882,482 burden hours.

All comments regarding this information collection should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, Attention: Chief, 202–272–8377.

List of Subjects in 48 CFR Parts 2, 22, and 52

Government procurement.

Dated: November 6, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2), in the definition ''United States'', by redesignating paragraphs (6) through (8) as paragraphs (7) through (9), respectively, and adding a new paragraph (6) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

United States * * *

(6) For use in Subpart 22.18, see the definition at 2.1801.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Amend section 22.102–1 by removing from the end of paragraph (g) the word ''and''; removing the period from the end of paragraph (h) and adding ''; and'' in its place; and adding paragraph (i) to read as follows:

22.102–1 Policy.

* * * * *

(i) Eligibility for employment under United States immigration laws.

■ 4. Add Subpart 22.18 to read as follows:

Subpart 22.18—Employment Eligibility Verification

Sec.

22.1800 Scope.
22.1801 Definitions.
22.1802 Policy.
22.1803 Contract clause.

22.1800 Scope.

This subpart prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service's employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.

22.1801 Definitions.

As used in this subpart—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), ''bulk cargo'' means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to

include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

22.1802 Policy.

(a) Statutes and Executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the United States, but is not a substitute for any other employment eligibility verification requirements.

(b) Contracting officers shall include in solicitations and contracts, as prescribed at 22.1803, requirements that Federal contractors must—

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the United States, except that the contractor may choose to verify only new hires assigned to the contract if the contractor is—

(i) An institution of higher education (as defined at 20 U.S.C. 1001(a));

(ii) A State or local government or the government of a Federally recognized Indian tribe; or

(iii) A surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond;

(3) Use E-Verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements, as required by the clause at 52.222–54, in subcontracts for—

(i) Commercial or noncommercial services, except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; and

(ii) Construction.

(c) Contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of just those employees assigned to the contract. The contractor is not required to verify employment eligibility of—

(1) Employees who hold an active security clearance of confidential, secret, or top secret; or

(2) Employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)–12.

(d) In exceptional cases, the head of the contracting activity may waive the E-Verify requirement for a contract or subcontract or a class of contracts or subcontracts, either temporarily or for the period of performance. This waiver authority may not be delegated.

(e) DHS and the Social Security Administration (SSA) may terminate a contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency must refer the contractor to a suspension or debarment official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222–54. If the contractor is suspended or debarred as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension or debarment. If the suspension or debarment official determines not to suspend or debar the contractor, then the contractor must reenroll in E-Verify.

22.1803 Contract clause.

Insert the clause at 52.222–54, Employment Eligibility Verification, in all solicitations and contracts that exceed the simplified acquisition threshold, except those that—

(a) Are only for work that will be performed outside the United States;

(b) Are for a period of performance of less than 120 days; or

(c) Are only for—

(1) Commercially available off-the-shelf items;

(2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of the definition of ''commercial item'' at 2.101);

(3) Items that would be COTS items if they were not bulk cargo; or

(4) Commercial services that are—

(i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);

(ii) Performed by the COTS provider; and

(iii) Are normally provided for that COTS item.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (b)(26) through (b)(41) as paragraphs (b)(27) through (b)(42), respectively, and adding a new paragraph (b)(26); and

■ c. Redesignating paragraph (e)(1)(xi) as paragraph (e)(1)(xii), and adding a new paragraph (e)(1)(xi) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jan 2009)

* * * * *

(b) * * *

__ (26) 52.222–54, Employment Eligibility Verification (Jan 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

* * * * *

(e)(1) * * *

(xi) 52.222–54, Employment Eligibility Verification (Jan 2009).

* * * * *

(End of clause)

■ 5. Add section 52.222–54 to read as follows:

52.222–54 Employment Eligibility Verification.

As prescribed in 22.1803 and 12.301(d)(3), insert the following clause:

Employment Eligibility Verification (Jan 2009)

(a) *Definitions.* As used in this clause—

Commercially available off-the-shelf (COTS) item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), ''bulk cargo'' means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.* (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.* (A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: *http://www.dhs.gov/E-Verify.*

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)–12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) *Is for*—(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,000; and

(3) Includes work performed in the United States.

(End of clause)

[FR Doc. E8–26904 Filed 11–13–08; 8:45 am]

BILLING CODE 6820–EP–P ?≤

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2008–0003, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–29; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the

rule appearing in Federal Acquisition Circular (FAC) 2005–29 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–29 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, Regulatory Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

RULE LISTED IN FAC 2005–29

Item	Subject	FAR case	Analyst
*I	Employment Eligibility Verification	2007–013	Murphy.

SUPPLEMENTARY INFORMATION: A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR Case 2007–013.

FAC 2005–29 amends the FAR as specified below:

Item I—Employment Eligibility Verification (FAR Case 2007–013)

This final rule implements Executive Order 12989, as amended June 6, 2008, and the selection of the Secretary for Homeland Security of the E-Verify system as the electronic system to be used for certain contractors and subcontractors as the means of verifying that certain of their employees are eligible to work in the United States. This final rule inserts a clause into Federal contracts that are above the simplified acquisition threshold and have a performance period of at least 120 days, committing Government contractors to use the U.S. Citizenship and Immigration Services' E-Verify system to verify that all of the contractors' new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States.

Exemptions include contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications. The final rule requires prime contractors to include the clause in subcontracts over $3,000 for services or for construction.

In exceptional circumstances, a head of the contracting activity, without power of redelegation, is authorized to waive the requirement to include the clause.

In response to public comments, the final rule significantly extends the timelines for registering, beginning to use the system for new and existing employees, and using the program to initiate verification of new hires.

Applicability to certain entities was limited in the following ways:

- Institutions of higher education need only verify employees assigned to a covered Federal contract.
- State and local governments and Federally Recognized Indian Tribes need only verify employees assigned to a covered Federal contract.
- Sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

In addition, the final rule exempts from verification requirements (a) employees who hold an active security clearance of confidential, secret, or top secret and (b) employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12. Contractors concerned with costs associated with identifying and separating existing employees assigned to a Federal contract, for the purpose of E-Verify, are provided the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract.

Dated: November 6, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–26905 Filed 11–13–08; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Friday,
November 14, 2008

Part IV

Postal Regulatory Commission

39 CFR Part 3020

Administrative Practice and Procedure, Postal Service; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–2 and CP2009–3; Order No. 129]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 2 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 73 FR 66076 (November 6, 2008).

The Postal Service seeks to add a new product identified as Priority Mail Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On October 24, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 2 to the Competitive Product List. The Postal Service asserts that the Priority Mail Contract 2 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–2.[1]

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–3. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of the Priority Mail Contract 2; [2] (2) a redacted version of the contract; which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals, unless that date is later than November 10, 2008, in which case the effective date will be deferred until January 1, 2009; [3] (3) requested changes in the MCS product list; [4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32; [5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 2, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2.

In Order No. 122, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

II. Comments

Comments were filed by the Public Representative.[8] No filings were submitted by other interested parties. The Public Representative's comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2–3.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. The Public Representative concludes that the contract is beneficial to both parties as well as the general public. *Id.* at 2–3.

III. Commission Analysis

The Commission has reviewed the contract and the financial analysis provided under seal that accompanies the agreement as well as the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 2 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 2 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can be effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms or offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2–3. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to

[1] Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 24, 2008 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[3] Attachment B to the Request; *see* Errata to Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] PRC Order No. 122, Notice and Order Concerning Priority Mail Contract 2 Negotiated Service Agreement, October 31, 2008.

[8] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 2 to Competitive Product List, November 5, 2008 (Public Representative Comments).

competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Priority Mail Contract 2 as competitive. Having considered the statutory requirement and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 2 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's filing seeks to establish a new domestic Priority Mail product. The contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Postal Service contends that adding the Priority Mail Contract 2 product will result in processing Priority Mail pieces that are less costly for the Postal Service than the average Priority Mail piece. *See* Request, Attachment A. It believes that its financial analysis shows that these cost savings can be accomplished while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. *Id.,* Attachment E, at 1.

Based on the data submitted and the comments received, the Commission finds that Priority Mail Contract 2 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Priority Mail Contract 2 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 2 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

It is Ordered:

1. The Priority Mail Contract 2 (MC2009–2 and CP2009–3) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020–Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
  Single-Piece Letters/Postcards
  [Reserved for Product Description]
  Bulk Letters/Postcards
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Parcels
  [Reserved for Product Description]
  Outbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
  Inbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
  High Density and Saturation Letters
  [Reserved for Product Description]
  High Density and Saturation Flats/Parcels
  [Reserved for Product Description]
  Carrier Route
  [Reserved for Product Description]
  Letters
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Not Flat-Machinables (NFMs)/Parcels
  [Reserved for Product Description]
Periodicals
[Reserved for Class Description]
  Within County Periodicals
  [Reserved for Product Description]
  Outside County Periodicals
  [Reserved for Product Description]
Package Services
[Reserved for Class Description]
  Single-Piece Parcel Post
  [Reserved for Product Description]
  Inbound Surface Parcel Post (at UPU rates)
  [Reserved for Product Description]
  Bound Printed Matter Flats
  [Reserved for Product Description]
  Bound Printed Matter Parcels
  [Reserved for Product Description]
  Media Mail/Library Mail
  [Reserved for Product Description]
Special Services
[Reserved for Class Description]
  Ancillary Services
  [Reserved for Product Description]
  Address Correction Service
  [Reserved for Product Description]
  Applications and Mailing Permits

[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Part B—Competitive Products
Competitive Product List
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Outbound International
Global Expedited Package Services (GEPS) Contracts GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
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To designate the facility of the United States Postal Service located at 7095 Highway 57 in Counce, Tennessee, as the ''Pickwick Post Office Building''. (Oct. 22, 2008; 122 Stat. 5013)

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