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Federal Register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, January 27, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Executive Order 13483 of December 18, 2008

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), section 140 of Public Law 97–92, and section 305 of Division D of the Consolidated Appropriations Act, 2008), at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and section 601 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417, October 14, 2008), and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, and section 142 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110–329, September 30, 2008), locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2009. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2009.

Sec. 8. *Prior Order Superseded.* Executive Order 13454 of January 4, 2008, is superseded.

THE WHITE HOUSE,
December 18, 2008.

Billing code 3195–W9–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

	1	2	3	4	5	6	7	8	9	10
GS-1	$17,540	$18,126	$18,709	$19,290	$19,873	$20,216	$20,792	$21,373	$21,396	$21,944
GS-2	19,721	20,190	20,842	21,396	21,635	22,271	22,907	23,543	24,179	24,815
GS-3	21,517	22,234	22,951	23,668	24,385	25,102	25,819	26,536	27,253	27,970
GS-4	24,156	24,961	25,766	26,571	27,376	28,181	28,986	29,791	30,596	31,401
GS-5	27,026	27,927	28,828	29,729	30,630	31,531	32,432	33,333	34,234	35,135
GS-6	30,125	31,129	32,133	33,137	34,141	35,145	36,149	37,153	38,157	39,161
GS-7	33,477	34,593	35,709	36,825	37,941	39,057	40,173	41,289	42,405	43,521
GS-8	37,075	38,311	39,547	40,783	42,019	43,255	44,491	45,727	46,963	48,199
GS-9	40,949	42,314	43,679	45,044	46,409	47,774	49,139	50,504	51,869	53,234
GS-10	45,095	46,598	48,101	49,604	51,107	52,610	54,113	55,616	57,119	58,622
GS-11	49,544	51,195	52,846	54,497	56,148	57,799	59,450	61,101	62,752	64,403
GS-12	59,383	61,362	63,341	65,320	67,299	69,278	71,257	73,236	75,215	77,194
GS-13	70,615	72,969	75,323	77,677	80,031	82,385	84,739	87,093	89,447	91,801
GS-14	83,445	86,227	89,009	91,791	94,573	97,355	100,137	102,919	105,701	108,483
GS-15	98,156	101,428	104,700	107,972	111,244	114,516	117,788	121,060	124,332	127,604

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$98,156	$79,535	$64,447	$52,221	$42,314	$37,828	$33,817	$30,231	$27,026
2	101,101	81,921	66,380	53,788	43,583	38,963	34,832	31,138	27,837
3	104,134	84,379	68,372	55,401	44,891	40,132	35,876	32,072	28,672
4	107,258	86,910	70,423	57,063	46,238	41,336	36,953	33,034	29,532
5	110,475	89,517	72,536	58,775	47,625	42,576	38,061	34,025	30,418
6	113,790	92,203	74,712	60,538	49,054	43,853	39,203	35,046	31,331
7	117,203	94,969	76,953	62,355	50,525	45,169	40,379	36,097	32,270
8	120,719	97,818	79,262	64,225	52,041	46,524	41,591	37,180	33,239
9	124,341	100,753	81,640	66,152	53,602	47,919	42,838	38,296	34,236
10	127,604	103,775	84,089	68,137	55,210	49,357	44,124	39,445	35,263
11	127,604	106,888	86,611	70,181	56,866	50,838	45,447	40,628	36,321
12	127,604	110,095	89,210	72,286	58,572	52,363	46,811	41,847	37,410
13	127,604	113,398	91,886	74,455	60,330	53,934	48,215	43,102	38,533
14	127,604	116,800	94,643	76,688	62,140	55,552	49,661	44,395	39,689

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Assistant Under Secretaries for Health (Only applies to incumbents who are not physicians or dentists)	$154,955**

	Minimum	Maximum
Service Directors	$115,117	$142,968
Director, National Center for Preventive Health	98,156	142,968

Physician and Dentist Base and Longevity Schedule***

Physician Grade	$96,539	$141,591
Dentist Grade	96,539	141,591

Clinical Podiatrist, Chiropractor, and Optometrist Schedule

Chief Grade	$98,156	$127,604
Senior Grade	83,445	108,483
Intermediate Grade	70,615	91,801
Full Grade	59,383	77,194
Associate Grade	49,544	64,403

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$98,156	$127,604
Assistant Director Grade	83,445	108,483
Chief Grade	70,615	91,801
Senior Grade	59,383	77,194
Intermediate Grade	49,544	64,403
Full Grade	40,949	53,234
Associate Grade	35,237	45,812
Junior Grade	30,125	39,161

* This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $143,500.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$117,787	$177,000
Agencies without a Certified SES Performance Appraisal System	$117,787	$162,900

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

Level I	$196,700
Level II	177,000
Level III	162,900
Level IV	153,200
Level V	143,500

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

Vice President	$227,300
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2008)

Chief Justice of the United States	$217,400
Associate Justices of the Supreme Court	208,100
Circuit Judges	179,500
District Judges	169,300
Judges of the Court of International Trade	169,300

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2009)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10**	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$9,090.00	$9,387.60	$9,585.30	$9,640.50	$9,887.10	$10,299.00	$10,395.00	$10,786.20	$10,898.10	$11,235.30	$11,722.50
O-7	7,553.10	7,904.10	8,066.40	8,195.40	8,429.10	8,660.10	8,926.80	9,192.90	9,460.20	10,299.00	11,007.30
O-6	5,598.30	6,150.30	6,553.80	6,553.80	6,578.70	6,860.70	6,897.90	6,897.90	7,290.00	7,983.30	8,390.10
O-5	4,666.80	5,257.20	5,621.40	5,689.80	5,916.60	6,052.80	6,351.60	6,570.60	6,853.80	7,287.30	7,493.40
O-4	4,026.90	4,661.40	4,972.20	5,041.80	5,330.40	5,640.00	6,025.20	6,325.50	6,534.30	6,654.00	6,723.30
O-3***	3,540.30	4,013.40	4,332.00	4,722.90	4,948.80	5,197.20	5,358.00	5,622.30	5,759.70	5,759.70	5,759.70
O-2***	3,058.80	3,483.90	4,012.50	4,148.10	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30
O-1***	2,655.30	2,763.60	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$4,722.90	$4,948.80	$5,197.20	$5,358.00	$5,622.30	$5,844.90	$5,972.70	$6,146.70
O-2E	-	-	-	4,148.10	4,233.30	4,368.30	4,595.70	4,771.50	4,902.30	4,902.30	4,902.30
O-1E	-	-	-	3,340.50	3,567.60	3,699.30	3,834.30	3,966.60	4,148.10	4,148.10	4,148.10
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$3,658.50	$3,935.70	$4,048.80	$4,159.80	$4,351.20	$4,540.50	$4,732.20	$5,021.10	$5,274.00	$5,514.60	$5,711.40
W-3	3,340.80	3,480.30	3,622.80	3,669.90	3,819.60	4,114.20	4,420.80	4,565.10	4,731.90	4,904.10	5,213.10
W-2	2,956.50	3,236.10	3,322.20	3,381.60	3,573.30	3,871.20	4,018.80	4,164.30	4,341.90	4,480.80	4,606.80
W-1	2,595.30	2,874.00	2,949.60	3,108.30	3,296.10	3,572.70	3,701.70	3,882.30	4,059.90	4,199.40	4,328.10

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,750.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $11,958.30 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $19,326.60 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,750.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2009)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10**	$14,688.60	$14,760.30*	$15,067.20*	$15,602.10*	$15,602.10*	$16,382.10*	$16,382.10*	$17,201.10*	$17,201.10*	$18,061.20*	$18,061.20*
O-9	12,846.90	13,032.00	13,299.30	13,765.80	13,765.80	14,454.60	14,454.60	15,177.30*	15,177.30*	15,936.00*	15,936.00*
O-8	12,172.20	12,472.50	12,472.50	12,472.50	12,472.50	12,784.50	12,784.50	13,104.30	13,104.30	13,104.30	13,104.30
O-7	11,007.30	11,007.30	11,007.30	11,063.10	11,063.10	11,284.50	11,284.50	11,284.50	11,284.50	11,284.50	11,284.50
O-6	8,796.60	9,027.90	9,262.20	9,716.70	9,716.70	9,910.80	9,910.80	9,910.80	9,910.80	9,910.80	9,910.80
O-5	7,697.40	7,928.70	7,928.70	7,928.70	7,928.70	7,928.70	7,928.70	7,928.70	7,928.70	7,928.70	7,928.70
O-4	6,723.30	6,723.30	6,723.30	6,723.30	6,723.30	6,723.30	6,723.30	6,723.30	6,723.30	6,723.30	6,723.30
O-3***	5,759.70	5,759.70	5,759.70	5,759.70	5,759.70	5,759.70	5,759.70	5,759.70	5,759.70	5,759.70	5,759.70
O-2***	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30	4,233.30
O-1***	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50	3,340.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$6,146.70	$6,146.70	$6,146.70	$6,146.70	$6,146.70	$6,146.70	$6,146.70	$6,146.70	$6,146.70	$6,146.70	$6,146.70
O-2E	4,902.30	4,902.30	4,902.30	4,902.30	4,902.30	4,902.30	4,902.30	4,902.30	4,902.30	4,902.30	4,902.30
O-1E	4,148.10	4,148.10	4,148.10	4,148.10	4,148.10	4,148.10	4,148.10	4,148.10	4,148.10	4,148.10	4,148.10
WARRANT OFFICERS											
W-5	$6,505.50	$6,835.50	$7,081.20	$7,353.60	$7,353.60	$7,721.40	$7,721.40	$8,107.50	$8,107.50	$8,513.10	$8,513.10
W-4	5,903.40	6,185.70	6,417.30	6,681.90	6,681.90	6,815.40	6,815.40	6,815.40	6,815.40	6,815.40	6,815.40
W-3	5,422.20	5,547.30	5,680.20	5,860.80	5,860.80	5,860.80	5,860.80	5,860.80	5,860.80	5,860.80	5,860.80
W-2	4,757.10	4,856.40	4,935.00	4,935.00	4,935.00	4,935.00	4,935.00	4,935.00	4,935.00	4,935.00	4,935.00
W-1	4,484.40	4,484.40	4,484.40	4,484.40	4,484.40	4,484.40	4,484.40	4,484.40	4,484.40	4,484.40	4,484.40

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,750.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $11,958.30 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $19,326.60 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,750.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2009)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$4,420.50	$4,520.70	$4,646.70	$4,795.50	$4,944.90
E-8	-	-	-	-	-	$3,618.60	3,778.80	3,877.80	3,996.60	4,125.00	4,357.20
E-7	$2,515.50	$2,745.60	$2,850.60	$2,990.10	$3,098.70	3,285.30	3,390.30	3,577.50	3,732.60	3,838.50	3,951.30
E-6	2,175.60	2,394.00	2,499.60	2,602.20	2,709.30	2,950.80	3,044.70	3,226.20	3,282.00	3,322.50	3,369.90
E-5	1,993.50	2,127.00	2,229.60	2,334.90	2,499.00	2,670.90	2,811.00	2,828.40	2,828.40	2,828.40	2,828.40
E-4	1,827.60	1,920.90	2,025.00	2,127.60	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50
E-3	1,649.70	1,753.50	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70
E-2	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70
E-1**	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50
E-1***	1,294.50	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,143.30 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2009)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					ENLISTED MEMBERS						
E-9*	$5,185.20	$5,388.00	$5,601.90	$5,928.30	$5,928.30	$6,224.70	$6,224.70	$6,536.10	$6,536.10	$6,863.10	$6,863.10
E-8	4,474.80	4,674.90	4,785.90	5,059.50	5,059.50	5,160.90	5,160.90	5,160.90	5,160.90	5,160.90	5,160.90
E-7	3,995.40	4,142.10	4,221.00	4,521.00	4,521.00	4,521.00	4,521.00	4,521.00	4,521.00	4,521.00	4,521.00
E-6	3,369.90	3,369.90	3,369.90	3,369.90	3,369.90	3,369.90	3,369.90	3,369.90	3,369.90	3,369.90	3,369.90
E-5	2,828.40	2,828.40	2,828.40	2,828.40	2,828.40	2,828.40	2,828.40	2,828.40	2,828.40	2,828.40	2,828.40
E-4	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50	2,218.50
E-3	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70	1,859.70
E-2	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70	1,568.70
E-1**	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50	1,399.50
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,143.30 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $929.40.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

Locality Pay Area[1]	Rate
Atlanta-Sandy Springs-Gainesville, GA-AL.	18.55%
Boston-Worcester-Manchester, MA-NH-RI-ME.	23.98%
Buffalo-Niagara-Cattaraugus, NY	16.39%
Chicago-Naperville-Michigan City, IL-IN-WI.	24.47%
Cincinnati-Middletown-Wilmington, OH-KY-IN.	18.28%
Cleveland-Akron-Elyria, OH.	18.16%
Columbus-Marion-Chillicothe, OH	16.62%
Dallas-Fort Worth, TX	19.95%
Dayton-Springfield-Greenville, OH	15.90%
Denver-Aurora-Boulder, CO	22.03%
Detroit-Warren-Flint, MI.	23.56%
Hartford-West Hartford-Willimantic, CT-MA	25.08%
Houston-Baytown-Huntsville, TX.	28.28%
Huntsville-Decatur, AL.	15.46%
Indianapolis-Anderson-Columbus, IN.	14.23%
Los Angeles-Long Beach-Riverside, CA.	26.51%
Miami-Fort Lauderdale-Pompano Beach, FL	20.21%
Milwaukee-Racine-Waukesha, WI	17.65%
Minneapolis-St. Paul-St. Cloud, MN-WI	20.36%
New York-Newark-Bridgeport, NY-NJ-CT-PA	27.96%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD	21.25%
Phoenix-Mesa-Scottsdale, AZ	16.08%
Pittsburgh-New Castle, PA	15.86%
Portland-Vancouver-Beaverton, OR-WA	19.71%
Raleigh-Durham-Cary, NC	17.38%
Richmond, VA.	16.10%
Sacramento--Arden-Arcade--Yuba City, CA-NV	21.53%
San Diego-Carlsbad-San Marcos, CA	23.44%
San Jose-San Francisco-Oakland, CA.	34.35%
Seattle-Tacoma-Olympia, WA.	21.06%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA.	23.10%
Rest of U.S.	13.86%

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2009)

AL-3/A	$102,400
AL-3/B	110,100
AL-3/C	118,100
AL-3/D	125,900
AL-3/E	133,900
AL-3/F	141,600
AL-2	149,600
AL-1	153,200

[1]Locality Pay Areas are defined in 5 CFR 531.603.

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Rules and Regulations

Federal Register
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Tuesday, December 23, 2008

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 72, 75, 76, 95, 110, and 150

RIN 3150–AH38

[NRC–2008–0543]

Regulatory Changes To Implement the Additional Protocol to the US/IAEA Safeguards Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to implement the *Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* (Additional Protocol). The Additional Protocol requires the U.S. to report additional information on various nuclear fuel cycle-related activities and to provide the International Atomic Energy Agency (IAEA) with access to those locations beyond the information currently reported for nuclear facilities under the existing *Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* (Safeguards Agreement). The amended regulations codify the requirement for certain NRC and Agreement State licensees to report information and provide access under the Additional Protocol that are currently not subject to inspections or reporting under the Safeguards Agreement. These amendments enable the U.S. Government to meet its obligations related to the Safeguards Agreement and the Additional Protocol.

DATES: *Effective Date:* This final rule is effective December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6103; e-mail *Naiem.Tanious @nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The ''United States Additional Protocol Implementation Act'' (Title II of Pub. L. 109–401) assigns the President responsibility for implementing the Act and the U.S. Additional Protocol. Executive Order 13458 assigned the U.S. Departments of State, Defense (DOD), Commerce (DOC), and Energy (DOE), the Attorney General, and the NRC responsibility for implementing the Additional Protocol. The NRC is assigned specific responsibility for implementing the Additional Protocol at NRC and Agreement State licensees (except at those facilities for which the DOE or DOD are assigned lead agency responsibility). The DOC is responsible for reportable commercial activities conducted outside of NRC-related activities. The Additional Protocol, on which the U.S. Senate provided its consent to ratification on March 31, 2004, is a legal document that requires the United States to report information on various nuclear fuel cycle-related activities to the IAEA and, upon request, to provide the IAEA with access to these locations in the U.S. Locations, information, and activities determined by the U.S. government to be of direct national security significance are excluded.

The Additional Protocol augments the existing Safeguards Agreement by requiring the United States to provide the IAEA with information on civil nuclear and nuclear-related items, materials, and activities not presently covered, including but not limited to the following:

a. Information about and IAEA inspector access to nuclear fuel cycle-related locations for which access is not already provided under the Safeguards Agreement (*e.g.*, uranium mines and ore concentrate storage installations);

b. Information on, and IAEA short-notice access to, all buildings on the sites of facilities selected by the IAEA from the U.S. Eligible Facilities List;

c. Access for IAEA collection of environmental samples at locations where such sampling is specifically authorized by the U.S. Government;

d. Information on research and development and manufacturing activities related to the nuclear fuel cycle; and

e. Expanded reporting of exports and imports of specific equipment and non-nuclear material.

The NRC is establishing these requirements to enable the United States to collect the information necessary to prepare the U.S. declaration to the IAEA.

Section-by-Section Analysis

Section 30.8 Information Collection Requirements: Office of Management and Budget (OMB) Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 30.34 Terms and Conditions of Licenses

In § 30.34, paragraph (k) is added to require byproduct material licensees to file location information described in § 75.11, to permit verification of information by the IAEA, and to take other actions as necessary to implement the Additional Protocol.

Section 40.8 Information Collection Requirements: OMB Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 40.31 Application for Specific Licenses

In § 40.31, paragraph (g) is amended to require both applicants for and recipients of a license to possess and use source material in a uranium or thorium processing plant and any other applicants for a license to possess source material to provide facility information described in new § 75.10. The section is also amended to require ore processing plants or facilities using or storing ore concentrates or impure source material to provide location information described in § 75.11.

Section 50.8 Information Collection Requirements: OMB Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 50.78 Facility Information and Verification

This section heading is amended. The codified text is also amended to require that both applicants for a construction permit or license, and recipients of a license submit information described in new § 75.10 and § 75.11. The section also permits verification of information by the IAEA and requires applicants for a construction permit or license and recipients of a license to take other actions as necessary to implement the Safeguards Agreement and Additional Protocol as described in 10 CFR Part 75.

Section 60.8 Information Collection Requirements: OMB Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

A new heading has been added after § 60.46 to read, ''US/IAEA Safeguards Agreement.''

Section 60.47 Facility Information and Verification

Section 60.47 is added to require applicants for a construction authorization or license and recipients of a license to submit information described in new § 75.10 upon a written request by the Commission. The section also permits verification of information by the IAEA and requires applicants for a construction authorization or license, and recipients of a license to take other actions as necessary to implement the Safeguards Agreement and Additional Protocol as described in Part 75.

Section 61.8 Information Collection Requirements: OMB Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 61.31 The heading of § 61.31 has been amended to read, ''US/IAEA Safeguards Agreement.''

Section 61.32 Facility Information and Verification

Section 61.32 is added to require applicants for a license and recipients of a license to submit information described in new § 75.10 and § 75.11. The section also permits verification of information by the IAEA and requires applicants for a license, and recipients of a license to take other actions as necessary to implement the Safeguards Agreement as described in Part 75.

Section 63.8 Information Collection Requirements: OMB Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 63.46 The heading of § 63.46 is amended to read, ''US/IAEA Safeguards Agreement.''

Section 63.47 Facility Information and Verification

Section 63.47 is added to require applicants for a construction authorization or license and recipients of a license to submit information described in new § 75.10 and § 75.11. The section also permits verification of information by the IAEA and requires applicants for a construction authorization or license, and recipients of a license to take other actions as necessary to implement the Safeguards Agreement and Additional Protocol as described in Part 75.

Section 70.8 Information Collection Requirements: OMB Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 70.21 Filing

Paragraph (g) is amended to require applicants for a construction authorization or license and recipients of a license to submit information described in new § 75.10 and § 75.11. The section also permits verification of information by the IAEA and requires applicants for a construction authorization or license, and recipients of a license to take other actions as necessary to implement the Safeguards Agreement and Additional Protocol as described in Part 75.

Section 72.9 Information Collection Requirements: OMB Approval

This section is amended to include the approved OMB information collection control numbers for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 72.13 Applicability

This section is not amended because the ranges that specify applicability in § 72.13(b) and (c) already encompass the new § 72.79.

Section 72.79 Facility Information and Verification

Section 72.79 is added to require applicants for a certificate of compliance or license and recipients of a certificate of compliance or license to submit information described in new § 75.10 and § 75.11. The section also permits verification of information by the IAEA and requires applicants for a certificate of compliance or license, and recipients of a certificate of compliance or license to take other actions as necessary to implement the Safeguards Agreement and Additional Protocol as described in Part 75.

Section 75.1 Purpose

Section 75.1 is amended to include the Additional Protocol and clarify the types of obligations that the U.S. has made to meet the Safeguards Agreement.

Section 75.2 Scope

Section 75.2 is amended to include applicants for a construction permit, construction authorization, or license, recipients of a license, and certificate holders that will be required to report information and provide the IAEA with access under the Safeguards Agreement and Additional Protocol. The scope includes facilities, the sites of the facilities, nuclear fuel cycle-related research and development locations, manufacturers of nuclear fuel cycle-related equipment or materials, uranium or thorium mines or concentration plants, locations with or importing impure source materials, locations where IAEA safeguards have been exempted or terminated, locations receiving imported material or equipment that is subject to export controls, and the exporting of source material and non-nuclear material and equipment that is subject to export controls.

This section also provides a reference to the sections in this Part that contain reporting requirements, information to be provided, inspections, and material accounting and control requirements for facilities and locations.

Section 75.3 Exemptions

Section 75.3 is amended to change the word ''Agreement'' to ''Safeguards Agreement and the Additional Protocol. Section 75.3(b) is amended to reflect the intent of the Safeguards Agreement and the Additional Protocol more accurately.

Section 75.4 Definitions

Section 75.4 is amended to include definitions that relate to the incorporation of the Additional Protocol

into the 10 CFR Part 75 regulations. Definitions that have been added include the Additional Protocol, Complementary access, Eligible Facilities List, Environmental sampling, Facility, Initial protocol, Location, Managed access, Nuclear fuel cycle-related manufacturing and construction, Nuclear fuel cycle-related research and development, Safeguards Agreement, and Subsidiary Arrangement. Other definitions that are amended to clarify their intent are Containment, Effective kilogram, Facility Attachment, Inventory change, and Transitional Facility Attachment. The definition of ''United States Eligibility Lists'' is deleted because it has been replaced by the definition of ''Eligible Facilities List.'' The definition of ''Identification under the Agreement'' is deleted because it is defined in § 75.11(a). The definition of ''Ore processing'' is also deleted. Previously, ore processing was excluded from Part 75, but it is now included in the Scope in § 75.2. The definition of ''Installation'' is deleted because it has been replaced by the term ''Facility''.

Section 75.6 Facility and Location Reporting

The heading of § 75.6 is amended. Paragraph (a) is revised to include the general address for all communications and reports (unless otherwise specified). New Paragraph (b) requires that all necessary reports to the NRC under the Safeguards Agreement are to be in an appropriate computer-readable format. New paragraphs (c) and (d) specifically identify the information that must be submitted for facilities and locations under the Safeguards Agreement and Additional Protocol.

Section 75.7 Notification of IAEA Safeguards

Section 75.7 discusses notifications of activities subject to the Safeguards Agreement and Additional Protocol.

Section 75.8 IAEA Inspections

The original § 75.8, Facility attachments is re-designated as § 75.15. The new § 75.8 is redesignated from § 75.42. In addition, the new § 75.8 is amended to include IAEA inspections for both facilities and locations. Paragraph (c) contains the requirements that were previously found in § 75.41. The codified text is amended to include both the facilities and locations under the Safeguards Agreement and Additional Protocol. These requirements were moved based on the logic of discussing notification of IAEA safeguards near the beginning of Part 75.

Paragraph (d) is amended to list the types of access by IAEA inspectors and the places to which they will have access. The section also includes the addition of ''Complementary Access'' in paragraph (d)(5) to verify the completeness and accuracy of reported information. Paragraph (d)(6) is added to allow IAEA access to additional licensee locations on which the U.S. did not submit reports to the IAEA under the Safeguards Agreement. Paragraph (e) is re-designated from § 75.42(d), and a new paragraph (e)(6) is added to state that the licensee shall permit the IAEA to perform other measures requested by the IAEA and approved by the NRC and other Federal agencies.

Paragraph (f) is re-designated from § 75.42(e). Paragraphs (e) and (f) are amended to distinguish them from complementary access. Paragraph (g) is added and states the type of activities that may be performed by IAEA in the performance of ''Complementary Access'' inspections at locations. These activities may include visual inspections, environmental sampling, use of radiation detection and measurement devices, applying tamper-indicating devices, performing sampling and nondestructive measurements, examining records, and other measures agreed upon by IAEA Board of Governors and following consultations between the IAEA and the U.S.

For the purpose of the Additional Protocol, the U.S. as a nuclear weapon State, manages access as specified by procedures that may include the:

(a) Removal of sensitive papers from office spaces; (b) shrouding of sensitive displays, stores and equipment;

(c) Shrouding of sensitive pieces of equipment, such as computers or electronic systems;

(d) Logging off computer systems and turning off data indicating devices;

(e) Restriction of safeguards instrumentation or environmental sampling to the purpose of the access; and

(f) In exceptional cases, giving only individual inspectors access to certain parts of the inspection location.

Section 75.9 Information Collection Requirements: OMB Approval

This section is amended to include OMB approvals for the new forms developed to implement the Additional Protocol. The section is also amended to include OMB approvals for the new reporting burden under Part 75.

The heading of § 75.9, ''Installation Information,'' is amended to read, ''Facility and Location Information.''

Section 75.10 Facility Information

This new section is added to include additional facility information requirements in new § 75.10(b)(5). This includes a map of the site and information on the size of the buildings and the nature of the activities conducted in the building. Paragraph (d) states the forms that must be prepared for each facility. Paragraph (d)(7) has been re-designated from § 75.14(a)(1) to require information on the facility's organizational responsibilities for material accounting and control. Paragraph (e) specifies how site information must be submitted. Paragraph (f) has been redesignated from § 75.11(e) and amended to use the term ''facility.'' Paragraph (g) has been redesignated from § 75.14(a)(2). Paragraph (h) requires information on the need to manage IAEA access to the facility.

Section 75.11 Location Information

Section 75.11 is amended to include the information requirements for locations. Specific information on locations includes:

(1) For nuclear fuel cycle related research and development, a general description, the location, and scale of operations;

(2) For nuclear fuel-cycle related manufacturing and construction, a description of the scale of operations;

(3) For uranium and thorium mine and concentration plants, the location, operational status, estimated annual production and capacity;

(4) For impure source material, possession information;

(5) For imports and exports of source material for non-nuclear end uses, the locations, quantities, chemical compositions, and use of the imported or exported materials;

(6) For IAEA-exempted and terminated nuclear material, the quantities, uses, and locations of the nuclear material; and

(7) For imports and exports of non-nuclear material and equipment, the location, quantity, and description of the equipment and materials.

This section also lists the forms that must be prepared for each location and the timing of annual reports, and requires licensees to provide information on the need to manage IAEA access to the location.

Section 75.12 Reporting Information to IAEA

Section 75.12 is amended to clarify the purpose of the section by changing the heading to ''Reporting information to IAEA.'' Other changes to the section

include adding references to § 75.10 and § 75.11 and using the terms ''facility'' and ''Safeguards Agreement.''

Section 75.13 Verification

This section is deleted. The requirements from § 75.13 have been merged into § 75.8.

Section 75.14 Supplemental Information

This section is deleted. The requirements from § 75.14 have been merged into new § 75.10.

Section 75.15 Facility Attachments

This section is redesignated from § 75.8. The section is moved to have the facility attachment information follow the sections discussing submittal of facility information, on which it is based. Also, § 75.15 is amended to reference new § 75.10 and to use the terms ''facility'' and ''Safeguards Agreement.'' Paragraph (f) is added to clarify that locations reporting under the Additional Protocol, unless located in a facility selected under Article 39(b) of the main text of the Safeguards Agreement, do not have facility attachments or transitional Facility attachments. The heading of § 75.15, ''Material Accounting and Control,'' is amended to read, ''Material Accounting and Control for Facilities.''

Section 75.21 General Requirements

Section 75.21 is amended to reference new § 75.10 and to use the terms ''facility'' and ''Safeguards Agreement.''

Section 75.31 General Requirements

Section 75.31 is amended to reference § 75.7 and to use the terms ''facility'' and ''Safeguards Agreement.''

Section 75.32 Initial Inventory Report

Section 75.32 is amended to use the term ''facility.'' The term ''computer-readable'' has been removed because § 75.6(b) and § 75.31 require all reports to be in appropriate computer-readable format.

Section 75.33 Accounting Reports

Section 75.33 is amended to remove the term ''computer-readable'' because § 75.6(b) and § 75.31 require all reports to be in appropriate computer-readable format.

Section 75.34 Inventory Change Reports

Section 75.34 is amended to use the term ''facility.'' The term ''computer-readable'' has been removed because § 75.6(b) and § 75.31 require all reports to be in appropriate computer-readable format.

Section 75.35 Accounting Reports

Section 75.35 is amended to remove the term ''computer-readable'' because § 75.6(b) and § 75.31 require all reports to be in appropriate computer-readable format.

Section 75.36 Special Reports

This section is amended to reference § 75.7(b) and use the term ''facility.''

Section 75.37 Disclosure of Reports to IAEA

This section is removed because the requirements from this section were redundant with the requirements in § 75.12.

Section 75.41 Designation

This section is removed because the requirements have been moved to § 75.8 which is a more logical location for this section.

Section 75.42 Inspections

This section is removed because the requirements have been moved to § 75.8 which is a more logical location for this section. A new heading is added after § 75.36 and before § 75.43 to read, ''ADVANCED NOTIFICATION AND EXPENSES.''

Section 75.43 Circumstances Requiring Advance Notification

This section is amended to reference § 75.7 and use the terms ''facility'' and ''Eligible Facilities List.''

Section 75.44 Timing of Advance Notification

Section 75.44 is amended to use the term ''facility.''

Section 75.45 Content of Advance Notification

Section 75.45 is amended to use the term ''facility.''

Section 75.46 Expenses

Section 75.46 is amended to reference § 75.7 and use the term ''Safeguards Agreement.''

Section 75.53 Criminal Penalties

Section 75.53 is amended to reference the revised sections of Part 75.

Section 76.35 Contents of Application

Paragraph (l) is amended to include applicants for a certificate and recipients of a certificate to submit information described in new § 75.10. The section also permits verification of information by the IAEA and requires applicants for a certificate, and recipients of a certificate to take other actions as necessary to implement the Safeguards Agreement as described in Part 75.

Section 95.36 Access by Representatives of the International Atomic Energy Agency or by Participants in Other International Agreements

Section 95.36(a) is amended to reference § 75.8. Sections 95.36(b)(1) and (b)(2) are amended to reference § 75.8.

Section 110.11 Export of IAEA Safeguards Samples

This section is amended to reference § 75.8.

Section 110.54 Reporting Requirements

This section is added to address the reporting requirement for exports of nuclear facilities and equipment, nuclear grade graphite for nuclear end use, and deuterium as required by the Additional Protocol.

Section 150.8 Information Collection Requirements: OMB Approval

Paragraph 150.8(c)(3) is added to include the OMB approval control number for DOC/NRC Forms AP–1, AP–A, and associated forms.

Section 150.17a Compliance With Requirements of US/IAEA Safeguards Agreement

Section 150.17a is amended to use the terms ''facility,'' ''location,'' and ''Eligible Facilities List'' and references to revised sections of Part 75. The section is also amended to require Agreement State licensees (and applicants) that possess source or special nuclear material to meet the requirements of Part 75. Section 150.17a(c) is removed because it is no longer accurate with respect to the current US/IAEA Safeguards Agreement. Section 150.17a(d) is redesignated as § 150.17a(c). Also, the reference to source material in amounts greater than one effective kilogram is deleted because licensees in addition to those possessing source and special nuclear material may be required to report information under the Additional Protocol.

Notice and Comment Waiver

Because the substance of the amendments made by this rule involves a foreign affairs function of the U.S., the notice and comment provisions of the Administrative Procedure Act do not apply [5 U.S.C. 553(a)(1)]. These regulations codify explicit obligations established by treaty or statute which the NRC has no discretion or authority to modify, thus rendering public comment unnecessary.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act of 1954, as amended (AEA), the Commission is issuing the final rule to amend 10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 72, 75, 76, 95, 110, and 150 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is modifying its regulations to implement the *Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* (Additional Protocol). There are no voluntary consensus standards available or applicable to implement the Additional Protocol. Additionally, this action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) and (c)(3); therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule imposes new or amended information collection requirements contained in 10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 72, 75, 76, 95, 110, and 150, that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by OMB, approval numbers 3150–0017, 3150–0020, 3150–0011, 3150–0127; 3150–0135; 3150–0199; 3150–0009; 3150–0132; 3150–0055; 3150–0047; 3150–0036; 3150–0032, and 0694–0135.

The burden to the public for these information collections is estimated to average 10 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The burden for the information collections in 10 CFR Parts 30, 40, 50, 60, 61, 63, 70, 72, 75, 76, 95, 110, and 150 are covered by the information collection requirements in 10 CFR Part 75 (3150–0055). Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.resource@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0055), Office of Management and Budget, Washington, DC 20503 or by Internet electronic mail to *NathanJ.Frey@omb.eop.gov.*

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information for an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. The information reported is necessary to satisfy U.S. Government obligations with IAEA under the *Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* (Safeguards Agreement) and the *Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* (Additional Protocol).

Backfit Analysis

The NRC has determined that the backfit rule (§ 50.109, § 70.76, § 72.62, or § 76.76) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Specific licenses, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material accounting and control, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; 5 U.S.C. 552 and 553; and the Energy Policy Act of 2005; Pub. L. 109–58, 119 Stat. 594 (2005); the NRC is adopting the following amendments to 10 CFR parts 30, 40, 50, 60, 61, 63, 70, 72, 75, 76, 95, 110, and 150.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–81D (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 30.8, paragraph (c)(3) is added to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(3) In § 30.34, DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control number 0694–0135.

■ 3. In 30.34, new paragraph (k) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(k) As required by the Additional Protocol, each specific licensee authorized to possess and use byproduct material shall file with the Commission location information described in § 75.11 of this chapter on DOC/NRC Forms AP–1 and associated forms. The licensee shall also permit verification of this information by the International Atomic Energy Agency (IAEA) and shall take other action as may be necessary to implement the US/IAEA Safeguards Agreement, as described in part 75 of this chapter.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

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

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243), Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 5. In § 40.8, the introductory text to paragraph (c) and paragraphs (c)(2), (c)(3), and (c)(4) are revised, and paragraph (c)(5) is added to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(c) This Part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

* * * * *

(2) In § 40.31, DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control numbers 0694–0135.

(3) In § 40.31, Forms N–71 and associated forms are approved under control number 3150–0056.

(4) In § 40.42, NRC Form 314 is approved under control number 3150–0028.

(5) In § 40.64, DOE/NRC Form 741 is approved under control number 3150–0003.

■ 6. In § 40.31, paragraph (g) is revised to read as follows:

§ 40.31 Application for specific licenses.

* * * * *

(g) An applicant for a license to possess and use source material, or the recipient of such a license shall report information to the Commission as follows:

(1) In response to a written request by the Commission, a uranium or thorium processing plant, and any other applicant for a license to possess and use source material, shall submit facility information described in § 75.10 of this chapter on Form N–71 and associated forms and site information on DOC/NRC Form AP–A, and associated forms;

(2) As required by the Additional Protocol, a uranium or thorium processing plant, and any other applicant for a license to possess and use source material, shall submit location information described in

§ 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms; shall permit verification of this information by the International Atomic Energy Agency (IAEA); and shall take other actions as may be necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter; or

(3) As required by the Additional Protocol, an ore processing plant or a facility using or storing ore concentrates or other impure source materials shall submit the information described in § 75.11 of this chapter, as appropriate, on DOC/NRC Form AP–1 and associated forms; shall permit verification of this information by the International Atomic Energy Agency (IAEA); and shall take other actions as may be necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 7. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec.1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, (42 U.S.C. 5841). Section 50.10 also issued under Secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 stat.1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 8. In § 50.8, paragraphs (b) and (c)(2) are revised, and paragraph (c)(3) is added to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this Part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.71, 50.72, 50.73, 50.74, 50.75, 50.78, 50.80, 50.82, 50.83, 50.90, 50.91, and 50.120 and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S to this Part.

(c) * * *

(2) In § 50.78, Form N–71 and associated forms are approved under control number 3150–0056.

(3) In § 50.78, DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control numbers 0694–0135.

■ 9. Section 50.78 is revised to read as follows:

§ 50.78 Facility information and verification.

(a) In response to a written request by the Commission, each applicant for a construction permit or license and each recipient of a construction permit or a license shall submit facility information, as described in § 75.10 of this chapter, on Form N–71, and associated forms and site information on DOC/NRC Form AP–A and associated forms;

(b) As required by the Additional Protocol, shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms; and

(c) Shall permit verification thereof by the International Atomic Energy Agency (IAEA) and take other action as necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

■ 10. The authority citation for 10 CFR part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851), sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 60.9 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

■ 11. In § 60.8, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 60.8 Information collection requirements: Approval.

* * * * *

(b) The approved information collection requirements contained in this Part appear in §§ 60.47, 60.62, 60.63, 60.65.

(c) In § 60.47, Form N–71 and associated forms are approved under control number 3150–0056, and DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control number 0694–0135.

■ 12–13. A new undesignated center heading is added after § 60.46 and new § 60.47 is added to read as follows:

US/IAEA Safeguards Agreement

§ 60.47 Facility information and verification.

(a) In response to a written request by the Commission, each applicant for a construction authorization or license and each recipient of a construction authorization or a license shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms, and site information on DOC/NRC Form AP–A and associated forms;

(b) As required by the Additional Protocol, applicants and licensees specified in paragraph (a) of this section shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms;

(c) Shall permit verification thereof by the International Atomic Energy Agency (IAEA) and take other action as necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 14. The authority citation for 10 CFR part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, and 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, and 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 61.9 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

■ 15. In § 61.8, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 61.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this Part appear in §§ 61.3, 61.6, 61.9, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.20, 61.22, 61.24, 61.26, 61.27, 61.28, 61.30, 61.31, 61.32, 61.53, 61.55, 61.57, 61.58, 61.61, 61.62, 61.63, 61.72, and 61.80.

(c) In § 61.32, Form N–71 and associated forms are approved under control number 3150–0056, and DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control numbers 0694–0135.

■ 16–17. A new undesignated center heading is added after § 61.31 and new § 61.32 is added to read as follows:

US/IAEA Safeguards Agreement

§ 61.32 Facility information and verification.

(a) In response to a written request by the Commission, each applicant for a license and each recipient of a license shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms and site information on DOC/NRC Form AP–A, and associated forms;

(b) As required by the Additional Protocol, applicants and licensees specified in paragraph (a) of this section shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms; and

(c) Shall permit verification thereof by the International Atomic Energy Agency (IAEA) and take other action as necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

■ 18. The authority citation for part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat.1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 19. In § 63.8, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 63.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this Part appear in §§ 63.47, 63.62, 63.63, and 63.65.

(c) In § 63.47, Form N–71 and associated forms are approved under control number 3150–0056, and DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control numbers 0694–0135.

■ 20–21. A new undesignated center heading is added after § 63.46 and new § 63.47 is added to read as follows:

US/IAEA Safeguards Agreement

§ 63.47 Facility information and verification.

(a) In response to a written request by the Commission, each applicant for a construction authorization or license and each recipient of a construction authorization or a license shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms and site information on DOC/NRC Form AP–A and associated forms;

(b) As required by the Additional Protocol, applicants and licensees specified in paragraph (a) of this section shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms;

(c) Shall permit verification thereof by the International Atomic Energy Agency (IAEA) and take other action as necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 22. The authority citation for 10 CFR part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243), sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 23. In § 70.8, paragraph (c)(1) is revised and (c)(3) is added to read as follows:

§ 70.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(1) In § 70.21(g), Form N–71 and associated forms are approved under control number 3150–0056.

* * * * *

(3) In § 70.21(g), DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control number 0694–0135.

■ 24. In § 70.21, paragraph (g) is revised to read as follows:

§ 70.21 Filing.

* * * * *

(g)(1) In response to a written request by the Commission, each applicant for a construction authorization or license and each recipient of a construction authorization or a license to possess and use special nuclear material shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms and site information on DOC/NRC Form AP–A and associated forms;

(2) As required by the Additional Protocol, applicants and licensees specified in paragraph (a) of this section shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms; and

(3) Shall permit verification thereof by the International Atomic Energy Agency (IAEA) and take other action as necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 25. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as

amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 26. In § 72.9, paragraph (c) is added to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(c) In § 72.79, Form N–71 and associated forms are approved under control number 3150–0056, and DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control number 0694–0135.

■ 27. Section 72.79 is added to read as follows:

§ 72.79 Facility information and verification.

(a) In response to a written request by the Commission, each applicant for a certificate of compliance or license and each recipient of a certificate of compliance or specific or general license shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms and site information on DOC/NRC Form AP–A and associated forms;

(b) Shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms; and

(c) Shall permit verification thereof by the International Atomic Energy Agency (IAEA) and take other action as necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

■ 28. The authority citation for part 75 is amended to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 75.4 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

■ 29. Section 75.1 is revised to read as follows:

§ 75.1 Purpose.

The purpose of this part is to implement the requirements established by treaties between the United States and the International Atomic Energy Agency (IAEA). These treaties include the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (Safeguards Agreement) and the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (Additional Protocol). This part contains requirements to ensure that the United States meets its nuclear non-proliferation obligations under these US/IAEA Safeguards treaties. These obligations include providing information to the IAEA on the place of applicant, licensee, or certificate holder activities; information on source and special nuclear materials; and access to the place of applicant, licensee, or certificate holder activities. These obligations are similar to the obligations accepted by other countries.

■ 30. Section 75.2 is revised to read as follows:

§ 75.2 Scope.

(a) All persons licensed by the Nuclear Regulatory Commission or an Agreement State, or who hold a certificate of compliance, or construction permit or authorization issued by the Nuclear Regulatory Commission are subject to the requirements of this part. These requirements also apply to all persons who have filed an application with the NRC to construct a facility or to receive source or special nuclear material. Locations determined by the U.S. Government to be associated with activities or information of direct national security significance to the United States are excluded from these requirements. Specifically, these requirements pertain to the following locations and activities of licensees and certificate holders:

(1) A facility, as defined in § 75.4, and the site of the facility;

(2) A location performing nuclear fuel cycle-related research and development, as defined in § 75.4;

(3) A location manufacturing, assembling, or constructing nuclear fuel cycle-related equipment or materials as defined in § 75.4;

(4) A location of a uranium or thorium mine or concentration plant (*e.g.*, in-situ leach mines and activities involving ore processing);

(5) A location importing or possessing ''impure'' source material [i.e., source material not in the form of purified chemical products (*e.g.*, UF_6, U metal, UO_2)];

(6) A location possessing source or special nuclear material on which IAEA safeguards have been exempted or terminated;

(7) A location receiving imports of material or equipment that is subject to export controls; and

(8) The activity of exporting source materials for non-nuclear purposes or exporting of non-nuclear material or equipment that is subject to export controls.

(b) Facilities referred to in § 75.2(a)(1) are also subject to the reporting requirements of § 75.6(b) and (c), IAEA inspections in § 75.8, Facility information in § 75.10, and the Material Accounting and Control requirements in §§ 75.21 through 75.45.

(c) Locations referred to in § 75.2(a)(2) through 75.2(a)(7) are also subject to the reporting requirements of § 75.6(b) and (d), and IAEA inspections in § 75.8, and location information in § 75.11.

■ 31. Section 75.3 is revised to read as follows:

§ 75.3 Exemptions.

(a) The Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the requirements of this Part that it determines are authorized by law and consistent with the Safeguards Agreement or the Additional Protocol, are not inimical to the common defense and security, and are otherwise in the public interest.

(b) Without limiting the generality of paragraph (a) of this section, the U.S. Government may request from the IAEA an exemption with respect to nuclear material of the following types:

(1) Source and special nuclear material in gram quantities or less as a sensing component in instruments;

(2) Nuclear material used in non-nuclear activities; and

(3) Plutonium with an isotopic concentration of plutonium-238 exceeding 80 percent.

■ 32. In § 75.4:

■ a. The paragraph designations are removed;

■ b. The definitions of *Identification under the Agreement, Installation, Ore processing, and United States Eligibility List* are removed;

■ c. The definitions of *Additional Protocol; Complementary access; Eligible Facilities List; Environmental sampling; Facility; Initial Protocol; Location; Managed access; Nuclear fuel-cycle related manufacturing and construction; Nuclear fuel-cycle related research and development; Safeguards Agreement; and Subsidiary arrangement* are added in alphabetical order; and

■ d. The definitions of *Containment, Effective kilogram, Facility attachment, Inventory change, Surveillance,* and *Transitional facility attachment* are revised.

The additions and revisions read as follows:

§ 75.4 Definitions.

* * * * *

Additional Protocol means the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, concluded between the United States and the IAEA in Vienna, Austria, on June 12, 1998, that follows the provisions of INFCIRC/540.

* * * * *

Complementary Access means access provided to IAEA inspectors in accordance with the provisions of the Additional Protocol.

Containment (with respect to IAEA safeguards) means containers, devices, or structures that are used to prevent undetected access to or movement of nuclear material.

Effective Kilogram means a unit used in safeguarding nuclear material. The quantity is:

(1) For special nuclear material: The amount specified in § 70.4 of this chapter.

(2) For source material: The amount specified in § 40.4 of this chapter.

Eligible Facilities List means the list of facilities that are eligible for IAEA safeguards inspections under the US/IAEA Safeguards Agreement, which the Secretary of State or his designee last submitted for Congressional review and which was not disapproved. A copy of this list is available for inspection at the NRC Web site, *http://www.nrc.gov,* and/or at the NRC Public Document Room. In accordance with the provisions of the Safeguards Agreement, facilities of direct national security significance are excluded from the Eligible Facilities List.

Environmental Sampling (with respect to IAEA Safeguards) means the collection of environmental samples (*e.g.*, air, water, vegetation, soil, or smears from surfaces) at a location specified by the IAEA for the purpose of assisting the IAEA to draw a conclusion about the absence of undeclared nuclear material or nuclear activities.

Facility means:

(1) A production facility or utilization facility as defined in § 50.2 of this chapter;

(2) A plant that converts nuclear material from one chemical form to another (e.g., Uranium hexafluoride plant);

(3) A fuel fabrication plant;

(4) An enrichment plant or isotope separation plant for the separation of isotopes of uranium or to increase the abundance of ^{235}U.

(5) An installation designed to store nuclear material, such as an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) as defined in § 72.3 of this chapter; or

(6) Any plant or location where the possession of more than 1 effective kilogram of nuclear material is licensed pursuant to Parts 40, 50, 60, 61, 63, 70, 72, 76, or 150 of this chapter or an Agreement State license.

Facility Attachment means a document negotiated between the U.S. and the IAEA that establishes safeguards commitments for a particular facility.

IAEA means the International Atomic Energy Agency or its duly authorized representatives.

IAEA Material Balance Area means an area established for IAEA material accounting purposes, so that:

(1) The quantity of nuclear material in each transfer into or out of each material balance area can be determined; and

(2) The physical inventory of nuclear material in each material balance area can be determined when necessary in accordance with specified procedures.

Initial Protocol means the protocol to the *Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* that was concluded with the IAEA and provides the IAEA the right to select a facility for material accounting reporting only without the right to conduct inspections.

Inventory Change means an increase or decrease in the quantity of source or special nuclear material in an IAEA material balance area.

Key Measurement Point means a location where source or special nuclear material appears in such a form that it may be measured to determine material flow or inventory. Key measurement points include, but are not limited to, the inputs and outputs (including measured discards) and storages in IAEA material balance areas.

Location means any geographical point or area identified by the United States in its declarations, or by the IAEA resulting from a question, under the Additional Protocol.

Managed Access means procedures to protect sensitive or classified information or, to meet safety or physical protection requirements, while allowing the IAEA to accomplish the purpose of a complementary access request.

Nuclear Fuel Cycle-Related Manufacturing and Construction means those activities related to the manufacture or construction of any of the following: Components for separating the isotopes of uranium or enriching uranium in the isotope 235, zirconium tubes, heavy water or deuterium, nuclear-grade graphite, irradiated fuel casks and canisters, reactor control rods, criticality safe tanks and vessels, irradiated fuel element chopping machines, and hot cells.

Nuclear Fuel Cycle-Related Research and Development means those activities specifically related to any process or system development aspect of any of the following: Conversion of nuclear material; enrichment of nuclear material; nuclear fuel fabrication; reactors; critical facilities; reprocessing of nuclear fuel; and processing of intermediate or high-level waste containing plutonium, high-enriched uranium, or uranium-233.

Nuclear Material means any source material or any special nuclear material.

Safeguards Agreement means the Agreement Between the United States and the IAEA for the Application of Safeguards in the United States, and all protocols and subsidiary arrangements to the agreement.

Subsidiary Arrangement means a document, negotiated between the U.S. and the IAEA, that formally defines the technical and administrative procedures to implement the measures contained in the Safeguards Agreement.

Surveillance (with respect to IAEA Safeguards) means instrumental or human observation aimed at detecting the movement of nuclear material.

Transitional Facility Attachment means that portion of the ''Transitional

Subsidiary Arrangements to the Protocol to the Safeguards Agreement'' that pertains to a particular facility that has been identified under the Initial Protocol.

■ 33. Section 75.6 is revised to read as follows:

§ 75.6 Facility and location reporting.

(a) Except where otherwise specified, all communications concerning the regulations in this Part shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001. Written communications may be delivered in person to the Nuclear Regulatory Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 between 7:30 a.m. and 4:15 p.m. eastern time. If a submittal deadline falls on a Saturday, Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

(b) Each applicant, licensee, or certificate holder who has been given notice by the Commission in writing that its facility or location is required to report under the Safeguards Agreement shall make its initial and subsequent reports, including attachments, in an appropriate format defined in the instructions.

(c) Facilities—Specific information regarding facilities is to be reported as follows:

Item	Section	Manner of delivery
Initial Inventory Report	75.32	As specified by printed instructions for preparation of DOE/NRC Form-742.
Inventory Change Reports	75.34	As specified by printed instructions for preparation of DOE/NRC Form-741 and Form-740M.
Material Status Reports	75.35	As specified by printed instructions for preparation of DOE/NRC Form-742, Form-742C, and Form-740M.
Special Reports	75.36	To the NRC Headquarters Operations Center.
Facility information	75.10(d)	As specified by printed instructions for Form N–71 and associated forms.
Site information	75.10(e)	As specified by printed instructions for preparation of DOC/NRC Form AP–A and associated forms.

(d) Locations—Specific information regarding locations is to be reported as follows:

Item	Section	Manner of delivery
Fuel cycle-related research and development information.	75.11(c)(1)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Fuel cycle-related manufacturing and construction information.	75.11(c)(2)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Mines and concentration plant information	75.11(c)(3)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Impure source material possession information	75.11(c)(4)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Imports and exports of source material for non-nuclear end uses.	75.11(c)(5)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
IAEA safeguards-exempted and terminated nuclear material information.	75.11(c)(6)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Imports and exports of non-nuclear material and equipment.	75.11(c)(7)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.

■ 34. Section 75.7 is revised to read as follows:

§ 75.7 Notification of IAEA safeguards.

(a) The licensee must inform the NRC:

(1) Before the licensee begins an activity that may be subject to the Safeguards Agreement; or

(2) Within 30 days of beginning an activity subject to the Additional Protocol.

(b) The Commission, by written notice, will inform the applicant, licensee, or certificate holder of those facilities subject to the application of IAEA safeguards.

(c) Such notice is effective until the Commission informs the licensee or certificate holder, in writing, that its facility or location is no longer so designated. Whenever a previously designated facility or location is no longer subject to the application of IAEA safeguards, the Commission will give the licensee or certificate holder prompt notice to that effect.

■ 35. Section 75.8 is revised to read as follows:

§ 75.8 IAEA inspections.

(a) As provided in the Safeguards Agreement and Additional Protocol, inspections may be ad hoc, routine, special, or a complementary access (or a combination of the foregoing). The objectives of the IAEA inspectors in the performance of inspections are as follows:

(1) Ad hoc inspections to verify information contained in the licensee's, applicant's, or certificate holder's facility information or initial inventory report, or to identify and verify changes in the situation which have occurred after the initial inventory reporting date at any location where the initial inventory report or any inspections carried out indicate that nuclear material subject to safeguards under the Safeguards Agreement may be present;

(2) Ad hoc inspections to identify and, if possible, verify the quantity and composition of the nuclear material referred to in notifications specified under § 75.43(b) (pertaining to exports) or § 75.43(c) (pertaining to imports) at any place where nuclear material may be located;

(3) Routine inspections are conducted as specified by the facility attachments referred to in § 75.15 to verify nuclear material and as-built facility design at the strategic points and the records maintained under this part;

(4) Special inspections may be conducted at any of the places specified above and any additional places where the Commission (in coordination with other Federal agencies), in response to an IAEA request, finds access to be necessary;

(5) Complementary access may be conducted at a location, using measures permitted under the Additional Protocol and as specified by managed access procedures, for the IAEA inspectors to verify the completeness and accuracy of the information provided on DOC/NRC Form AP–1 or AP–A and associated forms; and

(6) Complementary access must be provided at any additional locations where the Commission (in coordination with other Federal agencies), in response to an IAEA request, finds access to be necessary.

(b) The NRC will notify the applicant, licensee, or certificate holder of each such inspection or complementary access in writing as soon as possible after receiving the IAEA's notice from the U.S. Department of State. The applicant, licensee, or certificate holder should consult with the Commission immediately if the inspection or complementary access would unduly interfere with its activities or if its key personnel cannot be available.

(c) Each applicant, licensee, or certificate holder subject to the provisions of this part shall recognize as a duly authorized representative of the IAEA any person bearing IAEA credentials for whom the NRC has provided written or electronic authorization that the IAEA representative is permitted to conduct inspection activities on specified dates. If the IAEA representative's credentials have not been confirmed by the NRC, the applicant, licensee, or certificate holder shall not admit the person until the NRC has confirmed the person's credentials. The applicant, licensee, or certificate holder shall notify the Commission promptly, by telephone, whenever an IAEA representative arrives at a facility or location without advance notification. The applicant, licensee, or certificate holder shall also contact the Commission, by telephone, within one hour with respect to the credentials of any person who claims to be an IAEA representative and shall accept written or electronic confirmation of the credentials from the NRC. Confirmation may be requested through the NRC Operations Center (commercial telephone number 301–816–5100).

(d) Each applicant, licensee, or certificate holder subject to the provisions of this part shall allow the IAEA opportunity to conduct an NRC-approved inspection or complementary access of the facility or location to verify the information submitted under §§ 75.10, 75.11, and 75.31 through 75.43. The NRC will assign an employee to accompany IAEA representative(s) at all times during the inspection or complementary access. The applicant, licensee, or certificate holder may accompany IAEA representatives who inspect or access the facility or location. The IAEA representatives should not be delayed or otherwise impeded in the exercise of their duties.

(e) Each applicant, licensee, or certificate holder shall permit the IAEA, in conducting an ad hoc, routine, or special inspection at a facility, to:

(1) Examine records kept under § 75.21;

(2) Observe that the measurements of nuclear material at key measurement points for material balance accounting are representative;

(3) Verify the function and calibration of instruments and other measurement control equipment;

(4) Observe that samples at key measurement points for material balance accounting are taken in accordance with procedures that produce representative samples, observe the treatment and analysis of the samples, and obtain duplicates of these samples;

(5) Arrange to use the IAEA's own equipment for independent measurement and surveillance; and

(6) Perform other measures requested by the IAEA and approved by the NRC.

(f) Each applicant, licensee, or certificate holder shall, at the request of an IAEA inspector during an ad hoc, routine, or special inspection at a facility:

(1) Ship material accountancy samples taken for the IAEA's use, in accordance with applicable packaging and export licensing regulations, by the method of carriage and to the address specified by the inspector; and

(2) Take other actions contemplated by the Safeguards Agreement, and included in the safeguards approach approved by the United States and the IAEA, including but not limited to the following examples:

(i) Enabling the IAEA to arrange to install its equipment for measurement and surveillance;

(ii) Enabling the IAEA to apply its seals and other identifying and tamper-indicating devices to containers;

(iii) Making additional measurements and taking additional samples for the IAEA's use;

(iv) Analyzing the IAEA's standard analytical samples;

(v) Using appropriate standards in calibrating instruments and other equipment; and

(vi) Carrying out other calibrations.

(g) Each applicant, licensee, or certificate holder shall permit the IAEA, in conducting complementary access at a location, under the provisions of the Additional Protocol and subsidiary arrangements, to:

(1) Perform visual observations and record observations as photographs;

(2) Conduct environmental sampling, when authorized by the U.S. Government;

(3) Use radiation detection and measurement devices;

(4) Apply seals and other identifying and tamper-indicating devices;

(5) Perform nondestructive measurements and sampling;

(6) Examine records relevant to quantities, origin, and disposition of materials to confirm the accuracy of the information provided under § 75.11;

(7) Examine safeguards-relevant production and shipping records; and

(8) Other objective measures that have been demonstrated to be technically feasible and the use of which has been agreed upon by the IAEA Board of Governors and following consultations between the IAEA and U.S. Government.

(h) Nothing in this section requires or authorizes an applicant, licensee, or certificate holder to carry out any operation that would otherwise constitute a violation of the terms of any applicable license, regulation, or order of the Commission.

■ 36. In § 75.9, paragraphs (a) and (b), the introductory text to paragraph (c) and paragraph (c)(1) are revised, and paragraph (c)(6) is added to read as follows:

§ 75.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission, or another U.S. Government agency, has submitted the information collection requirements contained in this Part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC 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. OMB has approved the information collection requirements contained in this Part under control number 3150–0055.

(b) The approved information collection requirements contained in this Part appear in §§ 75.6, 75.7a, 75.10, 75.11, 75.21, 75.22, 75.23, 75.24, 75.31,

75.32, 75.33, 75.34, 75.35, 75.36, 75.43, 75.44, and 75.45.

(c) This Part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 75.10, Form N–71 and associated forms are approved under control number 3150–0056.

* * * * *

(6) In §§ 75.10 and 75.11, DOC/NRC Forms AP–1, AP–A, and associated forms are approved under control number 0694–0135.

■ 37–38. The undesignated center heading ''Installation Information'' after § 75.9 is revised and new § 75.10 is added to read as follows:

Facility and Location Information

§ 75.10 Facility information.

(a) Each applicant, licensee, or certificate holder subject to the provisions of this Part shall submit facility information, in response to written notification from the Commission, with respect to any facility that the Commission indicates has been identified under the Safeguards Agreement, the Initial Protocol to the Agreement, or meets the Additional Protocol reporting criteria, and in which the applicant, licensee, or certificate holder carries out licensed activities. (The Commission request must state whether the facility has been identified under Article 39(b) of the principal text of the Safeguards Agreement or Article 2(a) of the Initial protocol.) The applicant, licensee, or certificate holder shall submit the requested information to the Commission within the period specified in the Commission's request.

(b) Facility information includes:

(1) The identification of the facility, stating its general character, purpose, nominal capacity (thermal power level, in the case of power reactors), and geographic location, and the name and address to be used for routine purposes;

(2) A description of the general arrangement of the facility with reference, to the extent feasible, to the form, location and flow of nuclear material, and to the general layout of important items of equipment which use, produce, or process nuclear material;

(3) A description of features of the facility relating to material accounting, containment, and surveillance;

(4) A description of the existing and proposed procedures at the facility for nuclear material accounting and control, with special reference to material balance areas established by the licensee, measurement of flow, and procedures for physical inventory taking (As part of this description, the applicant, licensee, or certificate holder may identify a process step involving information that it deems to be commercially sensitive and for which it proposes that a special material balance area be established so as to restrict IAEA access to this information); and

(5) A map of the site and information on the size of the buildings and on the general nature of the activities conducted in each building.

(c) Each licensee or certificate holder shall thereafter submit to the Commission information with respect to any modification at the facility affecting the information referred to in paragraph (a) of this section. The following information must be submitted:

(1) Regarding a modification of a type described in the license or certificate conditions: At least 180 days before the modification is scheduled to be started, except that in an emergency or other unforeseen situation a shorter period may be approved by the Commission.

(2) Regarding any other modification relevant to the application of the provisions of the Safeguards Agreement: At the time the first inventory change report is submitted after the modification is completed.

(d) The information specified in paragraphs (b) and (c) of this section, except for the information specified in paragraph (b)(5) of this section, must be prepared on IAEA approved Design Information Questionnaire forms (Form N–71 and associated forms or other forms supplied by the Commission). The information must be sufficiently detailed to enable knowledgeable determinations to be made in the development of Facility Attachments or amendments thereto, including:

(1) Identification of the features of facilities and nuclear material relevant to the application of safeguards to nuclear material in sufficient detail to facilitate verification;

(2) Determination of IAEA material balance areas to be used for IAEA accounting purposes and selection of those strategic points which are key measurement points and which will be used to determine flow and inventory of nuclear material;

(3) Establishment of the nominal timing and procedures for taking of physical inventories of nuclear material for IAEA accounting purposes;

(4) Establishment of the records and reports requirements and records evaluation procedures;

(5) Establishment of requirements and procedures for verification of the quantity and location of nuclear material;

(6) Selection of appropriate combinations of containment and surveillance methods and techniques at the strategic points at which they are to be applied; and

(7) Information on organizational responsibility for material accounting and control.

(e) Information specified in paragraph (b)(5) of this section must be submitted as specified by instructions for DOC/NRC Form AP–A and associated forms and shall contain a site map drawn to scale as an attachment.

(f) The applicant's, licensee's, or certificate holder's security rules for physical protection that will impact the IAEA inspectors at the facility must be included in the facility information only when and to the extent specifically requested by the Commission.

(g) Health and safety rules that are to be observed by the IAEA inspectors at the facility must be included in the facility information.

(h) Information must be provided on the need to manage IAEA access to the facility to protect health and safety or to protect classified, proprietary, or other sensitive information, and on other protective measures that should be implemented should an IAEA access be requested.

■ 39. Section 75.11 is revised to read as follows:

§ 75.11 Location information.

(a) As required by the Additional Protocol, each applicant, licensee, or certificate holder shall submit location information to the Commission as specified in the instructions for DOC/NRC Form AP–1 and associated forms.

(b) Location information includes:

(1) Nuclear fuel cycle-related research and development information including a general description of the activity and information specifying the location of the activity.

(2) Nuclear fuel cycle-related manufacturing or construction information including a description of the scale of operations for the activity.

(3) Uranium and thorium mine and concentration plant information including information on the location, operational status, and the estimated annual production capacity and current annual production of the activity.

(4) Impure source material possession information including the quantities, the chemical composition, and the use or intended use of the material (*e.g.*, nuclear or non-nuclear use).

(5) Imports and exports of source material for non-nuclear end uses

including the location, quantities, chemical compositions, and use of the imported or exported material.

(6) IAEA-exempted and -terminated nuclear material information including information regarding the quantities, uses, and location of the nuclear material.

(7) Imports and exports of non-nuclear material and equipment including the location, quantity and description of the materials and equipment.

(c) Information specified in paragraphs (b)(1) through (b)(7) of this section must be supplied as specified in the instructions for DOC/NRC Form AP–1 and associated forms. The Information provided on DOC/NRC Form AP–1 and associated forms must be submitted annually. If the information has not changed, a ''No change'' report must be provided. NRC should also be notified when the activity is no longer performed. The annual report must be submitted by January 31 of each succeeding year after the initial report. The initial report must be submitted no later than 30 calendar days following the date of publication of this rule.

(d) Information must be provided on the need to manage IAEA access to the location to protect health and safety or to protect classified, proprietary, or other sensitive information, and on other protective measures that should be implemented should an IAEA access be requested.

■ 40. In § 75.12, paragraphs (a), (b), and (d) are revised to read as follows:

§ 75.12 Reporting information to IAEA.

(a) Except as otherwise provided in this section, the Commission will furnish to the IAEA all information submitted under §§ 75.10, 75.11, and 75.31 through 75.43.

(b)(1) An applicant, licensee, or certificate holder may request that information of particular sensitivity, that it customarily holds in confidence, not be transmitted physically to the IAEA. An applicant, licensee, or certificate holder who makes this request shall, at the time the information is submitted, identify the pertinent document or part thereof and make a full statement of the reasons supporting the request. The applicant, licensee, or certificate holder shall retain a copy of the request and all documents related to the request as a record until the Commission terminates the license or certificate for each facility or location involved with the request, or until the Commission notifies the applicant, licensee, or certificate holder that the applicant, licensee, or certificate holder is no longer under the Safeguards Agreement. Superseded material must be retained for 3 years after each change is made.

(2) In considering such a request, it is the policy of the Commission to achieve an effective balance between legitimate concerns of licensees, applicants, or certificate holders, including protection of the competitive position of the owner of the information, and the undertaking of the United States to cooperate with the IAEA to facilitate the implementation of the safeguards provided for in the Safeguards Agreement and Additional Protocol. The Commission will take into account the obligation of the IAEA to take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of the Safeguards Agreement and Additional Protocol.

(3) A request made under § 2.390 of this chapter will not be treated as a request under this section unless the application makes specific reference to this section, nor shall a determination to withhold information from public disclosure necessarily require a determination that such information not be transmitted physically to the IAEA.

(4) If a request is granted, the Commission will determine a location where the information will remain readily available for examination by the IAEA and will so inform the applicant, licensee, or certificate holder. The applicant, licensee, or certificate holder shall retain this information as a record until the Commission terminates the license or certificate for the facility involved with the request or until the Commission notifies the applicant, licensee, or certificate holder that the applicant, licensee, or certificate holder is no longer under the Safeguards Agreement. Superseded material must be retained for 3 years after each change is made.

* * * * *

(d) Where consistent with the Safeguards Agreement, the Commission may at its own initiative, or at the request of a licensee, determine that any information submitted under §§ 75.10, and 75.11 shall not be physically transmitted to, or made available for examination by, the IAEA.

§ 75.13 [Removed]

■ 41. Section 75.13 is removed.

§ 75.14 [Removed]

■ 42. Section 75.14 is removed.

■ 43–44. The undesignated center heading ''Material Accounting And Control'' following § 75.14 is revised and new § 75.15 is added to read as follows:

Material Accounting and Control for Facilities

§ 75.15 Facility attachments.

(a) The Facility Attachment or Transitional Facility Attachment will document the determinations referred to in § 75.10 and will contain other appropriate provisions.

(b) The Commission will issue license or certificate amendments, as necessary, to implement the Safeguards Agreement and the Facility Attachment (as amended from time to time). The license or certificate amendments through reference to the Facility Attachment or Transitional Facility Attachment, or otherwise, will specify:

(1) IAEA material balance areas;

(2) Types of modifications for which information is required, under § 75.10, to be submitted in advance;

(3) Procedures, as referred to in § 75.21;

(4) The extent to which isotopic composition must be included in batch data (under § 75.22) and advance notification (§ 75.45);

(5) Items to be reported in the concise notes accompanying inventory change reports, as referred to in § 75.34;

(6) Loss limits and changes in containment, as referred to in § 75.36 (pertaining to special reports);

(7) Actions required to be taken under § 75.8(f) at the request of an IAEA inspector;

(8) Procedures to be used for documentation of requests under § 75.46 (pertaining to expenses); and

(9) Other appropriate matters.

(c) The Commission will also issue license or certificate amendments, as necessary, for implementing the Initial Protocol to the Safeguards Agreement and the Transitional Facility Attachment (as amended from time to time).

(d) License or certificate amendments will be made under the Commission's rules of practice (part 2 of this chapter). Specifically, if the licensee or certificate holder does not agree to an amendment, an order modifying the license would be issued under § 2.204 of this chapter.

(e) Subject to constraints imposed by the Safeguards Agreement, the Commission will afford the applicant, licensee, or certificate holder a reasonable opportunity to participate in the development of the Facility Attachment or Transitional Facility Attachment applicable to the facility, and any amendments thereto, and to review and comment upon any instrument before it has been agreed to by the United States. The Commission will provide to the applicant, licensee, or certificate holder a copy of any such

instrument that has been completed under the Safeguards Agreement.

(f) Locations reporting under the Additional Protocol, unless located in a facility selected under Article 39(b) of the main text of the Safeguards Agreement, do not have Facility Attachments or Transitional Facility Attachments.

■ 45. In § 75.21, paragraphs (a) and (c) are revised to read as follows:

§ 75.21 General requirements.

(a) Each licensee or certificate holder who has been given notice by the Commission in writing that its facility has been identified under the Safeguards Agreement shall establish, maintain, and follow written material accounting and control procedures. The licensee or certificate holder shall retain as a record current material accounting and control procedures until the Commission terminates the license or certificate for the facility involved with the request or until the Commission notifies the licensee or certificate holder that the licensee or certificate holder is no longer under the Safeguards Agreement. Superseded material must be retained for 3 years after each change is made.

* * * * *

(c)(1) The procedures must, unless otherwise specified in license or certificate conditions, conform to the facility information submitted by the licensee under § 75.10.

(2) Until facility information has been submitted by the applicant, licensee, or certificate holder, the procedures must be sufficient to document changes in the quantity of nuclear material in or at its facility. Observance of the procedures described in §§ 40.61 or 74.15 of this chapter (or the corresponding provisions of the regulations of an Agreement State) by any applicant, licensee, or certificate holder subject thereto constitutes compliance with this paragraph.

* * * * *

■ 46. Section 75.31 is revised to read as follows:

§ 75.31 General requirements.

Each licensee or certificate holder who has been given notice by the Commission in writing that its facility has been identified under the Safeguards Agreement shall make, in an appropriate computer-readable format, an initial inventory report, and thereafter shall make accounting reports, with respect to the facility and, in addition, licensees or certificate holders who have been given notice, under § 75.7 that their facilities are subject to the application of IAEA safeguards, shall make the special reports described in § 75.36. These reports must be based on the records kept under § 75.21. At the request of the Commission, the licensee or certificate holder shall amplify or clarify any report with respect to any matter relevant to implementation of the Safeguards Agreement. Any amplification or clarification must be in writing and must be submitted, to the address specified in the request, within 20 days or other time as may be specified by the Commission.

■ 47. In § 75.32, paragraph (b) is revised to read as follows:

§ 75.32 Initial inventory report.

* * * * *

(b) The initial inventory report, to be submitted to the Commission as specified by the instructions (NUREG/BR–0007 and NMMSS Report D–24 ''Personal Computer Data Input for NRC Licensees''), must show the quantities of nuclear material contained in or at a facility as of the initial inventory reporting date. The information in the initial inventory report may be based upon the licensee's or certificate holder's book record.

* * * * *

■ 47. In § 75.33, paragraph (a)(1) is revised to read as follows:

§ 75.33 Accounting reports.

(a)(1) The accounting reports for each IAEA material balance area must consist of:

(i) Nuclear Material Transaction Reports (Inventory Change Reports); and

(ii) Material status reports showing the material balance based on a physical inventory of nuclear material actually present.

* * * * *

■ 48. In § 75.34, the introductory text of paragraph (b) and paragraph (b)(2) are revised to read as follows:

§ 75.34 Inventory change reports.

* * * * *

(b) Nuclear Material Transactions Reports (Inventory Change Reports), when appropriate, must be accompanied by Concise Notes, completed as specified in the instructions (NUREG/BR–0006 and NMMSS Report D–24 ''Personal Computer Data Input for NRC Licensees''). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. This Concise Note is used in:

* * * * *

(2) Describing, to the extent specified in the license conditions, the anticipated operational program for the facility, including particularly, but not exclusively, the schedule for taking physical inventory.

■ 47. In § 75.35, paragraph (a) is revised to read as follows:

§ 75.35 Material status reports.

(a) A material status report must be submitted for each physical inventory which is taken as part of the material accounting and control procedures required by § 75.21. The material status report must include a material balance report and a physical inventory report which lists all batches separately and specifies material identification and batch data for each batch. When appropriate, the material status report must be accompanied by a Concise Note. The reports described in this section must be prepared and submitted in accordance with instructions (NUREG/BR–0006, NUREG/BR–0007, and NMMSS Report D–24 ''Personal Computer Data Input for NRC Licensees''). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001.

* * * * *

■ 49. In § 75.36, paragraph (a) is revised to read as follows:

§ 75.36 Special reports.

(a) This section applies only to licensees or certificate holders who have been given notice under § 75.7(b) that their facilities are subject to the application of IAEA safeguards.

* * * * *

§ 75.37 [Removed]

■ 50. Section 75.37 is removed.

§ 75.41 [Removed]

■ 51. Section 75.41 is removed.

§ 75.42 [Removed]

■ 52. Section 75.42 is removed.

■ 53. A new undesignated center heading is added after § 75.36 to read as follows:

Advanced Notification and Expenses

■ 54. In § 75.43, paragraphs (a) and (d) are revised to read as follows:

§ 75.43 Circumstances requiring advance notification.

(a) Each applicant, licensee, or certificate holder who has been given notice under § 75.7 shall give advance written notification to the Commission regarding the international and domestic transfers specified in this section.

* * * * *

(d) *Domestic Transfers.* Notification must be given regarding any shipments of nuclear material (other than small quantities in the form of samples containing less than 0.01 effective kilogram per sample) to a non-eligible destination. As used in this paragraph, a *non-eligible destination* means any destination in the United States other than a facility on the Eligible Facilities List.

■ 55. In § 75.44, paragraph (a) is revised to read as follows:

§ 75.44 Timing of advance notification.

(a) Except as provided in paragraph (b) of this section, notification to the Commission, when required by § 75.43, must be given:

(1) In the case of exports and domestic transfers, at least 20 days in advance of the preparation of the nuclear material for shipment from the facility.

(2) In the case of imports, at least 12 days in advance of the unpacking of nuclear material at the facility.

* * * * *

■ 56. In § 75.45, paragraph (a) is revised to read as follows:

§ 75.45 Content of advance notification.

(a) The notifications required by § 75.43 must include the element weight of nuclear material being received or shipped, the chemical composition and physical form, the isotopic composition (to the extent specified by license conditions), the estimated date and place at the reporting facility where the nuclear material is to be unpackaged or prepared for shipment (and where the quantity and composition can be verified), the applicable IAEA material balance area at the reporting facility, the approximate number of items to be received or shipped, and the probable dates of receipt or shipment. The notification must indicate that the information is being supplied under § 75.43.

* * * * *

■ 57. In § 75.46, paragraphs (a) and (d) are revised to read as follows:

§ 75.46 Expenses.

(a) Under the Safeguards Agreement, the IAEA undertakes to reimburse an applicant, licensee, or certificate holder who has been given notice under § 75.7 for extraordinary expenses incurred as a result of its specific request: *Provided,* That the IAEA has agreed in advance to do so. The Safeguards Agreement also contemplates that, in any case, the IAEA will reimburse an applicant, licensee, or certificate holder for the cost of making additional measurements or taking samples at the specific request of an IAEA inspector.

* * * * *

(d) The Commission will take appropriate action to assist the applicant, licensee, or certificate holder regarding the reimbursement of any expense which, under the Safeguards Agreement, is to be borne by the IAEA.

■ 58. Section 75.53, is revised to read as follows:

§ 75.53 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, or conspiracy to violate, any regulation issued under sections 161b., 161i., or 161o. of the Act. For purposes of criminal sanctions under section 223, all the regulations in Part 75 are issued under one or more of sections 161b., 161i., or 161o., except as provided in paragraphs (b) and (c) of this section.

(b) The regulations in Part 75 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 75.1, 75.2, 75.3, 75.4, 75.5, 75.7, 75.9, 75.12, 75.15, 75.46, 75.51, and 75.53.

(c) Any provision in Part 75 that implements the ''Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America,'' known as the ''Additional Protocol,'' signed by the United States on June 12, 1998, is not issued under sections 161b., 161i., or 161o, for the purposes of criminal sanctions under section 223.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

■ 59. The authority citation for part 76 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Section 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

■ 60. In § 76.35, paragraph (l) is revised to read as follows:

§ 76.35 Contents of application.

* * * * *

(l)(1) In response to a written request by the Commission, each applicant for a certificate and each recipient of a certificate shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms and site information on DOC/NRC Form AP–A and associated forms;

(2) As required by the Additional Protocol, shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms; and

(3) Shall permit verification thereof by the International Atomic Energy Agency (IAEA); and shall take other action as may be necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

* * * * *

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 61. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 3 CFR, 2004 Comp., p. 196; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

■ 62. In § 95.36, paragraphs (a) and (b) are revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

(a) Based upon written disclosure authorization from the NRC Office of Nuclear Material Safety and Safeguards that an individual is an authorized representative of the International Atomic Energy Agency (IAEA) or other international organization and that the individual is authorized to make visits under an established agreement with the United States Government, an applicant, licensee, certificate holder, or other person subject to this part shall permit the individual (upon presentation of the credentials specified in § 75.8(c) of this chapter and any other credentials identified in the disclosure authorization) to have access to matter classified as National Security Information that is relevant to the conduct of a visit or inspection. A

disclosure authorization under this section does not authorize a licensee, certificate holder, or other person subject to this part to provide access to Restricted Data.

(b) For purposes of this section, classified National Security Information is relevant to the conduct of a visit or inspection if—

(1) In the case of a visit, this information is needed to verify information according to § 75.8 of this chapter; or

(2) In the case of an inspection, an inspector is entitled to have access to the information under § 75.8 of this chapter.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 63. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005; Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

■ 64. Section 110.11 is revised to read as follows:

§ 110.11 Export of IAEA safeguards samples.

A person is exempt from the requirements for a license to export special nuclear material set forth in sections 53 and 54d. of the Atomic Energy Act and from the regulations in this Part to the extent that the person exports special nuclear material in IAEA safeguards samples, if the samples are exported under § 75.8 of this chapter, or a comparable Department of Energy order, and are in quantities not exceeding a combined total of 100 grams of contained plutonium, U–233, and U–235 per facility per year. This exemption does not relieve any person from complying with Parts 71 or 73 of this chapter or any Commission order under section 201(a) of the Energy Reorganization Act of 1974 (42 U.S.C. 5841(a)).

■ 65. Section 110.54 is added to read as follows:

§ 110.54 Reporting requirements.

(a) Reports of exports of nuclear facilities and equipment, nuclear grade graphite for nuclear end use, and deuterium shipped during the previous quarter must be submitted by licensees making exports under the general license or specific license of this part by January 15, April 15, July 15, and October 15 of each year on DOC/NRC Forms AP–A or AP–1, and associated forms. The reports must contain information on all nuclear facilities, equipment, and non-nuclear materials (nuclear grade graphite for nuclear end use and deuterium) listed in Annex II of the Additional Protocol.

(b) These required reports must be sent via facsimile to (202) 482–1731, e-mailed to *aprp@ap.gov,* or hand delivered or submitted by courier to Bureau of Industry and Security, in hard copy, to the following address: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Attn: AP Reports, 14th Street and Pennsylvania Avenue, NW., Room 4515, Washington, DC 20230. Telephone: (202) 482–1001.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 66. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

■ 67. In § 150.8, paragraph (c)(3) is added to read as follows:

§ 150.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(3) In § 150.17a, Form N–71 and associated forms are approved under OMB control number 3150–0056 and DOC/NRC Forms AP–1 or AP–A and associated forms are approved under OMB control number 0694–0135.

■ 68. Section 150.17a is revised to read as follows:

§ 150.17a Compliance with requirements of US/IAEA Safeguards Agreement.

(a) For purposes of this section, the terms *facility, location*, and *Eligible Facilities List* have the meanings set forth in § 75.4 of this chapter.

(b) Each person who, under an Agreement State license, is authorized to possess byproduct, source, or special nuclear material is subject to the provisions of Part 75 of this chapter and shall comply with its applicable provisions. However, regarding these persons, the Commission will issue orders under section 274m of the Act instead of making license amendments; and, to the extent Part 75 of this chapter refers to license amendments and license conditions, these references shall be deemed, for purposes of this paragraph, to refer to orders under section 274m of the Act.

(c)(1) In response to a written request by the Commission, each applicant for an Agreement State license or certificate, and each recipient of an Agreement State license or certificate shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms, and site information on DOC/NRC Form AP–A and associated forms;

(2) As required by the Additional Protocol, shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 and associated forms; and

(3) Shall permit verification thereof by the International Atomic Energy Agency (IAEA); and shall take other action as may be necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

(d) In response to a written request by the Commission, each applicant for an Agreement State license or certificate, and each recipient of an Agreement State license or certificate shall submit facility information, as described in § 75.10 of this chapter, on Form N–71 and associated forms, and site information on DOC/NRC Form AP–A and associated forms; shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP–1 or AP–A and associated

forms; shall permit verification thereof by the International Atomic Energy Agency (IAEA); and shall take other action as may be necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

Dated at Rockville, Maryland, this 8th day of December 2008.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Executive Director for Operations.

[FR Doc. E8–30054 Filed 12–19–08; 11:15 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. 1341]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The staff commentary is amended to increase the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment from $37 million to $39 million reflects the increase of that index by 4.49% percent during the twelve-month period ending in November 2008. Thus, depository institutions with assets of $39 million or less as of December 31, 2008, are exempt from collecting data in 2009.

DATES: Effective January 1, 2009.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report those data to their federal supervisory agencies and make the data available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

Prior to 1997, HMDA exempted depository institutions with assets totaling $10 million or less, as of the preceding year-end. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to $28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board has adjusted the threshold annually, as appropriate.

For 2008, the threshold was $37 million. During the twelve-month period ending in November 2008, the CPIW increased by 4.49% percent; as a result, the exemption threshold is raised to $39 million. Thus, depository institutions with assets of $39 million or less as of December 31, 2008, are exempt from collecting data in 2009. An institution's exemption from collecting data in 2009 does not affect its responsibility to report data it was required to collect in 2008.

Final Rule

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(B). The amendment in this notice is technical. Comment 2(e)–2 to § 203.2 of the regulation is amended to implement the increase in the exemption threshold. This amendment merely applies the formula established by Regulation C for determining adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

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

Authority: 12 U.S.C. 2801–2810.

■ 2. In Supplement I to part 203, under *Section 203.2 Definitions, 2(e) Financial Institution*, paragraph 2(e)–2 is revised to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.2 Definitions

2(e) Financial Institution.

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2009, the asset-size exemption threshold is $39 million. Depository institutions with assets at or below $39 million as of December 31, 2008 are exempt from collecting data for 2009.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 17, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30361 Filed 12–22–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1334]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to revise the rate for earnings on required reserve balances and excess balances of eligible institutions and to provide that the rates may be revised by the Board from time to time.

DATES: The amendments to Regulation D are effective on December 23, 2008. The applicability date for the revised rates for earnings on required reserve balances and excess balances is December 18, 2008.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202/452–3565), or Dena L. Milligan, Staff

Attorney (202/452–3900), Legal Division, or Margaret Gillis DeBoer, Chief, Monetary and Reserve Analysis Section, (202/452–3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 2008, the Board published in the **Federal Register** an interim final rule amending Regulation D (Reserve Requirements of Depository Institutions) to direct the Federal Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements (''required reserve balances'') and balances held at Reserve Banks in excess of required reserve balances and clearing balances (''excess balances'') (73 FR 59482) (Oct. 9, 2008). At that time, the Board announced two formulas by which the amount of earnings payable on required reserve balances and excess balances would be calculated. For required reserve balances, the Board initially set the rate of interest at the average federal funds rate target established by the Federal Open Market Committee (''FOMC'') over the reserve maintenance period less 10 basis points. For excess balances, the Board initially set the rate of interest at the lowest federal funds rate target established by the FOMC in effect during the reserve maintenance period less 75 basis points. The Board stated that it may adjust the formula for the interest rate on excess balances in light of experience and evolving market conditions.

Since that time, the Board has adjusted the formula for the rate of interest for excess balances twice (73 FR 65506 (Nov. 4, 2008), 73 FR 67713 (Nov. 17, 2008)). When the Board adjusted the formula for the interest rate for excess balances the second time, the Board also adjusted the formula for the rate of interest on required reserve balances (73 FR 67713) (Nov. 17, 2008). The formula for the rate of interest on required reserve balances currently is equal to the average target federal funds rate over the maintenance period, and the formula for the rate of interest on excess balances currently is equal to the lowest target federal funds rate over the maintenance period.

In light of weak economic conditions, the FOMC decided, on December 16, 2008, to specify a target range for the federal funds rate as the objective for open market operations, rather than a single target rate. As a result, the previous rate formulas for interest on required reserve balances and excess balances were no longer workable. The Board has accordingly judged that setting the rate on required reserve balances and on excess balances at ¼ percent (0.25 percent) will best support the Federal Reserve's objectives. These revised rates of interest will be applicable with the reserve maintenance periods beginning on Thursday, December 18, 2008.

The Board will continue to evaluate the appropriate level of the rates of interest for required reserve balances and for excess balances in light of evolving market conditions, and will make further adjustments as needed. In order to provide needed flexibility in making these adjustments to the rates of interest, the Board is amending Regulation D to provide that the rates of interest on required reserve balances and excess balances may be rates as determined by the Board from time to time, rather than the rates stated in revised sections 204.10(b)(1) and 204.10(b)(2) of Regulation D.

Administrative Procedure Act

The Board has adopted this rule in light of, and to help address, the continuing unusual strains in the financial markets. This rule provides tools for carrying out monetary policy more effectively. The Board believes that any delay in implementing the rule would be contrary to the public interest because any delay would hamper the Board's ability to make timely rate adjustments in order to address existing credit and liquidity pressures in the financial markets and future developments in these markets. Delay in implementing changes to the rates of interest payable on required reserve balances and excess balances could retard the effective implementation of monetary policy. Therefore, in accordance with the Administrative Procedure Act (''APA'') section 553(b) (5 U.S.C. 553(b)), the Board finds, for good cause, that providing notice and an opportunity for public comment before the effective date of this rule would be contrary to the public interest. In addition, pursuant to APA section 553(d) (5 U.S.C. 553(d)), the Board finds good cause for making this amendment effective without 30 days advance publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act (the ''RFA'') requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA, the Board certifies that this interim final rule will not have a significant adverse economic impact on a substantial number of small entities. The rule continues the payment of interest on certain balances held by eligible institutions at the Federal Reserve Banks and will benefit all institutions, small and large, that receive such interest. There are no new reporting, recordkeeping, or other compliance requirements associated with this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board has reviewed the interim final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. In § 204.10, paragraph (b) is revised to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) Except as provided in paragraph (c) of this section, Federal Reserve Banks shall pay interest at the following rates—

(1) For required reserve balances, at ¼ percent;

(2) For excess balances, at ¼ percent; or

(3) For required reserve balances or excess balances, at any other rate or rates as determined by the Board from time to time.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30471 Filed 12–22–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0203; Airspace Docket No. 08–ANE–99]

Modification of Class D and E Airspace; Brunswick, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 56475) that modifies Class D and E Airspace at Brunswick, ME to reflect the times when the controlled airspace is effective.

DATES: Effective 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 2008 (73 FR 56475), Docket No. FAA–2008–0203; Airspace Docket No. 08–ANE–99. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 15, 2009.

No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, Georgia, on December 2, 2008.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–30434 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0454; Airspace Docket No. 08–AAL–13]

Establishment of Class E Airspace; Napakiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description contained in a Final Rule that was published in the **Federal Register** on Thursday, November 20, 2008 (73 FR 70271). Airspace Docket No. 08–AAL–13.

DATES: *Effective Date:* 0901 UTC, January 15, 2009.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docket FAA–2008–0454, Airspace Docket No. 08–AAL–13, published on Thursday, November 20, 2008 (73 FR 70271), established Class E airspace at Napakiak, AK. A typographical error was discovered in the airspace description defining the airport location. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register**, Thursday, November 20, 2008 (73 FR 70271), Docket No. FAA–2008–0454, Airspace Docket No. 08–AAL–15, page 70272, column 2 is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Napakiak, AK [Corrected]

Napakiak, Napakiak Airport, AK
(Lat. 60°41′25″ N., long. 161°58′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Napakiak Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 84-mile radius of the Napakiak Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 4, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–30390 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–P

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains amendments to the project review regulations of the Susquehanna River Basin Commission (Commission) requiring review and approval of any natural gas well development project targeting the Marcellus or Utica shale formations and involving the withdrawal, diversion, or consumptive use of waters of the Susquehanna River Basin, adding a provision providing for a specific approval by rule process for consumptive water use associated with such projects, and modifying the definitions of ''construction'' and ''project.'' In addition, editorial changes are made to the existing approval by rule provision related to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

DATES: These rules are effective on January 15, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, 717–238–0423; fax: 717–238–2436; e-mail: *rcairo@srbc.net*. Also, for further information on the final rulemaking, visit the Commission's Web site at *http://www.srbc.net*.

SUPPLEMENTARY INFORMATION:

Background and Purpose of Amendments

As a result of advances in hydraulic fracturing and higher natural gas prices, natural gas well development activity in the Susquehanna River Basin has increased dramatically in the past year, resulting in a large number of project applications being filed with the Commission seeking approval for the withdrawal and consumptive use of water for that activity. The Commission is hereby adopting a final rulemaking action to handle the large and immediate influx of project applications, and to avoid adverse, cumulative adverse or interstate effects to the water resources of the basin.

The final rule modifies the definitions of ''construction'' and ''project'' for purposes of natural gas well development; requires review and approval of any natural gas well development project involving the withdrawal, diversion, or consumptive use of water; and adds a specific approval by rule process associated with the consumptive use of water by such projects. The Commission's current approval by rule process is available for use only if the sole source of water is a public water supply system. Under this rule change, the new approval by rule process will allow for the consumptive use of wastewater, acid mine water, and other sources of water for natural gas well development projects. The final rule will not change the current process used to review groundwater or surface water withdrawals.

In addition, editorial changes are made to the existing approval by rule provision relating to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

The Commission convened public hearings on October 21, 2008, in Williamsport, Pa. and on October 22, 2008, in Binghamton, N.Y. A written comment period was held open until October 31, 2008. Comments were received at both the hearings and during the comment period, one set coming mainly from the environmental community or those concerned about environmental issues, and another set coming from industry representatives.

Comments from the environmental community expressed concern that an approval by rule process applying to gas well drilling projects would not provide sufficient protection to environmental resources such as aquifers and streams. There was a concern that the approval by rule process would somehow supersede or short cut all other forms of review conducted by the Commission. However, full review and approval will continue to be required for all withdrawals by well drilling projects. To make this point clear, the Commission is adding language to § 806.22(f)(9) of the final rule stating that the issuance of an approval by rule for a consumptive use shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a).

Several citizens were also concerned that chemicals added to water used for hydro-fracturing will not be treated properly and could somehow cause pollution of aquifers and streams. The Commission does not presently regulate water quality; however, the Commission's member jurisdictions regulate the treatment and disposal of flowback fluids or produced brines from well drilling operations. The Commission is therefore including a provision in § 806.22(f)(8) that requires gas well applicants to certify to the Commission that all such flowback fluids will be treated and disposed of in accordance with applicable state and federal law. In addition, project sponsors are required under § 806.22(f)(7) to obtain all necessary permits and approvals that are required for the project from other Federal, State, or local government agencies having jurisdiction.

Industry comments pointed to various sections of the proposed regulations felt to be either unnecessary or burdensome. While not agreeing with all such comments, the Commission has made the following changes to the final rulemaking, which it believes responds adequately to industry concerns:

1. The requirement for approval by rule of natural gas drilling projects in § 806.4(a)(8) is limited to those projects targeting the Marcellus or Utica Shale Formations, unless additional shale formations are identified by the executive director of the Commission in a formal determination pursuant to § 806.5. The reference to ''other shale formations'' in the proposed rulemaking has been deleted.

2. The requirement to submit a Notice of Intent (NOI) ''at least 60 days'' prior to undertaking a project or increasing a previously approved quantity under § 806.22(f)(2) is removed. Applicants will only be required to submit the NOI prior to such undertaking.

3. In § 806.22(f)(8), project sponsors are required to ''certify'' that all flowback fluids have been treated and disposed of in accordance with applicable law, instead of having to ''demonstrate to the satisfaction of the Commission'' that this has been done. Concern was raised that the term ''demonstrate'' was overly vague. Certification would be subject to laws relating to unsworn falsification to authorities.

4. In § 806.22(f)(10), it is made clear that an approval by rule does not rescind, but merely supersedes any previous consumptive use approval.

5. The provision contained in the proposed rulemaking prohibiting the transfer of § 806.22(f) approvals is deleted, allowing such approvals to be transferred in accordance with the rules applying to any project approval under § 806.6.

In response to a comment from the Commission's member jurisdictions, the term ''Executive Director'' replaces the term ''Commission'' in § 806.22(f)(7), (9) and (10) as the entity responsible for issuing an approval by rule and exercising oversight on that approval. Similar changes have been made in § 806.22(e)(1), (6) and (7) to be consistent with this change and to clarify current Commission practice. In response to another comment from member jurisdictions, the notice requirements in § 806.22(f)(3) have been modified to reference the notice requirements contained in § 806.15 that apply to all projects generally, and to require applicants to copy the appropriate agencies of the member state with any NOI submitted under the rule. A final change made in response to the Commission's member jurisdictions was to clarify the language in § 806.22(f)(11) related to the process for obtaining authorization to utilize additional sources of water subsequent to the issuance of an approval by rule.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

■ Accordingly, for the reasons set forth in the preamble, 18 CFR part 806 is amended as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

■ 1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

■ 2. In § 806.3, revise the definitions of ''construction'' and ''project'' to read as follows:

§ 806.3 Definitions.

* * * * *

Construction. To physically initiate assemblage, installation, erection or fabrication of any facility, involving or intended for the withdrawal, conveyance, storage or consumptive use of the waters of the basin. For purposes of natural gas well development projects subject to review and approval pursuant to § 806.4(a)(8), initiation of construction shall be deemed to commence upon the drilling (spudding) of a gas well, or the initiation of construction of any water impoundment or other water-related facility to serve the project, whichever comes first.

* * * * *

Project. Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation. For purposes of natural gas well development activity, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

* * * * *

■ 3. In § 806.4, amend paragraph (a) by adding paragraph (a)(8) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) * * *

(8) Any natural gas well development project in the basin targeting the Marcellus or Utica shale formations, or any other formation identified in a determination issued by the Executive Director pursuant to § 806.5, for exploration or production of natural gas involving a withdrawal, diversion or consumptive use, regardless of the quantity.

* * * * *

■ 4. In § 806.22, revise paragraph (e)(1) introductory text, (e)(1)(ii), (e)(6), (e)(7) and add a new paragraph (f) to read as follows:

§ 806.22 Standards for consumptive uses of water.

* * * * *

(e) * * *

(1) Except with respect to projects involving natural gas well development subject to the provision of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule:

* * * * *

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of its intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

* * * * *

(6) The Executive Director will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(7) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) Approval by rule for consumptive use related to natural gas well development.

(1) Any project involving the development of natural gas wells subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(2) Notification of Intent: Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 10 days after submittal of a NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15 and send a copy of the NOI to the appropriate agencies of the member state.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water and fluids, including additives, flowback and brines, utilized by the project.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback fluids or produced brines utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state, or local government agencies having jurisdiction over the project. The Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and produced fluids, including brines, have been treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant or deny or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any such approval shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a).

(10) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire five years from the date of such notification, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) Subsequent to the issuance of an approval by rule pursuant to paragraph (f)(9) of this section, authorization to utilize additional sources of water for the project other than those identified in the approval by rule may be obtained as follows:

(i) Water withdrawals or diversions requiring and receiving approval by the Commission pursuant to § 806.4(a), provided such withdrawal source is approved for such use and is registered

with the Commission at least 10 days prior to use on a form and in a manner as prescribed by the Commission.

(ii) Sources of water other than those subject to paragraph (f)(11)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, provided such sources are approved prior to use as a modification to the approval by rule. Any request to modify an approval by rule to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

Dated: December 11, 2008.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E8–30315 Filed 12–22–08; 8:45 am]

BILLING CODE 7040–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in January 2009. As discussed below, PBGC will publish a separate final rule document dealing with interest assumptions under its regulation on Allocation of Assets in Single-Employer Plans for January 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective January 1, 2009.

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

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

These interest assumptions are found in two PBGC regulations: the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). PBGC normally updates the assumptions under the two regulations each month in a single rulemaking document. Because of delays in obtaining data used in setting the assumptions for January 2009, PBGC is publishing two rulemaking documents to update the two regulations for January 2009. This document is a final rule updating the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) 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 (2) 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 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during January 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during January 2009.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.00 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 a decrease (from those in effect for December 2008) of 0.75 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 January 2009, 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 in 29 CFR Part 4022

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

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

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE—EMPLOYER PLANS

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

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

■ 2. In appendix B to part 4022, Rate Set 183, 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
* * *		*		*		*		*
183	1–1–09	2–1–09	4.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 183, 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
* * *		*		*		*		*
183	1–1–09	2–1–09	4.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 16th day of December 2008.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation.

[FR Doc. E8–30419 Filed 12–22–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 219

[Docket ID: MMS–2007–OMM–0067]

RIN 1010–AD46

Allocation and Disbursement of Royalties, Rentals, and Bonuses—Oil and Gas, Offshore

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The MMS is amending the regulations on distribution and disbursement of royalties, rentals, and bonuses to include the allocation and disbursement of revenues from certain leases on the Gulf of Mexico Outer Continental Shelf in accordance with the provisions of the Gulf of Mexico Energy Security Act of 2006. The regulations set forth the formula and methodology for calculating and allocating revenues to the States of Alabama, Louisiana, Mississippi, and Texas, their eligible political subdivisions, and the Land and Water Conservation Fund from the 181 Area in the Eastern Planning Area and 181 South Area in the Gulf of Mexico. The Secretary of the Interior will begin to disburse these revenues beginning on or before March 31, 2009.

DATES: *Effective Date:* This final rule becomes effective January 22, 2009.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, Offshore Energy and Minerals Management at (703) 787–1538.

SUPPLEMENTARY INFORMATION: The MMS published a proposed rule on the allocation and disbursement of qualified offshore royalties, rentals, and bonuses in the **Federal Register** on Tuesday, May 27, 2008 (73 FR 30331), with a 60-day comment period. A single, 14-day extension (73 FR 43673) to the comment period was announced on July 28, 2008, and the comment period closed on August 11, 2008. The MMS received six comment letters. Of the comment letters received, three were from States, one each was received from a locality, a nonprofit foundation, and an individual citizen.

The comments submitted in large part requested clarification on the authorized uses of the Gulf of Mexico Energy Security Act of 2006 (GOMESA) revenue sharing funds, timing of disbursements, and fund restrictions upon transfer to the States and Coastal Political Subdivisions (CPSs). Separate letters were received from the States of Alabama, Louisiana, and Texas. All three States addressed the stated purposes of GOMESA revenue sharing funds and individual State needs for coastal restoration and protection. Alabama and Louisiana requested more specifics in the timing of disbursements and inquired about the second phase of revenue sharing authorized by GOMESA. Louisiana alone objected to the definition of qualified OCS revenues as defined in the proposed regulation. The City of Mobile, Alabama, and the National Maritime Museum of the Gulf of Mexico submitted comments related to the use of funds for coastal protection, conservation, and restoration, and the educational purposes of the National Maritime Museum, and an individual citizen provided comments on MMS accounting of royalty revenues and designation of this rule as ''not a major rule.''

This final rule is substantially the same as the proposed rule. In response to comments, MMS made four changes to the rule. One minor clarifying language change was also made. Thus, the final rule, like the proposed rule, provides the methodology and formula for the distribution of GOMESA revenues from the 181 Area in the Eastern Planning Area and the 181 South Area.

Background

President George W. Bush signed the Gulf of Mexico Energy Security Act of 2006 into law on December 20, 2006 (Pub. L. 109–432, 120 Stat. 2922; codified at 43 U.S.C. 1331 note (2007) (Gulf of Mexico Energy Security)), as part of H.R. 6111, the Tax Relief and Health Care Act of 2006, which also extended several energy tax programs

that encourage efficiency and conservation, as well as the production and use of renewable energy sources. With regard to the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) provisions (Division C, Title 1, 120 Stat. 3000), GOMESA:

- Lifted the congressional moratorium on oil and gas leasing and development in a portion of the Central GOM and mandates lease sales in two areas of the GOM (the 181 Area and 181 South Area as defined by GOMESA) notwithstanding the omission of those two areas from any OCS leasing program under section 18 of the OCS Lands Act (43 U.S.C. 1344);
- Established a moratorium through June 30, 2022, in the vast majority of the Eastern Planning Area and a small portion of the Central Planning Area;
- Provided for the establishment of a process to exchange existing leases in the new moratorium areas for bonus or royalty credits that may only be used in the GOM; and
- Provided for the distribution of certain OCS revenues to the Gulf producing States of Alabama, Louisiana, Mississippi, and Texas, and to certain CPSs within those States.

This final rule sets forth how the Department of the Interior (DOI) will implement the GOMESA requirements related to the distribution of OCS revenues to the Gulf producing States and their CPSs.

Summary

For each of the fiscal years from 2007 through 2016, GOMESA directs the Secretary of the Treasury to deposit 50 percent of qualified OCS revenues—bonuses, rents, and royalties—from OCS oil and gas leases in areas designated as the 181 Area in the Eastern Planning Area and the 181 South Area into a special account in the U.S. Treasury. The GOMESA directs the Secretary of the Interior, for each of these fiscal years, to disburse 25 percent of the revenues in the special account to the Land and Water Conservation Fund (LWCF) and the remaining 75 percent to the States of Alabama, Louisiana, Mississippi, and Texas (collectively identified as the ''Gulf producing States'') and their eligible CPSs. The revenues are to be allocated among the Gulf producing States based on their inverse proportional distance from the leases in the 181 Area in the Eastern Planning Area and the 181 South Area and in accordance with regulations established by the Secretary of the Interior. The GOMESA also provides that in determining the individual Gulf producing States' share of the qualified OCS revenues, no State, irrespective of the amount established by the application of the inverse proportional distance formula, shall receive less than 10 percent of the revenues to be disbursed.

The GOMESA directs the Secretary of the Interior to disburse 20 percent of the funds allocated to each Gulf producing State, to political subdivisions within the State which are located in the State's coastal zone, and are within 200 nautical miles of the geographic center of any OCS leased tract. Revenues are allocated to the CPSs based on their population, miles of coastline, and their inverse proportional distance from designated leases in the 181 Area in the Eastern Planning Area.

REVENUE DISTRIBUTION OF QUALIFIED OCS REVENUES UNDER GOMESA 2007–2016

Recipient of qualified OCS revenues	Percentage of qualified OCS revenues (percent)
U.S. Treasury (General Fund)	50
Land and Water Conservation Fund	12.5
Gulf Producing States	30
Gulf Producing State Coastal Political Subdivisions	7.5

For the following examples, results are rounded after each intermediate calculation for methodology demonstration purposes. Actual MMS calculations of shared revenue will be computed to full precision and only the final disbursement amount will be rounded. The following example shows the revenue sharing formula used to calculate each Gulf producing State's share of GOMESA qualified OCS revenues.

(1) For each Gulf producing State, we will calculate and total, over all applicable leased tracts, the mathematical inverses of the distances between the points on the State's coastline that are closest to the geographic centers of the applicable leased tracts and the geographic centers of the applicable leased tracts.

(2) For each Gulf producing State, we will divide the sum of each State's inverse distances, from all applicable leased tracts, by the sum of the inverse distances from all applicable leased tracts across all four Gulf producing States. We will multiply the result by the amount of qualified OCS revenues to be shared, as shown below. In the formulas, I_{AL}, I_{LA}, I_{MS}, and I_{TX} represent the sum of the inverses of the closest distances between Alabama, Louisiana, Mississippi, and Texas and all applicable leased tracts, respectively.

Alabama Share = $(I_{AL} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times$ Qualified OCS Revenues

Louisiana Share = $(I_{LA} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times$ Qualified OCS Revenues

Mississippi Share = $(I_{MS} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times$ Qualified OCS Revenues

Texas Share = $(I_{TX} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times$ Qualified OCS Revenues

The following simplified example, involving only two applicable leased tracts, illustrates the application of the steps above in calculating the revenue allocations for the Gulf producing States and also demonstrates how the inverse distance formulas work to reward those closest to the sources of revenue.

Suppose there are two applicable leased tracts (t_1 and t_2) and that the following table represents the closest distance from each Gulf producing State to the geographic centers of each applicable leased tract:

Gulf producing state	Applicable leased tracts				Sum of inverse distances
	t_1		t_2		
	Distance (nautical miles)	Inverse distance	Distance (nautical miles)	Inverse distance	
Alabama	50	0.0200	70	0.0143	0.0343
Louisiana	90	0.0111	80	0.0125	0.0236
Mississippi	70	0.0143	60	0.0167	0.0310
Texas	230	0.0043	210	0.0048	0.0091
All States	N/A	0.0497	N/A	0.0483	0.0980

Further, suppose that fiscal year qualified OCS revenues are $96 million, $12 million of which would go to the LWCF, and $36 million of which would be allocated to the Gulf producing States. Applying the formulas above, the $36 million would be allocated to the Gulf producing States as shown below.

Alabama Share = (0.0343 ÷ 0.0980) × $36 million = $12,600,000.00

Louisiana Share = (0.0236 ÷ 0.0980) × $36 million = $8,669,387.76

Mississippi Share = (0.0310 ÷ 0.0980) × $36 million = $11,387,755.10

Texas Share = (0.0091 ÷ 0.0980) × $36 million = $3,342,857.14

However, because Texas' share is less than $3.6 million or 10 percent of the allocation of $36 million, we would allocate a 10 percent share to Texas and recalculate the other Gulf producing States' shares omitting Texas and its 10 percent share from the calculation as shown below.

Alabama Share = (0.0343 ÷ (0.0980 − 0.0091)) × $32.4 million = $12,500,787.40

Louisiana Share = (0.0236 ÷ (0.0980 − 0.0091)) × $32.4 million = $8,601,124.86

Mississippi Share = (0.0310 ÷ (0.0980 − 0.0091)) × $32.4 million = $11,298,087.74

Total = $32,400,000

Texas Share = 10% × $36 million = $3,600,000

Adding the three States' shares to the Texas' 10 percent share sums to $36 million.

The MMS will distribute 20 percent of each Gulf producing State's allocable share to eligible coastal political subdivisions. Each State's CPS share is calculated by the following formula:

(1) Twenty-five percent shall be allocated to each CPS in the proportion that the coastal population of the CPS bears to the coastal population of all CPSs in the producing State;

(2) Twenty-five percent shall be allocated to each CPS in the proportion that the number of miles of coastline of the CPS bears to the number of miles of coastline of all CPSs in the producing State. For the State of Louisiana, proxy coastline lengths for CPSs without a coastline will be considered to be ⅓ the average length of the coastline of all political subdivisions within Louisiana having a coastline.

(3) Fifty percent shall be allocated in amounts that are inversely proportional to the respective distances between the points in each CPS that are closest to the geographic center of each leased tract.

The following is a continuation of the prior example, detailing the estimated allocations for the two State of Alabama eligible CPSs—Baldwin and Mobile counties. For this example, it is assumed that t_1 and t_2 are both in the 181 Area in the Eastern Planning Area. The revenue allocated to the Alabama CPSs is 20 percent of the $12,500,787 calculated above which is $2,500,157.

Twenty-five percent of the allocation, equal to $625,039, is based on the CPS's population proportion. The 2000 Census numbers are: Baldwin County—140,415; Mobile County—399,843, and the corresponding population proportions are 25.99 percent and 74.01 percent, respectively. Thus, $162,448 is allocated to Baldwin, and $462,591 is allocated to Mobile.

A second 25 percent of the allocation is based on the CPS's proportion of coastline length. The coastline lengths in nautical miles for Alabama's CPSs are: Baldwin—28.249; Mobile—22.045, and the corresponding proportions of coastline length are 56.17 percent and 43.83 percent, respectively. Thus, $351,084 is allocated to Baldwin, and $273,955 is allocated to Mobile.

Finally, 50 percent of the allocation, equal to $1,250,079, is based on the proportion of summed inverse distances between the CPSs and the applicable leased tracts. The distance measures and inverse distance calculations for the CPSs are conceptually identical to those employed above in assessing the State shares. Let us assume the following distances and resulting inverse distance calculations for the two CPSs:

Alabama eligible CPS	Applicable leased tracts				Sum of inverse distances
	t_1		t_2		
	Distance (nautical miles)	Inverse distance	Distance (nautical miles)	Inverse distance	
Baldwin	50	0.0200	70	0.0143	0.0343
Mobile	54	0.0185	74	0.0135	0.0320
All CPS	.....	0.0385	.....	0.0278	0.0663

According to the table above, the proportions of the summed inverse distances for each CPS are: Baldwin County—51.73 percent; Mobile County—48.27 percent, so the allocation amounts are $646,666 and $603,413, respectively. The total allocation for each CPS, based on the three components, is shown below:

Alabama county	Population allocation	Coastline allocation	Inverse distance allocation	Total allocation
Baldwin	$162,448	$351,084	$646,666	$1,160,198
Mobile	462,591	273,955	603,413	1,339,959

In this hypothetical example, the county of Baldwin would receive $1,160,198 (46.41 percent) and the county of Mobile $1,339,959 (53.59 percent) of the $2,500,157 Alabama CPS share.

The GOMESA requires that each Gulf producing State and CPS use all amounts received for one or more of the following purposes:

- Projects and activities for the purposes of coastal protection, including conservation, coastal restoration, hurricane protection, and infrastructure directly affected by coastal wetland losses.
- Mitigation of damage to fish, wildlife, or natural resources.
- Implementation of a Federally approved marine, coastal, or

comprehensive conservation management plan.

• Mitigation of the impact of OCS activities through the funding of onshore infrastructure projects.

• Planning assistance and administrative costs not to exceed 3 percent of the amounts received.

The GOMESA establishes a separate revenue sharing provision to be implemented for fiscal year 2017 and thereafter. This rule covers revenue sharing provisions for the 181 Area in the Eastern Planning Area and 181 South Area, which are the only revenues shared through 2016. While revenue sharing from these two areas will continue to be shared indefinitely according to GOMESA, the second phase of GOMESA revenue sharing adds qualified OCS revenue from GOM leases issued after December 20, 2006, in the 181 Call Area and 2002–2007 GOM Planning Areas subject to withdrawal or moratoria restrictions and revenue caps identified in the act. The second phase of GOMESA revenue sharing will be addressed in a subsequent rulemaking.

Comments Leading to Rule Modifications

The States of Alabama and Louisiana requested that MMS clarify the timing and nature of GOMESA revenue disbursements to the Gulf producing States and eligible CPSs so that recipients can effectively plan projects and be certain of the date they will receive funds. Further, both States requested that funds be disbursed as early in the fiscal year as possible. The MMS has revised § 219.418 of the rule to affirm that MMS intends to disburse revenues on or before March 31st of the year following the fiscal year of qualified OCS revenues. The MMS requires several months to complete end-of-year audit procedures and validate the allocations of the inverse distance formulas. While issues could potentially arise making it difficult to meet the March 31st date for disbursement of all applicable revenues to all recipients, if MMS cannot meet this date, revenue recipients would be alerted. Revenues will be disbursed by electronic funds transfer (EFT) to each State and CPS. The EFT is a standard practice of the Federal Government, and EFT disbursement procedures are not included in the regulation. The MMS has contacted each State and CPS to obtain recipient electronic fund transfer and account information.

The State of Louisiana requested the regulation identify a single bureau point of contact for GOMESA revenue sharing questions. The MMS has designated the Chief, Financial Management, Minerals Revenue Management, as the lead contact on GOMESA revenue sharing issues. Contact information is found in § 219.410.

The State of Louisiana commented that the exclusion in the proposed regulation of rental revenues or user fees credited to MMS appropriated funds through the annual Congressional appropriations process from revenue sharing is contrary to the requirements of GOMESA. The definition of qualified OCS revenues in the § 219.411 definition has been modified in response to Louisiana's comment.

As discussed in the preamble of the proposed rule, appropriations language has been included annually since 1993 which provides MMS rental revenues above the $3.00/acre rate in effect on August 5, 1993, up to an annual cap, to fund current operations. The GOMESA revenue sharing formula created an unforeseen dual claim on rental revenues. To avoid any ambiguity, the regulation has been changed from the proposed rule to recognize that in the absence of a specific exclusion of qualified OCS revenues from leases in statute or appropriations language, GOMESA lease revenues are shared first with States/CPSs and the LWCF by the revenue sharing formula in this regulation and the remainder would be available for other uses as identified by statute or appropriations law. An exception would occur if Congress adopts explicit appropriations or statutory language which restricts or eliminates the sharing of certain GOMESA revenues from this revenue sharing program, or changes the definition of GOMESA qualified OCS revenues to recognize a different treatment of revenues. In those cases the circumscribed revenues would not be shared under the GOMESA revenue sharing program.

The State of Louisiana also objected to the exclusion of user fees from qualified OCS revenues. Unlike bonuses, rentals, and royalties, user fees (also called cost recovery fees) are not revenue ''from leases.'' User fees are payments made by operators or lessees for provisions of special services such as transfer of record title and review of exploration or development plans. They are collected by MMS based on the direct cost of providing a service to the lessees, and are not considered receipts directly emerging from a lease's revenues themselves. A civil penalty payment, which was excluded in the GOMESA, is similar to a user fee payment. A *civil penalty* is a payment for a violation of regulations and a *user fee* is payment for a service. While civil penalties and user fees may be paid for an action or authorization that happens on a lease, they are not revenues resulting from the lease itself. The revenues from a lease (bonuses, rentals, and royalties) reflect the value of the lessor's (i.e., the Federal Government's) property interest in the leased minerals. Since GOMESA revenue sharing is intended to share revenues resulting from the oil and gas property interest, user fees are not from leases, and thus, excluded from qualified OCS revenues for GOMESA revenue sharing.

The MMS has provided a separate line in the § 219.411 definition to recognize that user fees are not from leases and not shared under the GOMESA revenue sharing formula.

Comments were received from Alabama, Louisiana, and the State of Texas General Land Office related to authorized uses of the GOMESA revenue sharing funds. In summary, each Gulf producing State receiving GOMESA funds has different coastal conservation needs, and subsequently will utilize GOMESA funds to accomplish diverse goals via a variety of projects and activities. Therefore, Gulf producing States and CPSs have requested broad discretion to interpret the GOMESA legislation in a manner that accomplishes each State's coastal conservation and protection needs, such as hurricane protection measures and specific educational uses.

In this regard, it is important to note that GOMESA does not provide the Secretary of the Interior a compliance responsibility or enforcement mechanism similar to the plan review and approval authority included in the OCSLA Coastal Impact Assistance Program (CIAP). Accordingly, while the recipients of the GOMESA revenue sharing funds are legally obligated under GOMESA to expend the funds received only on the authorized uses enumerated in the Act, the MMS's role in this program is to calculate shares and transfer the applicable funds to the States and CPSs in a manner similar to the approach it follows in disbursing revenue sharing funds to the States under the offshore 8(g) program or the onshore oil and gas revenue sharing program. That is, once the funds are transferred, MMS no longer has Federal oversight. However, since the GOMESA enumerates the authorized uses for shared revenues, GOMESA's authorized uses have been added to the § 219.410 subpart introduction. The regulations do not include Interior compliance or enforcement activities since none were assigned by the GOMESA.

Comments Not Leading to Rule Modifications

The State of Louisiana requested that States and their CPSs be allowed to designate a trustee to receive their annual GOMESA revenue allocations. Louisiana further states that assigning funds to a trustee would provide States and their CPSs a ''capability to maximize their ability to further the purposes of GOMESA by leveraging their payment streams into long-term financing instruments.''

The regulation remains silent on the designation of a funds trustee. The GOMESA specifically enumerates the four Gulf producing States, CPSs, and the LWCF as the recipients of GOMESA revenue sharing funds. It is MMS's standard practice to disburse revenue sharing funds to the Government entity to which the revenues are shared. Therefore, MMS intends to distribute GOMESA revenues to the designated State or CPS account in the name of State or CPS and not directly to a trustee. A State or CPS is then free to adopt spending procedures involving trustees.

A Texas General Land Office comment requested clarification on how GOMESA's revenue sharing 200-mile limit from the center of a leased tract will affect certain Texas coastal counties. Some Texas CPSs are beyond 200 miles from the center of an applicable leased tract in the 181 Area in the Eastern Planning Area.

There are several points in the GOMESA that contribute to the understanding of the revenue allocations to Texas CPSs from the revenue sharing provisions under this rule. First, no State shall receive less than 10 percent of the revenues. Because Texas is the farthest distance from the revenue sharing areas of any Gulf producing State, the inverse distance calculation will provide less revenue to Texas than the other Gulf producing States, so Texas is the State most likely to be affected by the minimum distribution requirement. Second, the CPSs receive 20 percent of the revenues allocated to the States, so the statute provides a share of Texas revenues to the CPSs. Third, and key to understanding the implications on Texas CPSs of the revenue sharing provisions under this rule, there is the difference between an *applicable leased tract* and any *leased tract.*

The MMS defines both *applicable leased tract* and *leased tract* in the regulation. The term *applicable leased tract* appears twice in section 105 of the GOMESA at paragraphs (b)(1)(A) and (2)(A)(i), and this term clearly refers to tracts in the 181 and 181 South Area only. In section 102, paragraph (10)(B), an eligible CPS is defined as one in which any part is ''not more than 200 miles from the geographic center of any leased tract,'' not just those in the 181 and 181 South Area. In addition, this is how the 2007–2010 Coastal Impact Assistance Program defined leased tract. If the GOMESA authors wanted to limit eligible CPSs only to those within 200 miles of an applicable leased tract, this was the place to do it; yet, they did not provide that constraint. Thus, since all Texas CPSs are within 200 miles of a leased tract in the GOM, all will share in the revenue sharing provisions of this rule.

The States of Alabama and Louisiana requested that MMS specify in the regulations that a State can use GOMESA funds to match Federal grant programs that are consistent with GOMESA's authorized uses. As noted in Louisiana's comments, the GOMESA is silent on the use of GOMESA funds for cost sharing or matching requirements with other Federal grant programs and various other forms of Federal assistance. Thus, consistent with a Federal grant program's application of funds for GOMESA authorized uses, it appears that GOMESA funds may be used to meet a certain Federal program's recipient matching requirement depending on whether or not that specific Federal program's statutory language or guidelines specifically excludes Federal funds from being used by the recipient as matching funds.

The State of Alabama Department of Conservation and Natural Resources, inquired about the timing of when MMS will publish the rule for GOMESA revenue sharing to be implemented for fiscal year 2017 and thereafter. The State of Louisiana commented that this rule should not be restricted to the 2007–2016 period, but should include the additional GOMESA revenue sharing provisions that will begin in 2017 from leases issued after December 20, 2006, in the 2002–2007 GOM planning areas. We intend to publish the rulemaking for the second phase of GOMESA revenue sharing within the next 2 years. This will provide time for MMS to incorporate any lessons learned during the first phase of GOMESA revenue sharing and to include similar revenue sharing provisions if authorized in future legislation, while avoiding the need to extend the publication date of this rule.

In addition to the request that this rulemaking include the second phase of GOMESA revenue sharing, Louisiana asserted that GOMESA required rulemaking to ensue within 1 year of its passage and that MMS has not met this requirement. We note that this interpretation of GOMESA by Louisiana is incorrect. The requirement that rulemaking be promulgated not later than 1 year after the passage of the GOMESA only applies to Section 104 of the Act. The regulations required by GOMESA section 104(c)(4) only address the issuance of credits for the relinquishment of select leases offshore of Florida. Section 105 of the GOMESA addresses the revenue sharing provisions in this rule, and it includes no deadline for promulgation of rulemaking.

The State of Louisiana raises several points related to the definition of qualified OCS revenues found in § 219.411, including the exclusion of rental revenues allocated to MMS through the annual appropriations process, user fees, royalty-in-kind oil delivered to the Strategic Petroleum Reserve and not sold, and alternative energy/use revenues. The intent and requirement of GOMESA is that we promulgate regulations that describe in specific detail the distribution of GOMESA qualified OCS revenues. This rulemaking defines qualified OCS revenues to properly account for situations, revenue sources, and claims on OCS revenues not clearly identified in GOMESA. Our conclusion on the proper treatment of rental revenues and user fees is found in the preceding section which covers modifications made to the proposed rule.

The State of Louisiana requested that this regulation provide revenue shares to the Gulf producing States based on royalties from GOMESA qualified leases taken by the Secretary in-kind, delivered to the Strategic Petroleum Reserve (SPR), and later drawn down. Louisiana also requested that the proposed rule be revised to require MMS to sell all royalty-in-kind (RIK) oil it receives from GOMESA leases, which will raise the State revenue shares, but will mean that none of that oil could be delivered to the SPR.

The MMS policies related to RIK oil are designed to optimize benefits to the Nation as a whole. The GOMESA is clear that RIK oil not sold and, by implication, transferred or used for trades to stock the Department of Energy's SPR is excluded from qualified OCS revenue. Accordingly, MMS has no authority to selectively exclude oil from GOMESA leases or to compensate Louisiana with proceeds from a subsequent sale of oil from the SPR that originated as RIK oil following a draw down order from the President.

The SPR is managed as a National strategic asset by the Department of

Energy. The DOI has no authority over the SPR. Thus, the rule will continue to exclude RIK royalties for oil or gas taken in-kind and not sold.

The State of Louisiana requests that § 219.415 in the proposed rule be revised to not reduce the revenues shared with States and CPSs if bonus or royalty credits are used on GOMESA leases. Section 219.415 states that use of bonus or royalty credits on a GOMESA lease will reduce qualified OCS revenues available for distribution.

Section 104(c) of GOMESA authorizes the Secretary of the Interior to issue a bonus or royalty credit for use only in the GOM for the exchange of certain leases located offshore of the State of Florida. Thus, there is a possibility that some of the credits could be used on GOMESA revenue sharing leases. However, given the thousands of other leases to which the credits may be applied, and the incentives for credit holders to use them quickly, by far the bulk of the credits are likely to be used to pay bonus and royalty obligations on leases that are not subject to GOMESA revenue sharing provisions.

Moreover, the regulations for bonus or royalty credits authorized under GOMESA are found in the final rule titled *Bonus or Royalty Credits for Relinquishing Certain Leases Offshore*, RIN 1010–AD44, published September 12, 2008 (FR 73 52917). This rule deals with this same issue. Unlike the case with revenue from 8(g) leases, GOMESA does not exclude these credits from being applied to bonus or royalty obligations for leases subject to GOMESA revenue sharing provisions. To the extent this occurs, the U.S. would receive less qualified OCS revenues on GOMESA leases than if the bidders or lessees had paid in cash. It necessarily follows that any distribution of royalty or bonus payments to a State or CPS based on lower qualified revenues should result in a corresponding reduction from what it would have been had the entire payment been made in cash on the eligible leases.

However, the MMS projects the effect of bonus or royalty credits from section 104(c) of GOMESA on revenue sharing to be very limited. Since GOMESA distribution requirements apply only to revenues derived from new leases issued in the portion of the 181 Area located in the Eastern Planning Area and to the 181 South Area, production, and hence royalty, from such leases likely will not occur anytime soon. Additionally, these credits must be claimed by October 2010 and there are thousands of other leases where the credits, amounting to $60.4 million, could be promptly applied. We have not complied with Louisiana's request and have not changed the regulation because we see little chance that the credits will affect State allocations and too much complexity is required to exclude such a remote possibility.

The State of Louisiana proposes that revenues derived from alternative uses of the OCS in the 181 Area in the Eastern Planning Area and 181 South Area should also be shared according to the GOMESA revenue sharing formula. The State comments further that this rule inappropriately limits revenue sharing to oil and gas activity while GOMESA was not intended to be so constrained.

In this rule *applicable leased tract* and *leased tract* are defined as oil and gas leases. It is revenue from these oil and gas leases that qualifies as OCS revenues to be shared under this rule. While section 105 of GOMESA does not specifically limit revenue sharing to oil and gas leases, the two revenue sharing areas covered by this rule (181 Area in the Eastern Planning Area and 181 South Area) are opened to oil and gas leasing in Section 103 of GOMESA. Additionally, when the 181 Area in the Eastern Planning Area and 181 South Area are defined in section 102 of the GOMESA, these areas are delineated for oil and gas leasing, not simply for revenue sharing geographic boundaries as the commenter proposes. Accordingly, it is clearly the intent of Congress that the revenue sharing provisions of GOMESA apply only to oil and gas leases.

It is noteworthy that the revenue sharing provisions of the Energy Policy Act of 2005 (EPAct) already provide a separate and different revenue sharing formula for revenue generated from alternative energy leases authorized in Section 388. Louisiana acknowledges its familiarity with the provisions of EPAct under which 27 percent of the revenues from alternative energy projects within the 8(g) zone would be shared with applicable States. If Congress wished to share revenues from alternative energy leases outside of the 8(g) area defined in 43 U.S.C. 1337(p)(2) of the OCS Lands Act, it could have included those provisions in section 388 of EPAct, or made that arrangement explicit in GOMESA. In fact, Congress chose to do neither.

A letter from a private citizen critiqued assumptions in the proposed rule related to the categorization of this rule as not major, since it does not meet the $100 million annual threshold. We point out, however, that the MMS states in the proposed rule, and again in this final rule, that this is not a major rule under Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)) since it will not have an annual effect on the economy of $100 million or more or meet the other major rule criteria. The commenter further requests that MMS reconsider the expected revenues to be shared under this program considering current price projections and the designation of this rule as not a major rule. Cited are the $340 million in high bids for leases sold in Sale 181 in 2001. However, the GOMESA revenue sharing methodology and formula covered by this rule only involve two areas in the Central and Eastern GOM. The first area, known as *181 Area in the Eastern Planning Area*, is a subset of the *Sale 181 Call Area*, and does not include the *Final Sale 181 Area*. So revenues from the Sale 181 Area and reoffering leases expiring from the Sale 181 Area will not be shared revenues under this rule. A map of the area can be found at: *http://www.gomr.mms.gov/homepg/lsesale/224/egom224.html*. The 181 South Area, which will also share revenues under this rule, is not actually in the Sale 181 Call Area, but south of the 181 Call Area. A map of the area can be found at: *http://www.gomr.mms.gov/homepg/lsesale/208/cgom208.html*. For both of these revenue sharing areas, using June 2008 estimates for oil and gas prices and expected production volumes, MMS does not expect the 50 percent of GOMESA revenues shared with the States, CPSs and LWCF to exceed $100 million annually through 2016. Beyond 2016, revenues received from the leases issued in the two Sale 181 areas will mostly depend on the quantity of production, and in-turn, the royalties earned from production in these areas. Because exploration has not started in these areas, royalty revenue streams are considered too speculative to affect the classification of this rule.

The commenter also questions the effect of royalty collection adjustments on revenue shared under this rule ''since more than $2.5 billion in additional mineral revenues have been collected through compliance activities since 1982, this indicates that MMS may not be capable of doing a full accounting of royalties.'' To the contrary, the collection of these substantial revenues indicates that MMS is quite effective in auditing royalty payments initiated by its many lessees. Moreover, MMS does not expect these adjustments for the applicable leased tracts to be substantial in any 1 year and will, in any event, tend to balance out over time as both positive and negative adjustments are made from one fiscal year to the next.

Finally, like other Federal energy revenue sharing programs with the States (e.g., Mineral Leasing Act, Section 8(g) of the OCS Lands Act), GOMESA revenue sharing is based on the revenue received each year, including any compliance collections reflecting prior year adjustments. Compliance activities are conducted to ensure the Federal Government receives all the money it is entitled. Moreover, all GOMESA collections of qualified OCS revenues, including compliance collections, will be shared with States, CPSs, and the LWCF.

Other Changes to the Rule

The definition for *applicable leased tract* has been revised. The proposed rule included OCS Lands Act section 6 leases in the definition of an applicable oil and gas leased tract for GOMESA revenue sharing. Since section 6 of the OCS Lands Act applies to leases issued by States prior to the passage of the OCS Lands Act, and GOMESA revenue sharing provisions apply to applicable leased tracts issued after the passage of GOMESA, this previous inclusion was incorrect.

Procedural Matters

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

This rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The GOMESA directs the Secretary of the Interior to disburse a portion of qualified OCS revenues to the Gulf producing States, CPSs, and the LWCF. This rule describes the formula and methodology MMS will use to allocate the revenues among the Gulf producing States and the CPSs. The transfer of revenues from the Federal Government to State and local governments does not impose additional costs on any sector of the U.S. economy, and will not have any appreciable effect on the National economy. Internal estimates in June 2008, made for official budget projections, indicate that the annual transfers will total less than the $100 million annual threshold because of the relatively small OCS area whose bonus, rental, and royalty payments are subject to revenue sharing.

(2) This rule will not create any serious inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency is affected by the disbursements mandated by GOMESA.

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

(4) This rule does not raise novel legal or policy issues. This rule will merely provide formulas and methods to implement an Act of Congress. Previously, section 8(g) of the OCS Lands Act and section 384 of the Energy Policy Act of 2005 have provided for the distribution of a portion of OCS revenues to coastal States and local governments with distributions under the latter statute using essentially the same formulas and methods in this rule.

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 provisions of this rule specify how qualified OCS revenues will be allocated to certain States and eligible CPSs. The rule will have no effect on the amount of royalties, rents, or bonuses owed by lessees, operators, or payers regardless of size and, consequently, will not have a significant economic effect on offshore lessees and operators, including those classified as small businesses. Small entities may benefit from expenditures funded by these shared revenues, but it is not possible to estimate that effect since under the statute, States and political subdivisions will decide how such revenues are spent.

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

Small Business Regulatory Enforcement Fairness Act

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

a. Will not have an annual effect on the economy of $100 million or more. The provisions of this rule specify how qualified OCS revenues will be allocated to States and CPSs. The rule will have no effect on the amount of royalties, rents, or bonuses owed by lessees, operators, or payers regardless of size and, consequently, will not have a significant adverse economic effect on offshore lessees and operators, including those classified as small businesses. The Gulf producing States and CPS recipients of the revenues will likely fund contracts that will benefit the local economies, small entities, and the environment. These effects are projected to be less than $100 million annually.

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

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The effects, if any, of distributing revenues to the States and CPSs are projected to be beneficial.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required because the rule is not a mandate. It merely provides the formulas and methods to implement an allocation of revenue to certain States and eligible CPSs, as directed by Congress. Further, the statute allows 3 percent of funds allocated to Gulf producing States and CPSs to be used for planning and administrative activities.

Takings Implication Assessment (E.O. 12630)

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

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation

of a Federalism Assessment. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role, though it may fund activities that mitigate local challenges attributed to OCS exploration and development. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

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

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

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

Consultation with Indian Tribes (E.O. 13175)

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

Paperwork Reduction Act

There are no information collection requirements subject to the Paperwork Reduction Act (PRA) and this rulemaking does not require a submission to OMB for review and approval under section 3507(d) of the PRA.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The MMS has analyzed this final rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This final rule meets the criteria set forth in 516 Departmental Manual 2 (Appendix 1.10) for a Departmental ''Categorical Exclusion'' in that this final rule is ''* * * of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis * * *.'' This final rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for a MMS ''Categorical Exclusion'' in that its impacts are limited to administration, economic or technological effects. Further, the MMS has analyzed this final rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 516 Departmental Manual 2.3, and Appendix 2. The MMS concluded that this final rule does not meet any of the criteria for extraordinary circumstances as set forth in 516 Departmental Manual 2 (Appendix 2).

Data Quality Act

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

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

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

List of Subjects in 30 CFR Part 219

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

Dated: December 9, 2008.

Foster L. Wade,

Deputy Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 219 as follows:

PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

■ 1. The authority citation for part 219 is revised to read as follows:

Authority: Section 104, Pub. L. 97–451, 96 Stat. 2451 (30 U.S.C. 1714), Pub. L. 109–432, Div C, Title I, 120 Stat. 3000.

■ 2. Amend part 219 by adding new Subpart D—Oil and Gas, Offshore, to read as follows:

Subpart D—Oil and Gas, Offshore

Sec.

Subpart D—Oil and Gas, Offshore

§ 219.410 What does this subpart contain?

(a) The Gulf of Mexico Energy Security Act of 2006 (GOMESA) directs the Secretary of the Interior to disburse a portion of the rentals, royalties, bonus, and other sums derived from certain Outer Continental Shelf (OCS) leases in the Gulf of Mexico (GOM) to the States of Alabama, Louisiana, Mississippi, and Texas (collectively identified as the Gulf producing States); to eligible coastal political subdivisions within those States; and to the Land and Water Conservation Fund. Shared GOMESA revenues are reserved for the following purposes:

(1) Projects and activities for the purposes of coastal protection, including conservation, coastal restoration, hurricane protection, and infrastructure directly affected by coastal wetland losses.

(2) Mitigation of damage to fish, wildlife, or natural resources.

(3) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.

(4) Mitigation of the impact of OCS activities through the funding of onshore infrastructure projects.

(5) Planning assistance and administrative costs not-to-exceed 3 percent of the amounts received.

(b) This subpart sets forth the formula and methodology MMS will use to determine the amount of revenues to be disbursed and the amount to be allocated to each Gulf producing State and each eligible coastal political subdivision. For questions related to the revenue sharing provisions in this subpart, please contact: Chief, Financial Management, Minerals Revenue Management; P.O. Box 25165; Denver Federal Center, Building 85; MS–350B1; Denver, CO 80225–0165, or at (303) 231–3429.

§ 219.411 What definitions apply to this subpart?

Terms in this subpart have the following meaning:

181 Area means the area identified in map 15, page 58, of the Proposed Final Outer Continental Shelf Oil and Gas

Leasing Program for 1997–2002, dated August 1996, of the Minerals Management Service, available in the Office of the Director of the Minerals Management Service, excluding the area offered in OCS Lease Sale 181, held on December 5, 2001.

181 Area in the Eastern Planning Area is comprised of the area of overlap of the two geographic areas defined as the ''181 Area'' and the ''Eastern Planning Area.''

181 South Area means any area—

(1) Located—

(i) South of the 181 Area;

(ii) West of the Military Mission Line; and

(iii) In the Central Planning Area;

(2) Excluded from the Proposed Final Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002, dated August 1996, of the Minerals Management Service; and

(3) Included in the areas considered for oil and gas leasing, as identified in map 8, page 37, of the document entitled, *Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012*, dated February 2006.

Applicable Leased Tract means a tract that is subject to a lease under section 8 of the Outer Continental Shelf Lands Act for the purpose of drilling for, developing, and producing oil or natural gas resources, and is located fully or partially in either the 181 Area in the Eastern Planning Area, or in the 181 South Area.

Central Planning Area means the Central Gulf of Mexico Planning Area of the Outer Continental Shelf, as designated in the document entitled, *Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012*, dated February 2006.

Coastal political subdivision means a political subdivision of a Gulf producing State any part of which political subdivision is—

(1) Within the coastal zone (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)) of the Gulf producing State as of December 20, 2006; and

(2) Not more than 200 nautical miles from the geographic center of any leased tract.

Coastline means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. This is the same definition used in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

Distance means the minimum great circle distance.

Eastern Planning Area means the Eastern Gulf of Mexico Planning Area of the Outer Continental Shelf, as designated in the document entitled, *Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012*, dated February 2006.

Gulf producing State means each of the States of Alabama, Louisiana, Mississippi, and Texas.

Leased Tract means any tract that is subject to a lease under section 6 or 8 of the Outer Continental Shelf Lands Act for the purpose of drilling for, developing, and producing oil or natural gas resources.

Military Mission Line means the north-south line at 86°41′ W. longitude.

Qualified OCS Revenues mean—

(1) The term qualified OCS revenues means, in the case of each of fiscal years 2007 through 2016, all rentals, royalties, bonus bids, and other sums received by the U.S. from leases entered into on or after December 20, 2006, located:

(i) In the 181 Area in the Eastern Planning Area; and

(ii) In the 181 South Area.

(iii) For applicable leased tracts intersected by the planning area administrative boundary line (e.g., separating the GOM Central Planning Area from the Eastern Planning Area), only the percent of revenues equivalent to the percent of surface acreage in the 181 Area in the Eastern Planning Area will be considered qualified OCS revenues.

(2) Exclusions to the term qualified OCS revenues include:

(i) Revenues from the forfeiture of a bond or other surety securing obligations other than royalties;

(ii) Civil penalties;

(iii) Royalties taken by the Secretary in-kind and not sold;

(iv) User fees; and

(v) Lease revenues explicitly circumscribed from GOMESA revenue sharing by statute or appropriations law.

§ 219.412 How will the qualified OCS revenues be divided?

For each of the fiscal years 2007 through 2016, 50 percent of the qualified OCS revenues will be placed in a special U.S. Treasury account from which 75 percent of the revenues will be disbursed to the Gulf producing States, and 25 percent will be disbursed to the Land and Water Conservation Fund. Each Gulf producing State will receive at least 10 percent of the qualified OCS revenues available for allocation to the Gulf producing States each fiscal year.

REVENUE DISTRIBUTION OF QUALIFIED OCS REVENUES UNDER GOMESA

Recipient of qualified OCS revenues	Percentage of qualified OCS revenues (percent)
U.S. Treasury (General Fund)	50
Land and Water Conservation Fund	12.5
Gulf Producing States	30
Gulf Producing State Coastal Political Subdivisions	7.5

§ 219.413 How will the coastal political subdivisions of Gulf producing States share in the qualified OCS revenues?

Of the revenues allocated to a Gulf producing State, 20 percent will be distributed to the coastal political subdivisions within that State.

§ 219.414 How will MMS determine each Gulf producing State's share of the qualified OCS revenues?

(a) The MMS will determine the geographic centers of each applicable leased tract and, using the great circle distance method, will determine the closest distance from the geographic centers of each applicable leased tract to each Gulf producing State's coastline.

(b) Based on these distances, we will calculate the qualified OCS revenues to be disbursed to each Gulf producing State using the following procedure:

(1) For each Gulf producing State, we will calculate and total, over all applicable leased tracts, the mathematical inverses of the distances between the points on the State's coastline that are closest to the geographic centers of the applicable leased tracts and the geographic centers of the applicable leased tracts. For applicable leased tracts intersected by the planning area administrative boundary line, the geographic center used for the inverse distance determination will be the geographic center of the entire lease as if it were not intersected.

(2) For each Gulf producing State, we will divide the sum of each State's inverse distances, from all applicable leased tracts, by the sum of the inverse distances from all applicable leased tracts across all four Gulf producing States. We will multiply the result by the amount of qualified OCS revenues to be shared as shown below. In the formulas, I_{AL}, I_{LA}, I_{MS}, and I_{TX} represent the sum of the inverses of the closest distances between Alabama, Louisiana, Mississippi, and Texas and all applicable leased tracts, respectively.

Alabama Share = ($I_{AL} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})$) × Qualified OCS Revenues

Louisiana Share = ($I_{LA} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})$) × Qualified OCS Revenues

Mississippi Share = ($I_{MS} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})$) × Qualified OCS Revenues

Texas Share = ($I_{TX} \div (I_{AL} + I_{LA} + I_{MS} + I_{TX})$) × Qualified OCS Revenues

(3) If in any fiscal year, this calculation results in less than a 10 percent allocation of the qualified OCS revenues to any Gulf producing State, we will recalculate the distribution. We will allocate 10 percent of the qualified OCS revenues to the State and recalculate the other States' shares of the remaining qualified OCS revenues omitting the State receiving the 10 percent minimum share and its 10 percent share from the calculation.

§ 219.415 How will bonus and royalty credits affect revenues allocated to Gulf producing States?

If bonus and royalty credits issued under Section 104(c) of the Gulf of Mexico Energy Security Act are used to pay bonuses or royalties on leases in the 181 Area located in the Eastern Planning Area and the 181 South Area, then there will be a corresponding reduction in qualified OCS revenues available for distribution.

§ 219.416 How will the qualified OCS revenues be allocated to coastal political subdivisions within the Gulf producing States?

The MMS will disburse funds to the coastal political subdivisions in accordance with the following criteria:

(a) Twenty-five percent of the qualified OCS revenues will be allocated to a Gulf producing State's coastal political subdivisions in the proportion that each coastal political subdivision's population bears to the population of all coastal political subdivisions in the producing State;

(b) Twenty-five percent of the qualified OCS revenues will be allocated to a Gulf producing State's coastal political subdivisions in the proportion that each coastal political subdivision's miles of coastline bears to the number of miles of coastline of all coastal political subdivisions in the producing State. Except that, for the State of Louisiana, proxy coastline lengths for coastal political subdivisions without a coastline will be considered to be ⅓ the average length of the coastline of all political subdivisions within Louisiana having a coastline.

(c) Fifty percent of the revenues will be allocated to a Gulf producing State's coastal political subdivisions in amounts that are inversely proportional to the respective distances between the geographic center of each applicable leased tract and the point in each coastal political subdivision that is closest to the geographic center of each applicable leased tract. Except that, an applicable leased tract will be excluded from this calculation if any portion of the tract is located in a geographic area that was subject to a leasing moratorium on January 1, 2005, unless that tract was in production on that date.

§ 219.417 How will MMS disburse qualified OCS revenues to the coastal political subdivisions if, during any fiscal year, there are no applicable leased tracts in the 181 Area in the Eastern Gulf of Mexico Planning Area?

If, during any fiscal year, there are no applicable leased tracts in the 181 Area in the Eastern Gulf of Mexico Planning Area, MMS will disburse funds to the coastal political subdivisions in accordance with the following criteria:

(a) Fifty percent of the revenues will be allocated to a Gulf producing State's coastal political subdivisions in the proportion that each coastal political subdivision's population bears to the population of all coastal political subdivisions in the State; and

(b) Fifty percent of the revenues will be allocated to a Gulf producing State's coastal political subdivisions in the proportion that each coastal political subdivision's miles of coastline bears to the number of miles of coastline of all coastal political subdivisions in the State. Except that, for the State of Louisiana, proxy coastline lengths for coastal political subdivisions without a coastline will be considered to be ⅓ the average length of the coastline of all political subdivisions within Louisiana having a coastline.

§ 219.418 When will funds be disbursed to Gulf producing States and eligible coastal political subdivisions?

(a) The MMS will disburse allocated funds in the fiscal year after MMS collects the qualified OCS revenues. For example, MMS will disburse funds in fiscal year 2010 from the qualified OCS revenues collected during fiscal year 2009.

(b) We intend to disburse funds on or before March 31st of the year following the fiscal year of qualified OCS revenues.

[FR Doc. E8–30469 Filed 12–22–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 594, 595 and 597

Global Terrorism Sanctions Regulations; Terrorism Sanctions Regulations; Foreign Terrorist Organizations Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury (''OFAC'') is amending the Global Terrorism Sanctions Regulations and the Terrorism Sanctions Regulations to expand the scope of authorizations in each of those programs for the provision of certain legal services. Similarly, OFAC is amending the Foreign Terrorist Organizations Sanctions Regulations to expand the scope of a statement of licensing policy concerning payment for certain legal services.

DATES: *Effective Date:* December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Policy, tel.: 202–622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control (''OFAC'') are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: 202–622–0077.

Background

OFAC administers three sanctions programs with respect to terrorists and terrorist organizations. The Terrorism Sanctions Regulations, 31 CFR part 595 (''TSR''), implement Executive Order 12947 of January 23, 1995, in which the President declared a national emergency with respect to ''grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process * * *.'' The Global Terrorism Sanctions Regulations, 31 CFR part 594 (''GTSR''), implement Executive Order 13224 of September 23, 2001, in which the President declared an emergency

more generally with respect to ''grave acts of terrorism and threats of terrorism committed by foreign terrorists * * *.'' The Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (''FTOSR''), implement provisions of the Antiterrorism and Effective Death Penalty Act of 1996.

OFAC is revising sections in the GTSR and the TSR that authorize the provision of specified legal services. Section 594.506 of the GTSR and § 595.506 of the TSR authorize U.S. persons to provide certain specified legal services to or on behalf of persons whose assets are blocked under those regulations, provided that any payment of professional fees and reimbursement of incurred expenses must be specifically licensed. OFAC is expanding the scope of these general licenses by adding to the specified legal services the representation of persons detained within the jurisdiction of the United States or by the U.S. government with respect to either such detention or any charges made against such persons. The general licenses also authorize the initiation and conduct of proceedings. OFAC has long had in place general licenses that authorize the provision of specified legal services on behalf of blocked persons and payment for those services when specifically licensed. OFAC is expanding these categories to cover this additional factual situation in the GTSR and the TSR, as well as related changes in the FTOSR discussed below. OFAC also is making non-substantive revisions to § 595.506 of the TSR in order to conform it to parallel § 594.506 of the GTSR. As a result, OFAC is reissuing § 595.506 in its entirety.

In addition, OFAC is amending § 597.505 of the FTOSR, which states that specific licenses may be issued, on a case-by-case basis, authorizing payment of professional fees and reimbursement of incurred expenses through a U.S. financial institution for certain specified legal services by U.S. persons. OFAC is amending this statement of licensing policy to add to the list of services for which payment may be specifically licensed the representation of agents of foreign terrorist organizations detained within the jurisdiction of the United States or by the U.S. government, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings.

These amendments are not intended to, and do not, imply or create any substantive right or cause of action against the United States, its officers or employees, or any other person.

Public Participation

Because the amendments of 31 CFR parts 594, 595, and 597 involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to 31 CFR parts 594, 595, and 597 are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 594

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 595

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 597

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR parts 594, 595 and 597 as follows:

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 64 FR 4075, 3 CFR, 2003 Comp., p. 161.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Amend § 594.506 by revising paragraph (a)(4), redesignating existing paragraph (a)(5) as (a)(6), and adding a new paragraph (a)(5) to read as follows:

§ 594.506 Provision of certain legal services authorized.

(a) * * *

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons;

(5) Representation of persons, wherever located, detained within the jurisdiction of the United States or by the United States government, with respect to either such detention or any charges made against such persons, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings; and

* * * * *

PART 595—TERRORISM SANCTIONS REGULATIONS

■ 3. The authority citation for part 595 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 4. Revise § 595.506 to read as follows:

§ 595.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property or interests in property are blocked pursuant to § 595.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal,

arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons;

(5) Representation of persons, wherever located, detained within the jurisdiction of the United States or by the United States government, with respect to either such detention or any charges made against such persons, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings; and

(6) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property or interests in property are blocked pursuant to § 595.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 595.201(a) is prohibited except to the extent otherwise provided by law or unless specifically licensed in accordance with § 595.202(e).

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 5. The authority citation for part 597 continues to read as follows:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 6. Amend § 597.505 by redesignating existing paragraphs (e) and (f) as (f) and (g), respectively, and adding a new paragraph (e) to read as follows:

§ 597.505 Payment for certain legal services.

* * * * *

(e) Representation of an agent of a foreign terrorist organization, wherever located, detained within the jurisdiction of the United States or by the United States government, with respect to either such detention or any charges made against such agent, including, but not limited to, the conduct of military commission prosecutions and the initiation and conduct of federal court proceedings;

* * * * *

Dated: December 17, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–30532 Filed 12–22–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Naval Restricted Area, Port Townsend, Indian Island, Walan Point, WA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is issuing a final rule to enlarge an existing restricted area within Port Townsend Bay, Indian Island, Walan Point, Washington. The purpose of the restricted area is to ensure the security and safety of the public, and satisfy security, safety and operational requirements as they pertain to naval vessels. The restricted area will be marked on navigation charts to ensure security and safety for the public.

DATES: *Effective Date:* January 22, 2009.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000, or by e-mail to *david.b.olson@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, at 202–761–4922, Ms. Michelle Walker, Regulatory Branch Chief, U.S. Army Corps of Engineers, Seattle District, Northwest Division, at 206–764–6915, or Ms. Vicky Didenhover of the Regulatory Branch, U.S. Army Corps of Engineers, Seattle District, at 206–764–3311.

SUPPLEMENTARY INFORMATION: In the July 31, 2007, issue of the **Federal Register** (72 FR 41654), the Corps published a proposed rule to enlarge an existing restricted area in Port Townsend Bay, Indian Island, Walan Point, Washington.

In response to the proposed rule, we received 10 comments, two of which expressed support for the enlarged area. The remaining comments expressed the following concerns:

A. *Pier lighting:* One commenter expressed concern that the number and brightness of pier lights caused glare along the shoreline.

The existing lights will not change in connection with expansion of the restricted area. Pier lighting is controlled so that the minimum lighting for safety and security is used during pier operations, and pier lights are positioned to shine on the pier surface and into adjoining waters.

B. *Fixed security barrier:* Two commenters were concerned over aesthetic impacts and interference with navigation that would be caused by a physical barrier structure in the water and the buoys that position it.

Consideration of any fixed barrier is distinct from this regulatory action to expand the existing restricted area. Any proposal to place a physical barrier around the restricted area will be the subject of a separate environmental review.

C. *Emergency response:* Another commenter was concerned about the ability of the Navy and local municipalities to respond to an emergency involving the Navy's Indian Island facility.

The Navy has a robust emergency response system and closely coordinates with local response agencies. This expansion of the restricted area does not produce an aggravated risk of a safety or security situation for which additional emergency response would be required.

D. *Accident potential:* Two commenters expressed concern that, by constricting room available for navigation, the expansion of the restricted area could increase the risk of marine accidents.

This rulemaking will not result in physical changes to the Indian Island site that will present new navigational impediments. The present restricted area has been in effect since 1961, with no record of causing marine accidents or otherwise hindering navigation. Once this final rule goes into effect, the restricted area's boundaries will still lie approximately 1½ nautical miles from the nearest point on the Port Townsend-Keystone ferry route, and approximately 1,700 yards to the closest point of land at Kala Point. The coordinates defining the expanded restricted area were selected to avoid interference with established ferry routes, to minimize interference with the adjacent traffic lanes of Port Townsend Bay, and to minimize interference with traffic to the

Port Townsend Paper Mill and Port Townsend Marina.

E. A local municipality said that the Department of the Navy should prepare an environmental impact statement for all activities involving the Naval Magazine Indian Island since 1998, including the expansion of the restricted area.

The Corps has prepared an environmental assessment for this rulemaking action to expand the existing restricted area. Other Department of the Navy activities at this facility are outside of this rulemaking action, and will be addressed as appropriate through separate National Environmental Policy Act (NEPA) actions by the Navy.

One commenter requested a public hearing, expressing concern that insufficient information was provided regarding the nature of the potentially hazardous conditions, from which the expanded restricted area is intended to provide protection for the public.

This rulemaking action does not evaluate or implement any change to the nature or intensity of U.S. Navy operations at the Indian Island facility, but merely enlarges an existing restricted area in order to provide an additional safety and security buffer between the public and those activities. This rulemaking and its underlying evaluation focus on the environmental and public interest impacts of the expanded restricted area. It does not evaluate the impacts of present safety and security conditions at the Indian Island facility; any changes to those conditions will be evaluated, as appropriate, by the Navy. Because the commenter did not raise reasons for holding a public hearing reflecting concerns over the impacts of the expanded restricted area, we have determined that no valid public interest would be served by holding such a hearing.

Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is amending its regulations at 33 CFR part 334 by modifying the restricted area at § 334.1270. The enlarged area will be activated on an intermittent basis by the U.S. Navy.

Procedural Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps has determined that the modification of this restricted area would have practically no economic impact on the public and no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, the Corps certifies that this regulation will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined that this rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment with a Finding of No Significant Impact has been prepared for this action in accordance with applicable regulations. It may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4). We have also found under section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Section 334.1270 is revised to read as follows:

§ 334.1270 Port Townsend, Indian Island, Walan Point; naval restricted area.

(a) *The area.* The waters of Port Townsend Bay bounded by a line commencing on the north shore of Walan Point at latitude 48°04′42″ North, longitude 122°44′30″ West (Point A); thence to latitude 48°04′50″ North, longitude 122°44′38″ West (Point B); thence to latitude 48°04′52″ North, longitude 122°44′57″ West (Point C); thence to latitude 48°04′44″ North, longitude 122°45′12″ West (Point D); thence to latitude 48°04′26″ North, longitude 122°45′21″ West (Point E); thence to latitude 48°04′10″ North, longitude 122°45′15″ West (Point F); thence to latitude 48°04′07″ North, longitude 122°44′49″ West (Point G); thence to a point on the Walan Point shoreline at latitude 48°04′16″ North, longitude 122°44′37″ West (Point H).

(b) *The regulations.* This area is for the exclusive use of the U.S. Navy. No person, vessel, craft, article or thing shall enter the area without permission from the enforcing agency. The restriction shall apply during periods when ship loading and/or pier operations preclude safe entry. The periods will be identified by flying a red flag from the ship and/or pier.

(c) *Enforcement.* The regulation in this section shall be enforced by Commander, Navy Region Northwest and such agencies and persons as he/she shall designate.

Dated: December 18, 2008.

Jonathan A. Davis,

Acting Deputy Chief, Operations, Directorate of Civil Works.

[FR Doc. E8–30590 Filed 12–22–08; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Naval Restricted Area, Manchester Fuel Depot, Washington; and Naval Restricted Areas, Sinclair Inlet, WA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is issuing a final rule establishing a restricted area within Puget Sound at Orchard Point, at the U.S. Navy Manchester Fuel Depot, near Manchester. The Corps is also amending an existing regulation for restricted areas within Sinclair Inlet at the Naval Base Kitsap-Bremerton and the Puget Sound Naval Shipyard, at the City of Bremerton, Kitsap County. The purpose of the new restricted area is to ensure the security and safety of the public,

and satisfy security, safety and operational requirements as they pertain to naval vessels. The purpose of the amended restricted area is also to ensure the security and safety of the public, and satisfy security, safety and operational requirements as they pertain to naval vessels, in addition to releasing for unimpeded transit of Washington State Ferries the eastern most area of the established restricted area. The restricted areas will be marked on navigation charts to ensure security and safety for the public.

DATES: *Effective date:* January 22, 2009.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000, or by e-mail to *david.b.olson@usace.army.mil*.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters Operations and Regulatory Community of Practice, at 202–761–4922, Ms. Michelle Walker, Regulatory Branch Chief, U.S. Army Corps of Engineers, Seattle District, Northwest Division, at 206–764–6915, or Ms. Vicky Didenhover of the Regulatory Branch, U.S. Army Corps of Engineers, Seattle District, at 206–764–3311.

SUPPLEMENTARY INFORMATION: In the July 31, 2007, issue of the **Federal Register** (72 FR 41655), the Corps published a proposed rule to establish a new restricted area and to amend an existing restricted area in Puget Sound and Sinclair Inlet, Washington.

In response to the proposed rule, we received one comment expressing concerns regarding the proposed restricted area for Manchester Fuel Depot:

A. Location of restricted area: The commenter expressed concern regarding the description of the location of the restricted area in relation to Orchard Point.

We agree that the fuel pier is best described as located south of Orchard Point. Paragraph (b) of § 334.1244 has been modified to state that the fuel pier is located south of Orchard Point.

B. Marking of restricted area: The commenter expressed concern that he and his neighbors would have to ''travel a little further'' to clear the restricted area and asked if the South East corner could be marked in order to avoid unintentional incursions.

Marking would most likely entail establishing a permanent buoy or structure in the Rich Passage area. At this time, the Navy has no plans to mark a restricted area that will be implemented only on an intermittent basis.

C. Noise created by vessels pounding against the pier: The commenter indicated that at certain times moored vessels pound noisily against the fuel pier or camels, due to wind or waves.

The establishment of a restricted area does not affect how vessels are moored at the pier. The noise complaint is more appropriately addressed by the Navy through separate administrative processes.

D. When the restricted areas are active: The commenter contended that the restricted area would only be active during loading/unloading operations, as articulated in the proposed rule, but should more appropriately remain active the entire time the ship is at the pier.

The restricted area, which is to be in effect whenever pier operations preclude safe entry, will give the Navy flexibility to keep the restrictions active anytime a ship is at the pier, not merely during fueling operations.

E. The restricted area is ineffective without a physical barrier: The commenter asserted that some sort of physical barrier would be needed to provide effective security.

The establishment of a restricted area provides a legal basis upon which the public may be excluded from access and thus constitutes a legal action, not a physical action. There are currently no plans to install a physical barrier at Manchester Fuel Depot.

No comments were received on the proposed changes to the restricted area regulation for Sinclair Inlet.

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations in 33 CFR part 334 by adding § 334.1244 for the Manchester Fuel Depot, the creation of which is intermittent and subject to activation by the U.S. Navy. We are also amending the restricted area regulations in 33 CFR part 334 by modifying the area at § 334.1240, which creates a permanent enlargement near Pier D at Naval Base Kitsap-Bremerton and deletes the northeastern-most section of the restricted area.

Procedural Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). We have determined that the establishment of the new restricted area and the amendment of the existing restricted area would have practically no economic impact on the public and no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, we certify that this rule will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, we have determined that this rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment with a Finding of No Significant Impact has been prepared for this action in accordance with applicable regulations. It may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.1240 to read as follows:

§ 334.1240 Sinclair Inlet; naval restricted areas.

(a) *Sinclair Inlet: naval restricted areas.* (1) *Area No. 1.* All the waters of Sinclair Inlet westerly of a line drawn from the Bremerton Ferry Landing at

latitude 47°33′48″ North, longitude 122°37′23″ West on the north shore of Sinclair Inlet; and latitude 47°32′52″ North, longitude 122°36′58″ West, on the south shore of Sinclair Inlet.

(2) *Area No. 2.* That area of Sinclair Inlet to the north and west of an area bounded by a line commencing at latitude 47°33′40″ North, longitude 122°37′32″ West (Point A); thence south to latitude 47°33′36″ North, longitude 122°37′30″ West (Point B); thence southwest to latitude 47°33′23″ North, longitude 122°37′45″ West (Point C); thence southwest to latitude 47°33′19″ North, longitude 122°38′12″ West (Point D); thence southwest to latitude 47°33′10″ North, longitude 122°38′19″ West (Point E); thence southwest to latitude 47°33′07″ North, longitude 122°38′29″ West (Point F); thence southwest to latitude 47°33′04″ North, longitude 122°39′07″ West (Point G); thence west to the north shore of Sinclair Inlet at latitude 47°33′04.11″ North, longitude 122°39′41.92″ West (Point H).

(3) *The regulations.* (i) *Area No. 1.* No vessel of more than, or equal to, 100 gross tons shall enter the area or navigate therein without permission from the enforcing agency, except Washington State Ferries on established routes.

(ii) *Area No. 2.* This area is for the exclusive use of the United States Navy. No person, vessel, craft, article or thing, except those under supervision of military or naval authority shall enter this area without permission from the enforcing agency.

(b) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region Northwest, and such agencies and persons as he/she shall designate.

■ 3. Add § 334.1244 to read as follows:

§ 334.1244 Puget Sound, Manchester Fuel Depot, Manchester, Washington; naval restricted area.

(a) *The area.* The waters of Puget Sound surrounding the Manchester Fuel Depot Point A, a point along the northern shoreline of the Manchester Fuel Depot at latitude 47°33′55″ North, longitude 122°31′55″, West; thence to latitude 47°33′37″ North, longitude 122°31′50″, West (Point B); thence to latitude 47°33′32″ North, longitude 122°32′06″, West (Point C); thence to latitude 47°33′45.9″ North, longitude 122°32′16.04″, West (Point D), a point in Puget Sound on the southern shoreline of the Manchester Fuel Depot.

(b) *The regulations.* No person, vessel, craft, article or thing except those under the supervision of the military or naval authority shall enter the area without the permission of the enforcing agency or his/her designees. The restriction shall apply during periods when a ship is loading and/or pier operations preclude safe entry. The restricted periods will be identified by the use of quick-flashing beacon lights, which are mounted on poles at the end of the main fuel pier on the south side of Orchard Point at the entrance of Rich Passage. Entry into the area is prohibited when the quick-flashing beacons are in a flashing mode.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region Northwest, and such agencies and persons as he/she shall designate.

Dated: December 18, 2008.

Jonathan A. Davis,

Acting Deputy Chief, Operations, Directorate of Civil Works.

[FR Doc. E8–30588 Filed 12–22–08; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AB01

[Docket ID ED–2008–OESE–0003]

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final rule; correction.

SUMMARY: The Department of Education is correcting a final regulation that was published in the **Federal Register** on October 29, 2008 (73 FR 64436). The final regulations clarified and strengthened the Title I regulations in the areas of assessment, accountability, public school choice, and supplemental educational services.

DATES: Effective December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Zollie Stevenson, Jr., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, Washington, DC 20202–6132. Telephone: (202) 260–1824.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed under this section.

SUPPLEMENTARY INFORMATION: This is the second set of corrections to these regulations. The first set of corrections was published in the **Federal Register** on November 28, 2008 (73 FR 72352).

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—mducation, Indians—education, Infants and children, Institutions of higher education, Juvenile delinquency, Local educational agencies, Migrant labor, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

■ Accordingly, 34 CFR part 200 is corrected by making the following correcting amendments:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

§ 200.7 [Amended]

■ 2. Section 200.7 is amended by:

■ A. In paragraph (b)(3), removing the words ''adequate yearly progress'' and adding, in their place, the word ''AYP''.

■ B. In paragraph (b)(4), removing the words ''adequate yearly progress'' and adding, in their place, the word ''AYP''.

§ 200.12 [Amended]

■ 3. Section 200.12(a)(2) is amended by removing the words ''adequate yearly progress'' and the parentheses around the word ''AYP''.

■ 4. Section 200.42 is amended by adding a new paragraph (b)(5) to read as follows:

§ 200.42 Corrective action.

* * * * *

(b) * * *

(5) Continue to comply with § 200.39(c).

* * * * *

■ 5. Section 200.43 is amended by:

■ A. Adding a new paragraph (b)(5).

■ B. In paragraph (c)(1)(i), removing the word ''and'' at the end of the paragraph.

■ C. In paragraph (c)(1)(ii), removing the punctuation ''.'' and adding, in its place, the words ''; and'' at the end of the paragraph.

■ D. Adding a new paragraph (c)(1)(iii).

The additions read as follows:

§ 200.43 Restructuring.

* * * * *

(b) * * *

(5) Continue to comply with § 200.39(c).

(c) * * *

(1) * * *

(iii) Continue to comply with § 200.39(c).

* * * * *

■ 5. Section 200.48(a)(2)(iii)(B) is amended by removing the word ''The'' at the beginning of the paragraph and adding, in its place, the words ''Except as provided in paragraph (a)(2)(iii)(C) of this section, the''.

Dated: December 18, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–30552 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0154; FRL–8755–4]

RIN 2060–AO13

Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising the area source category list by changing the name of the ferroalloys production category to clarify that it includes all types of ferroalloys. We are also adding two additional products (calcium carbide and silicon metal) to the source category. EPA is issuing final national emissions standards for control of hazardous air pollutants (HAP) for area source ferroalloys production facilities. The final emissions standards for new and existing sources reflect EPA's determination regarding the generally available control technology (GACT) or management practices for the source category.

DATES: This final rule is effective on December 23, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0154. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., confidential business information 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 Area Source National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ferroalloys Production Facilities Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Conrad Chin, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1512; fax number: (919) 541–3207; e-mail address: *chin.conrad@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by this final rule include:

Category	NAICS code[1]	Examples of regulated entities
Industry:		
Electrometallurgical Ferroalloy Product Manufacturing	331112	Area source facilities that manufacture ferroalloys.
Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	331419	Area source facilities that manufacture silicon metal.
All Other Basic Inorganic Chemical Manufacturing	325188	Area source facilities that manufacture calcium carbide.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this final action, you should examine the applicability criteria in 40 CFR 63.11524 of subpart YYYYYY (NESHAP for Area Sources: Ferroalloys Production Facilities). If you have any questions regarding the applicability of this final action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 23, 2009. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112(d) of the CAA requires us to establish NESHAP for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We implemented these requirements through the Strategy and subsequent updates to the source category list. The ferroalloys production source category was listed pursuant to section 112(c)(3) for its contributions toward meeting the 90 percent requirement of chromium compounds, manganese compounds, and nickel compounds.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technology [GACT] or management practices by such sources to reduce emissions of hazardous air pollutants.'' As explained in the preamble to the proposed NESHAP, we are issuing standards based on GACT.

We are issuing these final national emission standards for ferroalloys production area sources in response to a court-ordered deadline that requires EPA to issue standards for one source category listed pursuant to section 112(c)(3) and (k) by December 15, 2008 (*Sierra Club* v. *Johnson*, no. 01–1537, D.D.C., March 2006).

III. Revision to the Source Category List

This final rule announces a revision to the area source category list developed under our Integrated Urban Air Toxics Strategy pursuant to CAA section 112(c)(3). The revision includes changing the name of the source category ''Ferroalloys Production: Ferromanganese and Silicomanganese'' to ''Ferroalloys Production Facilities.'' We are also adding two additional products (calcium carbide and silicon metal) to the source category.[1]

IV. Summary of Major Changes Since Proposal

We have made three significant changes to the proposed rule based on public comments.

Electrometallurgical Operation Visible Emissions. In response to comments, we have increased the level of the allowable accumulated occurrences of visible emissions (VE) from the electrometallurgical operation using EPA Method 22 from 3 percent in a 60-minute observation period to 5 percent in a 60-minute observation period.

Furnace Building Opacity. While we have retained the 20 percent opacity limit for the discharge of fugitive particulate matter (PM) emissions from the furnace building containing the

[1] We did not receive any adverse comments on the proposed revisions to the list.

electrometallurgical operations, we have increased the limit of the allowed single 6-minute average above 20 percent from 40 percent to 60 percent.

Frequency of VE Observations. Under this final rule, sources that conduct daily visual monitoring of the electric arc furnace (EAF) or other reaction vessel control equipment would be allowed to decrease this frequency to a weekly observation upon achieving 90 consecutive operating days of observation with no presence of any VE noted. If VE is noted after the source converts to a weekly schedule, the source must revert to daily observations for the affected control equipment until it achieves an additional 90 consecutive operating days of observation with no presence of any VE noted. At that point, the source may convert to weekly observations. We have also clarified this final rule to specify that such observations only need to be made on days (or weeks) when the electrometallurgical operations and associated control devices are operating.

V. Summary of Final Standards

A. Do these final standards apply to my source?

This final rule (subpart YYYYYY) applies to each existing or new electrometallurgical operation located at an area source that produces silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products. These standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

B. When must I comply with these standards?

All existing area source facilities subject to this final rule must comply with the rule requirements no later than June 22, 2009. New sources must comply with these final rule requirements on December 23, 2008 or upon startup of the facility, whichever is later.

C. What are the final standards?

1. Electrometallurgical Operation VE Limit

These final standards establish a limit, as measured by Method 22 (Appendix A–7 of 40 CFR part 60), on the duration of VE from the control device(s) on the electrometallurgical operations. The Method 22 test is designed to measure the amount of time that any VE are observed during an observation period. The owner or operator must demonstrate that the control device outlet emissions do not exceed 5 percent of accumulated occurrences in a 60-minute observation period. We refer to this as the 5 percent limit throughout this document.

2. Furnace Building Opacity Limit

These final standards establish a limit for fugitive emissions, as determined by Method 9 (Appendix A–4 of 40 CFR part 60), from the furnace building due solely to electrometallurgical operations. The owner or operator must demonstrate that the furnace building emissions do not exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute period per hour for which the average opacity does not exceed 60 percent during the 1-hour observation period. The observation period must include product tapping.

D. What are the initial and subsequent testing requirements?

1. Electrometallurgical Operations VE Limit

For each control device on an electrometallurgical operation, the owner or operator must conduct an initial Method 22 (Appendix A–7 of 40 CFR part 60) VE test for at least 60 minutes. A semiannual Method 22 test is required thereafter. In the case of a fabric filter control device, emissions would be observed at the monovent or outlet stack(s), as applicable. For ferroalloy facilities using wet scrubbers for PM control, the observations would be conducted at the scrubber outlet stack. For example, scrubber outlet emissions may be directed to a flare or to another combustion source such as a dryer. In this case the outlet of the downstream device or process would be observed.

2. Furnace Building Opacity

In order to demonstrate compliance with the furnace building opacity requirements, the owner or operator must conduct an initial 60-minute (ten 6-minute averages) opacity test for fugitive emissions from the furnace building according to the procedures in § 63.6(h) (subpart A of the 40 CFR part 63 General Provisions) and Method 9 of Appendix A–4 of 40 CFR part 60. The owner or operator must conduct a follow up Method 9 test every 6 months.

In order to provide flexibility to sources and reduce the costs of demonstrating compliance, this final rule allows sources to monitor VE using a Method 22 test in place of the semiannual Method 9 test. The Method 22 test is successful if no VE are observed for 90 percent of the readings over the furnace cycle (tap to tap) or 60 minutes, whichever is more. If VE are observed greater than 10 percent of the time over the furnace cycle or 60 minutes, whichever is more, then the facility must conduct a Method 9 performance test as soon as possible, but no later than 15 calendar days after the Method 22 test.

E. What are the monitoring requirements?

For existing ferroalloy facilities, the owner or operator must conduct and record the results of daily visual inspection of the control device outlet on days when the electrometallurgical operation is operating. In the case of a fabric filter, the source would observe the monovent or fabric filter outlet stack(s) for any VE. In the case of a wet scrubber, the source would observe the scrubber outlet stack. Should any of the daily observations reveal any VE, the owner or operator must conduct a Method 22 test as described earlier within 24 hours.

The source would have the option to decrease the frequency of observations from daily to weekly if the source collects at least 90 consecutive operating days of observations with no VE. If, after the source converts to a weekly schedule, any VE is observed, the source must revert to a daily schedule, until another consecutive 90 operating days of data are obtained that demonstrate there was no VE during the period observed. Then, the source may convert to a weekly observation schedule.

The owner or operator of a new electrometallurgical operation equipped with a new fabric filter is required to install and operate a bag leak detection system and prepare a site-specific monitoring plan instead of complying with the daily (or weekly) visual inspection requirements for existing sources. In addition, existing sources have the option of complying with the bag leak detection system requirements as an alternative to the daily (weekly) visual inspections.

In case of bag leak detection system alarm, the source must conduct a visual inspection within 1 hour of the alarm sounding. If the visual monitoring reveals the presence of any VE, the source must conduct a Method 22 test within 24 hours of determining the presence of any VE.

The owner or operator of a new sealed EAF equipped with a wet scrubber must install, operate and maintain a

continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate instead of complying with the daily (weekly) visual inspection requirements. Existing sources have the option of conducting CPMS monitoring in place of the daily (weekly) visual inspection requirements, as well.

When operating a CPMS, if the 3-hour average pressure drop or scrubber water flow rate is below the minimum levels that indicate normal operation of the control device, the source must conduct visual monitoring of the outlet stack(s) within 1 hour of determining that the 3-hour average parameter value is below the required minimum levels. Manufacturer's specifications will be used to provide the values for normal operation. If the visual monitoring reveals the presence of any VE, the source must conduct a Method 22 test within 24 hours of determining the presence of any VE.

F. What are the notification, recordkeeping, and reporting requirements?

The affected new and existing sources are required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 1 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting, including provisions for a startup, shutdown, and malfunction (SSM) plan and reports required by 40 CFR 63.6(e). Each facility is required to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 in the General Provisions. The owner or operator is required to submit the Initial Notification within 120 days after publication of this final rule in the **Federal Register**. The owner or operator is required to submit a Notification of Compliance Status within 90 days after the applicable compliance date to demonstrate initial compliance with this final rule.

In addition to the records required by 40 CFR 63.10, owners and operators are required to maintain records of all monitoring data including:

- Date, place, and time of the monitoring event
- Person conducting the monitoring
- Technique or method used
- Operating conditions during the activity
- Results, including the date, time, and duration of the period from the time the monitoring indicated a problem to the time that monitoring indicated proper operation.

G. What are the title V permit requirements?

This final rule exempts the ferroalloys production area source category from title V permitting requirements unless the affected source is otherwise required by law to obtain a title V permit. For example, sources that have title V permits because they are major sources under the criteria pollutant program would maintain those permits.

VI. Summary of Comments and Responses

We received six comments from industry representatives on the proposed rule during the comment period. Sections VI.A. through VI.D. summarize the significant comments and explain our response. Some of the comments we received requested clarification or only addressed minor source-specific issues. These comments are summarized and addressed in a memorandum to the project docket.

A. Electrometallurgical Operation VE Limit

Comment: Some commenters suggested that this final rule should allow a 5 percent accumulation of VE at the control device outlet instead of the proposed 3 percent limit. Some commenters disagreed with using data from the cement kiln industry to select a 3 percent VE limit for furnace or reaction vessel emissions (emitted from a baghouse or scrubber).[2] Instead, they said the limit should be comparable to the maximum achievable control technology (MACT) standard for baghouse emissions of ''35 milligrams per dry standard cubic meter, or 0.015 grains per dry standard cubic foot (gr/dscf)'' (40 CFR 63.1652(a)). The commenters added that 5 percent VE translates to a 3-minute accumulation period, vs. a 1.8-minute accumulation period at 3 percent, which is more practical to implement.

Response: As described at proposal, we determined that GACT is either a well controlled baghouse or wet scrubber, which is correlated with low particulate concentration in the exhaust gas. We selected 3 percent as the proposed VE limit instead of stack sampling to minimize the burden of compliance demonstration. However, we agree with commenters that a 5 percent accumulation is more practical to implement and, as such, is GACT. Because this change will not have a significant impact on emissions and will be simpler to implement, we are changing this final rule to allow a 5 percent accumulation.

B. Furnace Building Opacity Limit

Comment: Commenters argued that the proposed furnace building opacity limit is too restrictive in terms of the proposed upper bound of 40 percent for no more than one 6-minute period during the 60-minute observation period. Commenters provided additional information that some sources have existing permits that allow excursions up to 60 percent. For example, one ferrosilicon manufacturing facility is subject to a range of opacity limits depending on the operation being observed. Commenters also noted that some of the rules that EPA referenced in the proposed GACT determination were not for ferroalloys operations. They suggested that EPA should look to States like Kentucky and Ohio that have ferroalloys-specific rules and are based on a 60 percent upper limit.

Response: We agree with the commenters that there is evidence that the GACT for the 1-minute excursion level is 60 percent. In response to comments, we reviewed the permit limits for existing ferroalloys production area sources and found a range of allowed excursion levels ranging from 0 to 60 percent. We also looked at State rules in those States that have existing ferroalloys production sources. All had baseline opacity limits of 15 to 20 percent, and all allowed excursions of 40 to 60 percent or specified conditions that could be excluded from the observation. In the case of New York, there is a provision for the source to petition for an alternative limit. Therefore, based on existing permit requirements and relevant State regulations, we believe that a single 6-minute excursion level of 60 percent is GACT for this category. Because sources are, in fact, operating up to an excursion level of 60 percent, and this level presumably accounts for different normal operating conditions, we are making the change requested by the commenter.

C. Daily VE Inspections

The proposed rule required sources to conduct daily visual monitoring of the monovent or control device outlet stack(s) for any VE.

Comment: Some commenters said this final rule does not allow for any deviation from daily visible inspections of all control device outlets, even if the equipment is not operating. Some

[2] In the proposal preamble (73 FR 53169, September 15, 2008) we cited an example of a test at a wet cement kiln with a fabric filter that showed when outlet concentrations were less than 0.009 gr/dscf, opacity was less than 2 percent.

commenters also suggested a step-down process similar to that found in other programs, where in the absence of noting emissions during daily observations over a specified time period (e.g., one month), the source could step down to weekly observations. They said that this approach is consistent with federal leak detection and repair rules and would reduce the ''substantial burden on the affected facilities with no benefit to the environment.''

Response: First, we agree with commenters that observations are meaningful only on days when the source equipment (and control device) are operating. This final rule clarifies this point.

Also, based on a closer inspection of existing permit requirements for area sources in this industry, we did find some permits that required either weekly monitoring and/or allowed a step down from daily to weekly. While we estimate that the overall burden associated with the monitoring requirement is minimal, we are also sensitive to the fact that these are generally operations with a small number of staff with many other responsibilities. The intent of the VE inspection is to have ongoing assurance that the control device is operating properly. We are comfortable that a demonstration that shows good performance over at least 90 consecutive operating days, followed by weekly inspections, is sufficient for the type of controls (generally baghouses) used in this industry. Therefore we are changing this final rule to include a provision for stepped down observations after demonstrating good ongoing performance. Should a source subsequently observe VE on a weekly schedule, the source would have to revert to a daily schedule until another 90-day block of observations could be used to justify returning to a weekly schedule.

Comment: Another commenter said that the initial and semi-annual observations are ''entirely adequate'' to show compliance with the proposed standards. The commenter said area sources do not have the resources to send out personnel on a daily basis during operations to perform observations, nor should the same be required as a GACT standard or work practice. They added that title V does not require daily monitoring of any parameter.

Response: We disagree with the commenter that an initial and semi-annual observation alone provides sufficient assurance of compliance with the VE limit. While this final rule exempts sources from the title V permit requirement if the source is otherwise not subject to title V, we note that part of the basis for the exemption is that subjecting sources to the permit requirement would not lead to better monitoring and enforceability. PM control device monitoring provisions have historically been based on the use of either continuous opacity monitoring, bag leak detection, or parametric monitoring (e.g., pressure drop). Parametric monitoring requirements may be continuous, or, in some cases, daily in the form of a meter reading. With this final rule, we have replaced such requirements with daily VE monitoring that we believe provide data indicative of a well operated and maintained control device. In addition, the daily VE observation we require should not take more than 5 minutes, a burden we deem as minimal. As discussed above, we have provided the opportunity to reduce the frequency of such monitoring to weekly, but believe this is the minimum frequency that would demonstrate ongoing compliance. A facility always has the option to install the bag leak detection system or CPMS in lieu of the daily VE monitoring.

D. Activities Subject to the GACT Rule

Comment: Some commenters disagreed with our contention in the proposal preamble that blowing taps, poling, and oxygen lancing should be considered upsets or malfunctions and handled under the General Provisions SSM provisions. One commenter added that requiring an area source to treat a blowing tap or other operation associated with tapping as events that would require reporting to the administrative agency through an SSM plan adds unnecessary regulatory burden.

Response: We have reviewed our statements in the proposal preamble that such events should be treated under a source's SSM plan. Upon further discussions with the commenters we realized that some events such as poling can be quite frequent (e.g., daily), and may be difficult to define for all operations and product types. It was a mischaracterization on our part to imply that all such events are always malfunctions. We did not intend to require that sources include these events in their SSM plan such that the result would be daily reports of events that are not actual malfunctions. The content of the SSM plan is left to the discretion of the source and this final rule does not specify that such events should be included in a plan.

Comment: Commenters contended that blowing taps, poling, and oxygen lancing should be exempted from the area source GACT rule. They noted that such events are exempt from the ferroalloys MACT opacity standard (40 CFR 63.1653(b)) and requested that EPA provide the same exemption for area sources.

Response: We note that blowing taps, poling, and oxygen lancing activities emit the same urban HAP for which the source category was listed under section 112(c)(3). As we explained in the proposed rule, we listed the ferroalloys production area source category under section 112(c)(3) because we needed the category to meet the section 112(c)(3) 90 percent requirement for emissions of chromium compounds, manganese compounds, and nickel compounds. The record adequately supports and the commenters do not question that there are HAP emissions related to poling, oxygen lancing, and blowing taps, and that these emissions are from emission points in this source category. Because poling, oxygen lancing, and blowing taps emit chromium compounds, manganese compounds, and nickel compounds, we are appropriately setting standards for these activities in this GACT rule.

Based on discussions with the commenters, they indicated that they can meet the furnace building opacity standard without resorting to such exemptions. The availability of the increased excursion level provides a level of operation that does not require an exemption of the activities discussed above.[3] In fact, the purpose of the excursion level is to address variable operations and/or emissions. Because we believe that all companies can meet the opacity limit with the revised 60 percent excursion level, we do not believe an exemption of blowing taps, poling, and oxygen lancing events to be appropriate, since these events are HAP-emitting normal operations.

Finally, we have established that the controls required under this final rule are generally available within the source category. As more thoroughly discussed in the proposal and in Section IV (Summary of Major Changes Since Proposal), above, we have assessed the control technologies currently in place in this source category, reviewed the economics of this industry, and identified low cost methods to assure that HAP are well controlled. As described above, none of the commenters objected to the feasibility of

[3] See docket memos dated October 22, 2008 that summarize discussions with commenters on this topic.

meeting the building opacity limit, and none said it was prohibitive in cost or otherwise not an available technique. In light of the need to meet the requirements of section 112(c)(3) and the record basis for saying the control measures required today are generally available, we have decided to retain coverage of blowing taps, poling, and oxygen lancing. There is additional discussion on our decision to regulate these activities in the docket memorandum.

VII. Impacts of the Final Standards

Affected sources are well-controlled and our GACT determination reflects such controls. Compared to the early 1990s when we evaluated this industry as part of the development of the major source rule, we believe that sources have improved their level of control and reduced emissions due to State permitting requirements or actions taken to improve efficiency and/or reduce costs. For example, sources have reported improved capture of tapping emissions, improved process controls that minimize upset conditions, and installed improvements in fabric filter technology such as Goretex® bags. We estimate that the only impact associated with this final rule is for the compliance requirements (monitoring, reporting, recordkeeping and testing), which is estimated to be approximately $3,600 per facility.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This final action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP requires ferroalloys production area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). Records are required to demonstrate compliance with the opacity and VE requirements. The owner or operator of a ferroalloys production facility also is subject to notification and recordkeeping requirements in 40 CFR 63.9 and 63.10 of the General Provisions (subpart A), although we have deemed that annual compliance reports are sufficient instead of semiannual reports.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 387 labor hours per year at a labor cost of $35,662 or approximately $3,600 per facility. The average annual reporting burden is 26 hours per response, with approximately 3 responses per facility for 10 respondents. There are no capital and operating and maintenance costs associated with this final rule requirements for existing sources. Burden is defined at 5 CFR 1320.3(b).

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. EPA displays OMB control numbers various ways. For example, EPA lists OMB control numbers for EPA's regulations in 40 CFR part 9, which we amend periodically. Additionally, we may display the OMB control number in another part of the CFR, or in a valid **Federal Register** notice, or by other appropriate means. The OMB control number display will become effective the earliest of any of the methods authorized in 40 CFR part 9.

When this ICR is approved by OMB, the Agency will publish a **Federal Register** notice announcing this approval and displaying the OMB control number for the approved information collection requirements contained in this final rule. If necessary, we will also publish a technical amendment to 40 CFR part 9 in the **Federal Register** to consolidate the display of the OMB control number with other approved information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 750 employees for NAICS 331112 and 331419 and less than 1,000 employees for NAICS 325188); (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.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule is estimated to impact 10 area source ferroalloys production facilities that are currently operating. We estimate that five of these facilities may be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 0.02 percent. The costs are so small that the impact is not expected to be significant. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final rule on small entities. These standards represent practices and controls that are common throughout the ferroalloys production industry. These standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained from small businesses in our surveys, consultation with small business representatives on the State and national level, and industry

representatives that are affiliated with small businesses.

D. Unfunded Mandates Reform Act (UMRA)

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule is not expected to impact State, local, or tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This final 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. This final rule contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

Executive Order 13132 (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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this final action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable VCS. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use EPA Methods 9 and 22 in this final rule.

Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on December 23, 2008.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 15, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Part 63 is amended by adding subpart YYYYYY to read as follows:

Subpart YYYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

Applicability and Compliance Dates

Standards, Monitoring, and Compliance Requirements

Other Requirements and Information

Subpart YYYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

Applicability and Compliance Dates

§ 63.11524 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a ferroalloys production facility that is an area source of hazardous air pollutant (HAP) emissions. A ferroalloys production facility manufactures silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces (EAFs) or other reaction vessels.

(b) The provisions of this subpart apply to each existing and new electrometallurgical operation affected source as defined in paragraphs (b)(1) and (b)(2) of this section.

(1) An electrometallurgical operation affected source is existing if you commenced construction or reconstruction of the EAF or other reaction vessel on or before September 15, 2008.

(2) An electrometallurgical operation affected source is new if you commenced construction or reconstruction of the EAF or other reaction vessel after September 15, 2008.

(c) This subpart does not apply to research or laboratory facilities as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11525 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by June 22, 2009.

(b) If you start up a new affected source on or before December 23, 2008, you must achieve compliance with the applicable provisions of this subpart by no later than December 23, 2008.

(c) If you start up a new affected source after December 23, 2008, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards, Monitoring, and Compliance Requirements

§ 63.11526 What are the standards for new and existing ferroalloys production facilities?

(a) You must not discharge to the atmosphere visible emissions (VE) from the control device that exceed 5 percent of accumulated occurrences in a 60-minute observation period.

(b) You must not discharge to the atmosphere fugitive PM emissions from the furnace building containing the electrometallurgical operations that exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 60 percent.

§ 63.11527 What are the monitoring requirements for new and existing sources?

(a) *EAF Equipped with Fabric Filters.*

(1) *Visual Monitoring.* You must conduct visual monitoring of the monovent or fabric filter outlet stack(s) for any VE according to the schedule specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(i) *Daily Visual Monitoring.* Perform visual determination of fugitive emissions once per day, on each day the process is in operation, during operation of the process.

(ii) *Weekly Visual Monitoring.* If no visible fugitive emissions are detected in consecutive daily visual monitoring performed in accordance with paragraph (a)(1)(i) of this section for 90 days of operation of the process, you may decrease the frequency of visual monitoring to once per calendar week of time the process is in operation, during operation of the process. If visible fugitive emissions are detected during these inspections, you must resume daily visual monitoring of that operation during each day that the process is in operation, in accordance with paragraph (a)(1)(i) of this section until you satisfy the criteria of this section to resume conducting weekly visual monitoring.

(2) If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(3) If you own or operate an existing affected source, you may install, operate, and maintain a bag leak detection system for each fabric filter as an alternative to the monitoring requirements in paragraph (a)(1) of this section. If you own or operate a new affected source, you must install, operate, and maintain a bag leak detection system for each fabric filter according to the requirements in paragraphs (a)(3)(i) through (a)(3)(vii) of this section. Such source is not subject to the requirements in paragraphs (a)(1) and (a)(2) of this section.

(i) The system must be certified by the manufacturer to be capable of detecting emissions of PM at concentrations of 10 milligrams per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings and the owner or operator shall continuously record the output from the bag leak detection system using a strip chart recorder, data logger, or other means.

(iii) The system must be equipped with an alarm that will sound when an increase in relative PM loadings is detected over the alarm set point established in the operation and maintenance plan, and the alarm must be located such that it can be heard, seen, or otherwise detected by the appropriate plant personnel.

(iv) The initial adjustment of the system must, at minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and

establishing the alarm set points. If the system is equipped with an alarm delay time feature, you also must establish a maximum reasonable alarm delay time.

(v) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set point, or alarm delay time, except that, once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects including temperature and humidity.

(vi) For fabric filters that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the fabric filter and upstream of any wet scrubber.

(vii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(4) When operating a bag leak detection system, if an alarm sounds, conduct visual monitoring of the monovent or fabric filter outlet stack(s) as required in paragraph (a)(1) of this section within 1 hour. If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(5) You must prepare a site-specific monitoring plan for each bag leak detection system. You must operate and maintain each bag leak detection system according to the plan at all times. Each plan must address all of the items identified in paragraphs (a)(5)(i) through (a)(5)(v)of this section.

(i) Installation of the bag leak detection system.

(ii) Initial and periodic adjustment of the bag leak detection system including how the alarm set-point and alarm delay time will be established.

(iii) Operation of the bag leak detection system including quality assurance procedures.

(iv) Maintenance of the bag leak detection system including a routine maintenance schedule and spare parts inventory list.

(v) How the bag leak detection system output will be recorded and stored.

(b) *EAF Equipped with Wet Scrubbers.*

(1) Visual Monitoring. You must conduct visual monitoring of the wet scrubber outlet stack(s) for any VE according to the schedule specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Daily Visual Monitoring.* Perform visual determination of fugitive emissions once per day, on each day the process is in operation, during operation of the process.

(ii) *Weekly Visual Monitoring.* If no visible fugitive emissions are detected in consecutive daily visual monitoring performed in accordance with paragraph (b)(1)(i) of this section for 90 days of operation of the process, you may decrease the frequency of visual monitoring to once per calendar week of time the process is in operation, during operation of the process. If visible fugitive emissions are detected during these inspections, you must resume daily visual monitoring of that operation during each day that the process is in operation, in accordance with paragraph (b)(1)(i) of this section until you satisfy the criteria of this section to resume conducting weekly visual monitoring.

(2) If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(3) If you own or operate an existing affected source, you may install, operate and maintain a continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate as an alternative to the monitoring requirements specified in paragraph (b)(1) of this section. If you own or operate a new sealed EAF affected source, you must install, operate, and maintain a CPMS for each wet scrubber. Such source is not subject to the requirements in paragraph (b)(1) of this section.

(4) When operating a CPMS, if the 3-hour average pressure drop or scrubber water flow rate is below the minimum levels that indicate normal operation of the control device, conduct visual monitoring of the outlet stack(s) as required by paragraph (b)(1) of this section within 1 hour of determining that the 3-hour average parameter value is below the required minimum levels. Manufacturer's specifications for pressure drop and liquid flow rate will be used to determine normal operations. If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

§ 63.11528 What are the performance test and compliance requirements for new and existing sources?

(a) *Initial Compliance Demonstration Deadlines.* You must conduct an initial Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of paragraph (b)(1) of this section of each existing electrometallurgical operation control device and an initial Method 9 observation following the requirements of paragraph (c)(1) of this section from the furnace building due to electrometallurgical operations no later than 60 days after your applicable compliance date. For any new electrometallurgical operation control device, you must conduct an initial Method 22 test following the requirements of paragraph (b)(1) of this section within 15 days of startup of the control device.

(b) *Visible Emissions Limit Compliance Demonstration.*

(1) You must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test to determine that VE from the control device do not exceed the emission standard specified in § 63.11526(a). For a fabric filter, conduct the test for at least 60 minutes at the fabric filter monovent or outlet stack(s), as applicable. For a wet scrubber, conduct the test for at least 60 minutes at the outlet stack(s).

(2) You must conduct a semiannual Method 22 test using the procedures specified in paragraph (b)(1) of this section.

(c) *Furnace Building Opacity.*

(1) You must conduct an opacity test for fugitive emissions from the furnace building according to the procedures in § 63.6(h) and Method 9 (Appendix A–4 of 40 CFR part 60). The test must be conducted for at least 60 minutes and shall include tapping the furnace or reaction vessel. The observation must be focused on the part of the building where electrometallurgical operation fugitive emissions are most likely to be observed.

(2) Conduct subsequent Method 9 tests no less frequently than every 6 months and each time you make a process change likely to increase fugitive emissions.

(3) After the initial Method 9 performance test, as an alternative to the Method 9 performance test, you may monitor VE using Method 22 (Appendix A–7 of 40 CFR part 60) for subsequent semi-annual compliance demonstrations. The Method 22 test is successful if no VE are observed for 90 percent of the readings over the furnace cycle (tap to tap) or 60 minutes, whichever is longer. If VE are observed greater than 10 percent of the time over the furnace cycle or 60 minutes, whichever is longer, then the facility must conduct another test as soon as possible, but no later than 15 calendar days after the Method 22 test using Method 9 (Appendix A–4 of 40 CFR part 60) as specified in paragraph (c)(1) of this section.

§ 63.11529 What are the notification, reporting, and recordkeeping requirements?

(a) *Initial Notification.* You must submit the Initial Notification required by § 63.9(b)(2) of the General Provisions no later than 120 days after the date of publication of this final rule in the **Federal Register**. The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (b)(2)(iv).

(b) *Notification of Compliance Status.* You must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions before the close of business on the 30th day following the completion of the initial compliance demonstration. This notification must include the following:

(1) The results of Method 22 (Appendix A–7 of 40 CFR part 60) test for VE as required by § 63.11528(a);

(2) If you have installed a bag leak detection system, documentation that the system satisfies the design requirements specified in § 63.11527(a)(3) and that you have prepared a site-specific monitoring plan that meets the requirements specified in § 63.11527(a)(5);

(3) The results of the Method 9 (Appendix A–4 of 40 CFR part 60) test for building opacity as required by § 63.11528(a).

(c) *Annual Compliance Certification.* If you own or operate an affected source, you must submit an annual certification of compliance according to paragraphs (c)(1) through (c)(4) of this section.

(1) The results of any daily or weekly visual monitoring events required by § 63.11527(a)(1) and (b)(1), alarm-based visual monitoring at sources equipped with bag leak detection systems as required by § 63.11527(a)(4), or readings outside of the operating range at sources using CPMS on wet scrubbers required by § 63.11527(b)(4).

(2) The results of the follow up Method 22 (Appendix A–7 of 40 CFR part 60) tests that are required if VE are observed during the daily or weekly visual monitoring, alarm-based visual monitoring, or out-of-range operating readings as described in paragraph (c)(1) of this section.

(3) The results of the Method 22 (Appendix A–7 of 40 CFR part 60) or Method 9 (Appendix A–4 of 40 CFR part 60) tests required by § 63.11528(b) and (c), respectively.

(4) If you operate a bag leak detection system for a fabric filter or a CPMS for a wet scrubber, submit annual reports according to the requirements in § 63.10(e) and include summary information on the number, duration, and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other calibration checks, if applicable).

(d) You must keep the records specified in paragraphs (d)(1) through (d)(2) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart and all documentation supporting any Initial Notification, Notification of Compliance Status, and annual compliance certifications that you submitted.

(2) You must keep the records of all daily or weekly visual, Method 22 (Appendix A–7 of 40 CFR part 60), and Method 9 (Appendix A–4 of 40 CFR part 60) monitoring data required by § 63.11527 and the information identified in paragraphs (d)(2)(i) through (d)(2)(v) of this section.

(i) The date, place, and time of the monitoring event;

(ii) Person conducting the monitoring;

(iii) Technique or method used;

(iv) Operating conditions during the activity; and

(v) Results, including the date, time, and duration of the period from the time the monitoring indicated a problem (e.g., VE) to the time that monitoring indicated proper operation.

(e) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(f) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(g) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.11530 What parts of the General Provisions apply to my facility?

Table 1 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11531 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative nonopacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' under is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11532 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section.

Bag leak detection system means a system that is capable of continuously monitoring relative PM (i.e., dust) loadings in the exhaust of a fabric filter to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, or other effect to monitor relative PM loadings continuously.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: Duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Charging means introducing materials to an EAF or other reaction vessel, which may consist of, but are not limited to, ores, slag, carbonaceous material, and/or limestone.

Control device means the air pollution control equipment used to remove PM from the effluent gas stream generated by an EAF furnace or other reaction vessel.

Electric arc furnace means any furnace wherein electrical energy is converted to heat energy by transmission of current between electrodes partially submerged in the furnace charge.

Electrometallurgical operations means the use of electric and electrolytic processes to purify metals or reduce metallic compounds to metals.

Fugitive emissions means any pollutant released to the atmosphere that is not discharged through a ventilation system that is specifically designed to capture pollutants at the source, convey them through ductwork, and exhausts them from a control device. Fugitive emissions include pollutants released to the atmosphere through windows, doors, vents, or other building openings. Fugitive emissions also include pollutants released to the atmosphere through other general building ventilation or exhaust systems not specifically designed to capture pollutants at the source.

Sealed EAF means a furnace equipped with the cover with seals around the electrodes and outer edges of the cover to eliminate air being drawn in under the cover.

Tapping means the removal of product from the EAF or other reaction vessel under normal operating conditions, such as removal of metal under normal pressure and movement by gravity down the spout into the ladle.

§ 63.11533–63.11543 [Reserved]

As required in § 63.11530, you must meet each requirement in the following table that applies to you.

TABLE 1 TO SUBPART YYYYYY OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject
63.1[1]	Applicability.
63.2	Definitions.
63.3	Units and abbreviations.
63.4	Prohibited activities.
63.5	Construction/reconstruction.
63.6	Compliance with standards and maintenance.
63.8	Monitoring.
63.9	Notification.
63.10	Recordkeeping and reporting.
63.12	State authority and delegations.
63.13	Addresses of State air pollution control agencies and EPA regional offices.
63.14	Incorporation by reference.
63.15	Availability of information and confidentiality.
63.16	Performance track provisions.

[1] § 63.11524(d), ''Am I subject to this subpart?'' exempts affected sources from the obligation to obtain title V operating permits.

[FR Doc. E8–30424 Filed 12–22–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2008–0588; FRL–8755–9]

Idaho: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Idaho applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA). On September 30, 2008, EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA–R10–RCRA–2008–0588. On October 28, 2008, EPA published notification of an extension of the comment period for the proposed rule. The comment period closed on November 20, 2008. EPA has decided that the revisions to the Idaho hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization and EPA is authorizing these revisions to Idaho's authorized hazardous waste management program in this final rule.

DATES: *Effective Date:* Final authorization for the revisions to the hazardous waste program in Idaho shall be effective at 1 p.m. EST on December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, Mail Stop AWT–122, U.S. EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone (206) 553–6502. E-mail: *kocourek.nina@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under section 3006(b) of RCRA, 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). EPA also granted authorization to revisions to Idaho's program effective on: June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005) and February 26, 2007 (72 FR 8283, February 26, 2007).

This final rule addresses a program revision application that Idaho submitted to EPA in June 2008, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On September 30, 2008, EPA

published a proposed rule (73 FR 56775) stating the Agency's intent to grant final authorization for revisions to Idaho's hazardous waste program. EPA published an administrative extension of the comment period on October 28, 2008 (73 FR 63917), to extend the public comment period from October 30, 2008 to November 20, 2008.

B. What Were the Comments on EPA's Proposed Rule?

EPA received two sets of comments on the proposed rule from two separate commenters. The first set of comments came from a commenter who submitted written comments on each proposed revision to the authorized Idaho hazardous waste program for the past several years. The comments submitted for this revision restated past arguments concerning revisions to the authorized Idaho hazardous waste program. The commenter objected to EPA's action to revise Idaho's hazardous waste program because the commenter objects to certain aspects of how the Idaho Department of Environmental Quality (IDEQ) carries out the authorized program at the Idaho National Laboratory (INL) facility. In 2007, the same commenter, on the basis of the same objections, petitioned the Office of the Inspector General (OIG) to initiate a formal investigation into EPA's decision to revise the Idaho authorized program at that time. The OIG responded to the 2007 petition on July 13, 2008, by closing the case without further action. EPA respects the commenter's participation in the public process but believes no new concerns are raised in the current comments.

The comments received from the second commenter raised numerous issues, which are addressed in this response. The commenter questioned whether EPA impermissibly adopted rules promulgated pursuant to non-HSWA authority and rules promulgated as ''less stringent'' under HSWA. HSWA, the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act (RCRA), changed many aspects of hazardous waste management under RCRA. The legislative history of HSWA (98 Cong. Senate Report 284, HSWA Leg. Hist. 30, pages 6–7) explains, in part:

> These amendments also recognize that safe disposal, storage and treatment opportunities are limited and that the most effective way to protect human health and the environment is to minimize the opportunities for exposure by reducing or eliminating the generation of hazardous waste as expeditiously as possible. Rather than creating a rigorous regulatory program, provisions are included to encourage generators to voluntarily reduce the quantity and toxicity of all wastes. The amendments do not authorize the EPA or any other organization or person to intrude into the production-process or production decisions of individual generators. Taken as a whole, the reported bill emphasizes two concepts. First, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Second, waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

After passage of HSWA, EPA distinguished rules promulgated by EPA pursuant to the new HSWA authority from rules promulgated pursuant to the authority that pre-dated, but was not supplanted by, HSWA; EPA referred to the latter as ''non-HSWA'' rules. The issue of which authority, HSWA or non-HSWA, EPA exercises in each EPA rulemaking is distinguishable from EPA's determination of whether a new rule promulgated by EPA under either authority is ''more stringent'' or ''less stringent'' than the regulations that had been promulgated earlier and are being revised. EPA explains the authority it is using, HSWA or non-HSWA, in each rulemaking. That explanation is generally found in the **Federal Register** notice for each proposed and final rule in the discussion of how the regulatory changes will be administered and enforced in the State.

Regulations determined to be ''more stringent'' under HSWA or non-HSWA authority are regulations which each state must adopt to retain authorization for its hazardous waste program. Regulations determined to be ''less stringent'' under HSWA or non-HSWA authority are regulations which each state is encouraged, but not required, to adopt to retain its authorized hazardous waste program. HSWA regulations are not all ''more stringent'' than the regulations promulgated under RCRA before HSWA. Nor did Congress require all HSWA regulations to be more stringent; nothing in the statute, and no language in the legislative history, directs EPA to promulgate only ''more stringent'' provisions under HSWA authority.

Since the passage of HSWA, EPA has been highly selective when designating which new regulations will apply directly in every State immediately upon the effective date of the new regulations. New regulations EPA characterizes as promulgated under HSWA authority and as more stringent apply directly in all states, including states with authorized hazardous waste programs, upon their effective dates and are implemented and enforced directly and immediately by EPA until the State is authorized to implement and enforce those regulations. Upon authorization, those regulations authorized as a part of the State hazardous waste program are the federally enforceable requirements in that State.

The commenter questioned whether it was permissible for EPA to allow a state to adopt rules promulgated by EPA as ''less stringent than federal requirements.'' EPA exercises discretionary authority as provided by Congress in section 2002 of RCRA, 42 U.S.C. 6912, to regulate hazardous waste to protect human health and the environment and, barring explicit language in the statute, nothing in the act or amendments thereto prohibits EPA from promulgating new regulations that are ''less stringent'' or ''neutral'' relative to regulations that were promulgated earlier. If EPA promulgates new regulations to replace existing regulations, the newer regulations are, upon their effective date, the federal requirements against which a state program is compared when reviewing a revision to an authorized state hazardous waste program. The ''less stringent'' requirements are the federal requirements under RCRA in States without authorized hazardous waste programs. Those newer regulations which are less stringent than former regulations, may be, but are not required to be, adopted by states to retain an authorized hazardous waste program.

Section 3009 of RCRA, 42 U.S.C. 6929, bars a state from imposing less stringent requirements than those authorized under Subchapter III of RCRA respecting the same matter governed by such regulations. There is no bar prohibiting a state from imposing more stringent requirements and there is no bar prohibiting a state from adopting federal requirements which are promulgated by EPA as less stringent or neutral requirements as compared to regulations that were promulgated by EPA earlier. If a state adopts and is authorized for those ''less stringent'' regulations, the federally enforceable RCRA requirements in the State are those newly authorized requirements.

The commenter questioned whether EPA was allowing the Attorney General (AG) of Idaho to ''circumvent'' a rule-by-rule comparison of the federal regulations adopted by Idaho and the Idaho Statutes. The Idaho AG did submit a rule-by-rule statement citing specific statutory authority for each rule adopted by Idaho. EPA reviewed this statement, which was included in the docket for the rule and is Appendix I to the Idaho application. The ''Revised Attorney General's Statement for Final Authorization of Changes to the Federal

RCRA Program Through July 1, 2007'' amends and supplements the AG statements in previous authorization applications. The table presented in the AG statement and certified by the AG contains a rule-by-rule review. EPA reviewed each state rule and state statute cited in the AG statement. This independent EPA review was the basis for EPA's decision to propose authorizing the revision to the Idaho authorized hazardous waste program. Pursuant to 40 CFR 271.1(e), the Administrator (or delegated authority, in this case, the Regional Administrator) shall approve State programs which conform to the applicable requirements of that rule in Subpart A—Requirements for Final Authorization. Based on its review of the complete Idaho application, EPA concluded that the revisions to Idaho's program conformed to the applicable requirements of Subpart A.

The commenter also questioned whether optional rules, not required to be adopted, must be compared to the Idaho Statutes to ensure 40 CFR 271.1 is met in light of the fact, according to the commenter, that the Idaho AG claims the State of Idaho must adopt all regulations promulgated by EPA, even those promulgated which are less stringent than existing regulations. EPA did not see any language in the AG statement, or elsewhere in Idaho's application, indicating that the State of Idaho must adopt all regulations promulgated by EPA, even those less stringent. However, the AG does cite directly to Idaho Statute 39–4404 (Consistency with federal law) in the AG Statement and in the rule-by-rule comparison. That provision of the Idaho Statutes, acknowledging the desire of the legislature to avoid the existence of duplicative, overlapping or conflicting state and regulatory systems, directs the Idaho Board of Environmental Quality (Board) to promulgate rules which are consistent with RCRA and the federal regulations adopted by EPA to implement RCRA. The Board is barred from promulgating any rule that would impose conditions or requirements more stringent or broader in scope than RCRA and the RCRA regulations promulgated by EPA.

There is no statutory language directing the Board to immediately adopt less stringent rules promulgated by EPA to replace earlier, more stringent requirements. However, the AG has opined that the statutory language acts as a directive to the Board to promulgate rules which are consistent with RCRA and allows and encourages Idaho to adopt all less-stringent and optional rules promulgated by EPA. In reviewing each of Idaho's rules against the Idaho Statutes, EPA agreed with the AG that adopting such rules was permissible under both Idaho state law and under RCRA, as amended by HSWA, and that such adoption met the requirements of 40 CFR 271.1.

Finally, the commenter questioned whether the RCRA Burden Reduction Initiative impermissibly removed the manifest notification required to be sent to each state with the shipment of waste-derived fertilizers citing to sections 3002 and 3009 of RCRA, 42 U.S.C. 6922 and 6929. Section 3002(a)(5) of RCRA, 42 U.S.C. 6922(a)(5), directs the Administrator to promulgate regulations to establish standards applicable to generators as may be necessary to protect human health and the environment regarding the use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (except where waste was generated) for which a permit was issued. Pursuant to section 3009 of RCRA, 42 U.S.C. 6929, no regulation adopted under RCRA can be construed to prohibit any State from requiring the State be provided with a copy of each manifest used in connection with hazardous waste generated in that State or transported to a treatment, storage, or disposal facility within that State. The Burden Reduction Initiative (BRI), which became effective as an optional rule on May 4, 2006, streamlines EPA's information collection requirements to ensure that only information actually needed and used to implement the RCRA program is collected while retaining the goals of protecting human health and the environment.

Changes in manifest requirements made to earlier federal requirements by the BRI generally concern notice under the land disposal regulations at 40 CFR Part 268. The BRI does not prohibit any State from requiring a copy of a manifest. States were not required to adopt the BRI and States that do not adopt the BRI can require a copy of the manifest. A State is not barred from adopting the BRI by section 3009 of RCRA.

EPA believes the Agency has the necessary authority to promulgate the rules in the federal program, including those in this revision to Idaho's authorized hazardous waste program. Moreover, EPA believes that Idaho has the necessary authority to adopt the rules that are included in this revision of the Idaho authorized hazardous waste program.

C. What Decisions Have We Made in This Rule?

EPA has made a final determination that Idaho's revisions to the Idaho authorized hazardous waste program meet all of the statutory and regulatory requirements established by RCRA for authorization. Therefore, EPA is authorizing the revisions to the Idaho hazardous waste program and authorizing the State of Idaho to operate its hazardous waste program as described in the revision authorization application. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA, including the HSWA.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA as more stringent are implemented by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Idaho, including issuing permits or portions of permits, until the State is authorized to do so.

D. What Will Be the Effect of This Action?

The effect of this action is that a facility in Idaho subject to RCRA must comply with the authorized State program requirements and with any applicable Federally-issued requirement, such as, for example, the federal HSWA more stringent provisions for which the State is not authorized, and RCRA requirements that are not supplanted by authorized State-issued requirements, in order to comply with RCRA. Idaho has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

—Conduct inspections; require monitoring, tests, analyses or reports;

—Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations; suspend, modify or revoke permits; and

—Take enforcement actions regardless of whether the State has taken its own actions.

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho's program is being authorized are already effective under State law.

E. What Rules Are We Authorizing With This Action?

In June 2008, Idaho submitted a complete program revision application, seeking authorization for all delegable federal hazardous waste regulations codified as of July 1, 2007, as incorporated by reference in IDAPA 58.01.05(002)–(016) and (018). EPA is authorizing those rules in this action.

F. Who Handles Permits After This Authorization Takes Effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

G. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations (CFR) by referencing the authorized State's authorized rules in 40 CFR Part 272. EPA is reserving the amendment of 40 CFR Part 272, Subpart F for codification of Idaho's program at a later date.

H. How Does This Action Affect Indian Country (18 U.S.C. 1151) in Idaho?

EPA's decision to authorize the Idaho hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151. This includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho; (2) Any land held in trust by the U.S. for an Indian tribe; and (3) Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151.

I. Statutory and Executive Order Reviews

This final rule revises the State of Idaho's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This final rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this final rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR Part 9.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR Part 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of this final rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title

II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Those entities are already subject to the regulatory requirements that are included in the revisions to the State program in this final action.

5. 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 various levels of government.'' This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This final rule authorizes pre-existing State rules. Thus, Executive Order 13132 does not apply to this final rule.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. EPA specifically solicited additional comment on the proposed rule from tribal officials and no tribe commented on this action. Thus, Executive Order 13175 does not apply to this final rule.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 F.R. 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 approves a state program.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order (EO) 12898 (59 FR 7629, February 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This final rule does not affect the level of protection provided to human health or the environment because this rule authorizes pre-existing State rules which are equivalent to, and no less stringent than existing federal requirements.

11. Congressional Review Act

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

List of Subjects in 40 CFR Part 271

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

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

Dated: December 16, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

[FR Doc. E8–30516 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–SFUND–2008–0873; FRL–8755–6]

RIN 2050–AG47

Amendment to Standards and Practices for All Appropriate Inquiries Under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, this direct final rule amends the All Appropriate Inquiries Rule to reference ASTM International's E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' and allow for its use to satisfy the statutory requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

DATES: This rule is effective on March 23, 2009, without further notice, unless EPA receives adverse comment by January 22, 2009. If EPA receives such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–HQ–SFUND–2008–0873] by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov*.
- *Fax:* 202–566–9744
- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Headquarters West Building, Room 3334, located at 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Headquarters Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2008–0873. Please reference Docket number EPA–HQ–SFUND–2008–0873 when submitting your comments.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*

Docket: You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

All documents in the docket are listed in the *http://www.regulations.gov* index. Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM Internationals' E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' will not be place in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room at this docket facility 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 Superfund Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774, or *overmeyer.patricia@epa.gov*.

Regulated Entities

Today's action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries at certain properties. Parties purchasing large tracts (greater than 120 acres) of forested land and parties purchasing large rural properties may use the ASTM E2247–08 standard practice to comply with the all appropriate inquiries requirements of CERCLA. Today's rule does not require any entity to use this standard. Any party who wants to claim protection from liability under CERCLA may follow the regulatory requirement of the All Appropriate Inquiries Final Rule at 40 CFR part 312, or use the ASTM E1527–05 Standard Practice for Phase I Environmental Site Assessments to comply with the all appropriate inquiries provision of CERCLA.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing large tracts of forested lands or large rural properties and intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property that consists of large tracts of forested land or a large rural property with a brownfields grant awarded under CERCLA section104(k)(2)(B)(ii) may be affected by today's action. This includes State, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification

System (NAICS) codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

Preamble

I. Statutory Authority

This direct final rule amends the All Appropriate Inquiries Final Rule setting federal standards for the conduct of ''all appropriate inquiry'' at 40 CFR part 312. The All Appropriate Inquiries Final Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability relief and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Amendments''). In general, the Brownfields Amendments to CERCLA provide funds to assess and clean up brownfields sites; clarifies CERCLA liability provisions related to innocent purchasers of contaminated properties; and provides funding to enhance State and Tribal cleanup programs. In part, subtitle B of the Brownfields Amendments revises some of the provisions of CERCLA section 101(35) and limits Superfund liability under section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake ''all appropriate inquiry'' into prior ownership and use of property prior to purchasing the property in order to qualify for protection from CERCLA liability.

The Brownfields Amendments required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the final rule, the ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. Therefore, the final rule (40 CFR part 312) allows for the use of the ASTM E1527–05 standard to conduct all appropriate inquiries, in lieu of following requirements included in the final rule.

Since EPA promulgated the All Appropriate Inquiries Final Rule setting standards and practices for the conduct of all appropriate inquiries, ASTM International published a new Phase I site assessment standard specifically tailored to conducting site assessments of large tracts of rural and forestland property. This standard, ASTM E2247–08, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' was reviewed by EPA, in response to a request for its review by ASTM International, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Final Rule.

Today's direct final rule amends the All Appropriate Inquiries Final Rule to allow the use of the recently revised ASTM standard, E2247–08, for conducting all appropriate inquiries, as required under CERCLA for establishing the innocent landowner defense, as well as qualifying for the bona fide prospective purchaser and contiguous property owner liability protections.

With today's action, EPA is establishing that, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered to be in compliance with the requirements for all appropriate inquiries, as required in the Brownfields Amendments to CERCLA, if such parties comply with the procedures provided in the ASTM E2247–08, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.'' EPA determined that it is reasonable to promulgate this clarification as a direct final rule that is effective immediately, rather than delay promulgation of the clarification until after receipt and consideration of public comments. EPA made this determination based upon the Agency's finding that the ASTM E2247–08 standard is compliant with the All Appropriate Inquiries Final Rule and the Agency sees no reason to delay allowing for its use in conducting all appropriate inquiries. The Agency notes that today's action does not require any party to use the ASTM E2247–08 standard. Any party conducting all appropriate inquiries to comply with the CERCLA requirements at section 101(35)(B) for the innocent landowner defense, the contiguous property owner liability protection, or the bona fide prospective purchaser liability protection may continue to follow the provisions of the All Appropriate Inquiries Final Rule at 40 CFR part 312 or use the ASTM E1527–05 Standard.

In taking today's action, the Agency is allowing for the use of an additional recognized standard or customary business practice, in complying with a federal regulation. Today's action does not require any person to use the newly recognized standard. Today's action merely allows for the use of ASTM International's E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' for those parties purchasing relatively large tracts of rural property or forestlands who want to use the ASTM E2247–08 standard in lieu of the following specific requirements of the All Appropriate Inquiries Final Rule or the ASTM E1527–05 standard.

The Agency notes that there are no significant differences between the regulatory requirements and the two ASTM standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Final Rule, the ASTM E1527–05 Phase I Environmental Site Assessment Standard and the ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' as well as the applicability of the E2247–08 standard to certain types of properties, EPA developed, and placed in the docket for today's action, the document ''Comparison of All Appropriate Inquiries Regulation and

ASTM E2247–08 Phase I Environmental Site Assessment Process for Forestland or Rural Property.'' The document provides a comparison of the federal regulation and the two ASTM standards.

By taking today's action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113.

III. This Action

EPA is publishing this direct final rule without prior proposal because the Agency wants to provide additional flexibility for grant recipients or other entities who may benefit from the use of the ASTM E2247–08 standard. In addition, the Agency views this as a noncontroversial action and anticipates no adverse comment. We believe that today's action is reasonable and can be promulgated without consideration of public comment because it allows for the use of a tailored standard developed by a recognized standards developing organization and that was reviewed by EPA and determined to be equivalent to the Agency's final rule. Today's action does not disallow the use of the previously recognized standard (ASTM E1527–05) and it does not alter the requirements of the previously promulgated final rule. In addition, today's action will potentially increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527–05 standard or follow the requirements of the All Appropriate Inquiries Final Rule when conducting all appropriate inquiries.

Although we view today's action as noncontroversial, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate proposed rule containing the clarification summarized above. That proposed rule will serve as the proposal to be revised if adverse comments are received. If EPA does not receive adverse comment in response to this direct final rule prior to January 22, 2009, this rule will become effective on March 23, 2009, without further notice. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register**, informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time and before January 22, 2009.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735 (October 4, 1993)), and is therefore not subject to review by the Office of Management and Budget under the EO.

B. Paperwork Reduction Act

Today's action includes no information collection requirements and therefore no associated burdens. The action will not result in any change to the current regulation other than to allow for the use of an additional standard.

C. Regulatory Flexibility Act

Today's direct rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. (5 U.S.C. 601 *et seq.*). Although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirements under the APA or any other statute. Today's action does not change the current regulatory status quo and it has no economic impact. Therefore, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action merely allows for the use of a voluntary consensus standard. This action allows the newly recognized standard to be used by any entity. The action imposes no new regulatory requirements and will result in no additional burden to any entity. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act. 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. This action imposes no enforceable duty on any State, local or tribal governments or the private sector.

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 EO 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 direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. Thus, EO 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 9, 2000)). Today's action does not change any current regulatory requirements and therefore does not impose any impacts upon tribal entities. Thus, EO 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to EO 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), because it is not economically significant as defined in EO 12866, and 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 EO 13211, entitled ''Actions Concerning Regulations That Significantly Affect

Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under EO 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards.

Today's action is compliant with the spirit and requirements of the NTTAA. Today's action allows for the use of the ASTM International standard known as Standard E2247–08 and entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.''

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (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 direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Today's action does not change any regulatory requirements or impose any new requirements.

K. Congressional Review Act

The Congressional Review Act, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 5 U.S.C. 801 *et seq.* EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule is effective on March 23, 2009, unless EPA receives adverse comment by January 22, 2009.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: December 17, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40 chapter I of the code of Federal Regulations is amended as follows:

■ Title 40 Chapter I is amended as follows:

PART 312—[AMENDED]

■ 1. The authority citation for part 312 continues to read as follows:

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(3)(B).

Subpart B—Definitions and References

■ 2. Section 312.11 is amended by adding paragraph (b) to read as follows:

§ 312.11 References.

* * * * *

(b) The procedures of ASTM International Standard E2247–08 entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.'' This standard is available from ASTM International at *http://www.astm.org*, 1–610–832–9585.

[FR Doc. E8–30536 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2672; MB Docket No. 08–199; RM–11486]

Television Broadcasting Services; Kearney, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Pappas Telecasting of Central Nebraska, L.P., permittee of station KHGI–DT, to substitute DTV channel 13 for post-transition DTV channel 36 at Kearney, Nebraska.

DATES: This rule is effective January 22, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–199, adopted December 5, 2008, and released December 8, 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 Nebraska, is amended by adding DTV channel 13 and removing DTV channel 36 at Kearney.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–30539 Filed 12–22–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 12]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2009

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2007 rail industry random testing positive rates were 0.56 percent for drugs and 0.18 percent for alcohol. Because the industry-wide random drug testing positive rate has remained below 1.0 percent for the last two years, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2009, through December 31, 2009, will remain at 25 percent of covered railroad employees. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2009, through December 31, 2009.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (telephone 202 493–6313); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (telephone 816 561–2714).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2008 Minimum Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year. *See* 49 CFR 219.602, 608.

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent of covered railroad employees whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum rate. For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates. If the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year, FRA will return the minimum random drug testing rate to 50 percent of covered railroad employees.

If the industry-wide random alcohol violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent of covered railroad employees. FRA will raise the minimum random rate to 50 percent of covered railroad employees if the industry-wide random alcohol violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent of covered railroad employees whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2009, through December 31, 2009, because the industry random drug testing positive rate was below 1.0 percent for the last two years (.056 in 2007 and .060 in 2006). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2009, through December 31, 2009, because the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years (.018 in 2007 and .013 in 2006). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC on December 18, 2008.

Clifford C. Eby,

Administrator.

[FR Doc. E8–30541 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2008–0136]

Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/ Incidents for Calendar Year 2009

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule increases the rail equipment accident/incident reporting threshold from $8,500 to $8,900 for certain railroad accidents/incidents involving property damage that occur during calendar year 2009. This action is needed to ensure that FRA's reporting requirements reflect cost increases that have occurred since the reporting threshold was last computed in December of 2007.

DATES: This regulation is effective January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building 3rd Floor, Room W33–306, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202–493–1331); or Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–204, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202–493–1381).

SUPPLEMENTARY INFORMATION:

Background

A ''rail equipment accident/incident'' is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material, greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/ incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b) and (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/ incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225 to reflect any cost increases or decreases. 61 FR 30940 (June 18, 1996); 61 FR 60632 (Nov. 29, 1996); 61 FR 67477 (Dec. 23, 1996); 62 FR 63675 (Dec. 2, 1997); 63 FR 71790 (Dec. 30, 1998); 64 FR 69193 (Dec. 10, 1999); 65 FR 69884 (Nov. 21, 2000); 66 FR 66346 (Dec. 26, 2001); 67 FR 79533 (Dec. 30, 2002); 70 FR 75414 (Dec. 20, 2005); 72 FR 1184 (January 10, 2007); 72 FR 73659 (December 28, 2007).

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/ incident reporting threshold was revised. 72 FR 73659 (December 28, 2007). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of $8,500, which applies to rail equipment accidents/incidents that occur during calendar year 2008, should increase by $400 to $8,900 for equipment accidents/ incidents occurring during calendar year 2009, effective January 1, 2009. The specific inputs to the equation set forth in appendix B (i.e., $Tnew = Tprior * [1 + 0.4(Wnew - Wprior)/Wprior + 0.6(Enew—Eprior)/100]$) to part 225 are:

Tprior	Wnew	Wprior	Enew	Eprior
$8,500	$22.86094	$21.50323	180.16667	175.56667

Where: Tnew = New threshold; *Tprior* = Prior threshold (with reference to the threshold, ''prior'' refers to the previous threshold rounded to the nearest $100, as reported in the **Federal Register**); *Wnew* = New average hourly wage rate, in dollars; *Wprior* = Prior average hourly wage rate, in dollars; *Enew* = New equipment average PPI value; *Eprior* = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (Tnew) is $8,949.28, which is rounded to the nearest $100 for a final new reporting threshold of $8,900.

Notice and Comment Procedures and Effective Date

In this rule, FRA has recalculated the monetary reporting threshold based on the formula discussed in detail and adopted, after notice and comment, in the final rule published December 20, 2005, 70 FR 75414. FRA has found that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA has found that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, finding that notice and comment procedures are either impracticable, unnecessary, or contrary to the public interest, FRA is proceeding directly to the final rule.

FRA regularly recalculates the monetary reporting threshold using a pre-existing formula near the end of each calendar year. Therefore, any person affected by this rule anticipates the on-going adjustment of the threshold and has reasonable time to make any minor changes necessary to come into compliance with the regulations. FRA attempts to use the most recent data available to calculate the updated reporting threshold prior to the next calendar year. FRA has found that issuing the rule in December of each calendar year and making the rule effective on January 1, of the next year, allows FRA to use the most up-to-date data when calculating the reporting threshold and to compile data that accurately reflects rising wages and equipment costs. As such, FRA has found that it has good cause to make the effective date January 1, 2009.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034 (Feb. 26, 1979)).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 312 of the Small

Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

About 681 of the approximately 719 railroads in the United States are considered small entities by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 3,379 rail equipment accidents/incidents were reported in 2004, with small railroads reporting 307 of them. In 2005, 3,261 rail equipment accidents/incidents were reported, and small railroads reported 321 of them. Data for 2006 show that 2,967 rail equipment accidents/incidents were reported, with small railroads reporting 351 of them. Data for 2007 show that 2,636 rail equipment accidents/incidents were reported, with small railroads reporting 322 of them. On average for those four calendar years, small railroads reported about 11% (ranging from 9% to 12%) of the total number of rail equipment accidents/incidents. FRA notes that these data are accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting. Absent this rulemaking (i.e., any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2008 threshold in place would not allow it to keep pace with the increasing dollar amounts of wages and rail equipment repair costs. Therefore, this rule will be neutral in effect. Increasing the reporting threshold will slightly decrease the recordkeeping burden for railroads over time. Any recordkeeping burden will not be significant and will affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provided to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.'' This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of [$141,100,000 or more (as adjusted for inflation)] in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $141,100,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: That (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

Anyone is able to search the electronic form of all our 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) or you may visit *http://www.regulations.gov*.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Amend § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (i.e., $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008 and $8,900 for calendar year 2009) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(e) The reporting threshold is $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008 and $8,900 for calendar year 2009. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

* * * * *

Issued in Washington, DC, on December 17, 2008.

Clifford C. Eby,

Acting Administrator.

[FR Doc. E8–30534 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.071004577 8124 02]

RIN 0648–XL94

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Increase of the Landing Limit for Eastern Georges Bank Cod in the U.S./Canada Management Area

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

ACTION: Temporary rule; increase of landing limit.

SUMMARY: This action increases the landing limit of Eastern Georges Bank (GB) cod to 1,000 lb (453.6 kg) per day-at-sea (DAS), or any part of a DAS, up to 10,000 lb (4,535.9 kg) per trip for NE multispecies DAS vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan and is intended to increase the likelihood of harvesting the total allowable catch (TAC) for Eastern GB cod without exceeding it during the 2008 fishing year. This action is being taken to allow vessels to fully harvest the TACs for transboundary stocks of GB cod, haddock, and yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective December 23, 2008, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB cod landing limit within the Eastern U.S./Canada Area are found at § 648.85(a)(3)(iv)(A) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for Eastern GB cod for the 2008 fishing year (May 1, 2008 - April 30, 2009) was set at 667 mt (73 FR 16572, March 28, 2008), a 35–percent increase from the TAC for the 2007 fishing year.

The regulations at § 648.85(a)(3)(iv)(D) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. The default landing limit of Eastern GB cod for NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area is 500 lb (226.8 kg) per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. According to the most recent Vessel Monitoring System (VMS) reports and other available information, the fishing year 2008 Eastern GB cod TAC will not be harvested under the current landing limit. Analysis of harvest patterns in previous fishing years indicates that the TAC would not be exceeded under the increased landing limit of 1,000 lb (453.6 kg) per DAS, or any part of a DAS, up to 10,000 lb (4,535.9 kg) per trip. Based on this information, the Regional Administrator is increasing the current Eastern GB cod landing limit of 500 lb (226.8 kg) per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip in the Eastern U.S./Canada Area; to 1,000 lb (453.6 kg) per DAS, or any part of a DAS, up to 10,000 lb (4,535.9 kg) per trip, effective 0001 hours local time December 23, 2008, through April 30, 2009.

Eastern GB cod landings will continue to be closely monitored. Further inseason adjustments to increase or decrease the trip limit may be considered, based on updated catch data and projections. Should 100 percent of the TAC allocation for Eastern GB cod be projected to be harvested, the Eastern U.S./Canada Area would be closed to limited access NE multispecies DAS vessels for the remainder of the fishing year.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action would relieve a restriction by increasing the trip limit for Eastern GB cod for all NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area through April 30, 2009, to facilitate the harvest of the TAC for Eastern GB cod while ensuring that the TAC will not be exceeded during the 2008 fishing year. This will result in decreased regulatory discards of Eastern GB cod, increased revenue for the NE multispecies fishery, and an increased chance of achieving optimum yield in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Management Area TACs. It is important to take this action immediately because the current restrictive Eastern GB cod trip limit has prevented the NE multispecies fishery from harvesting the TAC at a rate that will result in complete harvest by the end of the 2008 fishing year. Delay in the implementation of this action could result in further wasteful discards of Eastern GB cod and decrease the opportunity available for vessels to fully harvest the 2008 Eastern GB cod TAC.

The information necessary to take this action only became available recently. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting Eastern GB cod in the U.S./Canada Management Area. The Regional Administrator's authority to increase trip limits for Eastern GB cod in the U.S./Canada Management Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 and Framework Adjustment 42. Further, the potential of increasing the Eastern GB cod trip limit was announced to the public when the 2008 U.S./Canada TACs were set (73 FR 16572, March 28, 2008) prior to the start of the 2008 fishing year. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: December 17, 2008.

Emily H. Menashes,

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

[FR Doc. E8–30581 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 247
Tuesday, December 23, 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 AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB05

Market Agency, Dealer, and Packer Bonds

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is reviewing how it calculates the reasonable bond required to be posted by each market agency, dealer, and certain packers (bonded entities) under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181, *et seq.*) (P&S Act or Act). We are initiating this review to determine what alternatives, if any, exist for revising the P&S Act regulations (9 CFR part 201) to better protect the financial interests of livestock sellers and consignors without exceeding a reasonable bond amount for bonded entities. We are seeking public comment and information on several identified alternative revisions to the regulations and the issues that we are considering in this review.

DATES: Written or electronic comments received by March 23, 2009 will be considered.

ADDRESSES: You may submit your written or electronic comments to:

- *Market Agency, Dealer and Packer Bond Comments*, c/o Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- E-Mail comments to *comments.gipsa@usda.gov*.
- Fax: (202) 690–2173
- Internet: Go to *http://www.regulation.gov* and follow the on-line instruction for submitting comments.

Instructions: All comments will become a matter of public record and should be identified as ''Market Agency, Dealer and Packer Bond Comments,'' making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Services staff at (202) 720–7486 to make an appointment to read comments.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov*.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking is issued under authority of section 407 of the P&S Act (7 U.S.C. 228(a)).

GIPSA enforces the Packers and Stockyards Act. Under authority granted the Secretary of Agriculture (Secretary) and delegated to us, we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the Act.

A statutory provision that supplements the P&S Act (7 U.S.C. 204) authorizes the Secretary to require reasonable bonds from market agencies, packers and dealers, with an exemption for packers whose average annual livestock purchases are less than $500,000. The bonds are intended to secure the performance of the bonded entities' monetary obligations to livestock sellers and consignors. Entities required to be bonded may fulfill this requirement by filing a surety bond issued by a surety company which is currently approved by the United States Treasury Department for bonds executed to the United States; or in whole or partial substitution for a surety bond, a trust agreement governing one or more irrevocable, transferable, standby letters of credit issued by a Federally-insured bank or institution and physically received and retained by a named trustee; or a trust fund agreement governing funds deposited or invested in fully negotiable obligations of the United States or Federally-insured deposits or accounts in the name of and readily convertible to currency by a trustee (9 CFR 201.27). The trustee named on a bond or bond equivalent (trust agreement or trust fund agreement) must be a financially responsible, disinterested person satisfactory to the GIPSA Administrator (9 CFR 201.32).

How Do Bonds Secure a Bonded Entity's Obligations to Livestock Sellers and Consignors?

A bonded entity fails to meet its monetary obligations to livestock sellers or consignors when it fails to pay for livestock within the time and manner specified in the P&S Act and regulations. Payment is usually due to the seller or consignor by the close of the next business day after the sale or purchase of livestock.

A bond or bond equivalent allows any person damaged by failure of the bonded entity to comply with any condition clause of the bond (see 9 CFR 201.31) to file a claim for damages against the bond, even if the person or persons are not named on the bond (9 CFR 201.33). Once we become aware of non-payment, we notify and instruct potential claimants of the proper procedures for filing valid claims against the bond. All claims for damages must be filed in writing with either the surety, the trustee, or the GIPSA Administrator within 60 days after the date of the transaction on which the claim is based. Under the P&S Act and regulations, a claimant may not file a lawsuit in U.S. District Court to collect damages owed by a bonded entity within the first 120 days, or more than 547 days from the date of the transaction on which the claim is based; otherwise, the claimant will lose eligibility to receive funds from the bond (9 CFR 210.33).

Upon receipt of the first claim against a bond, the surety on the bond or the trustee on the bond equivalent is required to terminate the bond or bond equivalent and collect any funds covered by the bond or bond equivalent up to its face amount. Once the period for filing claims has expired, the surety or the trustee is responsible for determining 1) if the claims involved transactions covered by the bond or bond equivalent, and 2) if the claims were filed timely. Claims that meet both tests are eligible to receive a pro-rata share of the proceeds from the bond or bond equivalent up to its face amount. The surety or the trustee is responsible

for distributing the proceeds accordingly. The proceeds from the bond may not be used to pay fees, salaries, or expenses for legal representation of the surety or the bonded entity.

Purpose of This Advance Notice of Proposed Rulemaking (ANPR) and the Alternatives Under Consideration

Section 201.30 of the regulations (9 CFR 201.30) describes the current formulas we use to calculate the required bond amount for each bonded market agency, packer, and dealer. We have found that the bond amounts based on the current formulas, last updated in 1983, frequently do not cover the total amount of money that is owed to livestock sellers and consignors when a bonded entity fails.

In 2006, approximately 5,407 dealers and market agencies, and 295 packers were bonded under the P&S Act. From 1997 to 2007, there was an average of 10 dealer, 5 market agency, and 4 packer business failures per year. During the same time period, payments from bonds or bond equivalents to livestock sellers and consignors averaged 15 percent of the amount of money owed when a dealer operation failed, 29 percent of the debt when a market agency failed, and 21 percent of the debt when a packer failed. Based on this data, the bond formulas in section 201.30 of the P&S Act regulations (9 CFR 201.30) often do not provide sufficient financial coverage of the full monetary obligations of market agencies, dealers, and packers to livestock sellers and consignors.

We considered different ways to increase the percentage of debt recovered by unpaid livestock sellers and consignors from the bonds of delinquent bonded entities. One option we considered was to establish a livestock indemnity fund similar to one currently in existence in a province of Canada. However, it was determined that we lack the statutory authority to pursue that option. Therefore, we turned our focus to other options. We believe that in order to better protect the financial interests of livestock sellers and consignors, the bond calculation formulas in section 201.30 of the P&S regulations (9 CFR 210.30) must be revised.

Through this ANPR, we are soliciting public comment and information on several alternatives that we have identified for calculating bond amounts required for bonded entities that are reasonable as stated in 7 U.S.C. 204. We invite comments from livestock sellers and consignors; insurance companies and banks that issue bonds and bond equivalents; other governmental entities that regulate market agencies, dealers, and packers at the State, regional or local level; market agencies, dealers, and packers subject to the bond requirement; and other interested persons or organizations.

What You Should Consider When Commenting on the Alternatives

In order for us to evaluate which alternative(s) would best secure obligations to livestock sellers and consignors without exceeding a reasonable amount of bond coverage for the bonded entities, please consider the following questions when commenting:

1. Which alternative, if any, do you prefer and why?
2. How would you recommend that we implement your preferred alternative?
3. What are the benefits and relative costs of each alternative? Do the benefits outweigh the costs and, if so, why?
4. What would be the impact of each alternative on small or new businesses in this industry?
5. What would be the impact of each alternative on large or more established businesses in this industry?
6. Is there a benefit to combining one or more of these alternatives and, if so, which ones?
7. What are the relative costs of combining one or more of these alternatives?
8. What would be the impact of combining one or more of these alternatives on small or new businesses in this industry?
9. What would be the impact of combining one or more of these alternatives on large or more established businesses?
10. Are there other alternatives that we should consider and, if so, what are they?

Alternative 1—Adding Risk Factors

One alternative we have identified involves adding a risk factor to the formulas used to calculate the reasonable bond coverage amount. We believe that the addition of a risk factor to the formulas would be one way to better protect livestock sellers and consignors. If we implement this alternative, we would require bonded entities at higher risk of failing to carry higher bonds than similar entities with a lower risk of failing. We may need to collect additional information, not now collected, to assess the risk factor. The risk factor would function in a manner similar to those used by insurance companies to calculate the rate a person pays for automobile or home owners' insurance. We could apply the risk factor to all bonded entities; to bonded entities whose overall risk exceeds a certain threshold; to those who have previously demonstrated problems with non-payment and/or insolvency; or to some combination of the above options.

Alternative 2—Revise Existing Factors in Current Formulas

Another alternative would be to revise the factors in the current formulas to increase the resulting bond amount. Bond amounts are currently calculated using the following factors:

1. The total dollar value of livestock sold (for a market agency selling livestock on commission) or the total dollar value of livestock purchased (by a market agency buying on commission, a dealer, or a packer, or by all persons for whom a market agency acting as a clearing agent served as a clearor) during the preceding business year, or substantial part of that business year, in which the bonded entity operated.
2. The number of days on which livestock was sold, not to exceed 130 (for a market agency selling livestock on commission) or half the number of days in any business year, not to exceed 130 (for a market agency buying on commission, a dealer, a market agency acting as a clearing agency, or a packer).
3. The result of dividing factor 1 by factor 2 for a market agency selling livestock on commission is the average sales per sale day (until the number of days on which livestock were sold exceeds 130). The results for market agencies buying on commission, dealers, or packers is the average purchases for 2 business days.
4. If the average sales per sale day or the average purchases for 2 business days exceeds a specific threshold amount ($50,000 for market agencies selling livestock on commission, or $75,000 for market agencies buying on commission and dealers), the amount of bond coverage need not exceed the threshold plus 10 percent, raised to the next $5,000 multiple.
5. Otherwise, bond coverage must be the next multiple of $5,000 above the average sales or purchase volume for 2 business days.
6. The minimum bond required is $10,000, unless a higher amount is required under State law.

We are seeking comment on which of these factors or combination of factors should be revised and in what way.

Alternative 3—Change Bond Calculation After Mergers/Acquisitions

A third alternative would change how bonds are calculated when market agencies and dealers merge or are acquired by another entity. Under the current formulas, the required bond

amount decreases for the larger merged entity due to the threshold and percent discount in factor 4 (discussed in alternative 2). To remedy this, we could change that factor as discussed in alternative 2. Or, we could require that the bond posted by the merged entity equal the combination of the amount that would have been required of each individual entity involved in the merger or acquisition.

Other Alternatives

We also invite the submission of suggestions on other alternatives to replace or supplement these proposed changes in the bond formulas because reasonable bonds alone that are posted by market agencies, packers and dealers may not ensure that the financial interests of livestock sellers and consignors are protected. We expect that any revision to the formulas for calculating bond amounts will increase the cost to market agencies, dealers, and packers to maintain the determined reasonable bond coverage.

Executive Order 12866 and Regulatory Flexibility Act

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Terry D. Van Doren,

Administrator, Grain Inspection, Packers and Stockyard Administration.

[FR Doc. E8–30515 Filed 12–22–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF ENERGY

10 CFR Part 452

RIN 1904–AB73

Production Incentives for Cellulosic Biofuels; Reverse Auction Procedures and Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and opportunity for comment.

SUMMARY: The Department of Energy (DOE) today publishes a proposed rule to establish the procedures and standards for reverse auctions of production incentives for cellulosic biofuels pursuant to section 942 of the Energy Policy Act of 2005 (EPAct 2005).

DATES: Public comment on this proposed rule will be accepted until January 22, 2009.

ADDRESSES: You may submit comments, identified by RIN 1904–AB73, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail* to *EPAct942@go.doe.gov.* Include RIN 1904–AB73 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

3. *Mail:* Address written comments to James Spaeth, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

You may obtain copies of comments submitted in response to this notice of proposed rulemaking by contacting Mr. James Spaeth.

FOR FURTHER INFORMATION CONTACT: Mr. James Spaeth, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401; (303) 275–4771; *jim.spaeth@go.doe.gov;* or Mr. Edward Myers, Office of the General Counsel, U.S. Department of Energy, Mailstop GC–72, Room 6B–256, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3397 or *edward.myers@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 942 of the Energy Policy Act of 2005, Public Law No. 109–58 (August 8, 2005), requires the Secretary of Energy (Secretary), in consultation with the Secretary of Agriculture, the Secretary of Defense, and the Administrator of the Environmental Protection Agency, to establish an incentive program for the production of cellulosic biofuels and to implement that program by means of a ''reverse auction.'' Section 942(a) states that the purposes of the program are to: ''(1) Accelerate deployment and commercialization of biofuels; (2) deliver the first 1 billion gallons of annual cellulosic biofuel production by 2015; (3) ensure biofuels produced after 2015 are cost competitive with gasoline and diesel; and (4) ensure that small feedstock producers and rural small businesses are full participants in the development of the cellulosic biofuels industry.'' In order to achieve these purposes, the Secretary is to award production incentives on a per gallon basis to eligible entities by means of a reverse auction. Under section 942, the first reverse auction is required annually until the earlier of the first year that annual production of cellulosic biofuels in the United States reaches 1 billion gallons or 10 years after enactment of EPAct 2005, *i.e.*, August 8, 2015.

However, pursuant to section 202 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140) (EISA), the Administrator of the Environmental Protection Agency is required to issue regulations that implement certain Renewable Fuel Standards, including regulations to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least 1 billion gallons of cellulosic biofuel by calendar year 2013. Consequently, if the Renewable Fuel Standard for cellulosic biofuel under EISA is achieved, the last reverse auction under section 942 of EPAct 2005 would occur in 2013.

II. Discussion of Proposed Rule

A. Overview

The proposed rule would establish procedures for the reverse auction and standards for making production incentive awards. The eligibility standards include both pre-auction requirements which must be met prior to an entity's participation in a reverse auction under section 942 and several post-auction standards which must be met as a condition of receiving an award. The post-auction standards are especially necessary if the Nation is to achieve the long-term goals of section 942, including delivery of the first one billion gallons of annual cellulosic biofuel production by 2015, and

establishment of a biofuels industry after 2015 that is cost competitive with gasoline and diesel. The post-auction standards are thus intended to ensure that successful bidders make real and meaningful progress toward the production of cellulosic biofuels in commercially significant quantities. DOE believes that as successive auctions yield more and more production of cellulosic biofuels, the Nation will move closer to achieving section 942's long-term national goal of a commercially viable production capability after 2015. In addition, by setting forth clear pre-auction and post-auction standards, DOE believes that only the most serious entities will seek to participate in each reverse auction.

More particularly, section 452.2 of the proposed rule defines key terms used in the proposed regulations. Section 452.3 describes the proposed rule's pre-auction eligibility standards, reverse auction procedures, and post-auction standards that must be met as a condition of receiving production incentive awards. Section 452.4 sets forth proposed terms of and limitations on the incentive production awards that will be issued under the program.

B. Definitions

Section 942 of EPAct 2005 defines ''*cellulosic biofuels*'' as ''any fuel that is produced from cellulosic feedstocks.'' 42 U.S.C. 16251(b)(1). Because the incentives authorized by section 942 are based on a gallon measure, DOE proposes in section 452.2 of the regulations to refine the statutory definition of ''cellulosic biofuel'' by requiring the production of a liquid fuel. Additionally, the proposed rule would define ''cellulosic feedstock'' as any lignocellulosic feedstock as so defined by EPAct, section 932(a)(2). This serves to make the proposed rule consistent with and complementary to the Department's existing Bioenergy Program under section 932 of EPAct and supports the Renewable Fuels Standard for biofuels originally in EPAct 2005, section 1501, which was enhanced by the Energy Independence and Security Act of 2007.

As explained above, the goals of section 942 include the delivery of the first one billion gallons of annual cellulosic biofuel production by 2015 and establishment of a biofuels industry after 2015 that is cost competitive with gasoline and diesel. In addition, section 942(c)(4)(C) requires that, as a condition of receiving an award, successful bidders must enter into an agreement with the Secretary to begin production of cellulosic biofuels not later than three years after the date of the reverse auction in which they participated. Taking the aforementioned goals together with the contractual requirement of section 942(c)(4)(C), DOE proposes to require successful bidders to commit to production of a commercially significant quantity within three years of the reverse auction in which they submitted their successful bid. This requirement is necessary if the Nation is to be able to achieve delivery of the first one billion gallons of annual cellulosic biofuel production by 2015 and the establishment of a commercially viable cellulosic biofuels production capability after 2015. Accordingly, ''Commercially Significant Quantity'' is defined in the proposed rule as 10 million or greater gallons of cellulosic biofuels produced in one year. This volume is an estimate of the volume necessary to operate a commercial scale refinery at approximately 60 percent of nameplate capacity; it is a level adequate to make such a facility commercially viable and is based on the size (15 to 20 million gallons per year) of commercial scale corn ethanol biorefineries when they were first commercialized. See, Funding Opportunity Announcement (FOA) DE–PS36–06GO96016, ''Commercial Demonstration of an Integrated Biorefinery System for Production of Liquid Transportation Biofuels, Biobased Chemicals, Substitutes for Petroleum-based Feedstocks and Products, and Biomass-based Heat/Power.''

Two other proposed definitions similarly reflect DOE's intent to assure that the goals of section 942 are achieved. First, ''*eligible biofuels producer*'' is defined as a business association, including but not limited to a sole proprietorship, partnership, joint venture, corporation, or other business entity that owns and operates, or plans to own and operate, an eligible cellulosic biofuels production facility and that meets all other eligibility requirements that are conditions on the receipt of production incentives under this part. These eligibility requirements are discussed in Section II.C.

Secondly, DOE proposes to define the term ''*eligible cellulosic biofuels production facility*'' as a facility that: (1) Is or will be located in the United States (including U.S. territories and possessions); (2) meets or will meet all applicable Federal and State permitting requirements; and (3) meets any financial criteria established by the Secretary.

DOE encourages interested persons to submit comments on the above definitions and to make recommendations regarding other terms that may warrant definition in the final rule.

C. Reverse Auction Procedures and Eligibility Requirements

Solicitations. Under the proposed rule, the reverse auction process commences with DOE's issuance of a solicitation. DOE proposes to issue the solicitation by publication in the **Federal Register** and by posting the solicitation on its Web site at *http://www.eere.energy.gov* no later than 60 days before the reverse auction. The solicitation would invite interested persons and businesses to file eligibility submissions, as described herein, and set forth the terms on which bids will be accepted.

Eligibility. As discussed above, the proposed rule includes both pre-auction and post-auction eligibility requirements intended to ensure that the goals of section 942 are met. The result is a three-step eligibility process. First, the proposed rule would require entities seeking to participate in a reverse auction to make a pre-auction eligibility submission that includes an implementation plan demonstrating at a minimum that they own and operate, or plan to own and operate, an eligible cellulosic biofuels production facility; identifies the site or proposed site for the facility; identifies one or more proposed sources of financing for the construction or expansion of the facility; and provides any other additional information specified in the applicable solicitation. The proposed rule would require the pre-auction eligibility submission, including the implementation plan, at a time to be specified in the solicitation prior to the reverse auction.

Second, the proposed rule would require that, within one year of a reverse auction, the successful bidder(s) submit a progress report. The progress report must demonstrate that the successful bidder has acquired the site where its proposed eligible cellulosic biofuels production facility will be located; it has obtained secure financing commitments for the facility's construction or expansion thereof; a licensed construction/design firm has entered into a written engineering, procurement, and construction (EPC) agreement for design and construction of the facility or facility expansion; and the EPC agreement provides for completion of the facility or facility expansion such that production operations at the facility are likely to be completed in order to commence production of commercially significant quantities within three years of the date of the reverse auction.

Third, as a condition of receiving the award, the proposed rule would require the successful bidder, within 90 days after the reverse auction, to enter into an agreement with the Secretary to begin production of commercially significant quantities of cellulosic biofuel in an eligible cellulosic biofuels production facility within three years of the date of the reverse auction in which it made a successful bid. The successful bidder must fulfill the terms of its agreement or else lose the award.

Upon meeting the above three eligibility requirements on a timely basis, including the timely commencement of production in commercially significant quantities, the successful bidder will begin to receive production incentives on a volumetric basis, as per the terms of its bid. DOE believes that these three eligibility requirements are necessary in order to make meaningful progress toward the goals of section 942 and to meet the requirements of a production agreement with the Secretary, entered into pursuant to section 942(c)(4)(C) of EPAct 2005.

Notification of Eligibility Status. The proposed rule provides that all parties who make pre-auction eligibility submissions will be notified by DOE of their eligibility status no later than 15 days before the relevant reverse auction. Similarly, all successful bidders will be duly notified of the acceptability of their progress reports and contract submissions in the second and third steps of eligibility determinations required under the proposed rule.

Bidding Procedures. The proposed rule provides that following DOE's review of pre-auction eligibility submissions and notifications of pre-auction eligibility status, DOE will conduct an electronic reverse auction through a limited duration single bid auction process open only to eligible biofuels producers. The proposed rule would require bids to be submitted electronically to a Web site specified in the solicitation. The ''open window'' period for bid submissions would consist of a single continuous, minimum four-hour period for each auction. Eligible biofuels producers would submit their electronic bids for production incentives, as specified in DOE's regulations and the relevant solicitation. Only electronic bids received from pre-auction eligible biofuels producers during the open window period would be accepted. The proposed rule would require bids to specify a desired level of production incentive on a per gallon basis and an estimated annual production amount in gallons.

Bid Evaluation and Incentive Awards Selection and Notification. The proposed rule provides that DOE will review the bids received during the open window period and, within 45 days following the close of the open window for submission of bids, announce on its Web site and by direct mail the names of the successful bidders and the terms of their bids. As required by section 942(c)(4)(A)(iii) of EPAct 2005, the proposed rule states that DOE will issue awards for the bid production amounts beginning with the bidder that submitted the bid for the lowest level of production incentive on a per gallon basis.

DOE encourages comments and recommendations regarding the advisability of using the above-described electronic single bidding process or, alternatively, whether the reverse auction would be improved by use of an open iterative process allowing eligible entities to submit multiple bids in real-time during the open window period of the live auction. In particular, DOE is interested in comments as to whether a transparent iterative process, where several rounds of bids are posted, would tend to increase economic efficiency by driving down the production incentives to a market-clearing level. DOE also invites comments regarding the optimum duration of the open window period for bidding.

Statutory Priorities. Section 942(e) of EPAct 2005 requires the Secretary to give award priority to projects that: ''(1) Demonstrate outstanding potential for local and regional economic development; (2) include agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and (3) have a strategic agreement in place to fairly reward feedstock suppliers.'' 42 U.S.C. 16251(e).

In order to implement this statutory priority scheme in a manner that also complies with the statutory requirement to issue awards beginning with the eligible entity that submits a bid for lowest level of production incentive, DOE proposes to use the priorities in section 942(e) as a tie-breaker device. Specifically, the proposed rule provides in section 452.5(c)(3) that in the event of a tie among the lowest bids, preference will be given to the lowest tied bidder based on DOE's evaluation of the extent to which of the tied bids best meets one or more of the three statutory priority standards. In the event more than one lowest tied bid is found to meet the priority standards to an equal extent, section 452.5(c)(4) of the proposed rule states that the award will be distributed equally on a per capita basis among such bidders.

For example, assume the available funds for section 942 incentive awards pursuant to congressional appropriations under a solicitation and reverse auction are $2,500,000; assume further that there are two pre-qualified lowest bidders, both of which are agricultural producers. Assume further that these two bidders submitted identical low bids of $.65 per gallon and the two bidders meet the statutory preference standards to the same extent; but one of these bidders (Bidder A) sought an incentive for 10,000,000 gallons of biofuels production, while the other (Bidder B) sought an incentive for 5,000,000 gallons of biofuels production. The total production incentive sought under these circumstances for Bidder A is $6,500,000 and the total production incentive sought by Bidder B is $3,250,000. Under these assumed facts, DOE intends to make half of the appropriated funds ($1,250,000) available for awards to each of the two lowest successful bidders. Bidder A would not receive a greater award than Bidder B even though its bid was based on double the production of Bidder B. This approach would distribute incentives on the widest scale among lowest successful bidders that qualify for statutory preferences.

DOE invites comments on its proposed method for determining the successful bid. DOE is particularly interested in knowing whether it would be advisable to apply the statutory priorities not as a tie breaker device but as a pre-qualification preference or evaluation point preference. With respect to the tie breaker approach proposed in this NOPR, DOE is interested in receiving comments from the public about the proposed prorating of awards among successful bids that meet the statutory priority standards. DOE invites public comment on whether it would be preferable for DOE to make a determination of which bidder among those who have tied best meets the statutory priority standards, thereby obviating the need to prorate awards. DOE is concerned that the auction process could be ''gamed,'' *i.e.*, there is a potential for undisclosed business or investment interests to ''front'' a bidder that qualifies for a statutory priority to the disadvantage of other bidders that do not qualify for a statutory priority. DOE encourages parties to comment on the likelihood of such abuses and how to best prevent them.

D. Incentive Award Terms and Limitations

1. *Amount of Incentive.* As required by section 942(c)(4)(B) of EPAct 2005 and subject to appropriations, the proposed rule states that an auction participant selected to receive an award shall receive the amount of the production incentive on the per gallon basis requested in the auction solicitation for each gallon produced and sold by the entity during the first six years of operation.

2. *Failure to Commence Production.* As discussed above, the proposed rule provides in section 452.4(d) that a successful bidder must enter into an agreement with DOE under which the successful bidder agrees to begin production of cellulosic biofuels not later than three years after the date of the reverse auction in which it submitted a successful bid. This is a statutory requirement contained in section 942(c)(4)(C) of EPAct 2005. Section 452.6(b) of the proposed rule provides that failure of a successful bidder to fulfill the terms of this agreement by actually commencing production of commercially significant quantities of cellulosic biofuels within three years after the date of the auction shall result in the immediate revocation of the award. DOE invites comments and recommendations concerning the appropriateness of this remedy.

3. *Limitations.* Section 942(d) of EPAct 2005 establishes five types of limitations on the cellulosic biofuels production incentives, including: (1) A per gallon amount determined by the Secretary may be awarded during the first four years of the program; (2) a declining per gallon cap on the incentives awarded over the remaining lifetime of the program, to be established by the Secretary, so that cellulosic biofuels produced after the first year of annual cellulosic biofuels production in the United States in excess of one billion gallons are cost competitive with gasoline and diesel; (3) not more than 25 percent of the funds committed within each reverse auction may be awarded to any one project; (4) not more than $100 million may be awarded in any one year; and (5) not more than $1 billion may be awarded over the lifetime of the program.

The proposed rule would implement the foregoing limitations at section 452.6(c). In particular, the proposed rule provides that the first of the above limitations shall be $1.00 per gallon during the first four years of the program. For these purposes, the program would be deemed to have commenced on the date that the first solicitation for a reverse auction is issued. DOE's intent is to create an incentive for early commencement of operations that yield commercially significant production volumes in the near term. Because the second limitation described above (the declining per gallon cap) will result in lower incentive awards in years after the first four years of the program, an earlier program commencement date should hasten the period during which the higher limitation ceiling will be available. However, DOE solicits comments and recommendations regarding its selection of the program commencement date.

4. *Transferability of Awards.* The proposed rule would permit awards to be transferred to successor entities that meet all eligibility requirements for the program, as set forth in the proposed rule, and enter into an agreement with the Secretary to commence production within three years of the date of the reverse auction. DOE encourages interested persons to submit comments and recommendations regarding these proposed transferability restrictions. In addition, DOE requests comments regarding any other transfer-related issues. For example, should awards (including the right to the awards and the underlying obligation to commence production within three years of the auction) be transferable at all? If the awards should be transferable, should the awards be transferable prior to the time that production commences? Should the awards be transferable to entities not engaged in the production of cellulosic biofuels, *i.e.*, should DOE permit the creation of a securitized interest and secondary market in production incentive awards, or should DOE (as proposed in this NOPR) only permit entities actually engaged in cellulosic ethanol production to receive the awards?

III. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act (NEPA) regulations at paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings that are strictly procedural. DOE notes that the procedures proposed in this NOPR do not afford DOE discretion to determine whether or how a facility will be constructed or operated. DOE's prescribed role under section 942, that is, awarding production incentives to the lowest bidder in a reverse auction, is strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required for the proposed rule or for an award that DOE gives or proposes to give to a successful bidder. If DOE subsequently proposes to take any additional actions with respect to successful bidders, separate from the award of funds under section 942 of EPAct 2005, DOE will separately evaluate the need for NEPA review of those new proposed actions.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov*.

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule will only affect biofuels producers if they choose to participate in the reverse auction. Moreover, the proposed rule would provide an economic benefit without imposing any regulatory requirements on producers of cellulosic biofuels. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. This certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small

Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

Proposed section 452.4(a) provides that entities that intend to participate in a reverse auction must file a pre-auction eligibility submission. The pre-auction eligibility submission must contain certain information, including an implementation plan, as described above. This information will be used by DOE to determine if an entity that files a pre-auction eligibility submission will be accepted to participate in the reverse auction.

In addition, proposed section 452.4(c) provides that a bidder must submit a progress report. The progress report must contain the additional information described above. DOE will use this information to evaluate the bidder's progress in the production of cellulosic biofuels. DOE has submitted this collection of information to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

DOE estimates that the annual reporting and recordkeeping burden for this collection of information will be 30 hours per year (10 bidders × 3 hours) at a total annual cost of $2250 (10 bidders × $225 per auction). 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. 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.

Interested parties are invited to submit comments to OMB addressed to: Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the DOE contact person at the address given in the **ADDRESSES** section of this notice. OMB is particularly interested in comments on (1) The necessity of the proposed information collection requirements, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be maintained; and (4) ways to minimize the burden of the requirements on respondents.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534.

This proposed rule would not impose a Federal mandate on State, local, or tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family wellbeing. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency

pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Consultation

Pursuant to section 942(c)(1) of EPAct 2005, DOE will consult with the Secretary of Agriculture, the Secretary of Defense, and the Administrator of the Environmental Protection Agency prior to issuing a final rule.

IV. Approval of the Office of the Secretary

The issuance of this proposed rule has been approved by the Office of the Secretary.

List of Subjects in 10 CFR Part 452

Fuel, Grant programs, Recordkeeping and reporting requirements, Renewable energy.

Issued in Washington, DC, on December 11, 2008.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend chapter II of title 10 of the Code of Federal Regulations by adding a new part 452 as set forth below:

PART 452—PRODUCTION INCENTIVES FOR CELLULOSIC BIOFUELS

Sec.

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 16251.

§ 452.1 Purpose and scope.

(a) This part sets forth the standards, policies, and procedures that the Department of Energy uses for receiving, evaluating, and awarding bids in reverse auctions of production incentive payments for cellulosic biofuels under section 942 of the Energy Policy Act of 2005 (42 U.S.C. 16251).

(b) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

§ 452.2 Definitions.

Cellulosic biofuels means any liquid fuel produced from cellulosic feedstocks.

Cellulosic feedstock means any lignocellulosic feedstock as defined by EPAct 2005, section 932(a)(2).

Commercially significant quantity means 10 million gallons or more of cellulosic biofuels produced in one year.

DOE means the U.S. Department of Energy.

Eligible biofuels producer means a business association, including but not limited to a sole proprietorship, partnership, joint venture, corporation, or other business entity that owns and operates, or plans to own and operate, an eligible cellulosic biofuels production facility and that meets all other eligibility requirements that are conditions on the receipt of production incentives under this part.

Eligible cellulosic biofuels production facility means a facility—

(1) Located in the United States (including U.S. territories and possessions);

(2) Which meets all applicable Federal and State permitting requirements; and

(3) Meets any financial criteria established by the Secretary.

EPAct 2005 means the Energy Policy Act of 2005, Public Law 109–58 (August 8, 2005).

Open window means the period during each reverse auction, as specified in an associated solicitation, during which DOE accepts bids for production incentives under this part.

Secretary means the Secretary of Energy.

§ 452.3 Solicitations.

The reverse auction process commences with the issuance of a solicitation by DOE. DOE will publish a solicitation in the **Federal Register** and shall post the solicitation on its Web site at *http://www.eere.energy.gov* no later than 60 days before the bidding in a reverse auction under this part commences. The solicitation shall:

(a) Invite interested persons and businesses to submit pre-qualification statements;

(b) Set forth the terms on which bids will be accepted;

(c) Specify the open window for bidding; and

(d) Specify the date by which successful bidders will be required to file pre-auction eligibility submissions.

§ 452.4 Eligibility requirements.

(a) *Pre-auction eligibility submissions.* (1) Entities that intend to participate in a reverse auction, within the time period stated in the relevant solicitation, must file a pre-auction eligibility submission that provides all information requested in the applicable solicitation to which it is responding, including an implementation plan.

(2) Each pre-auction eligibility submission's implementation plan must, at a minimum:

(i) Demonstrate that the filing party owns and operates or plans to own and operate an eligible cellulosic biofuels production facility;

(ii) Identify the site or proposed site for the filing party's eligible cellulosic biofuels production facility; and

(iii) Identify one or more proposed sources of financing for the construction or expansion of the filing party's eligible cellulosic biofuels production facility.

(b) *Notification of pre-auction eligibility status.* DOE shall notify each entity that files a pre-auction eligibility submission of its acceptance or rejection no later than 15 days before the reverse auction for which the submission was made. A DOE decision constitutes final agency action and is conclusive.

(c) *Progress reports.* Within one year after the reverse auction in which a bidder successfully competed, the bidder must submit a progress report that includes all additional information required by the solicitation in which the bidder submitted a successful bid and which demonstrates that the bidder has:

(1) Acquired the site where its proposed eligible cellulosic biofuels production facility is or will be located;

(2) Obtained secure financing commitments for the plant or expansion thereof, as necessary to produce cellulosic biofuels; and

(3) Entered into a written engineering, procurement, and construction (EPC) contract for design and construction of the eligible cellulosic biofuels production facility; such EPC contract must provide for completion of construction of the eligible cellulosic biofuels production facility such that operations at the plant or plant expansion will commence within three years of the reverse auction in which the bidder successfully competed.

(d) *Production agreement.* Within 90 days after submission of its progress report under paragraph (c) of this section, the successful bidder must enter into an agreement with DOE which requires the bidder to begin production of commercially significant quantities of cellulosic biofuels, at the plant or plant expansion that was the subject of the relevant bid, not later than three years from the date of the acceptance of the successful bid.

(e) *Confirmation of continuing eligibility.* After receiving the progress report under paragraph (c) of this section and upon confirmation by DOE that the successful bidder has entered into a production agreement with DOE, as described in paragraph (d) of this section, DOE will confirm to the bidder that it continues to meet the eligibility requirements of this part.

(f) *Contractual condition on eligibility.* (1) As a condition of the receipt of an award under this part, a successful bidder in a reverse auction under this part must demonstrate that it has fulfilled the terms of its production agreement entered into with DOE pursuant to paragraph (d) of this section.

(2) As a condition of continuing to receive production incentive payments under this part, a bidder that has entered into a production agreement with DOE must annually submit to DOE, by a commercially reasonable date specified by DOE, verification of the bidder's production volumes for the prior calendar year. Within 90 days of the submission of such verification, DOE shall notify the successful bidder whether the bidder has fulfilled the terms of the production agreement and shall make payment of any production incentive awards then outstanding for the one year period covered by the verified data submission.

§ 452.5 Bidding procedures.

DOE shall conduct an electronic reverse auction through a limited duration single bid per producer auction process open only to pre-auction eligible cellulosic biofuels producers. The following procedures shall be used:

(a) DOE shall accept only electronic bids received from pre-auction eligible cellulosic biofuels producers during the open window established in the solicitation. The open window shall consist of a single continuous period of at least four hours for each auction.

(b) Bids must specify:

(1) A desired level of production incentive on a per gallon basis.

(2) An estimated annual production amount in gallons.

(3) All bids will be confidential until 45 days after the close of the window for submission of bids for the reverse auction.

(c) Bid evaluation and incentive awards selection.

(1) After DOE evaluates the bids received during the open window, it shall, within 45 days following the close of the open window for submission of bids for the reverse auction, announce on DOE's Web site and by direct mail the names of the successful bidders and the terms of their bids.

(2) DOE shall issue awards for the bid production amounts beginning with the bidder that submitted the bid for the lowest level of production incentive on a per gallon basis.

(3) In the event of a tie among the lowest bids, preference will be given to the lowest tied bidder based on DOE's evaluation of the extent to which the tied bids meet the following criteria:

(i) Demonstrates outstanding potential for local and regional economic development;

(ii) Includes agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and

(iii) Has a strategic agreement in place to fairly reward feedstock suppliers.

(4) In the event more than one lowest tied bid equally meets the standards in paragraph (c)(3) of this section, the award will be distributed equally on a per capita basis among those lowest tied bidders meeting the standards.

§ 452.6 Incentive award terms and limitations.

(a) *Amount of incentive.* Subject to the availability of appropriated funds and the limitations in paragraph (c) of this section, an eligible cellulosic biofuels producer selected to receive an award shall receive the amount of the production incentive on the per gallon basis requested in the auction solicitation for each gallon produced and sold by the entity during the first six years of operation of its eligible cellulosic biofuels production facility.

(b) *Failure to commence production.* Failure by an eligible cellulosic biofuels producer that made a successful bid to commence production of cellulosic biofuels, at the eligible cellulosic biofuels production facility that was the subject of the successful bid, by the end of the third year after the close of submission of the open window of bids for the reverse auction in which it submitted a successful bid, shall result in immediate revocation of DOE's award to that producer.

(c) *Incentive award limitations.* The following limits shall apply to awards of cellulosic biofuels production incentives under this part:

(1) During the first four years after the commencement of the program, the incentive shall be limited to $1.00 per gallon. For purposes of this limitation, the program shall be deemed to have commenced on the date that the first solicitation for a reverse auction is issued;

(2) A per gallon cap over the remaining lifetime of the program of $.95 per gallon provided that—

(i) This cap shall be lowered by $.05 each year commencing the first year after annual cellulosic biofuels production in the United States exceeds one billion gallons;

(ii) Not more than 25 percent of the funds committed within each reverse auction shall be awarded to any single project;

(iii) Not more than $100 million in production incentives shall be awarded in any one calendar year; and

(iv) Not more than $1 billion in production incentives shall be awarded over the lifetime of the program.

(d) *Participation in subsequent auctions.* A successful bidder in a reverse auction under this part may participate in subsequent reverse auctions if the incentives sought will assist the addition of plant production capacity for the eligible cellulosic biofuels production facility associated with its previously successful bid.

(e) *Transferability of awards.* A production incentive award under this part may be transferred to a successor entity that meets all eligibility requirements of this part, including execution of an agreement with DOE to commence production of cellulosic

biofuels in commercially significant quantities not later than three years of the date that bidding closes on the reverse auction in which the predecessor entity submitted a successful bid.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1327; Directorate Identifier 2008–NM–161–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 22, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 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*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1327; Directorate Identifier 2008–NM–161–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0151, dated August 5, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.

To prevent this, an improved strike package/door bolting system, including a Polymer Positive Temperature Coefficient (PPTC) element (overheat protection) was introduced by Airbus Modification 35219 in production and modification 35218 (Service Bulletin A320–25–1444) in-service. The PPTC is a resettable thermistor and is installed on the frame of the electrically-operated cockpit door latch/striker assembly.

The in-service implementation of this modification was originally managed by an Airbus campaign but the rate of installation by operators has not met the expected timescales, making mandatory action necessary to address this.

For the reasons described above, this AD requires the installation of improved cockpit door latch/striker assemblies.

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

Relevant Service Information

Airbus has issued Service Bulletin A320–25–1444, Revision 02, dated August 1, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 620 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $297,600, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2008–1327; Directorate Identifier 2008–NM–161–AD.

Comments Due Date

(a) We must receive comments by January 22, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122; A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, –233; and A321–111, –112, –131, –211, –212, –213, –231, and –232 series airplanes; certificated in any category; equipped with a cockpit door latch/striker assembly having part number AR4714–1 or AR4714–3.

Subject

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

Reason

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

An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.

To prevent this, an improved strike package/door bolting system, including a Polymer Positive Temperature Coefficient (PPTC) element (overheat protection) was introduced by Airbus Modification 35219 in production and modification 35218 (Service Bulletin A320–25–1444) in-service. The PPTC is a resettable thermistor and is installed on the frame of the electrically-operated cockpit door latch/striker assembly.

The in-service implementation of this modification was originally managed by an Airbus campaign but the rate of installation by operators has not met the expected timescales, making mandatory action necessary to address this.

For the reasons described above, this AD requires the installation of improved cockpit door latch/striker assemblies.

Actions and Compliance

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

(1) Within 8 months after the effective date of this AD: Replace all cockpit door latch/striker assemblies having part number AR4714–1 or AR4714–3 with modified units in accordance with Airbus Service Bulletin A320–25–1444, Revision 02, dated August 1, 2006 (Airbus Modification 35218).

(2) Previous accomplishment of the replacement before the effective date of this AD in accordance with Airbus Service Bulletin A320–25–1444, dated April 29, 2005, or Revision 01, dated July 19, 2005, meets the requirements of paragraph (f)(1) 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, 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 EASA Airworthiness Directive 2008–0151, dated August 5, 2008, and Airbus Service Bulletin A320–25–1444, Revision 02, dated August 1, 2006, for related information.

Issued in Renton, WA, on December 12, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30478 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1326; Directorate Identifier 2008–NM–141–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes; and Boeing Model 757–200, –200PF, and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 747 series airplanes and certain Boeing Model 757–200, –200PF, and –300 series airplanes. This proposed AD would require replacing the control switches of the forward, aft, and nose cargo doors of Model 747 airplanes; and would require replacing the control switches of cargo doors 1 and 2 of Model 757 airplanes. This proposed AD results from reports of problems associated with the uncommanded operation of cargo doors. We are proposing this AD to prevent injuries to persons and damage to the airplane and equipment.

DATES: We must receive comments on this proposed AD by February 6, 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; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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 proposed 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: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1326; Directorate Identifier 2008–NM–141–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

We received several reports of problems associated with the uncommanded operation of the forward, aft, and nose cargo doors of Boeing Model 747 airplanes that had accumulated between 9,390 and 22,529 total flight cycles; and cargo doors 1 and 2 of Boeing Model 757 airplanes that had accumulated between 4,300 and 30,000 total flight cycles. Tests of the cargo door control switches have shown that the control switches remained in the closed position after they were released, which caused the cargo doors to continue moving. The cause of the switch failure is related to the rated switch operation life cycle. This condition, if not corrected, could result in injuries to persons and damage to the airplane and equipment.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007 (for Model 747 airplanes). This service bulletin describes procedures for replacing the control switches of the forward, aft, and nose cargo doors with new control switches.

We have also reviewed Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007 (for Model 757 airplanes). This service bulletin describes procedures for replacing the control switches of cargo doors 1 and 2 with new control switches.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition

described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 765 airplanes of U.S. registry. We also estimate that it would take about 2 to 3 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $130 to $195 per airplane. Based on these figures, we estimate the cost of this proposed AD to U.S. operators up to $332,775 fleet cost, or between $290 and $435 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2008–1326; Directorate Identifier 2008–NM–141–AD.

Comments Due Date

(a) We must receive comments by February 6, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; and Boeing Model 757–200, –200PF, and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

Unsafe Condition

(d) This AD results from reports of problems associated with the uncommanded operation of cargo doors. We are issuing this AD to prevent injuries to persons and damage to the airplane and equipment.

Compliance

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

Replacement

(f) Within 24 months after the effective date of this AD, replace the control switches as specified in paragraph (f)(1) or (f)(2) of this AD, as applicable. Repeat the replacements thereafter at intervals not to exceed 6 years.

(1) For Model 747 airplanes: Replace the control switches of the forward, aft, and nose cargo doors in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007.

(2) For Model 757 airplanes: Replace the control switches of cargo doors 1 and 2 in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6429; 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.

Issued in Renton, Washington, on December 12, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30481 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1330; Directorate Identifier 2008–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Model DHC–7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: ''Transport Canada has received numerous service difficulty reports concerning Viking DHC–7 and Bombardier DHC–8 aircraft fluorescent lamp holder damage due to overheating. It has been determined that lamp holder overheating is a result of arcing between the fluorescent tube pins and the lamp holder contacts when the tube is not properly seated during installation.

Overheating of lamp holders, if not corrected, could generate fumes and smoke.''

The unsafe condition could result in an in-flight fire. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 22, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Viking Air Limited, 9574 Hampden Road, Sidney, British Columbia V8L 8V5, Canada; telephone 250–656–7227; fax 250–656–0673; e-mail *technical.publications@vikingair.com*; Internet *http://www.vikingair.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1330; Directorate Identifier 2008–NM–138–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–27, dated July 4, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Transport Canada has received numerous service difficulty reports concerning Viking DHC–7 and Bombardier DHC–8 aircraft fluorescent lamp holder damage due to overheating. It has been determined that lamp holder overheating is a result of arcing between the fluorescent tube pins and the lamp holder contacts when the tube is not properly seated during installation. Overheating of lamp holders, if not corrected, could generate fumes and smoke, causing concern to passengers and crew.
>
> This directive mandates repetitive inspection[s] for proper installation [and functioning] of fluorescent tubes and prohibits installation of non-arc-protected replacement fluorescent lamp ballasts.

The unsafe condition could result in an in-flight fire. The corrective actions include replacing any lamps that are not properly seated in the lamp holder, and replacing any broken, non-functioning lamp holders. Replacing all affected fluorescent lamp ballasts would terminate the repetitive inspections. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Viking Air Limited has issued Service Bulletin V7–33–01, dated February 28, 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 Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 21 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,680, or $80 per product, 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 determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Viking Air Limited (Formerly Bombardier, Inc.): Docket No. FAA–2008–1330; Directorate Identifier 2008–NM–138–AD.

Comments Due Date

(a) We must receive comments by January 22, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Viking Air Limited Model DHC–7–1, DHC–7–100, DHC–7–101, DHC–7–102, and DHC–7–103 airplanes, certificated in any category; serial numbers 1 through 113 inclusive, with Modifications 7/2444 and 7/2445 incorporated.

Subject

(d) Air Transport Association (ATA) of America Code 33: Lights.

Reason

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

Transport Canada has received numerous service difficulty reports concerning Viking DHC–7 and Bombardier DHC–8 aircraft fluorescent lamp holder damage due to overheating. It has been determined that lamp holder overheating is a result of arcing between the fluorescent tube pins and the lamp holder contacts when the tube is not properly seated during installation. Overheating of lamp holders, if not corrected, could generate fumes and smoke, causing concern to passengers and crew.

This directive mandates repetitive inspection[s] for proper installation [and functioning] of fluorescent tubes and prohibits installation of non-arc-protected replacement fluorescent lamp ballasts.

The unsafe condition could result in an in-flight fire. The corrective actions include replacing any lamps that are not properly seated in the lamp holder, and replacing any broken, non-functioning lamp holders. Replacing all affected fluorescent lamp ballasts would terminate the repetitive inspections.

Actions and Compliance

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

(1) Within 1,000 flight hours after the effective date of this AD: Perform a visual inspection to ensure proper installation and functioning of the fluorescent tubes in the lamp holders, and perform all applicable corrective actions before further flight, in accordance with the Accomplishment Instructions of Viking Service Bulletin V7–33–01, dated February 28, 2008. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) Replacing all fluorescent lamp ballasts having part number (P/N) BAO8006–1 and BA[O]8006–28–1 with new fluorescent lamp ballasts having P/N BR9000–21, in accordance with the Accomplishment Instructions of Viking Service Bulletin V7–33–01, dated February 28, 2008, terminates the repetitive inspections required by paragraph (f)(1) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; 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.

(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 Canadian Airworthiness Directive CF–2008–27, dated July 4, 2008, and Viking Service Bulletin V7–33–01, dated February 28, 2008, for related information.

Issued in Renton, Washington, on December 13, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30514 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1325; Directorate Identifier 2008–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–281 Airplanes Equipped With Auxiliary Fuel Tanks Installed in Accordance With Supplemental Type Certificate SA3449NM

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 certain Boeing Model 727–281 airplanes. This proposed AD would require deactivation of Rogerson Aircraft Corporation auxiliary fuel tanks. This proposed AD results from fuel system reviews conducted by the manufacturer, which identified potential unsafe conditions but has not

provided associated corrective actions. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by February 6, 2009.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed 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: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1325; Directorate Identifier 2008–NM–157–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC) design approval) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to design approval holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Rogerson Auxiliary Fuel Tank STCs

The auxiliary fuel tank STCs on affected airplanes are cylindrical and double walled. These tanks use pneumatic air pressure to empty into the airplane center wing tank. All auxiliary tanks use some type of electrical fuel quantity indication system (FQIS), flight deck control and annunciation panels, float level switches, valves and venting systems, electrical wiring connections in the dry bay area, and electrical bonding methods.

FAA's Findings

During the SFAR 88 safety assessment, it was determined that the Rogerson Aircraft Corporation FQIS and float level switch did not meet intrinsically safe electrical energy levels as described in the guidelines of advisory circular (AC) 25.981–1B, Fuel Tank Ignition Source Prevention Guidelines. Rogerson identified potential ignition sources resulting from a combination of single and latent failures for the Rogerson fuel tank subsystems. To prevent high electrical energy levels from the FQIS and float level switch from entering the auxiliary fuel tank, we have determined that the appropriate solution (depending on the type of auxiliary tank) for continued use is a combination of actions. First, installing a transient suppression device (TSD) in the FQIS and float level switches would be needed. In order to maximize wire separation, the TSD must be installed as close as possible to the points where the FQIS and float level switch wires enter the auxiliary tank. Other actions might include replacing high-energy FQISs, and float level switches that are impractical for TSD application, with intrinsically safe FQISs, providing wire separation, conducting a one time inspection and/or replacing aging float level switch conduit assemblies, periodically inspecting the external dry bay system components and wires, and testing the integrity of bonding resistances.

Furthermore, to reduce fuel vapor ignition risks associated with dry running of fuel pumps and fuel pump failures, operational limitations are needed to ensure that the fuel pumps

are turned off when the auxiliary tank is emptied. An inspection to detect fuel leakage in the dry bay and vent pipe shrouds needs to be included in the operator's maintenance program. Rogerson Aircraft Corporation has declared all STCs as high-flammability exposure installations, and has reported a few service difficulties with fuel leakage and damage to tank bladders during maintenance activities.

Rogerson has not provided the service information required under SFAR 88 that would lead the FAA to make a finding of compliance; therefore, we must mandate the deactivation of all Rogerson Aircraft Corporation auxiliary fuel tanks.

If operators do not wish to deactivate their auxiliary fuel tanks, we will consider requests for alternative methods of compliance (AMOCs). The most likely requests would be to allow continued use of the tanks by showing compliance with SFAR 88. This would involve obtaining STCs and developing maintenance procedures to address the safety issues identified above.

Once an operator has deactivated the tank as specified in this proposed AD, the operator might wish to remove the tank. This would require a separate design approval, if an approved tank removal procedure does not exist.

Related Rulemaking

AD 2008–12–03, amendment 39–15546 (73 FR 31749, June 4, 2008) applies to various transport category airplanes equipped with auxiliary fuel tanks installed in accordance with the identified Rogerson fuel tank STCs. That AD requires deactivation of Rogerson Aircraft Corporation auxiliary fuel tanks.

We have determined that AD 2008–12–03 does not include STC SA3449NM, which is also subject to the identified unsafe condition, and might be installed on Boeing Model 727–281 airplanes.

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. For this reason, we are proposing this AD, which would require deactivation to prevent usage of auxiliary fuel tanks.

This NPRM proposes the same requirements as AD 2008–12–03, but for airplanes that were not included in the applicability of that AD. In determining whether to supersede that AD or issue a new AD action, we considered the effect on the fleet of superseding AD 2008–12–03, and the consequent workload associated with revising maintenance record entries. In light of this, we have determined that a less burdensome approach is to issue a separate AD action for just the additional airplanes. This proposed AD would therefore not supersede AD 2008–12–03. Airplanes listed in the applicability of AD 2008–12–03 must be in compliance with its requirements. This proposed AD is a separate AD action and applies only to Boeing Model 727–281 airplanes, certificated in any category and equipped with auxiliary fuel tanks installed in accordance with STC SA3449NM.

Costs of Compliance

This proposed AD would affect about 17 U.S.-registered airplanes. The following table provides the estimated costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Report	1	$80	None	$80	$1,360.
Preparation of tank deactivation procedure	80	80	None	6,400	Up to $108,800.
Physical tank deactivation	30	80	$1,200	3,600	Up to $61,200.

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. 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, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–1325; Directorate Identifier 2008–NM–157–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 6, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727–281 airplanes, certificated in any category and equipped with auxiliary fuel tanks installed in accordance with Supplemental Type Certificate (STC) SA3449NM.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

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.

Report

(f) Within 60 days after the effective date of this AD, submit a report to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Information collection requirements in this AD are approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are assigned OMB Control Number 2120–0056. The report must include the following information:

(1) The airplane registration and auxiliary tank STC number installed.

(2) The usage frequency in terms of total number of flights per year and total number of flights for which the auxiliary tank is used.

Prevent Usage of Auxiliary Fuel Tanks

(g) Within 90 days after the effective date of this AD, deactivate the auxiliary fuel tanks, in accordance with a deactivation procedure approved by the Manager of the Los Angeles ACO. Any auxiliary tank component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation may not result in the need for additional instructions for continued airworthiness.

Note 1: Appendix A of this AD provides criteria that might need to be included in the deactivation procedure. Timely approval is dependent on early submittal of the deactivation procedures.

Note 2: For technical information, contact Dan Zevallos, Director of Program Management, Rogerson Aircraft Corporation, 2201 Alton Parkway, Irvine, California 92606; phone (949) 442–2306; fax (949) 442–2322.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210; 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.

Material Incorporated by Reference

(i) None.

Appendix A

Deactivation Criteria

The auxiliary fuel tank deactivation procedure required by paragraph (g) of this AD might need to address the following actions.

(1) Permanently drain auxiliary fuel tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

Note: If applicable, removing the bladder might help eliminate out-gassing.

(2) Disconnect all electrical connections from the fuel quantity indication system (FQIS), fuel pumps if applicable, float switches, and all other electrical connections required for auxiliary tank operation, and stow them at the auxiliary tank interface.

(3) Disconnect all pneumatic connections if applicable, cap them at the pneumatic source, and secure them.

(4) Disconnect all fuel feed and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) tanks, cap them at the airplane tank side, and secure them in accordance with a method approved by the FAA; one approved method is specified in AC 25–8 Fuel Tank Systems Installations. In order to eliminate the possibility of structural deformation during cabin decompression, leave open and secure the disconnected auxiliary fuel tank vent lines.

(5) Pull and collar all circuit breakers used to operate the auxiliary tank.

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable airplane flight manual (AFM) to indicate that the auxiliary fuel tank is deactivated. Remove auxiliary fuel tank operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary tank is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary tank maintenance procedures.

(9) After the auxiliary fuel tank is deactivated, accomplish procedures such as leak checks and pressure checks deemed necessary before returning the airplane to service. These procedures must include verification that the airplane FQIS and fuel distribution systems have not been adversely affected.

(10) Include with the operator's proposed procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation and return the airplane to service.

Issued in Renton, Washington, on December 14, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30518 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1324; Directorate Identifier 2008–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–60F Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This proposed AD would require revising the airplane flight manual to provide the flightcrew with procedures to preclude dry running of the fuel pumps. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent pump inlet friction (i.e., overheating or sparking) when the fuel pumps are continually run as the center wing fuel tank becomes empty, and/or electrical arc burnthrough, which could result in a fuel tank fire or explosion.

DATES: We must receive comments on this proposed AD by February 6, 2009.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed 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: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1324; Directorate Identifier 2008–NM–101–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. We have received a report indicating that the fuel pumps of the center wing fuel tank and alternate fuel tank on McDonnell Douglas Model DC–8 airplanes could be subject to pump inlet friction (i.e., overheating or sparking) when the fuel pumps are continually run as the center wing fuel tank becomes empty, and/or electrical arc burnthrough. These conditions, if not corrected, could result in a fuel tank fire or explosion.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require revising the Certificate Limitations section of the DC–8 Airplane Flight Manual (AFM) to provide the flightcrew with procedures to preclude dry running of the fuel pumps.

Costs of Compliance

We estimate that this proposed AD would affect 156 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $12,480, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2008–1324; Directorate Identifier 2008–NM–101–AD.

Comments Due Date

(a) We must receive comments by February 6, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

Model
(1) DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes.
(2) DC–8F–54 and DC–8F–55 airplanes.
(3) DC–8–61, DC–8–62, and DC–8–63 airplanes.
(4) DC–8–61F, DC–8–62F, and DC–8–63F airplanes.
(5) DC–8–71, DC–8–72, and DC–8–73 airplanes.
(6) DC–8–71F, DC–8–72F, and DC–8–73F airplanes.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent pump inlet friction (i.e., overheating or sparking) when the fuel pumps are continually run as the center wing fuel tank becomes empty, and/or electrical arc burnthrough, which could result in a fuel tank fire or explosion.

Compliance

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

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after the effective date of this AD, revise the Certificate Limitations Section of the DC–8 AFM to include the following procedures that preclude dry running of fuel pumps and/or electrical arc burnthrough (This may be done by inserting a copy of this AD into the AFM):

''During level flight, the applicable alternate or center wing auxiliary tank boost pump switch must be placed in the OFF position no more than 5 minutes after the auto fill light is continuously illuminated. DO NOT reset any tripped fuel pump circuit breakers.''

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210; 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.

Issued in Renton, Washington, on December 12, 2008.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–30521 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

RIN 1024–AD72

Vehicles and Traffic Safety

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: The National Park Service published a proposed rule revising 36 CFR 4.30 in the **Federal Register** on December 18, 2008, 73 FR 76987, inadvertently leaving out the last two paragraphs. This correction restores that text.

FOR FURTHER INFORMATION CONTACT: Philip A. Selleck, Regulations Program Manager, 1849 C St., NW., Washington, DC 20240 (202) 208–4206; e-mail *philip_selleck@nps.gov*.

Correction

In proposed rule FR Doc. E8–29892, beginning on page 76987 in the issue of December 18, 2008, make the following correction to the text of the proposed rule. On page 76990, in the 2nd column, add at the end of § 4.30 the following paragraphs (f) and (g):

§ 4.30 Bicycles.

* * * * *

(f) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11 and 4.14.

(g) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

Dated: December 18, 2008.

Lyle Laverty,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. E8–30649 Filed 12–22–08; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0496; FRL–8752–7]

RIN 2060–A076

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to adjust the allowance system for control of U.S. consumption and production of

hydrochlorofluorocarbons (HCFCs) by apportioning baselines and allocating production and consumption allowances for several HCFCs for which the Agency previously allocated allowances and other HCFCs that were not allocated allowances previously, for the control periods 2010–2014. The HCFC allowance system is part of EPA's Clean Air Act program to phase out ozone-depleting substances (ODSs) to protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts, as well as other health and ecological effects. The U.S. is obligated under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) to limit HCFC consumption and production to a specific level and, using stepwise reductions, to decrease the specific level culminating in a complete HCFC phaseout in 2030. The next major milestone, to occur on January 1, 2010, is a 75 percent reduction from the aggregate U.S. HCFC baseline for production and consumption. In this action EPA proposes to allocate the allowances for 2010–2014 that will ensure compliance with the international stepwise reduction, consistent with the 1990 Clean Air Act Amendments. In addition, EPA proposes to amend the regulatory provisions concerning allowances for HCFC production for developing countries' basic domestic needs to be consistent with the September 2007 adjustments to the Montreal Protocol. Also, the Agency is providing its interpretation of a self-effectuating ban on introduction into interstate commerce and use of HCFCs contained in section 605(a) of the Clean Air Act and proposes to amend existing regulatory provisions to facilitate implementation of the statutory requirements.

DATES: Comments must be received on or before February 23, 2009, unless a public hearing is requested. If a public hearing is requested, comments must then be received on or before March 9, 2009. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on January 2, 2009. If a hearing is held, it will take place on January 7, 2009 and the comment period will then close on March 9, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0496, 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:* Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket # EPA–HQ–OAR–2008–0496 Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, 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–2008–0496. 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 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: Cindy Axinn Newberg, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9729, *newberg.cindy@epa.gov*.

SUPPLEMENTARY INFORMATION: Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs), and to phase out production and consumption in a step-wise fashion over time, culminating in a general phaseout by 2020 while permitting a small amount of HCFC production to continue solely for servicing existing appliances until 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA of 1990) also mandates restrictions on HCFCs, culminating in a complete production and consumption phaseout in 2030. For purposes of both the Montreal Protocol and the Clean Air Act, ''consumption'' is defined as production plus imports minus exports. Sections 605 and 606 of the Clean Air Act authorize EPA to promulgate regulations to manage the consumption and production of HCFCs until the terminal phaseout. In 1993 EPA established a chemical-by-chemical, ''worst-first,'' approach to implement the Montreal Protocol's graduated phaseout in overall HCFC levels (58 FR 65018). Key concepts in the ''worst-first'' approach included ''distinguishing among HCFCs based on their [ozone depletion potential (ODP)] and phasing out use in new equipment prior to use for servicing existing equipment'' (58 FR 65026). The consumption cap became effective in 1996, and HCFC consumption in the U.S. remained about 15 percent below the cap for the first two years. In 1998 and 1999, consumption rose to levels that approached the cap. On January 21, 2003, EPA established an allowance tracking system for HCFCs (68 FR 2820), noting at that time that EPA would again pursue a notice-and-comment rulemaking to implement a 2010 stepwise reduction. EPA promulgated minor amendments to these regulations on June 17, 2004 (69 FR 34024), and July 20, 2006 (71 FR 41163).

In this action, EPA proposes the next step in the chemical-by-chemical phaseout the United States uses to meet its international obligations. Specifically, EPA proposes for HCFC–141b, HCFC–22, and HCFC–142b, to grant specified percentages of the consumption and production baselines for the control periods 2010–2014; and for other HCFCs to apportion company-by-company consumption and production baselines as well as grant

specified percentages of the consumption and production baselines for the control periods 2010–2014. EPA is also proposing to amend the provisions for HCFC production allowances to meet the basic domestic needs of developing countries. In addition, EPA is proposing regulatory changes to complete the implementation of the section 605(a) ban on introduction into interstate commerce or use of HCFCs and clarifies its interpretation of this Clean Air Act provision.

Abbreviations and Acronyms Used in this Document

CAA—Clean Air Act
CAAA—Clean Air Act Amendments of 1990
CFC—chlorofluorocarbon
EPA—Environmental Protection Agency
HCFC—hydrochlorofluorocarbon
Montreal Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
NPRM—Notice of Proposed Rulemaking
ODP—ozone depletion potential
ODS—ozone-depleting substance
Party—States and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*
SNAP—Significant New Alternatives Policy
UNEP—United Nations Environment Programme

Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Table of Contents

I. Regulated Entities

These proposed amendments will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing.	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers ...	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters ...	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators.	333415	.....	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment manufacturers.
Importers of air conditioners and refrigerators.	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment importers.

This table is not intended to be exhaustive, 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 potentially could be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. How Do the Montreal Protocol and Clean Air Act Phase Out HCFCs?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eventually eliminating the production and consumption of

stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Montreal Protocol. Title VI includes restrictions on production, consumption, and use of ozone-depleting substances that are subject to acceleration if ''the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use * * * more rapidly than the applicable schedule'' prescribed by the statute. Both the Montreal Protocol and the Clean Air Act define consumption as production plus imports minus exports.

In 1990, as part of the London Amendment to the Montreal Protocol, the Parties identified HCFCs as ''transitional substances'' to serve as temporary, lower-ODP substitutes for CFCs and other ODSs. EPA similarly viewed HCFCs as ''important interim substitutes that will allow for the earliest possible phaseout of CFCs and other Class I substances'' [1] (58 FR 65026). In 1992, through the Copenhagen Amendment to the Montreal Protocol, the Parties created a detailed phaseout schedule for HCFCs beginning with a cap on consumption for industrialized (Article 2) Parties, a schedule to which the United States adheres. The consumption cap for each Article 2 Party was set at 3.1 percent (later tightened to 2.8 percent) of a Party's CFC consumption in 1989, plus a Party's consumption of HCFCs in 1989 (weighted on an ODP basis). Based on this formula, the HCFC consumption cap for the U.S. was 15,240 ODP-weighted metric tons, effective January 1, 1996. This became the U.S. consumption baseline for HCFCs.

The 1992 Copenhagen Amendment created a schedule with graduated reductions and the eventual phaseout of HCFC consumption (Copenhagen, 23–25 November, 1992, Decision IV/4). Prior to the 2007 adjustment, the schedule called for a 35 percent reduction of the consumption cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020 (restricting the remaining 0.5 percent of baseline to the servicing of existing refrigeration and air-conditioning equipment), with a total phaseout in 2030.

The Copenhagen Amendment did not cap HCFC production. In 1999, however, the Parties created a cap on production for Article 2 Parties through an amendment to the Montreal Protocol agreed by the Eleventh Meeting of the Parties (Beijing, 29 November—3 December 1999, Decision XI/5). The cap on production was set at the average of: (a) 1989 HCFC production plus 2.8 percent of 1989 CFC production, and (b) 1989 HCFC consumption plus 2.8 percent of 1989 CFC consumption. Based on this formula, the HCFC production cap for the U.S. was 15,537 ODP-weighted metric tons, effective January 1, 2004. This became the U.S. production baseline for HCFCs.

The U.S. has chosen to implement the Montreal Protocol phaseout schedule on a chemical-by-chemical basis. In 1992, environmental and industry groups petitioned EPA to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at that time, EPA believed that the U.S. could meet, and possibly exceed, the required Montreal Protocol reductions through a chemical-by-chemical phaseout that employed a ''worst-first'' approach focusing on certain chemicals earlier than others. In 1993, as authorized by section 606 of the CAA, the U.S. established a phaseout schedule that eliminated HCFC–141b first and would greatly restrict HCFC–142b and HCFC–22 next, followed by restrictions on all other HCFCs and ultimately a complete phaseout. (58 FR 15014, March 18, 1993; 58 FR 65018, December 10, 1993). EPA explained that its action modified the schedule contained in paragraphs (a) and (b) of section 605 (58 FR 65025). Paragraph (a) addresses use and introduction into interstate commerce, while paragraph (b) addresses production.

On January 21, 2003 (68 FR 2820), EPA promulgated regulations to ensure compliance with the first milestone in the HCFC phaseout: the requirement that, by January 1, 2004, the U.S. reduce HCFC consumption by 35 percent and freeze HCFC production. In that rule EPA established chemical-specific consumption and production baselines for HCFC–141b, HCFC–22, and HCFC–142b. To further carry out the 1993 phaseout schedule, EPA issued calendar-year allowances equal to 100 percent of baseline for HCFC–22 and HCFC–142b for each control period [2] from 2003 through 2009. For those same control periods EPA issued calendar-year allowances equal to zero for HCFC–141b; under the 1993 rule HCFC–141b was subject to a complete phaseout on January 1, 2003, which allowed the United States to meet and exceed the 2004 stepwise reduction of 35 percent below the baseline for all HCFCs. EPA did, however, create a petition process to allow applicants to request very small amounts of HCFC–141b beyond the phaseout. EPA considered establishing baselines for all HCFCs in that rule but deferred such action for all but HCFC–141b, HCFC–142b, and HCFC–22. These regulations were amended with a technical correction on July 16, 2003 (68 FR 41925), and with direct final rules adopting minor amendments on June 17, 2004 (69 FR 34024) and July 20, 2006 (71 FR 41163).

To further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol's phaseout schedule for HCFCs at the 19th Meeting of the Parties in September 2007. In accordance with Article 2(9)(d) of the Montreal Protocol, the adjustment to the phaseout schedule was effective on May 14, 2008.[3]

As a result of the 2007 Montreal Adjustment (reflected in Decision XIX/6), the United States and other industrialized countries are obligated to reduce HCFC production and consumption 75 percent below the established baseline by 2010, rather than 65 percent as was the previous requirement. The other milestones remain the same: 90 percent below the baseline by 2015, and 99.5 percent below the baseline by 2020—allowing, during 2020 to 2030, production and consumption at only 0.5 percent of baseline solely for servicing existing air-conditioning and refrigeration equipment. The adjustment also resulted in a phaseout schedule for HCFC production that parallels the consumption phaseout schedule. All production and consumption for Article 2 Parties is phased out by 2030.

Decision XIX/6 also adjusted the provisions for Parties operating under

[1] Class I refers to the controlled substances listed in appendix A to 40 CFR part 82 subpart A. Class II refers to the controlled substances listed in appendix B to 40 CFR part 82 subpart A.

[2] A control period, as defined at 40 CFR 82.3, is a twelve-month period from January 1 through December 31.

[3] Under Article 2(9)(d) of the Montreal Protocol, an adjustment enters into force six months from the date the depositary (the Ozone Secretariat) circulates it to the Parties. The depositary accepts all notifications and documents related to the Protocol and examines whether all formal requirements are met. In accordance with the procedure in Article 2(9)(d), the depositary communicated the adjustment to all Parties on November 14, 2007. The adjustment entered into force and become binding for all Parties on May 14, 2008.

paragraph 1 of Article 5 (developing countries): (1) To set production and consumption baselines based on the average 2009–2010 production and consumption, respectively; (2) to freeze production and consumption at those baselines in 2013; and (3) to add stepwise reductions of 10 percent below baselines by 2015, 35 percent by 2020, 67.5 percent by 2025, and 97.5 percent by 2030—allowing, between 2030 and 2040, an annual average of no more than 2.5 percent to be produced or imported solely for servicing existing air-conditioning and refrigeration equipment. All production and consumption for Article 5 Parties is phased out by 2040.

In addition, Decision XIX/6 adjusted Article 2F to allow industrialized countries to produce ''up to 10 percent of baseline levels'' for export to Article 5 countries ''in order to satisfy basic domestic needs'' until 2020.[4] Paragraph 14 of Decision XIX/6 notes that no later than 2015 the Parties would consider ''further reduction of production for basic domestic needs'' in 2020 and beyond. Under paragraph 13 of Decision XIX/6, the Parties will review in 2015 and 2025, respectively, the need for the ''servicing tails'' for industrialized and developing countries. The term ''servicing tail'' refers to an amount of HCFCs used to service existing equipment, such as certain types of air-conditioning and refrigeration appliances.

B. What Sections of the Clean Air Act Apply to This Rulemaking?

Several sections of the Clean Air Act apply to this proposed rulemaking. Section 605 of the Clean Air Act phases out production and consumption and restricts the use of HCFCs in accordance with the schedule set forth in that section. Section 606 provides for acceleration of the schedule in section 605 based on a determination by EPA regarding current scientific information or the availability of substitutes, or to conform to any acceleration under the Montreal Protocol. EPA has previously accelerated the section 605 schedule through a rulemaking published December 10, 1993 (58 FR 65018). Though this action, EPA is further accelerating the section 605 HCFC production and consumption phaseouts.

Section 606 provides authority for EPA to promulgate regulations that establish a schedule for production and consumption that is more stringent than what is set forth in section 605 if: ''(1) Based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a Class I or Class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title.'' It is only necessary to meet one of the three criteria. EPA believes that in this instance, all three criteria have been met.

The first criterion allows the Administrator, based on an assessment of credible current scientific information, to determine that a more stringent schedule may be necessary to protect human health. The recent scientific findings by the Montreal Protocol's Science Assessment Panel, *Science Assessment of Ozone Depletion: 2006,* available in the docket for this rulemaking, were initially presented to the Parties to the Montreal Protocol in October 2006 at the 18th Meeting of the Parties in New Delhi, India. The Assessment was published in March 2007, and hard copies were available to the Parties in advance of the 26th Open-Ended Working Group Meeting held in June 2007 in Nairobi, Kenya. The assessment report shows that notwithstanding the evidence of a healing of the ozone layer, there continue to be human health and environmental effects associated with ozone depletion and that recovery continues to rely on a successful total global phaseout of ODSs. The report includes scenarios where additional actions taken by the Parties would result in a faster recovery. While these specific scenarios (including complete phaseout by the end of that calendar year) were not all necessarily deemed to be practical, they demonstrated to the Parties what could be achieved with additional actions and contributed in part to the willingness of many Parties, including the United States, to consider the adjustments to the Montreal Protocol's HCFC phaseout schedule that were successfully negotiated in September 2007. EPA published a notice of data availability (72 FR 35230) concerning the potential changes in HCFC consumption from proposed adjustments to the Montreal Protocol submitted by the United States for consideration at the 19th Meeting of the Parties held in Montreal September 2007. The data made available through that notice were specific to the United States' proposal but had general applicability to the other five proposals submitted by various Parties to the Protocol and to what was ultimately agreed to by the Parties at the 19th Meeting.

Reductions in stratospheric ozone levels lead to higher levels of ultraviolet radiation reaching the Earth's surface, and a higher risk of negative health

[4] Paragraphs 4–6 of adjusted Article 2F read as follows:

''4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five per cent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five per cent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2015, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

6. Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed zero. However:

i. Each Party may exceed that limit on consumption by up to zero point five per cent of the sum referred to in paragraph 1 of this Article in any such twelve-month period ending before 1 January 2030, provided that such consumption shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020;

ii. Each Party may exceed that limit on production by up to zero point five per cent of the average referred to in paragraph 2 of this Article in any such twelve-month period ending before 1 January 2030, provided that such production shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020.''

effects. According to the American Cancer Society, one in five Americans will develop skin cancer in their lifetime, and one American dies every hour from this disease. While medical research continues to improve the understanding of the causes and effects of skin cancer, many health and education groups are working to reduce the incidence of this disease. EPA believes the recent scientific findings on stratospheric ozone depletion, together with the well-established relationship between ozone depletion and increased risk of human health effects, support a determination that a more stringent HCFC phaseout schedule may be necessary to protect against such effects.

The second criterion allows the Administrator to determine a more stringent schedule is practicable based on the availability of substitutes for ODS, taking into account technological achievability, safety, and other relevant factors. Since the establishment of the domestic chemical-by-chemical phaseout in the United States, advances by industry have resulted in the availability of substitutes for a large variety of end-use applications. Under section 612 of the CAA, EPA's Significant New Alternatives Policy (SNAP) program evaluates and lists alternatives for ODSs that reduce overall risk to human health and the environment and are currently or potentially available. Alternatives include chemical replacements, product substitutes, and alternative technologies. The SNAP program has reviewed approximately 450 combinations of alternatives and end uses to date. EPA makes information available concerning potential alternatives for various end-use applications. Suitable alternatives—in many cases, multiple suitable alternatives—are available for all end-use applications for the HCFCs considered in this action. The SNAP program has reviewed substitutes for the following industrial sectors:

- Refrigeration & Air Conditioning.
- Foam Blowing Agents.
- Cleaning Solvents.
- Fire Suppression and Explosion Protection.
- Aerosols.
- Sterilants.
- Tobacco Expansion.
- Adhesives, Coatings & Inks.

HCFCs have been used in almost all of these industrial sectors. For example, within the air conditioning and refrigeration industrial sector, end uses where HCFCs have been used include chillers, industrial process refrigeration systems, ice skating rinks, cold storage warehouses, refrigerated transport, retail food refrigeration, household appliances, and residential and light commercial air conditioning and heat pumps. The SNAP program lists substitutes for each of the end uses. (For a complete list of substitutes the reader is directed to: *http://www.epa.gov/ozone/snap/lists/index.html.*) EPA believes that given the availability of substitutes, a more stringent HCFC phaseout schedule now is practicable.

The last criterion is that the Montreal Protocol be modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than section 605 would dictate. The United States submitted a proposal to adjust the Montreal Protocol in March 2007 to accelerate the phaseout of HCFCs. This was one of six proposals considered by the Parties at their 19th Meeting. Due to the efforts of the United States and others, the Parties agreed to adjustments that result in a more aggressive phaseout schedule for both developed and developing countries. Therefore, this third criterion has been met. Through this action, EPA is proposing to incorporate a schedule that reflects the 2007 Montreal Adjustment in its regulations. In order to meet the 2010 stepdown, EPA is proposing to allocate HCFC allowances for the years 2010 through 2014 at a level that will ensure the aggregate HCFC production and consumption will not exceed 25 percent of the U.S. baselines.

While section 606 is sufficient authority for this acceleration of the section 605 phaseout schedule, EPA also notes that section 614(b) of the Clean Air Act provides that in the case of a conflict between the Act and the Protocol, the more stringent provision shall govern. Thus, section 614(b) requires the Agency to establish phaseout schedules at least as stringent as the schedules contained in the Protocol.

In addition to implementing the 2007 Montreal Adjustment, today's proposed rule would also address provisions in section 605 of the Clean Air Act that relate to use and introduction intro interstate commerce of class II substances. In today's action, EPA is proposing to complete its implementation (begun in 1993) of the section 605 provisions on use of class II substances. EPA is also proposing regulatory language to reflect the section 605 provisions on introduction into interstate commerce of class II substances. EPA previously addressed the provisions concerning use of class II substances in a 1993 rulemaking that accelerated the phaseout schedule for HCFC–22 and HCFC–142b (58 FR 15014, 58 FR 65018). The intent of the 1993 rulemaking was to accelerate not only the production and consumption schedule, but also the use restrictions for those two substances. In the March 18, 1993 notice of proposed rulemaking, EPA stated that the effect of this acceleration was ''to prohibit the use of the chemicals (virgin material only) for any use except as a feedstock or as a refrigerant in existing equipment as of January 1, 2010'' (58 FR 15028). EPA noted in the December 10, 1993 notice of final rulemaking that ''HCFC restrictions and the approach included in today's final rule have not changed from those proposed by the Agency in March'' (58 FR 65028). The regulatory prohibitions included with that notice, however, did not control use directly, but instead banned production and import for most uses. In today's action, EPA is proposing to add the direct use prohibitions contemplated in the 1993 rule as well as the corresponding prohibitions on introduction into interstate commerce. EPA is also clarifying its interpretation of section 605(a).

III. This Proposal

EPA is proposing to adjust existing regulations to address the next major milestone in the HCFC phaseout. As a Party to the Montreal Protocol, and having ratified the Montreal Protocol and all of its amendments, the United States is required to decrease its amount of HCFC consumption and production to 25 percent of the U.S. baseline by 2010. Our domestic chemical-by-chemical approach results in differing schedules for the phaseout of individual HCFC compounds. EPA believes that the chemical-by-chemical HCFC allocation of allowances proposed in this notice of proposed rulemaking (NPRM) will ensure that the United States continues to maintain an overall HCFC production and consumption level that is below the 2010 cap specified by the September 2007 Montreal Adjustment, while at the same time ensuring that servicing needs consistent with Section 605(a) of the Clean Air Act and EPA's implementing regulations continue to be met. Thus the aggregate allowances for all U.S. HCFC consumption in the years 2010–2014 will not exceed 3,810 ODP-weighted metric tons (25 percent of the aggregate U.S. consumption baseline) annually and the aggregate allowances for all U.S. HCFC production in the years 2010–2014 will not exceed 3,884.25 ODP-weighted metric tons (25 percent of the aggregate U.S. production baseline) annually.

To meet the 2010 cap for the 2010–2014 control periods, EPA is proposing to continue its past practice of apportioning company-specific production and consumption baselines for individual HCFCs, and granting a certain percent of that baseline as necessary to achieve compliance with the cap. For HCFC–141b, HCFC–22, and HCFC–142b, EPA is proposing to apportion company-specific baselines in amounts that are equivalent to those currently published at § 82.17 (for production) and § 82.19 (for consumption), adjusted as necessary to reflect permanent transfers of baseline allowances and changes to the names of entities identified in the tables at § 82.17 and § 82.19. Companies are currently granted, in § 82.16, 0 percent of baseline for HCFC–141b and 100 percent of baseline for HCFC–22 and HCFC–142b. For 2010–2014, given the previous phaseout of HCFC–141b, EPA will continue to allocate zero percent for HCFC–141b, continuing to allow only limited amounts of production via an EPA petition process.[5] EPA is proposing to allocate less than 100 percent of baseline for HCFC–22 and HCFC–142b to meet our obligations under the Montreal Protocol and reflecting the use restrictions under section 605(a) that are discussed later in this proposal while providing for servicing needs consistent with those restrictions.

EPA is proposing a similar approach for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, which currently do not have baselines. EPA is proposing to apportion company-specific baselines for these HCFCs based on production and import data available to the Agency. For control periods 2010–2014, EPA is proposing to grant 125 percent of baseline for these HCFCs.

The allocations described above for HCFC–22, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb reflect EPA's analysis of market data for these chemicals. The proposed allocations were developed to allow the need for virgin material to be met and to avoid shortages during the affected control periods, as well as to accommodate some market growth for HCFCs–123, –124, –225ca, and –225cb, for which baselines were not developed in the 2003 allocation rule. The total proposed allocation of HCFC allowances to meet the U.S. need for virgin material is less than the 3,810 ODP-ton cap. The differential between the cap and the total proposed allocation will have the effect of accommodating minor adjustments in the market, particularly to allow potential market growth for HCFCs that have not been produced or imported since 2003 (and which are therefore not reflected here). In summary, of the 3,810 ODP tons of consumption and 3,884.25 ODP tons of production allowable for the 2010–2014 control periods as established by the Montreal Protocol, EPA is proposing to allocate allowances, in aggregate, for 2,920 ODP tons of consumption and 2,646 ODP tons of production.

These proposed allocations represent 77 percent of the consumption cap and 68 percent of the production cap established by the Montreal Protocol for 2010. EPA seeks comment on whether the proposed allocations, together with the amounts assumed to be available from reclaimed refrigerant, will suffice to meet HCFC needs for the existing uses (primarily refrigerant servicing) that will still be permitted in 2010, as well as potential adjustments in the HCFC market. Please provide information and documentation on newly emerging uses of HCFCs and other uses of HCFCs, if any, that are not accounted for by EPA currently. EPA is especially interested in information pertaining to the years 2010 through 2014.

EPA is proposing two other changes in this proposed rule. First, to reflect the September 2007 Montreal Adjustments, EPA is proposing to adjust the amount of Article 5 allowances for control periods 2010–2019. Second, EPA is completing its implementation of the provisions in section 605 of the Clean Air Act that relate to use and introduction into interstate commerce of class II substances.

EPA is not proposing changes to other provisions of 40 CFR part 82 subpart A, such as the recordkeeping and reporting obligations, the essential use and critical use provisions, and the HCFC–141b petition process. EPA is only seeking comments on the portions of 40 CFR part 82 subpart A that are specifically addressed by this proposal.

A. How Does EPA Propose to Issue Production and Consumption Allowances for 2010–2014?

In the United States, an allowance is the unit of measure that controls production and consumption of ozone-depleting substances. An allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific substance. EPA establishes company-by-company baselines (also known as ''baseline allowances'') and allocates calendar-year allowances equal to a percentage of the baseline for specified control periods. EPA has allocated two types of calendar-year allowances—production allowances and consumption allowances—for HCFC–22 and HCFC–142b. ''Production allowance'' and ''consumption allowance'' are defined at 40 CFR 82.3. To produce an HCFC for which allowances have been allocated, an allowance holder must expend both production and consumption allowances. To import an HCFC for which allowances have been allocated, an allowance holder must expend consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may obtain a refund of those consumption allowances upon submittal of proper documentation to EPA.

Since EPA is implementing the phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. Upon EPA approval, an allowance holder may trade allowances for one type of HCFC for allowances of another type of HCFC, with transactions weighted according to the ozone depletion potential of the chemicals involved. Pursuant to section 607 of the Clean Air Act, EPA applies an offset to each HCFC trade by deducting 0.1 percent from the transferor's allowance balance. The offset is viewed as a benefit to the ozone layer since it ''results in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions'' (42 U.S.C. 7671f).

Under current regulations at 40 CFR 82.15(a) and (b), HCFC–22 and HCFC–142b may not be produced or imported in excess of the calendar-year allowances held by the producer or importer. EPA has not yet allocated any calendar-year allowances for HCFC–142b or HCFC–22 to cover the 2010 control period and beyond. Absent a grant of calendar-year allowances for these HCFCs, § 82.15 would prohibit their production and import after December 31, 2009. EPA intends to avoid that result by issuing a final rule in advance of that date that will allocate calendar-year allowances for 2010–2014.

1. What Actions Did EPA Take in the 2003 Allocation Rule?

In the January 21, 2003, allocation rule, EPA established baselines for HCFC–141b, HCFC–22, and HCFC–142b. Section 601(2) states that EPA may select ''a representative calendar year'' to serve as the baseline for HCFCs. In the 2003 allocation rule, however,

[5] EPA is not proposing any changes and thus is not seeking comment with regard to the HCFC–141b petition process for the 2010–2014 control periods.

EPA concluded that because the entities eligible for allowances had differing production and import histories, no one year was representative for all companies. Therefore, in the 2003 allocation rule EPA assigned an individual consumption baseline year to each company by selecting its highest ODP-weighted consumption year from among the years 1994 through 1997. EPA assigned individual production baseline years in the same manner. EPA did not consider years after 1997 to avoid creating an uneven playing field that would skew allocations to those companies with ample resources and good access to information regarding the impending phaseout. EPA is not proposing to revisit decisions made in the 2003 allocation rule, such as the Agency's discretion to consider data from multiple years in establishing a baseline.

The 2003 allocation rule apportioned production and consumption baselines to each company in amounts equal to the amounts in the company's highest ''production year'' or ''consumption year,'' as described above. It completely phased out the production and import of HCFC–141b, with the limited exception described above, by granting 0 percent of that chemical's baseline for production and consumption in the table at § 82.16. The rule granted 100 percent of baseline for production and consumption of HCFC–22 and HCFC–142b. EPA was able to allocate allowances for HCFC–22 and HCFC–142b at 100 percent of baseline because, in light of the concurrent complete phaseout of HCFC–141b, the allocations for HCFC–22 and HCFC–142b, combined with projections for consumption of all other HCFCs, remained below the 2004 cap of 65 percent of the baseline.

Because EPA has allocated the same amount of allowances every year from 2004 to 2009—with minor changes reflecting permanent trades of baseline allowances—and because EPA tracks the production and consumption of all HCFCs (including those for which baselines are not allocated), the Agency can ascertain that the U.S. will remain comfortably below the cap through 2009. The January 2003 allocation rule announced that EPA would allocate allowances for 2010–2014 in a subsequent action and that those allowances would be lower in aggregate than for 2003–2009, consistent with the next stepwise reduction for HCFCs under the Montreal Protocol. EPA stated its intention to determine the exact amount of allowances that would be needed for HCFC–22 and HCFC–142b, bearing in mind that other HCFCs would also contribute to total HCFC consumption. EPA stated that it would likely achieve the 2010 reduction step by applying a percentage reduction to the HCFC–22 and HCFC–142b baseline allowances. EPA has monitored the market to ascertain servicing needs and market adjustments in the use of HCFCs, including HCFCs for which EPA did not establish baselines in the 2003 allocation rule.

2. How Will EPA Allocate 2010–2014 Allowances for HCFC–22 and HCFC–142b?

This proposal identifies five primary options for allocating HCFC–22 and HCFC–142b allowances for the control periods 2010–2014: (1) Allocating a percentage of the baseline allowances (§§ 82.17 and 82.19) for each HCFC respectively with or without considering any permanent baseline transfers and/or inter-pollutant transfers that resulted in a different amount of production or consumption for a specific HCFC; (2) allocating allowances based on evaluation of the most recent three years of production, import, and/or export data as reported to EPA; (3) allocating allowances based on evaluation of past sales of HCFCs by allowance holders by considering how the HCFCs were ultimately used (*e.g.,* servicing refrigeration or air-conditioning, original manufacture of refrigeration or air-conditioning equipment, foam blowing); (4) allocating allowances based on aggregated ODP tons; or (5) allocating a total amount of allowances and allowing for purchase by establishing an auction system. These options are described in more detail in section III.A.9 of this preamble. Each of these five methods offers advantages and disadvantages for potential allowance holders which vary according to whether a particular entity is predominantly a producer or importer; whether it currently sells HCFC–22 and HCFC–142b to original equipment manufacturers, wholesalers, retailers, or companies that service appliances; whether the portion of its business that is ODS-based is expanding or contracting as the next major milestone in the phaseout approaches; its liquidity; whether it holds both HCFC–142b and HCFC–22 allowances and/or engages in inter-pollutant transfers; and whether it sold HCFCs for applications that do not lend themselves to servicing. Without regard to the practices of individual entities, each of the potential allocation schemes also offers advantages and disadvantages associated with the ease of implementation and other administrative burdens. EPA has placed in the docket to this NPRM a memorandum titled ''Draft Regulatory Options for Allocating HCFC Allowances after 2009'' that explores the advantages and disadvantages of the various options. In addition to the memorandum, EPA has also placed in the docket written correspondence by entities that also discusses various options for allocating HCFC allowances.

EPA provided notice of the leading option for implementing the 2010 milestone in the preamble to the 2003 allocation rule by indicating that EPA ''intends to achieve this reduction step through notice and comment prior to 2010 and will likely implement the reduction by simply listing a percent of baseline allowances to be granted in § 82.16 for the years after 2009'' (68 FR 2823). The Agency said that it would allocate allowances for HCFC–22 and HCFC–142b at less than 100 percent of the respective baselines during the control periods 2010–2014. EPA continues to believe that this option is the most appropriate, but seeks comment on other options. This approach offers a transparent design and provides stability in that it uses a well-vetted baseline. EPA believes this option also is the least burdensome because it would not require additional one-time or periodic reporting obligations that may be necessary if EPA were to adopt a different option. Producers and importers have adapted to the current HCFC allocation method and aligned their business activities around the baselines set forth in the 2003 allocation rule. Currently, EPA manages a tracking system and issues calendar-year allowances per control period to specific entities listed in § 82.17 and § 82.19. An option that utilizes this system would limit administrative burdens for the Agency and allowance holders.

In the 2003 allocation rule, EPA did not forecast the amount of reduction for HCFC–22 and HCFC–142b that would be needed to ensure that the United States stayed sufficiently below the 2010 stepwise reduction, which at the time was a reduction of 65 percent from the Montreal Protocol baseline. EPA did not determine whether it would reduce the allocations for the two substances by the same percentage or by different percentages. Several factors affect determination of the appropriate percentage of the HCFC–22 and HCFC–142b production and consumption baselines to allocate for 2010–2014. Factors include the percentage of the aggregate U.S. production and consumption caps that other HCFCs comprise as well as provisions in the Clean Air Act and implementing

regulations that include use restrictions (discussed in section III.C of this NPRM).

EPA uses information from quarterly, annual, and other periodic reporting requirements to monitor consumption, production, imports, and exports of all HCFCs. EPA uses this information to ensure companies' compliance with regulatory requirements and to develop reports that are requested by the Parties to the Montreal Protocol, including reports ascertaining U.S. compliance with the phaseout caps. The information enables EPA to monitor production and consumption for all HCFCs, including HCFCs for which baselines have not yet been established and for which allowances have not yet been allocated.

Although EPA's July 20, 2001, proposed HCFC allocation rulemaking would have allocated production and consumption allowances for all HCFCs, the January 2003 final rule apportioned company-specific baselines, and allocated a specific percentage of baseline allowances for the 2003–2009 control periods, only for HCFC–141b, HCFC–22, and HCFC–142b. EPA applied a ''worst-first'' approach to these HCFCs since they are the most damaging to the stratospheric ozone layer. The 2003 final rule noted that the HCFC market was continuing to evolve. At that time, the market for HCFCs with lower ODPs did not reflect rapid expansion and thus it was not necessary to establish specific baselines by chemical and issue allowances to ensure that the United States remained below its cap. Later in this proposal, EPA further discusses establishing and apportioning baselines as well as allocating calendar-year allowances for these lower-ODP HCFCs for the control periods 2010–2014.

3. How Should EPA Consider Servicing Needs for Existing Equipment?

EPA is proposing to use projected servicing needs in its determination of the amounts of HCFC–22 and HCFC–142b allowances to be allocated for the 2010–2014 control periods. EPA is focusing on servicing needs because under section 605(a) of the Clean Air Act and EPA's implementing regulations, nearly all other uses of these two HCFCs will be banned effective January 1, 2010. EPA has previously issued a draft analysis of servicing demand for the HCFC appliances in the U.S. refrigeration and air-conditioning sector projected to be in service from 2010–2019. The report is titled *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector* (the ''Servicing Tail'' report). On November 4, 2005, EPA published a notice of data availability (70 FR 67172) making a draft of the report available for public review and comment. On September 29, 2006, EPA held a stakeholder meeting presenting the findings of a revision to the Servicing Tail report along with other important information regarding the next major milestones in the HCFC phaseout. EPA solicited comments on the findings presented at the meeting. Some stakeholders, including representatives of manufacturers, chemical producers, importers, reclaimers, industry associations, and environmental organizations, commented on the projected amount of HCFCs needed to service this installed base of equipment and on the amounts expected to be available from reclamation.

EPA focused the analysis on air-conditioning and refrigeration appliances because such equipment will represent the bulk of the servicing need. In addition, the servicing exception to the use ban for HCFC–22 and HCFC–142b pertains only to use as a refrigerant in such equipment. EPA also focused the analysis on HCFC–22 because HCFC–22 is the predominant HCFC in the installed base of air-conditioning and refrigerant equipment for which servicing in the U.S. will likely continue. The findings in the Servicing Tail report have helped to shape EPA's views regarding the allocation for the control periods 2010–2014.

The majority of HCFC–22 equipment that is projected to be in use from 2010 onward will be air-conditioning applications, including window units, packaged terminal units, residential and commercial unitary air-conditioning, chillers, dehumidifiers, water and ground source heat pumps, and non-light duty mobile air-conditioning in buses and trains. Approximately 147.5 million units of all such types of HCFC–22 air-conditioning equipment will be in use in 2010, decreasing from 2010 levels by about 41 percent by 2015 and 76 percent by 2020. In 2010, approximately 2.2 million units of HCFC–22 refrigeration equipment will be in use, including retail food, industrial process refrigeration, and transport refrigeration equipment (but not including cold storage warehouses). The installed base of HCFC–22 refrigeration equipment is projected to decrease from 2010 levels by about 29 percent by 2015 and 51 percent by 2020. EPA developed these estimates using its Vintaging Model, a tool for estimating the annual chemical emissions from industrial sectors that have historically used ozone-depleting substances in their products. Additional information on the Vintaging Model is available in the docket for this rulemaking.

As a result of the September 2007 Montreal Adjustment, in which the Parties agreed to adjust the stepwise reduction in 2010 from 65 percent of baseline to 75 percent of baseline for non-Article 5 Parties, and recognizing the overall advances by industry in transitioning to non-ODS substitutes, EPA has prepared a draft revised Servicing Tail report to: (1) Reflect the 75 percent reduction in 2010; (2) consider more recent production and consumption data in the United States; and (3) consider more recent trends in the air-conditioning and refrigeration sectors. This revised draft report is available in the docket for this rulemaking. EPA is accepting comments on the analysis and the draft findings until February 23, 2009 or March 9, 2009 if a hearing regarding this rulemaking is held.

The Servicing Tail report utilizes production, import, and export data reported to the Agency on a quarterly, annual, and transactional basis, as required by § 82.24. EPA's analysis of the reported data confirms that the United States is satisfying its obligations as it phases out ODSs and enables EPA to consider trends in the HCFC markets on a chemical-by-chemical basis. EPA also uses this information to submit an annual report to the Ozone Secretariat as requested by the Parties to the Montreal Protocol.

Using the reported data, the draft revised Servicing Tail report, and the comments provided at the September 2006 stakeholder meeting and submitted in subsequent correspondence (available in the docket), EPA believes it has sufficient information to propose through this action to allocate a percentage of baseline allowances for HCFC–22 and for HCFC–142b for production and consumption for the control periods 2010–2014 that will address servicing needs. The specific percentage of baseline for each of the affected compounds is discussed below. EPA requests comments regarding whether it should consider other sources of information in addition to the required reports, the Servicing Tail report, and stakeholder comments. In particular, EPA is interested in whether these sources provide sufficient information to allow EPA to reasonably estimate servicing needs for 2010–2014, especially for HCFC–22, which accounts for the majority of the market.

4. How Will the Allocated Allowances Appear in the Regulations?

EPA is proposing to revise two types of tables in 40 CFR part 82 that together

specify the production and consumption allowances available to allowance holders during specified control periods. Tables at § 82.17 and § 82.19 apportion baseline production and consumption amounts (also referred to as baseline production allowances and baseline consumption allowances), respectively, to individual companies for individual HCFCs. Complementing these tables, the table at § 82.16 lists the percentage of baseline allocated to allowance holders for specific control periods. EPA is proposing to retain this framework of complementary tables, revising them to reflect adjustments to baselines, and to grant percentages of baselines in a manner that achieves the 2010 phasedown goal.

Currently the table at § 82.16 allocates zero percent of baseline to HCFC–141b and 100 percent of baseline to HCFC–22 and HCFC–142b (combined in a single column) for each control period spanning 2003–2009. EPA is proposing to amend the table by including control periods 2010–2014, by continuing to allocate zero percent to HCFC–141b, and by allocating specified percentages (in separate columns) to HCFC–22, HCFC–142b, and—as will be discussed later—other HCFCs.

The proposed percentages for HCFC–22 and HCFC–142b differ because EPA projects that the needs will differ for servicing air-conditioning and refrigeration appliances during the 2010–2014 control periods. EPA's analysis shows that there will be a significantly greater need for HCFC–22 than for HCFC–142b during the control periods 2010–2014. Based on the Servicing Tail report and reporting information already required by EPA (which includes inter-pollutant transfers), the needs for individual HCFCs are not uniform.

EPA believes that allocating the same percentage of baseline for HCFC–22 and HCFC–142b would result in too few allowances for HCFC–22 and too many allowances for HCFC–142b.[6] While inter-pollutant transfers in accordance with § 82.23(b) could continue to be used as a means to trade allowances for one HCFC for another, EPA is not planning to rely on such transfers as a mechanism for large-scale corrections. Instead, EPA anticipates that the continued availability of inter-pollutant transfers will permit the market to self-correct for unforeseen changes in demand and allow individuals to consider a range of options for their allowances. EPA seeks to avoid unnecessary disruptions in the marketplace. EPA's goal is to promote a smooth transition for industry.

EPA requests comments on allocating different percentages of baseline production allowances and baseline consumption allowances for HCFC–22 and HCFC–142b.

5. What Other Methods Could Be Used to Determine the Allocation for HCFC–22 and HCFC–142b Allowances?

EPA is proposing to allocate HCFC–22 and HCFC–142b allowances based on the projected servicing needs for those compounds, taking into account the amount of those needs that can be met through recycling and reclamation. However, EPA can envision other methods for determining how many allowances to allocate for the control periods 2010–2014 for these two compounds, including allocating the maximum amount that ensures compliance under the Montreal Protocol aggregate 2010 cap without room for other HCFCs. EPA notes above that HCFCs other than HCFC–22 and HCFC–142b are likely to be needed during the control periods 2010–2014. Thus EPA favors an approach that includes other HCFCs, recognizing that for such HCFCs baselines must be established and apportioned for each substance, and a percentage of the baseline must be allocated for these control periods. EPA believes it would not be appropriate to allocate the full 3,810 ODP-weighted metric tons of consumption and 3,884.25 ODP-weighted metric tons of production solely to HCFC–22 and HCFC–142b, given the projected needs for other HCFCs as discussed in section III.B.11 of this preamble.

Approaches that do not consider servicing needs could result in shortages of HCFC–22. EPA considered, but is not proposing, allocating a percentage of the 2010 aggregate HCFC consumption and production caps for HCFC–22 and HCFC–142b respectively equal to the same overall percentage of the aggregate HCFC consumption and production caps allocated for each substance in the 2003 allocation rule. Under this approach, EPA would start with the percentage of the total allowable HCFC consumption and production level attributable to each HCFC in the 2003 rule. For example, beginning in 2004, the total allowable HCFC consumption level was 9,906 ODP-weighted metric tons. Using the consumption data for each company's highest ODP-weighted consumption year, EPA allocated HCFC–22 allowances equal to 66 percent of 9,906 ODP tons and HCFC–142b allowances equal to 13 percent of 9,906 ODP tons. We could apply the same percentages to the total allowable HCFC consumption level for 2010–2014 of 3,810 ODP-weighted metric tons. This would provide congruence for the overall ''pie.'' EPA is concerned, however, that such an approach would provide significantly fewer HCFC–22 allowances in 2010 than would be needed for servicing. Sixty-six percent of the aggregate HCFC cap for the control periods 2010–2014 equals 2,515 ODP-weighted metric tons, which is approximately equal to 46,000 metric tons of HCFC–22. The Servicing Tail report, however, estimates that approximately 62,500 metric tons of HCFC–22 will be needed for servicing in 2010. EPA is concerned that if large quantities of recycled or reclaimed[7] HCFC–22 are not available, the need to make up the almost 20,000-metric-ton shortfall could trigger illegal activities such as imports of HCFC–22 by those that do not hold consumption allowances. As noted elsewhere in this NPRM, EPA does not believe it should rely on inter-pollutant transfers to secure such a significant amount of HCFC–22 allowances.

While EPA regulations aim at maximizing refrigerant reuse, EPA believes that reclamation rates in 2010–2014 would not be sufficient to avert a shortfall if EPA were to issue 46,000 metric tons of consumption allowances to HCFC–22 using this option. This shortfall would equal approximately 30 percent of the total projected servicing need for 2010–2014. As explained in the next section, amounts reported to EPA of reclaimed refrigerant coupled with estimates for available recycled refrigerants indicate that currently less than 30 percent of the servicing need can be met through refrigerant recovery and reuse during these control periods. Thus, EPA has rejected this method as a basis for deciding the relative amounts

[6] EPA estimates that to stay below the aggregate cap while reducing HCFC–22 and HCFC–142b by equal percentages, the resulting HCFC–22 allowances would equal less than two-thirds of the projected demand for HCFC–22.

[7] EPA has defined Reclaim, Recover and Recycle at § 82.152 as follows: (1) *Reclaim* refrigerant means to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in section 5 of appendix A of 40 CFR part 82, subpart F; (2) *recover* refrigerant means to remove refrigerant in any condition from an appliance and to store it in a external container without necessarily testing or reprocessing it in any way; (3) *recycle* refrigerant means to extract refrigerant from an appliance and clean refrigerant for reuse without meeting all of the requirements for reclamation. In general, recycled refrigerant is refrigerant that is cleaned using oil separation and singe or multiple passes through devices, such as replaceable core filter-driers, which reduce moisture, acidity, and particulate matter. These procedures are usually implemented at the field job site.

of HCFC–22 and HCFC–142b allowances to issue for the 2010–2014 control periods. A memorandum to the docket entitled ''Summary: EPA Analysis of U.S. Reclamation Practices and Trends'' provides additional information on reclamation practices underlying the assumptions in EPA's analysis.

EPA's primary objective is to ensure compliance with the obligation under the Montreal Protocol to reduce the ODP-weighted ''basket'' of HCFCs to 75 percent below the baseline for production and consumption beginning January 1, 2010. Various options, alone or in combination, could be used to meet this objective. EPA believes, however, that the proposed option provides the best assurance that allocations will be available to meet the projected needs for all HCFCs during the 2010–2014 control periods.

6. How Important Is HCFC–22 in Determining the Allocation of Allowances?

HCFC–22 is the HCFC most widely produced and used in applications for which servicing of existing equipment will occur during 2010–2019. The Servicing Tail analysis focused on HCFC–22, which represents a majority of the market, but also includes information on other refrigerants and components of blends including HCFC–142b and HCFC–123. The report included in the docket focuses on two major equipment types: refrigeration and air conditioning.

Refrigeration equipment can be broken down into four categories: (1) Domestic refrigeration, (2) refrigerated transport, (3) industrial process refrigeration (IPR), and (4) commercial refrigeration. Domestic refrigeration includes household refrigerators, household freezers, combination refrigerator/freezer units, and water coolers. With the exception of certain older household freezers that use HCFC–22, this category typically does not use HCFCs or blends containing HCFCs. Refrigerated transport includes refrigeration used in equipment that moves products from one place to another and includes refrigerated ship holds, truck trailers (*i.e.*, reefer trucks), railway freight cars, and other shipping containers. Industrial process refrigeration systems are complex, customized systems used to cool process streams in the chemical, food processing, pharmaceutical, petrochemical, and manufacturing industries. This sector also includes industrial ice machines, equipment used directly in the generation of electricity, and ice rinks. Commercial refrigeration can be further broken down into three end-uses: cold storage warehouses, retail food systems, and ice makers.

EPA estimates that HCFC–22 use in air-conditioning and refrigeration equipment was approximately 115,000 metric tons in 2006. Approximately 66 percent—about 76,000 metric tons—was for servicing existing equipment, with the percentage higher for the refrigeration industry than the air-conditioning industry. The majority of HCFC–22 consumption for servicing is currently attributed to residential and small commercial unitary equipment and retail food refrigeration equipment.

The projected servicing need for HCFC–22 in 2010 is approximately 62,500 MT (3,438 ODP-weighted metric tons) or approximately 90 percent of the consumption cap for all HCFCs in 2010, which is 3,810 ODP-weighted metric tons. Although EPA estimates that the servicing need for HCFC–22 will decrease each year beginning in 2010, EPA is not convinced that there is enough room under the aggregate HCFC cap to consider any scenario where the allocation of allowances for HCFC–22 production or consumption is substantially higher than the projected servicing need, given the need to allocate allowances for other HCFCs as discussed elsewhere in this NPRM.

In the 2003 allocation rule, EPA issued baseline consumption allowances for HCFC–22 equaling 119,384,852 kilograms (119,385 metric tons, or 6,566 ODP-weighted metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. The Montreal Protocol cap for all U.S. HCFC consumption beginning in 2004 was 9,906 ODP-weighted metric tons. The baseline allowances for HCFC–22 consumption represented approximately 66 percent of the Montreal Protocol HCFC consumption cap for the United States.

In the 2003 allocation rule EPA issued baseline production allowances for HCFC–22 equaling 110,619,359 kilograms (110,619 metric tons, or 6,084 ODP-weighted metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. The Montreal Protocol cap for all U.S. HCFC production beginning in 2004 was 10,999 ODP-weighted metric tons. The baseline allowances for HCFC–22 production represented approximately 70 percent of the Montreal Protocol HCFC production cap for the United States.

In the 2003 allocation rule EPA issued baseline consumption allowances for HCFC–142b equaling 21,088,677 kilograms (21,089 metric tons, or 1,371 ODP-weighted metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. This represented approximately 14 percent of the Montreal Protocol HCFC consumption cap of 9,906 ODP-weighted metric tons for the United States.

In the 2003 allocation rule EPA issued baseline production allowances for HCFC–142b equaling 25,090,394 kilograms (25,090 metric tons, or 1,631 ODP-weighted metric tons) and allocated 100 percent of the baseline for the 2003–2009 control periods. This represented approximately 15 percent of the 10,999 ODP-weighted metric tons allowed for the United States under the Montreal Protocol HCFC cap.

In the 2003 allocation rule EPA issued baseline consumption and production allowances for HCFC–141b, and under its ''worst first'' chemical-specific approach allocated 0 percent of baseline for consumption and production—eliminating, with certain narrow exemptions, the production and import of HCFC–141b. EPA projects that a minimal amount of HCFC–141b will continue to be needed for exempted HCFC–141b production until 2015. Although EPA does not intend to allocate HCFC–141b production or consumption allowances, EPA must account for continued consumption and production of minimal exempted amounts of HCFC–141b to ensure compliance with the 2010 caps.

In addition, EPA must ensure that production and consumption of HCFCs for which baselines were not established in the 2003 allocation rule does not result in an aggregate allocation exceeding the HCFC production or HCFC consumption caps established by the Montreal Protocol.

Air-conditioning and refrigeration equipment commonly requires servicing, which may include the need to add refrigerant to account for refrigerant losses that occur over time. The limited amount of production and import of HCFC–22 and HCFC–142b beginning January 1, 2010, will be allowed only for servicing equipment manufactured prior to January 1, 2010. Later in this proposal, EPA will consider what is meant by ''manufactured.''

The Agency recognizes that servicing needs can be met with a combination of newly manufactured HCFCs (virgin HCFCs) and HCFCs that have been recovered and either recycled or reclaimed. Therefore, EPA does not anticipate that the entire projected HCFC–22 servicing need (3,438 ODP tons) will need to be produced or imported to meet the anticipated

demand. A percentage of that servicing need will be met by recovering used HCFC–22 from existing equipment. The ''servicing tail'' report provides analysis of various scenarios regarding reclamation. In addition, EPA's memo to the docket ''Summary: EPA Analysis of U.S. Reclamation Practices and Trends'' provides background on the reclamation industry, which includes information concerning capacity to reclaim greater amounts of refrigerants, and projects that more than 20 percent of the servicing need can be met by recovering used HCFC–22 from existing equipment.

Recycled and reclaimed HCFCs offset the need for newly-manufactured HCFCs and after the terminal phaseout, as with the CFC phaseout, will become the sole source of HCFCs for servicing existing equipment. EPA regulations at 40 CFR part 82 Subpart F manage the recovery, recycling, reclamation, and reuse of HCFCs under section 608 of the CAAA. Under those regulations, HCFCs may not be vented and must be recovered and are then generally either recycled, reclaimed, or in some cases destroyed. Therefore, it is reasonable to assume that some amount of used HCFCs will be available to meet servicing needs. In accordance with the chemical-by-chemical phaseout regime adopted by the United States, after 2020 only recycled, reclaimed, and stockpiled HCFC–22 and HCFC–142b will be available to service appliances that require those substances. EPA's existing regulations at § 82.16 terminate HCFC–22 and HCFC–142b production and consumption at the end of 2019, and EPA is not proposing to modify that provision. The very small amount of additional production and consumption of HCFCs allowed under Article 2F of the Montreal Protocol between 2020 and 2030 for servicing existing appliances (0.5 percent of baseline) will only be permitted for HCFCs other than HCFC–141b, HCFC–22, and HCFC–142b, per § 82.16(e), and restricted to servicing only air-conditioning and refrigeration equipment manufactured prior to January 1, 2020 per § 82.16(d).

Given its previous experience with the Class I phaseout, EPA believes that over time a larger percentage of recovered HCFCs will be available for reuse. For example, after the 1996 CFC phaseout, motor vehicles with CFC–12 air-conditioning systems continued to be serviced with used CFC–12. In fact, even today recovered CFC refrigerants are still in use for servicing a range of older equipment.

The Servicing Tail report used EPA's Vintaging Model to determine the quantities of HCFC–22 from existing (recycled or reclaimed) sources that can meet post-2010 servicing needs with the remaining quantities required through virgin manufacture (expending allowances). For a given year, the Vintaging Model assumes that a certain percentage of refrigerants, which varies by end-use, is recovered from discarded equipment. The model aggregates the quantities recovered but does not distinguish the ''pool'' of refrigerant between quantities that are reclaimed versus those that are recycled. EPA's Vintaging Model was the primary tool used to launch the analysis and form the basis for quantitative estimates of projected HCFC consumption. The Vintaging Model estimates the annual chemical emissions from industry sectors that have historically used ODS, including air conditioning, refrigeration, foams, solvents, aerosols, and fire protection. Within these industry sectors, there are over 50 independently modeled end-uses. The model uses information on the market size and growth for each of the end-uses, as well as a history and projections of the market transition from ODS to alternatives. As ODS are phased out, a percentage of the market share originally filled by the ODS is allocated to each of its substitutes. The model tracks emissions of annual ''vintages'' of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment. EPA's Vintaging Model makes use of this market information to build an annual inventory of in-use stocks of equipment and the ODS refrigerant and non-ODS substitutes in each of the end-uses.

For purposes of analysis, the Servicing Tail report considers scenarios for HCFC–22 and HCFC–142b where differing amounts of servicing needs were met by recycled and reclaimed refrigerants. For example, the report examines scenarios in which 10 percent, 15 percent, 20 percent, 25 percent, 50 percent, and 75 percent of the total amount of HCFC–22 in retired or converted equipment is recovered. These analyses depict the potential ratios of new and recovered HCFCs that could be available during the years 2010–2019 to meet the overall servicing needs recognizing that the higher recovery rates are less likely for the earlier control periods.

EPA has anecdotal and reported information concerning recovery rates for refrigerants. Commenters at the September 2006 stakeholder meeting indicated that approximately 10 percent of HCFC–22 in current use was recovered and either reclaimed or recycled. Data reported to EPA consistent with 40 CFR Part 82 Subpart F shows that approximately 3716 metric tons (204 ODP tons) of HCFC–22 was reclaimed in 2007. EPA does not track recycled refrigerants, since recycled refrigerant (unlike reclaimed refrigerant) typically is charged back into equipment with the same ownership rather than re-entering the market. Readers interested in additional information concerning recovery and recycling should review the Servicing Tail report. Given the regulatory requirements for recycling and reclamation (at 40 CFR part 82 subpart F), experience with the CFC phaseout, and industry practices, EPA estimates that during the period 2010–2014, an amount greater than 20 percent of the total servicing need for HCFC–22 can be met with HCFC–22 that has been recovered and either recycled or reclaimed. Since EPA is not banning the use of HCFC–22 equipment, recovered and reclaimed HCFC–22 will become a more valuable commodity as the U.S. approaches the January 1, 2015, stepdown. The demand for HCFC–22 to service existing equipment should provide an economic incentive for an increase in the quantities of used HCFC–22 available for reclamation. As an indicator, EPA notes that several reclamation companies have recently started offering financial payments for used HCFC–22. The docket for this NPRM provides further information regarding EPA's assumptions regarding the availability of recycled or reclaimed HCFC–22 to meet servicing needs.

EPA has considered, but is proposing to reject, using an increasing number to represent the contribution of recycled and reclaimed refrigerant for each of the control periods from 2010–2014 and thus simultaneously reducing the amount of allowances needed for HCFC–22. EPA believes for these control periods, maintaining a constant number of allowances would reduce the overall burden for the allowance holders and would ease business practices. EPA notes that recovery rates could fluctuate yearly and thus holding steady for control periods 2010–2014 is an appropriate approach. In addition, the step downs in the expected recycling and reclamation rates then more closely reflect the international commitments in Decision XIX/6. EPA expects that for the 2015–2019 control periods, the percent of servicing need met by recovered refrigerants will increase and, as noted above, beginning in 2020 all servicing needs for HCFC–22 will be met with

recovered refrigerants. EPA will address the percent of servicing need to be met by recovered refrigerants in 2015–2019 in a subsequent rulemaking to reflect the 2015 stepdown required by Article 2F:

> Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group 1 of Annex C does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of the controlled substances in Group 1 of Annex C does not exceed zero. However, * * * each Party may exceed that limit on consumption by up to zero point five percent of the sum referred to in paragraph 1 of this Article in any such twelve-month period ending before 1 January 2030, provided that such consumption shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020.

EPA believes that meeting demand after 2010 will require the reuse of HCFC–22, and is particularly concerned with ensuring that demand is met during the first years of the 2010–2014 control periods when a large number of appliances using HCFC–22 will still be suitable for use. EPA notes that a smooth transition for stakeholders—including continued availability of needed material for approved uses—has historically been an essential aspect of the U.S.'s success in implementing the Montreal Protocol and Clean Air Act requirements. For purposes of the 2010–2014 control periods, EPA is proposing to use a number in the range of 15—25 percent to represent the contribution of recovered refrigerant to the total servicing need. EPA requests comments on the amount of the total servicing need for HCFC–22 that can be met with recovered refrigerants, which is between 15 and 25 percent of total estimated servicing need.

7. HCFC–22 Allowances for 2010–2014

EPA is proposing to allocate HCFC–22 consumption allowances to meet 80 percent of the servicing need, assuming that the remaining 20 percent will be met by recovered HCFC–22 that is either recycled or reclaimed. This translates into approximately 50,000 metric tons (2,750 ODP-weighted metric tons), or approximately 72 percent of the total HCFC consumption cap for each of the control periods from 2010 through 2014.

As it did in the 2003 allocation rule, EPA is proposing to allocate production allowances among different chemicals using the same percentage breakdown as for consumption allowances. This would allocate 45,498 metric tons (2,502 ODP tons) of the 3,884.25-ODP-ton production cap to HCFC–22 production. This is consistent with section 605(c) of the Clean Air Act, which states that EPA shall promulgate a phaseout schedule for HCFC consumption that is the same as that applicable to HCFC production. EPA recognizes that there is a difference between the amount of imported and produced HCFCs and that the degree of difference may vary over time. However, EPA does not believe it is necessary to use two different chemical-by-chemical percentage breakdowns (*i.e.*, one for consumption allowances and another for production allowances) to ensure compliance with the production and consumption caps. Therefore, for simplicity and for consistency with section 605(c), EPA is proposing to use the same percentages for production and consumption allocations—deriving the percentages based on estimated need for each individual HCFC.

If more HCFC–22 is recovered, recycled, and reclaimed than assumed in this proposed rule, EPA anticipates that the demand for virgin HCFC–22 will decrease. Thus it is possible that not all the production and consumption allowances will be used. It is also possible that any ''extra'' HCFC–22 allowances could be converted via inter-pollutant transfers to meet other HCFC needs.

EPA requests comments on its application of a 20 percent rate of availability of recovered (recycled or reclaimed) HCFC–22. As discussed above, EPA estimates that at least 20 percent of the 2010–2014 servicing need can be met from recycled or reclaimed material. EPA believes that by the January 1, 2010, effective date of this rule, 20 percent of the 2010–2014 servicing needs should be available from recycled or reclaimed material, and that the availability of recycled or reclaimed material would be expected to increase as the phaseout progresses. EPA notes that in 2020 all HCFC–22 and HCFC–142b used to service air-conditioning and refrigerant equipment will need to be recycled or reclaimed, in light of the nearly-complete phasedown of production and import of virgin material that is scheduled to occur by that date. Additionally, EPA regulations already prohibit the intentional venting of refrigerants and require refrigerant recovery, and the market for recycled and reclaimed refrigerant is predicted to grow as the phaseout progresses. EPA is interested in other data regarding the actual and projected rates of refrigerant recycling and reclamation in the U.S., as well as whether it should consider allocating allowances for HCFC–22 at other levels, such as approximately 100 percent, 90 percent, 80 percent, or 75 percent of the aggregate 2010 cap.

8. HCFC–142b Allowances for 2010–2014

After subtracting out the proposed 72 percent of the 2010 cap for HCFC–22, 28 percent remains to meet all other HCFC needs. EPA believes that the remaining 28 percent is more than the projected HCFC–142b servicing needs, the amounts of HCFC–141b that EPA expects to allow based on the petition process, and all other likely HCFC consumption for the 2010–2014 control periods. This is based on a review of required quarterly, annual, and periodic reports; the Servicing Tail analysis; and comments submitted to EPA by stakeholders in advance of this proposed rulemaking. As described below, the amounts allocated for these substances reflect these assumptions.

As discussed in the Servicing Tail report described above, the projected servicing need for HCFC–142b is extremely low: Approximately 100 metric tons (7 ODP tons). In estimating the need for 2010–2014, EPA has considered the amount of HCFC–142b produced and imported into the United States as reported to EPA in recent years under the existing requirements. Whereas earlier versions of the Servicing Tail analysis focused on HCFC–22, the most recent version—which is included in the docket for this rulemaking—also projects the demand for all other HCFCs for which consumption and production are likely to occur: HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb. The recovery, recycling, and reclamation requirements apply to HCFC–142b as they do to all refrigerants, but recovery rates for HCFC–142b are considerably lower than for HCFC–22, largely because HCFC–142b is typically used in blended refrigerants. The limited amount of data available to EPA indicates that less than 1 percent of HCFC–142b is recycled or reclaimed. In light of the limited data available, and the extremely low estimate of recycling and reclamation, EPA is proposing to allocate 100 percent of the projected HCFC–142b servicing need rather than assuming that a specified percentage of the need will be met through the use of recycled or reclaimed amounts. EPA is proposing to issue consumption allowances for HCFC–142b of 100 metric tons (7 ODP tons). Allocating 72 percent of the consumption cap to HCFC–22 and less than 1 percent to HCFC–142b allows up to 27 percent to be allocated to other HCFCs.

EPA is proposing to allocate production allowances for HCFC–142b at the same proportion of the production cap as was used to allocate consumption allowances as a proportion of the consumption cap. Thus EPA is proposing to allocate production allowances for HCFC–142b at 142 metric tons (9.2 ODP tons).

9. How Does the Aggregate for HCFC–22 and HCFC–142b Translate to Entity-by-Entity?

EPA is proposing to allocate up to a total of no more than 50,000 metric tons of HCFC–22 consumption allowances, 45,498 metric tons of HCFC–22 production allowances, 100 metric tons of HCFC–142b consumption allowances, and 142 metric tons of HCFC–142b production allowances. However, EPA actually allocates allowances to individual persons (*i.e.,* legal entities). As discussed in section III.A.2 of this preamble, EPA's preferred approach is to apportion baselines and allocate allowances on a pro-rata basis to the entities that received baseline allowances in the 2003 allocation rule. Nevertheless, the Agency is taking comment on other allocation options, which are discussed below.

Company-specific production and consumption baselines (also referred to as ''baseline allowances'') for HCFC–141b, HCFC–22, and HCFC–142b are listed at §§ 82.17 and 82.19(a), respectively. The percentage of baseline each entity receives in each control period from 2003 through 2009 appears at § 82.16(a). EPA is proposing to amend § 82.16(a) to include the 2010–2014 control periods. For the years 2010–2014, as for the years 2003–2009, EPA's preferred approach is to specify the same percentage of baseline for each entity. EPA considers allocation of the same percentage to each entity listed at § 82.17 and § 82.19 to be the most equitable approach. EPA does not believe that its allocation of baseline allowances should reflect sales of controlled substances that would subsequently occur. EPA believes that the market for HCFCs that the allowance holders sell to, will evolve to reflect these restrictions as it would evolve other market conditions. This approach is consistent with EPA's previous approach to allocations. However, EPA does note that there have been and continue to be restrictions on use of controlled substances. EPA considered alternative approaches such as evaluating sales information for HCFCs where allowances were expended and considering the differences between expended allowances versus allowances acquired via inter-pollutant transfers. EPA has included in the docket to this rulemaking a memorandum titled *Draft Regulatory Options for Allocating HCFC Allowances after 2009* as well as comments submitted by stakeholders describing alternative approaches that the Agency may consider.

As previously noted, allowances allocated for individual control periods may be thought of as ''calendar-year allowances'' to distinguish them from the apportioned baseline production or consumption allowances (§ 82.17 and § 82.19). For 2010–2014, EPA is proposing to apportion production and consumption baselines for HCFC–22 and HCFC–142b to the same entities that were apportioned HCFC–22 and HCFC–142b baselines in the 2003 allocation rule. EPA is proposing to amend that list of entities and their baselines to reflect changes in the entities' names as well as mergers and acquisitions, but only where EPA has been notified of changes in writing before or during the comment period for this rulemaking, which closes February 23, 2009 or March 9, 2009 if a hearing is held.

The proposed company-specific baselines also reflect adjustments resulting from approved inter-pollutant and/or inter-company transfers of baseline allowances (*i.e.*, permanent rather than calendar-year allowances) through the process described in § 82.23. To be reflected in the final apportionment of baselines in the final rule, such transfers must have occurred, with EPA approval, before or during the second quarter of the 2008 control period (*i.e.*, by June 16, 2008). As noted in the 2003 allocation rulemaking, EPA is sensitive to the need to avoid creating an ''uneven playing field'' that could potentially skew allocations to entities with ample resources and good access to information. EPA held a public meeting on June 16, 2008. As it did in the 2003 allocation rulemaking when determining which years to use for establishing a baseline, EPA is using the date of the public meeting as a cutoff date for inter-pollutant and inter-company transfers of permanent baseline allowances that would be reflected in the revised tables shown in this NPRM. EPA believes that since allowance transfers affect the pool of allowances for each controlled substance and thus the amounts apportioned company-by-company, a cutoff date in advance of the issuance of the NPRM is necessary and thus selected a date based on availability and access to information.

EPA recognizes that in some cases entities are no longer actively involved in HCFC production, import, and/or export activities. EPA is seeking comment on whether it should retain the baselines for such entities (the preferred approach) or whether it should retire, auction, or redistribute the baselines among the active entities. EPA has placed in the docket to this proposed rule a memorandum that considers and evaluates each of these options, discussing both the advantages and disadvantages, titled *Draft Regulatory Options for Adjusting the HCFC Baseline for Allowance Allocations.* For example, apportioning a baseline to an entity that is no longer active means that its allowances might not be expended, resulting in a net environmental benefit. Allocating allowances via an auction may allow for new entrants to purchase allowances or for allowances to be purchased and intentionally retired. However, EPA currently does not use an auction for allocating allowances and anticipates that designing and deploying an auction system could cause administrative delays. An auction system could impose costs on new participants, which would be borne by non-participants who received allowances for the 2003–2009 control periods without charge. EPA notes, however, that under the current allowance system for new entrants to acquire allowances, allowances must be transferred from an existing allowance holder and that when such a transfer occurs, costs are likely to arise from the purchase price and any transaction costs. Allocating allowances to entities that are no longer active in the field may provide an option for new entrants and for entities seeking to purchase and retire allowances, as the inactive entities would presumably be willing sellers. EPA is proposing to retain the baselines for HCFC–22 and HCFC–142b as previously apportioned, subject to updates to reflect name changes and permanent inter-company and inter-pollutant transfers.

Consistent with past practice, EPA is publishing baseline allowance information in this NPRM, having first notified the affected companies of its intention to do so.

Applying the approach described above, EPA proposes to apportion production and consumption baselines for HCFC–141b, HCFC–22, and HCFC–142b to the following entities in the following amounts:

Table

Person	Controlled substance	Allowances (kg)
Production Allowance Allocation		
Arkema	HCFC–22	46,692,336
	HCFC–141b	24,647,925
	HCFC–142b	484,369
DuPont	HCFC–22	42,638,049
Honeywell	HCFC–22	37,378,252
	HCFC–141b	28,705,200
	HCFC–142b	2,417,534
MDA Manufacturing	HCFC–22	2,383,835
Solvay Solexis	HCFC–142b	6,541,764
Consumption Allowance Allocation		
ABCO Refrigeration Supply	HCFC–22	279,366
Altair Partners	HCFC–22	302,011
Arkema	HCFC–22	48,637,642
	HCFC–141b	25,405,570
	HCFC–142b	483,827
Automatic Equipment Sales	HCFC–22	54,088
Condor Products	HCFC–22	74,843
Continental Industrial Group	HCFC–141b	20,315
Coolgas, Inc	HCFC–141b	16,097,869
Coolgas Investment Property	HCFC–22	590,737
Discount Refrigerants	HCFC–22	375,328
	HCFC–141b	994
Dupont	HCFC–22	38,814,862
	HCFC–141b	9,049
	HCFC–142b	52,797
Full Circle	HCFC–22	14,865
H.G. Refrigeration Supply	HCFC–22	40,068
Honeywell	HCFC–22	35,392,492
	HCFC–141b	20,749,489
	HCFC–142b	1,315,819
ICC Chemical Corp	HCFC–141b	81,225
Ineos Fluor Americas	HCFC–22	2,546,305
Kivlan & Company	HCFC–22	2,081,018
MDA Manufacturing	HCFC–22	2,541,545
Mondy Global	HCFC–22	281,824
National Refrigerants	HCFC–22	5,528,316
Refricenter of Miami	HCFC–22	381,293
Refricentro	HCFC–22	45,979
R-Lines	HCFC–22	63,172
Saez Distributors	HCFC–22	37,936
Solvay Fluorides	HCFC–22	3,781,691
	HCFC–141b	3,940,115
Solvay Solexis	HCFC–142b	194,536
Tulstar Products	HCFC–141b	89,913

EPA requests comments on the proposed method and calculations for allocating allowances on an entity-by-entity basis for HCFC–22 and HCFC–142b production and consumption.

10. Baselines for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb

EPA is proposing to establish and apportion baselines for other HCFCs that have been produced or imported in recent years by using information on production, import, export, and other transactions that has been reported to the Agency under existing regulations. EPA requires recordkeeping and reporting for production, import, export, and trade of all ozone-depleting substances, including HCFCs for which baseline allowances have not yet been established. The recordkeeping and reporting requirements implement section 603 of the Clean Air Act and ensure that companies are in compliance with regulatory and Clean Air Act requirements and that the United States is able to meet international obligations. EPA is not proposing any changes to these requirements.

EPA reviewed HCFC production, import, and export data for the years leading up to the 2003 allocation rule, and chose to establish baselines and allocate allowances for the highest-ODP HCFCs (*e.g.*, a ''worst-first'' approach) in a manner that ensured U.S. compliance with the 2004 cap (35 percent below the U.S. baseline). Prior to the tightening of the 2010 HCFC cap at the 19th Meeting of the Parties to the Montreal Protocol in September 2007, EPA anticipated that limiting production and consumption of HCFC–22 and HCFC–142b for the 2010–2014 control periods would ensure sufficient room under the then-effective 65 percent reduction cap without the need to restrict production and consumption of other HCFCs. Prior to attending the 19th Meeting of the Parties where agreement was reached to reduce the 2010 cap from a 65 percent reduction to a 75 percent reduction, EPA conducted analysis which was shared with stakeholders to ensure that the U.S. could consider changes to our obligations that were both meaningful for ozone layer protection and achievable, allowing servicing needs to continue to be met. Considering that the

September 2007 Montreal Adjustment provides for adjustment of the cap from a 65 percent to a 75 percent reduction, EPA is proposing additional precautions to ensure that the more stringent cap will not be exceeded. These precautions include establishing and apportioning baselines for the 2010–2014 control periods for other HCFCs that were produced or imported during the 2003–2007 control periods.

EPA is proposing to apportion baselines for the other HCFCs by amending §§ 82.17 and 82.19 to include company-specific production and consumption baselines for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb. EPA data indicate that those four HCFCs were produced, imported, or exported during the 2003–2007 control periods.

In the 2003 allocation rule, EPA did not issue allowances for all HCFCs, noting in part ''that the continuously developing HCFC market would be hampered by such distribution'' and that the market proportions at that time ''of these lower-ODP HCFCs do not reflect the rapidly expanding market and that distributing allowances for these HCFCs at [that] time would unnecessarily restrict their supply and impede transition to less ozone-depleting substances'' (68 FR 2823). Considering the recent adjustments to the Montreal Protocol and the evolution in the HCFC market, EPA believes it is now appropriate to establish a baseline and apportion baseline allowances for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb.

All HCFCs are covered under the Montreal Protocol stepwise reductions, and EPA must consider all HCFC production and import in ensuring that the United States continues to meet its international obligations. The four HCFCs identified in this proposal are the only remaining HCFCs commonly used in the United States that do not currently have established baselines. EPA does not expect that establishing baseline allowances for these four HCFCs would trigger additional recordkeeping or reporting obligations, since companies that produce, import, or export any HCFC already report production and consumption data to EPA. The impacts stem from the years chosen for establishing a baseline, the apportionment of the baseline among companies, and the percentage of baseline allocated for the control years 2010–2014. EPA discusses these issues more specifically below.

EPA recognizes that many different methods and data sources can be used to establish baseline allowances. EPA believes that the best data to use for this purpose are the data reported to the Agency under § 82.24. Entities that have not reported data would not be included in the baseline calculations and would not receive baseline allowances. If necessary, EPA could augment the data for completeness or to verify accuracy by issuing requests for information under section 114 of the CAA. EPA seeks comment on its proposal to use data reported under § 82.24 as the basis for identifying the entities to which allowances should be allocated.

In the 2003 allocation rule, EPA calculated each entity's HCFC–141b, HCFC–22, and HCFC–142b baseline from that entity's highest reported consumption and production from the years 1994–1997. EPA chose that particular range of years because beginning in 1998, some entities were aware of the impending rulemaking and could have increased production or import in an effort to secure higher baseline allowances. EPA stated in the 2003 allocation rulemaking that ''by not selecting a year after 1997 it will avoid creating an uneven playing field that skews allocations to those companies with ample resources and good access to information'' (68 FR 2832). EPA is proposing to follow a similar approach for these four HCFCs by considering the highest reported data from a range of years rather than selecting a single baseline year. EPA is proposing to use the data reported for the 2005–2007 control periods to calculate baselines for the four additional HCFCs, based on an entity's highest reported consumption and production for the 2005–2007 control periods. By using past years, EPA avoids any ramp-up in the level of production and consumption resulting from a desire to maximize individual baselines in anticipation of this rule going into effect. By using recent data, EPA ensures the baseline reflects the current market as closely as possible, and issues raised when EPA decided to postpone allocating baseline allowances for these HCFCs in 2003.

EPA requests comment on the need to establish baselines for these four additional HCFCs at this time. In particular, EPA is interested in comments concerning whether establishing and apportioning a baseline for these four HCFCs, and allocating a percentage of that baseline for the 2010–2014 control periods, is necessary to ensure that the United States does not exceed the 25 percent HCFC cap under the 2007 Montreal Adjustment. EPA requests comments on the appropriateness of using each company's highest reported consumption and production for 2005–2007 rather than the lowest or an average.

11. What Percentage of the Baseline Will EPA Allocate for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for the Control Periods 2010–2014?

EPA is proposing to establish baseline production and consumption allowances for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, and to allocate 125 percent of these baselines for the 2010–2014 control periods. By establishing these baseline production and consumption allowances, EPA would be creating a mechanism for limiting growth in production and consumption for these HCFCs during those control periods. Regardless of any action by EPA, given the 605(a) self-effectuating provisions, further growth for these HCFCs will be constrained in 2015 by the provisions on use. For example, given the characteristics of HCFC–225ca and HCFC–225cb, they are generally used as solvents. As of January 1, 2015 that application will be restricted. Thus any growth in the use of these HCFCs will be balanced to some extent by the self-effectuating provisions. Thus EPA is recognizing that other limiting factors, such as section 605(a) of the CAA, will considerably affect how these HCFCs can be used in subsequent control periods. While it is appropriate and necessary for EPA to allocate less than 100 percent of the baseline allowances for HCFC–22 and HCFC–142b, given the use restrictions that apply beginning January 1, 2010, these four low-ODP HCFCs are not subject to domestic use restrictions until a later date. For example, while newly manufactured HCFC–22 cannot be produced or imported for charging into new air-conditioning and refrigeration appliances as of January 1, 2010 (40 CFR 82.16(c)), HCFC–123 can be produced or imported for new appliances until 2020 (40 CFR 82.16(d)). Therefore, EPA believes that it is not appropriate to allocate less than 100 percent of baseline for these compounds in this action. EPA has included information and analysis on these HCFCs in Chapter 3 of the Servicing Tail analysis, which is in the docket for this rulemaking. After reviewing trends in the production, import, export, and trade data submitted to EPA since 2003, EPA believes that allocating 100 percent of the baseline should be sufficient to meet current demand. The Servicing Tail analysis available in the docket provides additional information concerning trends based on the Vintaging Model and additional information provided by stakeholders. However, EPA has heard

from stakeholders that some amount of market expansion for these low-ODP HCFCs is possible during the 2010–2014 control periods. Given the low ODPs for these HCFCs, EPA believes that if it were to allocate 125 percent of the baseline for 2010–2014, the United States could still meet the overall HCFC cap of 75 percent below the baseline during these control periods. EPA believes that any continued growth for these HCFCs will be considerably affected by section 605(a) as of January 1, 2015.

Through this action, EPA is proposing to allocate allowances equaling 125 percent of the baseline for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for the 2010–2014 control periods. If rapid growth were to occur, creating the need for additional amounts of these HCFCs, EPA believes that inter-pollutant transfers could be used to make adjustments. If the full amount of allowances is not needed, then some allowances may go unused. In accordance with the next stepdown under the Montreal Protocol, EPA will issue a rule prior to the 2015 HCFC milestone to limit aggregate production and consumption of all HCFCs to no more than 10 percent of the U.S. baselines for production and consumption. At that time, EPA plans to consider the appropriate level of allowances for 2015 and beyond based on market demand and the section 605(a) restrictions on introduction into interstate commerce and use discussed elsewhere in this NPRM. Examples of uses that will be limited by section 605(a) beginning in 2015 are solvent uses and fire suppression. EPA anticipates other changes as well. For example, EPA's proposed allowance level for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb does not assume a specified level of recycling and reclamation. For HCFCs used in non-refrigeration applications, such as those used as solvents (*i.e.*, HCFC–225ca and HCFC–225cb), the section 608 ''no venting'' prohibition is not applicable. HCFC–123 is used in chillers that in some cases are replacing CFC chillers. Given that in many cases these appliances will last a long time, it will be some time before significant amounts of HCFC–123 are recovered and recycled or reclaimed. In future rulemakings, however, EPA may estimate the amount of the total need for HCFC–123 that can be met through recycling and reclamation. As the HCFC–123 market matures, the refrigerant recovery, recycling, and reclamation requirements in 40 CFR part 82 subpart F, will result in a greater amount of reusable HCFC–123. Recognizing that the HCFC market will continue to evolve, subject to the constraints in section 605(a), EPA is proposing to establish and apportion baseline allowances and provide calendar-year allowances for the control periods 2010–2014 for these HCFCs.

EPA has established company baselines for these four low-ODP HCFCs by choosing each company's highest production and consumption years from 2005, 2006, and 2007. This is the same approach EPA used to establish the company baselines for HCFC–141b, HCFC–22, and HCFC–142b in the 2003 allocation rule.

Data show that 125 percent of the highest year's consumption of HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for all the companies combined equals 163 ODP-weighted metric tons, which is slightly more than 4 percent of the total HCFC consumption cap of 3,810 ODP tons.

EPA data also show that 125 percent of the highest year's production of HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for all the companies combined equals 135 ODP-weighted metric tons, which is slightly more than 3 percent of the total HCFC production cap of 3,884.25 ODP tons.

EPA proposes to allocate production allowances to the following entities for the following amounts:

Person	Controlled substance	Allowances (kg.)
AGC Chemicals Americas	HCFC–225ca	266,608
	HCFC–225cb	373,952
DuPont	HCFC–124	2,269,210
Honeywell	HCFC–124	1,804,121

EPA also proposes to allocate consumption allowances to the following entities for the following amounts:

Person	Controlled substance	Allowances (kg.)
AGC Chemicals Americas	HCFC–225ca	285,328
	HCFC–225cb	286,832
Arkema	HCFC–124	3,719
Condor Products	HCFC–124	3,746
Coolgas, Inc	HCFC–123	20,000
Dupont	HCFC–123	2,933,906
	HCFC–124	743,312
Honeywell	HCFC–124	1,284,265
ICOR	HCFC–124	81,220
National Refrigerants	HCFC–123	72,600
	HCFC–124	50,380
Tulstar Products	HCFC–123	34,800
	HCFC–124	229,582

EPA is proposing to allocate 125 percent of each company's baseline for these low-ODP HCFCs for the 2010–2014 control periods. These allocations would appear as additions to the table at § 82.16. EPA requests comments on its proposal to grant 125 percent of baseline to companies for these HCFCs for the 2010–2014 control periods.

12. What About Other HCFCs?

In addition to HCFC–141b, HCFC–22, and HCFC–142b, as well as newly addressed HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, EPA recognizes that the list of HCFCs in appendix B to subpart A includes additional substances. EPA's proposed allocations, based on projected 2010–2014 need, have the effect of reserving some room under the 2010 aggregate HCFC cap for any HCFCs not specifically included in §§ 82.16, 82.18, and 82.19. Given the 4 percent of the 3,810 consumption cap EPA is proposing to allocate for the newly addressed HCFCs (–123, –124, –225ca and –225cb), room under the 2010 production and consumption caps still remains. EPA notes that some niche applications in the U.S. use other HCFCs, such as HCFC–21. However, EPA is not aware of additional need for production or import of these substances at this time. Also, some amount of HCFC–141b will likely continue to be produced or imported via the petition process during the 2010–2014 control periods. EPA believes it is appropriate to reserve some room in case circumstances were to change and users of another HCFC were to seek to acquire an amount either by production or by import. EPA notes that the producer or importer would be required to report to EPA consistent with the existing recordkeeping and reporting requirements. If necessary, EPA could subsequently propose amending the regulations to set and apportion baselines and issue allowances for these HCFCs. EPA requests comments on its proposed approach of allocating baseline allowances for HCFC–141b, HCFC–22, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb based on the projected need for virgin material in the U.S., which would have the effect of not allocating allowances for the remaining amount under the 3,810 ODP-ton cap.

B. Does the Article 5 Allowance Provision Change Given the Adjustments to the Montreal Protocol?

Under the Montreal Protocol, industrialized countries and developing countries have different schedules for phasing out ODS production and consumption. Developing countries operating under Article 5, paragraph 1 of the Montreal Protocol in most cases have additional time in which to phase out ODSs. Recognizing that it would be inadvisable for developing countries to spend their scarce resources to build new ODS manufacturing facilities to meet basic domestic needs for chemicals they would ultimately phase out, the Parties to the Montreal Protocol decided to permit a small amount of production in industrialized countries, in addition to the amounts otherwise permitted for such countries under the relevant phaseout schedules, for export to meet the basic domestic needs of developing countries. As discussed above, at the 19th Meeting of the Parties (MOP) to the Montreal Protocol held in September 2007, the Parties agreed to a revised phaseout schedule for both Article 5 and non-Article 5 Parties. Included with the changes to the phaseout schedule were changes to the amount of production in industrialized countries that would be permitted to meet the basic domestic needs of Article 5 Parties. These changes were in keeping with the more stringent phaseout schedule for developing countries. Previously, the Montreal Protocol had allowed non-Article 5 countries to produce at 15 percent of their baseline levels for export to Article 5 countries from 2016, the year in which Article 5 countries were required to freeze consumption, through the terminal phaseout in 2040. At the 19th MOP the Parties agreed that to satisfy basic domestic needs of Article 5 countries, non-Article 5 Parties would be allowed to produce up to 10 percent of baseline levels until 2020. For the period after 2020, the Parties agreed to consider further reduction of the production for basic domestic needs no later than 2015 (*UNEP/Ozl.Pro.19/7 Decision XIX/6: Adjustments to the Montreal Protocol with regard to Annex C, Group I, substances (hydrochlorofluorocarbons*)).

Section 605(d)(2) of the Clean Air Act states that notwithstanding the restrictions on production, use, and introduction into interstate commerce set forth in paragraphs (a) and (b) of that section, EPA ''may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator'' (42 U.S.C. 7671d(d)(2)). EPA's implementing regulation at 40 CFR § 82.18(a) provides for allocation of ''Article 5 allowances'' for production of specified ODSs solely for export to Article 5 Parties to meet those countries' basic domestic needs. The ''Article 5'' Parties are listed at 40 CFR part 82, subpart A, appendix E. Currently under § 82.18(a) an entity that is apportioned baseline HCFC production allowances receives an amount of Article 5 allowances equal to 15 percent of that production baseline.

EPA is proposing to amend § 82.18(a) to reflect the adjustment to the Montreal Protocol at the 19th MOP and to ensure that the United States does not permit a level of production to meet basic domestic needs in Article 5 Parties that exceeds the level specified in the adjustments. EPA is taking this action in accordance with section 606(a)(3) of the Clean Air Act. EPA is also proposing minor changes to 82.15(c) to clarify that HCFCs produced with Article 5 allowances may be introduced into interstate commerce if destined for export.

Section 82.18(a)(1) currently states that a person apportioned baseline production allowances for specified HCFCs is also apportioned Article 5 allowances for the specified HCFCs equal to the following percentages of that person's baseline: For control periods through 2014, 15 percent; for control periods from 2015 through 2029, 10 percent; and for control periods from 2020 through 2039, 15 percent. While the Montreal Protocol previously permitted production for the basic domestic needs of Article 5 countries equal to 15 percent of the U.S. production baseline for each control period until 2040, section 605(d)(2)(B) of the Clean Air Act requires that for the period between 2015 and 2030 the production for Article 5 countries be limited to 10 percent of baseline. Thus EPA regulations at § 82.18(a) currently restrict Article 5 allowances to 10 percent of production baseline from January 1, 2015, through December 31, 2029, but otherwise allow the full 15 percent previously permitted by the Protocol.

EPA is proposing to amend § 82.18(a) to allocate Article 5 allowances for the HCFCs covered by this rulemaking, for the period 2010–2019, consistent with the recent changes to the Montreal Protocol. Prior to 2015, exports to Article 5 Parties of HCFC–123, HCFC–124, HCFC–225ca, or HCFC–225cb would not require expending Article 5 allowances.

Given that Article 2F of the Montreal Protocol, as adjusted in September 2007, does not provide for additional HCFC production to meet the basic domestic needs of Article 5 Parties past 2019, EPA is proposing to sunset the Article 5 allowance provision for all HCFCs at the end of 2019 in the absence of further adjustments to the Protocol. Decision XIX/6 paragraph 14 states ''In order to satisfy basic domestic needs [the Parties] agree to allow for up to 10% of baseline until 2020, and for the period after that, to consider no later than 2015

further reductions of production for basic domestic needs.'' If the Parties were to adjust the basic domestic needs provisions of the Protocol to permit continued production for such needs past 2019, EPA would evaluate that adjustment and consider issuing a proposed regulation to extend the availability of Article 5 allowances for basic domestic needs to the extent consistent with the Clean Air Act. Any such proposed regulations would include production levels and schedules that were at least as stringent as those specified in the Montreal Protocol, as adjusted.

EPA requests comments on its proposed revisions to § 82.18(a).

C. How Does EPA Interpret ''Introduce Into Interstate Commerce or Use''?

Section 605(a) is titled ''Restriction of use of class II substances'' and reads:

''Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any Class II substance unless such substance—

(1) Has been used, recovered, and recycled;

(2) Is used and entirely consumed (except for trace quantities) in the production of other chemicals; or

(3) Is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term 'refrigerant' means any class II substance used for heat transfer in a refrigerating system.''

Section 605(a) is self-effectuating, banning the introduction into interstate commerce and use of HCFCs by its own terms. In section 605(c), however, Congress directed EPA to promulgate regulations restricting the use of class II substances in accordance with section 605. In today's action, EPA is proposing to complete its implementation of the section 605 provisions on use of class II substances. EPA is also proposing regulatory language to reflect the section 605 provisions on introduction into interstate commerce of class II substances.

As discussed earlier in this notice, the provisions governing HCFC–22 and HCFC–142b promulgated as part of the 1993 phaseout rule were intended ''to prohibit the use of the chemicals (virgin material only) for any use except as a feedstock or as a refrigerant in existing equipment as of January 1, 2010'' (58 FR 15028). As promulgated, however, the regulatory prohibitions did not control use directly, but instead banned production and import for most uses. EPA is proposing to add the direct use prohibitions contemplated in the 1993 phaseout rule as well as the corresponding prohibitions on introduction into interstate commerce contained in section 605(a). Consistent with the schedule adopted in the 1993 phaseout rule, the section 605(a) use and interstate commerce restrictions would apply to HCFC–22 and HCFC–142b beginning in 2010 and to all other HCFCs beginning in 2015.[8] The restrictions on production and import, both in general and for particular uses, that were promulgated in 1993 are at 40 CFR 82.16(b)–(g). EPA is not proposing to change these provisions in this action. However, EPA is further implementing section 605(a) by proposing direct restrictions on use and introduction into interstate commerce to be codified at § 82.15 and by clarifying its interpretation of the statutory requirements.

Since the promulgation of the 2003 allocation rule, EPA has received questions from stakeholders regarding the Agency's interpretations of section 605(a). Based on these questions, EPA has decided to include in this proposed rule a discussion of how it interprets that section, particularly the terms ''introduction into interstate commerce'' and ''use.'' EPA is proposing to promulgate a definition of interstate commerce to facilitate the implementation of section 605(a).

Section 605(a) includes the phrase ''introduction into interstate commerce.'' Section 611 (Labeling) contains a similar phrase, noting that certain products shall not be ''introduced into interstate commerce'' unless the product bears a clearly legible and conspicuous warning label. EPA's definition of interstate commerce for section 611 purposes appears at 40 CFR 82.104(n):

> *Interstate Commerce* means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States customs clearance.

After considering this regulatory definition, and noting the similarities in the statutory language, EPA proposes to amend § 82.3 to include a definition of ''interstate commerce'' that is identical to the definition at § 82.104(n), except that the phrase ''controlled substance'' would appear where the § 82.104(n) definition uses the term ''product.'' This is because section 605(a) addresses substances rather than products. Adding a definition of interstate commerce to § 82.3 will clarify the applicability of the section 605(a) provisions. Choosing a definition that is already well-established in the labeling program will minimize stakeholder confusion. EPA requests comments on adding this definition of interstate commerce to subpart A.

EPA notes that under this definition, ''introduction into interstate commerce'' would include release of HCFCs by the domestic manufacturer for distribution and transport prior to export. The section 605(a) ban thus has relevance to the export of HCFCs—limiting exports to HCFCs that are ''used, recovered, and recycled'' (section 605(a)(1)); HCFCs that are destined for transformation (section 605(a)(2)); HCFCs that will be used as a refrigerant in appliances manufactured before the date specified in the regulations (section 605(a)(3)); and HCFCs that will be exported to Article 5 Parties (section 605(d)(2)). As a result, HCFC exports to non-Article 5 Parties would be limited as of January 1, 2010, or January 1, 2015, depending on the specific HCFC.

In addition to banning ''introduction into interstate commerce'' of HCFCs, section 605(a) also bans ''use,'' subject to three statutory exceptions that inform EPA's understanding of the term ''use.'' While these exceptions apply to the ''interstate commerce'' ban as well as the ''use'' ban, the discussion below focuses on the ''use'' aspects of the exceptions. EPA is proposing to interpret the ''use'' ban as applying to the use of HCFCs in manufacturing and servicing HCFC products.

The first exception, which appears at section 605(a)(1), applies to class II substances that have been ''used, recovered, and recycled.'' This exception confirms EPA's understanding of the use ban as limited to the manufacture and servicing of HCFC products. If the ban applied to use of HCFCs by a consumer, such ''use'' might include the continued operation of an appliance (*e.g.*, a residential air conditioner) where an HCFC acts as the refrigerant. Under this broad definition of ''use,'' there would be an incentive for consumers to hire servicing technicians to recover the

[8] The petition process for HCFC–141b exemption allowances at 82.16(h) would sunset in 2015, since HCFC–141b is not used as a refrigerant and thus does not meet the criteria established by 605(a) for an exception from the statutory ban on use. EPA intends to revise § 82.16(h) when it addresses the control periods 2015–2019.

HCFCs from appliances already in their homes and businesses, to recycle the HCFCs for reuse, and to charge the HCFCs back into the same appliances. These steps should not be necessary for continued operation of installed equipment. However, by taking these steps, consumers could avail themselves of the exception for ''used, recovered, and recycled'' substances at section 605(a)(1). There would be no environmental benefit to following such a procedure. There could even be an environmental detriment, given the potential for losses of refrigerant during the recovery and recycling process. EPA does not believe that Congress intended such a result. Moreover, EPA believes that Congress intended to permit the continued use of previously manufactured appliances, as indicated by the third exception to the use ban (section 605(a)(3)). Thus, EPA is not proposing an interpretation that would result in shortening the useful lifetime of appliances that were manufactured prior to the effective date of the use restriction. EPA concludes that the section 605(a) ''use'' ban does not apply to a consumer's operation of equipment that contains HCFCs. Rather, it applies to use during manufacture and servicing of equipment. EPA believes that Congress meant for the section 605(a)(1) exception to allow the use of ''used, recovered, and recycled'' HCFCs in appropriate instances by servicing technicians, reclaimers, and appliance manufacturers.

Section 605(a)(2) refers to HCFCs that are ''used and entirely consumed (except for trace quantities) in the production of other chemicals.'' Similar language appears as an exception to the definition of ''production'' at section 601(11). This type of use is referred to in EPA's regulations as ''transformation'' (see the definition of ''transform'' at 40 CFR 82.3). The current phaseout schedule for HCFC production and consumption already includes a transformation exception within § 82.16. EPA intends to implement the transformation exception in section 605(a)(2) consistent with the transformation exception to the HCFC production phaseout.

Section 605(a)(3) provides an exception for HCFCs that are ''used as a refrigerant in appliances manufactured prior to January 1, 2020.'' EPA reads this exception as allowing appliances manufactured before the specified date to be serviced with virgin HCFCs. This is consistent with the legislative history of the exception. The predecessor to section 605(a)(3) in the Senate bill was an exception for ''other regulated substances'' (such as HCFCs) that are ''used to maintain and service household appliances or commercial refrigeration units manufactured prior to January 1, 2015.'' The House amendment contained identical language. While the language that emerged in the Conference Agreement is less specific, we can infer that this exception was intended to address, at a minimum, maintenance and servicing needs.

As noted above, EPA interprets the 605(a) use ban to cover initial charges as well as maintenance and servicing. As written, the section 605(a)(3) exception would permit some newly manufactured appliances (*i.e.*, those manufactured prior to January 1, 2020) to be charged with virgin HCFCs following the effective date of the use ban. In the 1993 phaseout rule, however, EPA banned production and import of HCFC–22 and HCFC–142b, effective January 1, 2010, for use in appliances manufactured after 2009. EPA also indicated that it intended to ban use of virgin HCFC–22 and HCFC–142b in such appliances. Consistent with decisions made in the 1993 rule, EPA is proposing, for HCFC–22 and HCFC–142b, to apply the section 605(a)(3) exception only to the use of these HCFCs in appliances manufactured before 2010. Such use would consist of servicing and maintenance of these appliances. EPA notes that servicing could entail a wide range of activities including replacing parts or components. For the low ODP-refrigerants covered by 82.16(d), however, EPA is proposing to apply the section 605(a)(3) exception to the use of HCFCs in equipment manufactured before January 1, 2020, which would allow initial charging of equipment for a limited period as well as servicing and maintenance uses. For those refrigerants, 82.16(d) bans production and import effective January 1, 2015 for use in appliances manufactured after 2019.

EPA notes that the exception at section 605(a)(3) limits introduction into interstate commerce and use to situations where the HCFC: ''is used as a refrigerant in appliances manufactured prior to'' the specified date. Section 601 defines appliance as ''any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.'' EPA recognizes many devices meet the section 601 definition of appliance. For example, commercial refrigeration includes the retail food and cold storage sectors. Industrial process refrigeration includes customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. Other types of appliances include household refrigerators and freezers; chillers; water coolers; vending machines; residential and light commercial heat pumps; residential dehumidifiers; unitary systems; and commercial ice machines. Under the SNAP program and regulations promulgated under § 608, EPA has recognized the differences in these appliances and in some cases has found substitute refrigerants acceptable for some appliances but not others or established different control thresholds such as different leak rate requirements. For the purposes of this action, EPA has considered the definition of appliance carefully, particularly evaluating at what point a device becomes a manufactured appliance. EPA believes that the difference in types of appliances affects the point when manufacture is complete.

Through this action, EPA is providing an interpretation of section 605(a) under which air-conditioning and refrigeration appliances are ''manufactured'' when the refrigerant loop is completed, the appliance can function, the appliance holds the complete and proper charge, and is ready for use for its intended purposes. For refrigerators and room air-conditioners, manufacture may be complete while the appliance is still at a manufacturing facility. For instance, if such an appliance has been pre-charged with the desired amount of refrigerant, has gone through the entire manufacturing line so that all mechanical, electrical, labeling and painting/marking procedures are complete, and is ready to be packaged and shipped, and is a ''stand-alone'' piece of equipment (*i.e.*, it only needs to be plugged into an electrical outlet and turned on to function properly), then EPA would consider the appliance as ''manufactured.'' The situation differs, however, for other appliances, such as commercial refrigeration and industrial process refrigeration, involving more complex installation processes. Such devices are field charged with refrigerant; the refrigerant loop typically is completed onsite, and—particularly with industrial process refrigeration—the parts are custom-built. EPA would consider these field-charged appliances ''manufactured'' at the point installation of all parts is completed and fully charged refrigerant (whether or not the appliance had started operation). For some appliances, such as condensing (outside) units for split-system air conditioners, refrigerant charge is often included in the product during the

manufacturing process but then is typically adjusted in the field to account for different line sizes and indoor unit configurations. EPA would consider the ''manufacture'' of this type of appliance similar to that for field-charged equipment; that is, manufacture would not be complete until the device is installed in the field, connected with the indoor unit, and charged to the proper level.

EPA does not interpret ''use'' to include destruction, recovery for disposal, discharge consistent with all other regulatory requirements or other similar actions where the substance is part of a disposal chain. At the point disposal-related actions occur, other statutory and regulatory provisions generally govern. For example, Congress addressed the issue of disposal under section 608. EPA has promulgated regulations to implement section 608 for appliances: These safe disposal requirements are codified at 40 CFR part 82 subpart F. In some instances, HCFCs may need to be introduced into interstate commerce in order to reach an appropriate destruction facility. Consistent with its interpretation of ''use,'' EPA is interpreting the interstate commerce prohibition to exclude introduction into interstate commerce for the purpose of destruction.

As noted above, the current regulatory provisions already preclude production or import of HCFC–22 and HCFC–142b in 2010 and beyond for purposes that are not exempted at § 82.16(c) consistent with section 605(a).[9] However, EPA is proposing through this action to amend § 82.15 to add prohibitions that specifically preclude any person from introducing into interstate commerce or using (according to the interpretations above) any HCFCs for purposes that are not consistent with section 605. EPA believes that this is appropriate because section 605(a) specifically bans use and introduction into interstate commerce. In addition, under the current regulatory structure the prohibitions apply to the producer or importer of the HCFC compounds. The provisions EPA is proposing to add to the regulations would apply to manufacturers of appliances and other HCFC products, as well as anyone who services such products. EPA requests comments on adding these prohibitions and on its interpretation of section 605(a).

Finally, EPA is proposing revisions to its regulations on export production allowances to ensure consistency with section 605(a). Export production allowances allow an HCFC that is subject to a domestic phaseout to be produced for export to Parties that continue to allow imports of that substance (40 CFR 82.18(b)). Currently, entities that hold baseline production allowances for HCFC–141b are allocated export production allowances equal to 100 percent of their baseline production allowances. EPA is proposing to sunset this provision on December 31, 2009, in order to avoid a conflict with the section 605(a) restrictions on use and introduction into interstate commerce. Under the proposed interstate commerce definition, ''introduction into interstate commerce'' would include release of HCFCs by the domestic manufacturer for distribution and transport prior to export. EPA is not proposing to allocate export production allowances for any other HCFCs. EPA seeks comment on the sunset of provisions for export production allowances.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA did not conduct a specific analysis of the benefits and costs associated with this NPRM. Many previous analyses provide a wealth of information on the costs and benefits of the U.S. HCFC phaseout including:

- The 1993 *Addendum to the 1992 phaseout regulatory impact analysis: Accelerating the phaseout of CFCs, halons, methyl chloroform, carbon tetrachloride, and HCFCs.*
- The 1999 Report *Costs and Benefits of the HCFC Allowance Allocation System.*
- The 2000 Memorandum *Cost/Benefit comparison of the HCFC Allowance Allocation System.*
- The 2005 Memorandum *Recommended scenarios for HCFC phaseout costs estimation.*
- The 2006 ICR *Reporting and Recordkeeping Requirements of the HCFC Allowance System.*
- The 2007 Memorandum *Preliminary estimates of the incremental cost of the HCFC phaseout in Article 5 countries.*
- The 2007 Memorandum *Revised Ozone and Climate Benefits Associated with the 2010 HCFC Production and Consumption Stepwise Reductions and a Ban on HCFC Pre-charged Imports.*

Copies of these documents and a summary memorandum is available in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting requirements and through this action is not proposing to amend those provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

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.

For purposes of assessing the impacts of this proposal on small entities, small entity is 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.

This proposal will affect the following categories:

[9] As discussed earlier in this action, there is an additional exception for production to meet the basic domestic needs of Article 5 countries, consistent with section 605(d).

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators	333415		Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Importers of air conditioners and refrigerators	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

After considering the economic impacts of the proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA is not proposing to change the methodology for the 2010–2014 control periods. Instead, EPA is continuing to allocate production and consumption allowances using the same approach currently used for control periods 2003–2009. Thus the 13 small businesses eligible for allowances for HCFC–22 and HCFC–142b identified in that rulemaking (68 FR 2845) are still eligible for allowances under this rule. In addition, small businesses eligible for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb using the same methodology, will also be eligible for allowances. EPA is not proposing any changes to the recordkeeping or reporting provisions and thus will not have any impact on the burden to these businesses.

While EPA does not believe this proposal will have a significant economic impact on a substantial number of small entities, nonetheless, EPA continues to try to reduce further any impacts on small entities. With respect to the allowance allocation system as a whole, EPA is proposing to continue to provide flexibility. Consistent with the methodology for establishing baselines for HCFC–141b, HCFC–22, and HCFC–142b, while small entities will be on the same footing as larger entities, EPA is again is proposing to use the highest year of consumption. EPA is also to limit consideration of company-specific baseline adjustments to reflect permanent inter-company or inter-pollutant transfers made prior to June 16, 2008 as discussed elsewhere in the preamble to avoiding skewing baselines to entities with ample resources or access to information. EPA also believes that the ability to transfer allowances among entities provides the greatest flexibility for small entities to manage their allocation. As noted in the 2003 allocation (68 FR 2846), unlike with the class I substances, there is no restriction to limit inter-pollutant transfers to groups of substances. Both inter-pollutant and inter-company transfers of allowances are possible, either on a calendar-year or permanent basis. A small entity can opt for short-term or long-term decisions concerning the allowances it holds after evaluating its place in the overall market. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The requirements already established at 40 CFR part 82 subpart A already govern the production, import, and export of ODS. The regulatory changes for the next major milestone in the general phaseout continue to implement the same general framework previously established. EPA does not anticipate that this proposed rulemaking will have any significant direct impacts or State, local and tribal governments or private sector entities. Thus, this 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. This proposed rule would apportion production and consumption allowances and establish baselines for private entities, not 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. Today's proposal is expected to primarily affect producers, importers, and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply. 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: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposal does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 F.R. 19885, April 23, 1997) because it is not economically significant as

defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects of excessive exposure to UV radiation on children: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994: 30A: 1647–54; (2) Elwood JM, Japson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK, ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whieman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, *et al.* ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma.'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, DK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early-life exposure to UV radiation.

This action proposes to reduce the potential continued use of Class II controlled substances and the emissions of such substances. It implements the United States commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the United States can take to complete the overall phaseout of ODS and further decrease impacts on children's health from stratospheric ozone depletion. EPA requests comments regarding the impacts of this proposal on the continued efforts to protect children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed regulation predominately impacts HCFC production, imports, exports, and trades. The Agency has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 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 involve 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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By allocating allowances for HCFCs and thus restricting the amount of HCFCs available as of January 1, 2010, this rule avoids emissions of these ozone-depleting substances, lessening the adverse human health effects for the entire population.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: December 11, 2008.

Stephen L. Johnson,

Administrator.

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q).

Subpart A—Production and Consumption Controls

2. Amend § 82.3 by adding in alphabetical order the definition of ''Interstate Commerce'' to read as follows:

§ 82.3 Definitions for Class I and Class II Controlled Substances.

* * * * *

Interstate Commerce means the distribution or transportation of any controlled substance between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any controlled substance in more than one state, territory, possession or District of Columbia. The entry points for which a controlled substance is introduced into interstate commerce are the release of a controlled substance from the facility in which the controlled substance was manufactured, the entry into a warehouse from which the domestic manufacturer releases the controlled substance for sale or distribution, and at the site of United States customs clearance.

* * * * *

3. Amend § 82.15 by revising paragraph (c) and adding paragraph (g) to read as follows:

§ 82.15 Prohibitions for Class II Controlled Substances.

* * * * *

(c) Production with Article 5 allowances. No person may introduce into U.S. interstate commerce any class II controlled substance produced with Article 5 allowances, except for export to an Article 5 Party as listed in Appendix E of this subpart. Every kilogram of a class II controlled substance produced with Article 5 allowances that is introduced into interstate commerce other than for export to an Article 5 Party constitutes a separate violation under this subpart. No person may export any class II controlled substance produced with Article 5 allowances to a non-Article 5 Party. Every kilogram of a class II controlled substance that was produced with Article 5 allowances that is exported to a non-Article 5 Party constitutes a separate violation under this subpart.

* * * * *

(g) *Introduction into interstate commerce or use.* (1) Effective January 1, 2010, no person may introduce into interstate commerce or use HCFC–141b (unless used, recovered, and recycled) for any purpose except for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a); for HCFC–141b exemption needs; as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(2) Effective January 1, 2010, no person may introduce into interstate commerce or use HCFC–22 or HCFC–142b (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction, for use as a refrigerant in equipment manufactured before January 1, 2010; for export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(3) Effective January 1, 2015, no person may introduce into interstate commerce or use HCFC–141b (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a), as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(4) Effective January 1, 2015, no person may introduce into interstate commerce or use any class II controlled substance not governed by paragraphs (g)(1) through (3) of this section (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for use as a refrigerant in equipment manufactured before January 1, 2020; for export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(5) Effective January 1, 2030, no person may introduce into interstate commerce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a); as a transshipment or heel; or for exemptions permitted in § 82.15(f).

(6) Effective January 1, 2040, no person may introduce into interstate commerce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction, as a transshipment or heel, or for exemptions permitted in § 82.15(f).

4. Revise § 82.16(a) to read as follows:

§ 82.16 Phaseout Schedule of Class II Controlled Substances.

(a) In each control period as indicated in the following table, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified Class II controlled substances apportioned under §§ 82.17 and 82.19:

Control period	HCFC–141b	HCFC–22	HCFC–142b	HCFC–123	HCFC–124	HCFC–225ca	HCFC–225cb
2003	0	100	100	.....	.....	.....	.....
2004	0	100	100	.....	.....	.....	.....
2005	0	100	100	.....	.....	.....	.....
2006	0	100	100	.....	.....	.....	.....
2007	0	100	100	.....	.....	.....	.....
2008	0	100	100	.....	.....	.....	.....
2009	0	100	100	.....	.....	.....	.....
2010	0	35.2	4.9	125	125	125	125
2011	0	35.2	4.9	125	125	125	125
2012	0	35.2	4.9	125	125	125	125
2013	0	35.2	4.9	125	125	125	125
2014	0	35.2	4.9	125	125	125	125

* * * * *

5. Revise § 82.17 to read as follows:

§ 82.17 Apportionment of Baseline Production Allowances for Class II Controlled Substances.

Effective January 1, 2010, the following persons are apportioned baseline production allowances for HCFC–22, HCFC–141b, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, as set forth in the following table:

Person	Controlled substance	Allowances (kg.)
AGC Chemicals Americas	HCFC–225ca	266,608
	HCFC–225cb	373,952
Arkema	HCFC–22	46,692,336
	HCFC–141b	24,647,925
	HCFC–142b	484,369
DuPont	HCFC–22	42,638,049
	HCFC–124	2,269,210

Person	Controlled substance	Allowances (kg.)
Honeywell	HCFC–22	37,378,252
	HCFC–141b	28,705,200
	HCFC–142b	2,417,534
	HCFC–124	1,804,121
MDA Manufacturing	HCFC–22	2,383,835
Solvay Solexis	HCFC–142b	6,541,764

6. Revise § 82.18(a) and (b) to read as follows:

§ 82.18 Availability of Production in Addition to Baseline Production Allowances for Class II Controlled Substances.

(a) *Article 5 allowances.*

(1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b, HCFC–22, or HCFC–142b under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2009, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(2) Effective January 1, 2010, a person apportioned baseline production allowances under § 82.17 for HCFC–141b, HCFC–22, or HCFC–142b is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(3) Effective January 1, 2015, a person apportioned baseline production allowances under § 82.17 for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(b) *Export Production Allowances.*

(1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b under § 82.17 is also apportioned export production allowances, equal to 100 percent of their baseline production allowances, for HCFC–141b for each control period up until December 31, 2009 to be used for the production of HCFC–141b for export only, in accordance with this section.

(2) [Reserved]

* * * * *

7. Revise § 82.19 to read as follows:

§ 82.19 Apportionment of Baseline Consumption Allowances for Class II Controlled Substances.

(a) Effective January 1, 2010, the following persons are apportioned baseline consumption allowances for HCFC–22, HCFC–141b, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, as set forth in the following table:

Person	Controlled substance	Allocation (kg)
ABCO Refrigeration Supply	HCFC–22	279,366
AGC Chemicals Americas	HCFC–225ca	285,328
	HCFC–225cb	286,832
Altair Partners	HCFC–22	302,011
	HCFC–22	48,637,642
Arkema	HCFC–141b	25,405,570
	HCFC–142b	483,827
	HCFC–124	3,719
Automatic Equipment Sales	HCFC–22	54,088
Condor Products	HCFC–22	74,843
	HCFC–124	3,746
Continental Industrial Group	HCFC–141b	20,315
Coolgas, Inc	HCFC–141b	16,097,869
	HCFC–123	20,000
Coolgas Investment Property	HCFC–22	590,737
Discount Refrigerants	HCFC–22	375,328
	HCFC–141b	994
Dupont	HCFC–22	38,814,862
	HCFC–141b	9,049
	HCFC–142b	52,797
	HCFC–123	2,933,906
	HCFC–124	743,312
Full Circle	HCFC–22	14,865
H.G. Refrigeration Supply	HCFC–22	40,068
Honeywell	HCFC–22	35,392,492
	HCFC–141b	20,749,489
	HCFC–142b	1,315,819
	HCFC–124	1,284,265
ICC Chemical Corp	HCFC–141b	81,225
ICOR	HCFC–124	81,220
Ineos Fluor Americas	HCFC–22	2,546,305
Kivlan & Company	HCFC–22	2,081,018
MDA Manufacturing	HCFC–22	2,541,545
Mondy Global	HCFC–22	281,824
National Refrigerants	HCFC–22	5,528,316
	HCFC–123	72,600

Person	Controlled substance	Allocation (kg)
	HCFC–124	50,380
Refricenter of Miami	HCFC–22	381,293
Refricentro	HCFC–22	45,979
R-Lines	HCFC–22	63,172
Saez Distributors	HCFC–22	37,936
Solvay Fluorides	HCFC–22	3,781,691
	HCFC–141b	3,940,115
Solvay Solexis	HCFC–142b	194,536
Tulstar Products	HCFC–141b	89,913
	HCFC–123	34,800
	HCFC–124	229,582

(b) [Reserved]

[FR Doc. E8–29965 Filed 12–22–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2007–0163; FRL–8752–6]

RIN 2060–AH67

Protection of Stratospheric Ozone: Ban on the Sale or Distribution of Pre-Charged Appliances

AGENCY: Environmental Protection Agency [EPA].

ACTION: Proposed rule.

SUMMARY: EPA is proposing to ban the sale or distribution of air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these substances, beginning January 1, 2010. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances as the refrigerant, and pre-charged appliance parts. We are proposing these restrictions to protect stratospheric ozone.

DATES: Comments must be received on or before January 22, 2009, unless a public hearing is requested. Comments must then be received on or before February 6, 2009. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on January 2, 2009. If a hearing is held, it will take place on January 7, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0163, 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:* Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket #EPA–HQ–OAR–2003–0163, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, 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–2007–0163. 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: Cindy Axinn Newberg, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9729, *newberg.cindy@epa.gov*.

SUPPLEMENTARY INFORMATION: (1) Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA) authorizes EPA to promulgate regulations to manage the consumption and production of HCFCs until the total phaseout in 2030. EPA promulgated final regulations establishing an allowance tracking system for HCFCs on January 21, 2003 (68 FR 2820). These regulations were amended on June 17, 2004 (69 FR 34024) and July 20, 2006 (71 FR 41163). This action proposes a ban on sale or distribution of air-conditioning and refrigeration appliances that contain HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances as the refrigerant.

(2) Abbreviations and Acronyms Used in This Document.

CAAA—Clean Air Act Amendments of 1990

CFC—chlorofluorocarbon

HCFC—hydrochlorofluorocarbon

ODP—ozone depletion potential
ODS—ozone-depleting substance
Party—States and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*
Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
SNAP—Significant New Alternatives Policy
TSCA—Toxic Substance Control Act
UNEP—United Nations Environment Programme

(3) Tips for Preparing Your Comments.

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Table of Contents

I. Regulated Entities

These proposed amendments will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators	333415		Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Importers of air conditioners and refrigerators	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

This table is not intended to be exhaustive, 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 potentially could be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

In 1973 chemists Frank Sherwood Rowland and Mario Molina at the University of California-Irvine began studying the impacts of chlorofluorocarbons (CFCs) in the earth's atmosphere. They discovered that CFC molecules were stable enough to migrate to the stratosphere and that the chorine atoms contained in these molecules could cause the breakdown of large amounts of ozone in the stratosphere. The Toxic Substances Control Act (TSCA), passed in 1976, included regulatory authority over CFCs. EPA's first regulatory response to the concerns for stratospheric ozone protection resulted in a ban on CFC aerosol propellants (43 FR 11301, March 17, 1978; 43 FR 11318, March 17, 1978).

EPA followed this initial regulatory approach with an Advance Notice of Proposed Rulemaking (ANPRM) which discussed a freeze on the production of certain CFCs and a system of marketable permits to allocate CFC consumption among industries (45 FR 66726; October 7, 1980). EPA did not act immediately on the 1980 ANPRM and was subsequently sued by the Natural Resources Defense Council (*NRDC* v. *Thomas*, No. 84–3587 (D.D.C.)) for failure to regulate CFCs further. EPA and NRDC settled the case and agreed that EPA would propose further regulatory controls on CFCs, or state the reasons for deciding not to issue a

proposal, by December 1, 1987, and would take final action by August 1, 1988.

On January 10, 1986 (51 FR 1257), EPA published its Stratospheric Ozone Protection Plan. That plan described the analytic basis for supporting negotiations for an international agreement to control CFCs and for reassessing the need for additional domestic regulations of CFCs and other ozone-depleting substances (ODS). The United States participated in negotiations organized by the United Nations Environment Programme (UNEP) to develop an international agreement to protect stratospheric ozone. These negotiations, preceded by the 1985 signing of the Vienna Convention, resulted in the signing of the Montreal Protocol in 1987. The United States ratified the Montreal Protocol on April 21, 1988. In 1988, EPA promulgated regulations implementing the requirements of the Montreal Protocol through a system of tradable allowances under section 157(b) of the Clean Air Act as amended in 1977. This section was subsequently modified by the 1990 Amendments and became CAAA § 615. The Senate Report on the 1990 Amendments, Senate Rep. No. 101–228: ''Authority of the Administrator'' notes that this section ''is intended * * * to preserve the authority and responsibility of the Administrator as set forth in section 157 of the existing Clean Air Act,'' although the Conference report to the 1990 CAAA is silent on this matter.

Since the CAAA were passed in 1990, EPA has promulgated regulations based on various provisions of Title VI. For example, EPA has promulgated a production and consumption phaseout schedule that included a revised trading regime for Class I ODS, a production and consumption phaseout schedule and trading regime for Class II ODS, servicing requirements for air-conditioning and refrigeration appliances, bans on nonessential products containing or manufactured with ODS, and labeling requirements.

Concern for ozone layer protection remains paramount for the global community. In an effort to further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol's phaseout schedule for HCFCs in September 2007. The Parties agreed that industrialized countries, including the United States, would reduce production and consumption of HCFCs to 75 percent below the established baseline in 2010, to 90 percent below the established baseline in 2015, and to 99.5 percent in 2020—allowing for only 0.5 percent production and consumption between 2020–2030 to be used solely for servicing existing appliances culminating in the terminal phaseout in 2030. In addition, the Parties adjusted the schedule for non-industrialized countries by agreeing to set production and consumption baselines based on the average values for 2009–2010 production and consumption, respectively; to freeze production and consumption in 2013; and to add stepwise reductions as follows: 10 percent below baselines in 2015, 35 percent below in 2020, 67.5 percent below in 2025 and allowing for a servicing tail to average no more than 2.5 percent between 2030–2040 to be used solely for servicing existing appliances, culminating in the terminal phaseout in 2040.

The requirements already established at § 82.16(c) will make it unlawful to produce or import HCFC–22 or HCFC–142b on or after January 1, 2010 for use in refrigeration or air-conditioning appliances manufactured on or after that date. The practical result of this provision is that effective January 1, 2010, domestic manufacturers of air-conditioning and refrigeration appliances will not be able to charge newly manufactured appliances with newly produced or imported HCFC–22 or HCFC–142b, and thus will not be introducing appliances containing these newly produced substances into interstate commerce. This regulatory provision does not lead to similar results for imported products, because these appliances are charged before entering the United States.

III. Proposed Action

EPA is proposing to establish regulations that ban the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances, beginning January 1, 2010. The ban would cover imported appliances and appliances ultimately destined for export, as well as appliances manufactured in the United States for domestic use. In addition, EPA is proposing to extend these requirements to air-conditioning and refrigeration appliances that are suitable only for use with newly produced HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances as the refrigerant, as well as pre-charged appliance components.

Over 9.7 million pre-charged air-conditioning and refrigeration appliances (e.g., window air conditioners, refrigerators) were imported into the United States in 2006. Coupled with any pre-charged appliances that were manufactured domestically, they represent a concern for ozone layer recovery after the January 1, 2010 restriction on production and import of HCFC–22 and HCFC–142b becomes effective. The United States is committed to protecting stratospheric ozone because a thinning of the ozone layer results in greater ultraviolet radiation, and more incidences of related human health damages, such as incidences of skin cancer.

A. Authority to Ban Sale or Distribution, or Offer for Sale and Distribution, of Specific Types of Appliances

Section 301(a) gives EPA statutory authority to promulgate regulations as are necessary to carry out its functions under the Clean Air Act, such as issuing prohibitions and standards. Further, § 615 of the CAAA states that:

> If, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process or activity, and shall submit notice of the proposal and promulgation of such regulation to the Congress.

As discussed in the Background section to this proposal, EPA acted under pre-1990 CAA authority that is substantially the same as the authority provided by CAAA § 615.[1] Various sections of Title VI of the CAAA include statutory language that is the same as, or similar to, the statutory authority that existed prior to 1990. Provisions contained in Title VI of the CAAA include specific legislative language pertaining to individual ODSs or specific programs while also including non-specific authority in § 615 to determine when action is necessary to ensure adequate protection of stratospheric ozone. For example, § 606 authorizes EPA to accelerate the phaseout requirements to take further action necessary to protect stratospheric ozone. The general authority in § 615 serves as a supplement to other more specific authority contained in Title VI.

[1] In 1988, EPA promulgated regulations implementing the requirements of the Montreal Protocol through a system of tradable allowances under section 157(b) of the Clean Air Act as amended in 1977. Section 157(b) was subsequently modified by the 1990 Amendments and became section 615. Thus EPA has taken action previously under similar authority.

While § 615 sets forth the authority and responsibility of the Administrator to protect stratospheric ozone in order to protect public health and welfare, EPA recognizes that this authority was intended to augment the other authorities and responsibilities established by Title VI and not to serve as a basis for prohibiting practices, processes, or activities that Congress specifically exempted. For example, EPA does not intend to promulgate regulations eliminating the exceptions from the phaseout for essential uses as established by § 604.

Since 1990, EPA has rarely relied on the authority in § 615 to support rulemaking activity, since the activities that the Agency regulates have generally been addressed under other, more specific, Title VI authorities. In 1993, EPA promulgated trade restrictions using § 615 authority in order to conform EPA regulations to Montreal Protocol provisions on trade with countries that were not Parties to the Protocol (March 18, 1993, 58 FR 15014, 15039 and December 10, 1993, 58 FR 65018, 65044). These trade restrictions prevented shipments of ozone-depleting substances from the U.S. to countries with no regulatory infrastructure to control their use. Promulgating these restrictions reduced the release of ozone-depleting substances into the atmosphere, thereby reducing effects on public health and welfare. The restrictions also resulted in eliminating the U.S. as a potential market for ODS produced in non-Parties, thereby discouraging shifts of production to non-Parties and limiting the potential for undermining the phaseout. Since 1993, EPA has stated that § 615 authority is available and would be used if the other Title VI authorities were not sufficient to address concerns for ozone layer protection. For example, in the late 1990s, EPA, the National Aeronautics and Space Administration (NASA), and the Federal Aviation Administration (FAA) considered options for addressing potential ozone depletion concerns that would result from supersonic commercial aircraft. EPA and NASA analyzed the impacts from a theoretical fleet of supersonic commercial aircraft, known as High Speed Civil Transport (HCST), and in an October 1998 Memorandum of Agreement between the two agencies (signed by Spence M. Armstrong, Associate Administrator for Aeronautics and Space Transportation Technology (NASA) and Robert Perciasepe, Assistant Administrator for Air and Radiation (EPA)) (available in the docket) noted the potential to rely on § 615 in conjunction with other regulatory authorities.

Through this action EPA is proposing to establish regulations under authority of § 615, to take effect January 1, 2010, that would ban the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances. Furthermore, EPA is proposing to ban effective January 1, 2010, the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances suitable for use solely with newly produced HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances, as well as pre-charged appliance parts. As discussed elsewhere in this proposal, EPA believes that not exercising § 615 authority for precharged appliances could lead to problematic consequences in light of the January 1, 2010, ban on the manufacture of HCFC–22, HCFC–142b, or blends containing one or both of these substances for servicing new appliances. This ban makes it more likely that new appliances containing these substances could be serviced or disposed of illegally by non-certified technicians lacking training on emissions minimization. Furthermore, reducing the installed base of HCFC appliances results in reducing potential emissions and lessening the need for HCFCs for servicing. While some of the HCFCs used in appliances can be reclaimed and reused, a certain amount of the HCFCs becomes contaminated and is not available for future use. Thus restricting the installed base of HCFC appliances will have the effect of reducing the overall amount of HCFC consumption and emissions. This approach is consistent with the previous actions taken to restrict applications of ozone-depleting substances where suitable substitutes exist. This proposal also helps further the goals of the Montreal Protocol, in particular the Parties' recent emphasis on reducing emissions of HCFCs, as evidenced by the Parties' agreement in September 2007 to accelerate the HCFC production and consumption phaseout. The result of the rulemaking will be fewer appliances pre-charged with HCFCs that could be emitted either during the useful lifetimes of the appliances via leaks or improper servicing, or by the improper disposal of the appliances resulting in the release of refrigerant. EPA requests comments regarding whether this is an appropriate circumstance to invoke the authority provided by § 615.

B. Criteria and Conditions Established Under § 615 of CAAA

Under § 615, if in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, then the Administrator must promptly promulgate regulations respecting the control of such substance, practice, process or activity. In this proposal, the Administrator proposes to conclude that, beginning January 1, 2010, the practice of selling and distributing precharged air-conditioning and refrigeration appliances and pre-charged appliance parts containing HCFC–22, HCFC–142b, or blends of these substances, as well as air-conditioning and refrigeration appliances suitable for use solely with newly produced HCFC–22, HCFC–142b, or blends of these substances, may reasonably be anticipated to affect ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health.[2] EPA requests comment on these proposed findings.

As summarized in the background section of this preamble, the effects of ODS on stratospheric ozone are well known. Further information on the science of ozone depletion is available in the docket. The specific ODS addressed in this action, HCFC–22 and HCFC–142b, are class II substances listed under section 602(b) of the Clean Air Act. Pursuant to section 602(b), class II substances are those substances that are ''known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.'' As discussed below under the heading ''*What are the impacts on stratospheric ozone resulting from continued activities*?,'' EPA has prepared an estimate of the reduction in HCFC emissions attributable to a ban on pre-charged appliances. EPA estimates that a ban on HCFC pre-charged imports will reduce HCFC emissions by approximately 4,700 ODP tons from 2010 through 2019. EPA plans to assess whether it is feasible to compare the HCFC emissions averted through this rulemaking to the overall ODS emission rate for the same period. (For purposes of approximate comparison, an assumed average of 470 ODP tons per year of

[2] EPA is not addressing in this proposed action the separate question of whether such effect also may reasonably be anticipated to endanger public welfare.

averted emissions during this time period is approximately 12 percent of the 3,810 ODP ton U.S. compliance cap for consumption of all HCFCs each year during 2010–2014, and 31 percent of the cap during 2015–2019.)

The phrase ''such effect,'' as used in section 615, could be read to refer to (1) stratospheric ozone depletion generally; (2) stratospheric ozone depletion associated with HCFCs; or (3) stratospheric ozone depletion attributable to the specific practice of importing HCFC pre-charged appliances. As indicated above, the Administrator proposes to conclude that, the stratospheric ozone depletion attributable to the specific practice of importing HCFC pre-charged appliances ''may reasonably be anticipated to endanger'' public health and thus is sufficient in itself. Therefore, it is not necessary to arrive at additional or definitive interpretations for purposes of this action.

The links between stratospheric ozone depletion and skin cancer are well established. Other public health concerns include cataracts and immune suppression. Since the appearance of an ozone hole over the Antarctic in the 1980s, Americans have become aware of the health threats posed by ozone depletion, which decreases the atmosphere's ability to protect the earth's surface from the sun's UV rays. The 2006 documents *Scientific Assessment of Ozone Depletion*, prepared by the Scientific Assessment Panel to the Montreal Protocol, and *Environmental Effects of Ozone Depletion and its Interactions with Climate Change*, prepared by the Environmental Effects Assessment Panel (see *http://ozone.unep.org/Assessment_Panels/*), provide comprehensive information regarding the links between emissions of ODS, ozone layer depletion, UV radiation, and human health effects.

Skin cancer is the most common form of cancer in the U.S., with more than 1,000,000 new cases diagnosed annually (National Cancer Institute, ''Common Cancer Types,'' at *http://www.cancer/gov/cancertopics/commoncancers*). Melanoma, the most serious form of skin cancer, is also one of the fastest growing types of cancer in the U.S.; melanoma cases in this country have more than doubled in the past two decades, and the rise is expected to continue (Ries, L., Eisner, M.P., Kosary, C.L., *et al.*, eds. *SEER Cancer Statistics Review, 1973–1999.* Vol 2003. Bethesda (MD): National Cancer Institute; 2002.) In 2007, invasive melanoma was expected to strike more than 59,000 Americans and kill more than 8,000 (National Cancer Institute, ''Melanomas,'' at *http://www.cancer/gov/cancertopics/types/melanoma*).

Nonmelanoma skin cancers are less deadly than melanomas. Nevertheless, left untreated, they can spread, causing disfigurement and more serious health problems. There are two primary types of nonmelanoma skin cancers. Basal cell carcinomas are the most common type of skin cancer tumors. They usually appear as small, fleshy bumps or nodules on the head and neck, but can occur on other skin areas. Basal cell carcinoma grows slowly, and rarely spreads to other parts of the body. It can, however, penetrate to the bone and cause considerable damage. Squamous cell carcinomas are tumors that may appear as nodules or as red, scaly patches. This cancer can develop into large masses, and unlike basal cell carcinoma, it can spread to other parts of the body.

EPA projects that approximately 1,700 total cases of cancer (nonmelanoma and cutaneous malignant melanoma) and approximately 9 premature mortalities will be avoided by banning the sale and distribution of pre-charged appliances beginning in 2010. More information regarding this projection is available in a memorandum prepared by ICF Consulting for EPA (''Avoidance of Skin Cancer Incidences and Mortalities Associated with a 2010 Ban on Products Pre-Charged with R–22'') and placed in the docket for this rulemaking. EPA does not routinely provide projections of this nature in developing rules under Title VI of the CAA. Other UV-related health effects, which EPA has not quantified, are discussed below.

Other UV-related skin disorders include actinic keratoses and premature aging of the skin. Actinic keratoses are skin growths that occur on body areas exposed to the sun. The face, hands, forearms, and the ''V'' of the neck are especially susceptible to this type of lesion. Although premalignant, actinic keratoses are a risk factor for squamous cell carcinoma. Chronic exposure to the sun also causes premature aging, which over time can make the skin become thick, wrinkled, and leathery.

Cataracts are a form of eye damage in which a loss of transparency in the lens of the eye clouds vision. If left untreated, cataracts can lead to blindness. Research has shown that UV radiation increases the likelihood of certain cataracts. Although curable with modern eye surgery, cataracts diminish the eyesight of millions of Americans. Other kinds of eye damage include pterygium (*i.e.*, tissue growth that can block vision), skin cancer around the eyes, and degeneration of the macula (*i.e.*, the part of the retina where visual perception is most acute).

Scientists have found that overexposure to UV radiation may suppress proper functioning of the body's immune system and the skin's natural defenses. All people, regardless of skin color, might be vulnerable to effects including impaired response to immunizations, increased sensitivity to sunlight, and reactions to certain medications.

EPA seeks comment on whether the practice of selling and distributing air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends of these substances may reasonably be anticipated to affect ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare.

EPA investigated the potential impacts of failure to control the import of refrigeration and air-conditioning appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances. EPA believes the impacts fall into two broad categories: environmental impacts on stratospheric ozone resulting from continued activities and financial impacts.

The first impact category—impacts on stratospheric ozone resulting from continued activities—can be further delineated into:

- Impacts from the continued production of HCFC–22, HCFC–142b, and blends containing one or both of these substances for use as a refrigerant in air-conditioning and refrigeration appliances that cannot be initially charged in the U.S. but could be charged abroad and subsequently imported into the U.S. if EPA did not take action; and
- Impacts from improperly servicing equipment and/or venting controlled substances.

1. What are the impacts on stratospheric ozone resulting from continued activities?

The global HCFC phaseout is already underway, and restrictions on production, import, and sale and distribution of specific types of HCFC products are already in place in the United States and in international markets. The United States banned sale and distribution of aerosols, pressurized dispensers, and foam products containing HCFCs in 1994, and the European Union has banned HCFCs for refrigerant use in new equipment since 2001 (Regulation EC No 2037/2000 of the European Parliament). Many manufacturers of pre-charged appliances already service the European market and other markets with non-

HCFC pre-charged appliances, thus they are already manufacturing air-conditioning and refrigeration pre-charged appliances with non-ozone depleting refrigerants. EPA believes this should ease the implementation of a proposed ban, and given that retooling and other design changes have either already occurred to meet the European and other markets, or will occur as a result of the global phaseout of HCFCs, EPA believes costs associated directly with this proposed rulemaking are limited.

EPA estimates that in 2006, approximately 9.7 million pre-charged appliances, including heat pumps, window air conditioners, and dehumidifiers, were imported into the United States and sold throughout the country. This figure includes units pre-charged with other refrigerants. EPA estimates that 9.0 million pre-charged appliances, the vast majority, were pre-charged with HCFC–22. In addition to the 9.7 million imported pre-charged appliances, appliances were sold that were manufactured domestically. EPA believes this is a mature and stable market and EPA projects that in the absence of a restriction, as many as 12.7 million pre-charged HCFC appliances could be imported and made available for sale or distribution in the U.S., on an annual basis, during 2010–2019 using reasonable assumptions concerning market growth. Separate domestic restrictions on the production and import of HCFC–22 and HCFC–142b would essentially preclude the manufacture and initial charging of these appliances with newly manufactured HCFC–22, HCFC–142b, and blends containing one or both of these controlled substances, as of January 1, 2010.

In estimating the environmental impacts associated with continuing to allow sale and distribution of HCFC pre-charged appliances in interstate commerce, EPA considered factors such as the number of different appliances likely to be available, the average charge sizes for the appliances, and the leak rates associated with the appliances that are likely to be serviced during their useful lifetime. The projected emission of HCFC–22 between January 1, 2010 and December 31, 2019, in the absence of a ban on pre-charged appliances, based on charge sizes and leak rates is approximately 4,700 ODP-weighted metric tons from these pre-charged appliances. By comparison, in accordance with the Montreal Protocol adjustments from September 2007, in 2010 the cap for consumption for the total basket of HCFCs in the United States will be 3,810 ODP tons annually for the years 2010–2014 and 1,524 ODP tons for the years 2015–2020. This consumption is for the total basket of HCFCs, with HCFC–22 and HCFC–142b restricted to servicing the existing base of air-conditioning and refrigeration appliances—in particular the units that are charged onsite, including but not limited to, chillers and residential unitary units.

The maximum level of consumption will also be used to service and charge both existing and newly manufactured appliances with other HCFCs, and in other applications such as niche solvent uses prior to 2015, and will include amounts for consumption of HCFC–123, HCFC–124, HCFC–225ca, HCFC–225cb, and—in some extremely narrow cases—HCFC–141b. EPA requests comments on the projected number of pre-charged HCFC appliances that could be available after January 1, 2010, and the associated amount of ODS that would be necessary to both charge and service these appliances during their useful lifetimes.

2. What factors will influence the costs of pre-charged appliances charged with substitutes?

EPA believes that for the air-conditioning and refrigeration applications affected by this proposed rule, the price of the refrigerant is a comparatively small fraction of the total price of the appliance, ranging from 1 to 3 percent of total cost. EPA also believes that only a limited number of appliance components will be replaced to accommodate an alternative refrigerant. The decision by the Parties to the Montreal Protocol to adjust the phaseout schedules for HCFCs was based partly on reliable information concerning commercially available substitute refrigerants that has been provided to the Parties by the technical assessment panels the Parties sponsor. For some applications, manufacturers have a suite of refrigerants from which to choose and can therefore consider a range of price and operational factors.

EPA considered whether the transition to alternative refrigerants in pre-charged appliances would involve differential costs. Considering that these appliances are not retrofitted, this would be an upstream cost occurring at the point of manufacture, not after consumer purchase. EPA's evaluation, included in the docket for this rulemaking, examined potential consumer impacts from differences in refrigerant cost and differences in costs associated with changes to certain appliance components to accommodate an alternative refrigerant. Generally the R–410A appliances are more energy-efficient than their HCFC–22 counterparts, which may result in reduction of energy usage by consumers and thus would result in a net savings. EPA assessed existing industry data and applied assumptions regarding future manufacturing and marketing trends. Several critical limitations associated with projecting differential refrigerant and component prices precluded the Agency from determining an incremental cost estimate with certainty. However, given the relatively limited range of impacts, EPA believes it can estimate, with a reasonable degree of certainty, a range of possible cost impacts.

The prices of HCFC–22 in developing countries range widely from $2/kg to $13/kg. The current average price for R–410A—one substitute for HCFC–22 in non-industrialized countries—is approximately $13/kg. Refrigerant prices vary widely based on factors such as volumes purchased and negotiation of purchasing contracts; further, projecting prices into the future is complicated by variability in individual manufacturers' business decisions regarding when to make the long-term capital investments to alternative refrigerants. EPA expects, however, that the prices of alternative refrigerants such as R–410A will drop as demand increases and patents expire. The more aggressive phasedown of HCFC–22 production and import resulting from the decision taken at the 19th Meeting of the Parties is likely to lead to an increase in the price of HCFC–22 and a drop in the price of R–410A. Prices of HCFC–22 will likely increase as the stepwise reductions in production and consumption continue. As the global phaseout of HCFCs continues, other international markets may become more restrictive, further influencing the global pricing.

Equipment charged with alternative refrigerants such as R–410A requires slightly different components—such as thicker-walled copper tubing—that may cost slightly more than the components used in older HCFC–22 appliances. EPA is not aware of any industry data now available that projects the likely future differences in component costs between equipment designed for HCFC–22 and equipment designed for alternatives including R–410A, whether from manufacturers in developed countries or developing countries. EPA's evaluation estimates that for appliances manufactured in the United States, incremental costs associated with component modifications could range from zero to 10 percent of the cost of the appliances—an estimated per-unit difference of $5 for smaller units and $45 for larger units. The cost differential

for manufacturers in developing countries could be less or more, and the degree to which any such differential would be passed along to U.S. consumers is unknown. The more efficient operations of the R–410A appliances may result in reduced energy costs.

Given the caveats above, EPA estimates that the price differential could range from zero to $45 (with a mid-range of $42.50) for each of the larger units (*e.g.*, unitary air conditioners) that would be imported annually during the period 2010–2019, and that the differential for the smaller units (*e.g.*, room air-conditioners) would range from zero to $5 (with a mid-range of $3.50).

In the analysis included in the docket for this proposed rulemaking, EPA states that 9.0 million appliances pre-charged with HCFC–22 were imported into the United States in 2006. Applying assumptions identified in the docket concerning market growth, EPA estimates that the market for imported pre-charged appliances will grow to an annual average rate of 12.7 million appliances per year during the period 2010–2019. Thus, during the period 2010–2019, EPA projects that an average of 12.7 million appliances per year would be imported pre-charged with a non-ozone-depleting alternative refrigerant such as R–134a, R–407C, or R–410A. EPA's analysis shows that the engineering modifications to components of appliances using R–134a or R–407C are likely to have negligible cost. EPA has, however, calculated the incremental cost associated with the more significant modifications necessary for units using R–410A, which EPA estimates will constitute approximately 64 percent of the pre-charged imports during this time, or approximately 8.1 million of the 12.7 million pre-charged units imported with alternative refrigerants on an annual basis during 2010–2019.

The annual aggregate of such impacts would range from zero to $48 million, with a mid-range estimate of $41 million.

Assumptions regarding the market, growth, and factors concerning costs are further considered in a draft memorandum *Costs Associated with Refrigerant Substitution from R–22 to R–410A in Pre-charged Equipment,*[3] prepared by ICF Consulting for EPA and available in the docket for this rulemaking. EPA seeks comment on that draft memorandum, including the assumptions regarding likely refrigerant replacement and the cost impacts. In addition, EPA requests comments regarding the current and potential availability and prices of pre-charged appliances that do not contain HCFC–22, HCFC–142b, or blends containing either of these refrigerants. In particular, EPA is interested in information regarding likely market trends considering both the promulgation of a ban on sale and distribution and in the absence of such a restriction. EPA requests comments on the projected number of appliances that could be available after January 1, 2010, and the associated amount of ODS that would be necessary to both charge and service these appliances during their useful lifetimes.

3. Are There Implications for Other Markets?

EPA believes that there is an additional impact associated with not banning the sale and distribution in interstate commerce of these appliances as of January 1, 2010. EPA believes that prolonging U.S. demand for imported pre-charged appliances would discourage global efforts to transition to non-ODS technologies in manufactured air-conditioning and refrigeration appliances. Given the commitments of the United States and its trading partners to ultimately phase out HCFCs, investment in HFC product lines is occurring and will continue to occur globally. Production capacity requires a long-term capital investment and the choice of refrigerant dictates some of that investment in the form of factory tooling, design, and a network of suppliers for components. Without this proposed ban, investment decisions influenced by demand could foster continued investment in HCFC-based manufacturing rather than investment in alternatives and would run counter to the United States's domestic approach to promote smooth transitions rather than a rush to transition at the tail end of global phaseout. EPA has not calculated these potential impacts but does recognize that such impacts potentially exist. EPA requests comments regarding the timing for transitioning pre-charged appliances to non-ODS refrigerants.

4. Without Taking Action Are There Impacts Associated With Unequal Treatment of Stakeholders?

The requirements established at § 82.16(c) make it unlawful, effective January 1, 2010, to produce or import HCFC–22 or HCFC–142b for use in refrigeration or air-conditioning appliances manufactured on or after that date. The result of this provision is that, effective January 1, 2010, domestic air-conditioning and refrigeration appliance manufacturers will no longer have newly manufactured or imported HCFC–22 or HCFC–142b available to charge their newly manufactured appliances. EPA believes that this proposal, once finalized, will have the effect of providing more equitable treatment of domestically manufactured and imported appliances by holding the equipment to the same requirements for sale and distribution within interstate commerce.

EPA would like to clarify that when referring to appliances that are suitable for use solely with newly produced HCFC–22, HCFC–142b, and blends containing one or both of these controlled substances, EPA means to refer to appliances that according to the manufacturer would not be suitable for use with recycled or reclaimed refrigerants. EPA believes that such a situation could potentially arise if, for example, manufacturer's directions stated specifically that the appliance must be charged with newly manufactured refrigerants. EPA is not suggesting through this action to create any differentiated standards, just to clarify that the proposed rule is not intended to extend to newly manufactured appliances charged with used refrigerants.

EPA believes that not promulgating these proposed requirements, or a very similar set of requirements, could result in differing treatment with regard to sale and distribution in interstate commerce for similar appliances based on the location of the manufacturing facility. EPA requests comments on the application of a sales restriction in interstate commerce on all pre-charged appliances.

C. Establishing 40 CFR Part 82 Subpart I

EPA intends to house the proposed requirements in a new subpart. EPA intends to create 40 CFR Part 82 Subpart I, to be named Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs. While alternatively these proposed requirements could be contained within existing subparts, particularly subpart A or subpart C, EPA believes a new subpart is more appropriate. The requirements could be housed in subpart A, but subpart A generally applies to bulk substances and not finished goods. EPA could house the provisions in subpart C, since that subpart includes a ban on the sale and distribution of certain products manufactured with or containing HCFCs, but those provisions were

[3] HCFC–22 is also referred to as R–22, particularly where it is used in refrigeration and air-conditioning applications.

promulgated under CAA section 610. Given that EPA is using different authority for these provisions and is structuring them somewhat differently, EPA is planning to house these provisions separately for ease of reference.

D. Air-Conditioning and Refrigeration Appliances Banned From Sale or Distribution, or Offer for Sale or Distribution, in Interstate Commerce

EPA is proposing that any air-conditioning or refrigeration appliances containing HCFC–22, HCFC–142b, or any blend that contains one or both of these controlled substances, would be subject to the ban proposed through this action. EPA requests comment on banning the sale or distribution, or offer for sale or distribution, of these appliances recognizing the wide availability of substitutes. EPA additionally requests comments on whether the types of appliances listed below in this section comprise the universe of affected appliances that currently or potentially could use HCFC–22, HCFC–142b, or any blend that contains one or both of these controlled substances as a refrigerant.

Refrigeration and air-conditioning end-uses typically use a refrigerant in a vapor compression cycle to cool and/or dehumidify a substance or space, like a refrigerator cabinet, room, office building, or warehouse. HCFC–22 is a popular refrigerant that is commonly used in a variety of refrigeration and air conditioning equipment including both industrial and residential applications, most of which are not pre-charged but are instead charged onsite. HCFC–22 can be used in a large range of equipment including:

Residential Uses

- Window air conditioning units.
- Dehumidifiers.
- Central air conditioners.
- Air-to-air heat pumps.
- Ground-source heat pumps.
- Ductless air conditioners.
- Chest or upright freezers.

Commercial and Industrial Uses

- Packaged air conditioners and heat pumps.
- Chillers.
- Retail food refrigeration.
- Cold storage warehouses.
- Industrial process refrigeration.
- Transport refrigeration.

HCFC–22 is often used as a component in refrigerant blends that contain several chemicals. Some common end uses for refrigerant blends that contain HCFC–22 are:

- Retail food refrigeration.
- Cold storage warehouses.
- Industrial process refrigeration.
- Transport refrigeration.

As a refrigerant, HCFC–142b is rarely used by itself; it is generally a component of a refrigerant blend. For example, it is part of a blend known as R–409A, which also includes HCFC–22 and can be used in some applications.

Readers interested in substitutes for CFC refrigerants should review the Significant New Alternatives Policy (SNAP) program which evaluates and regulates substitutes for ODS. Section 612 authorizes EPA to identify and publish lists of acceptable and unacceptable substitutes for class I or class II ozone-depleting substances. The Administrator has determined a large number of alternatives are acceptable because they provide limited risk to human health and the environment. The purpose of SNAP is to allow a safe, smooth transition away from ODS by identifying as acceptable substitutes that offer lower overall risks to human health and the environment than the ODS they replace and by prohibiting substitutes that provide significantly greater risk than other substitutes that are available. Additional information concerning substitutes specifically for air-conditioning and refrigeration applications can be found at: *http://www.epa.gov/ozone/snap/refrigerants/index.html.*

1. Resale of Used Air-Conditioning and Refrigeration Appliances in Interstate Commerce

This proposed rule concerns only the sale or distribution, and offer for sale or distribution, of newly manufactured appliances. This action is not intended to govern the sale or distribution, or offer for sale or distribution, of any previously owned or used appliances. EPA believes appliances previously owned or used should continue to be available in interstate commerce. However, EPA is concerned with the potential for appliances to be marked as previously owned and used when those appliances were actually newly manufactured. Therefore, we are requesting comments on whether we can continue to permit the sale or distribution, and offer for sale or distribution, of used appliances while maintaining the integrity of this proposal. EPA requests comments on whether there is a need for additional requirements to distinguish between newly manufactured and previously manufactured appliances.

2. Servicing Air-Conditioning and Refrigeration Appliances

This proposed rule does not affect the servicing of air-conditioning or refrigeration appliances manufactured prior to January 1, 2010. Servicing is regulated under other authorities, notably 40 CFR part 82, subpart F. EPA believes it is necessary to continue to permit the servicing of air-conditioning and refrigeration appliances manufactured prior to January 1, 2010, to ensure a smooth transition to alternatives. As noted above, regardless of whether EPA takes final action on this proposed rule, it will be illegal to produce or import HCFC–22, HCFC–142b or blends containing one or both of these controlled substances to charge appliances manufactured after January 1, 2010. If new appliances that use these banned refrigerants are available for sale after this time, there may be a temptation to illegally recharge them with the banned refrigerants. This could increase the potential for poor servicing practices resulting in leaks or venting in violation of the Subpart F prohibitions.

3. Identifying Banned Appliances

The term ''appliance'' is defined in section 601 of the CAAA and in EPA's regulations at 40 CFR part 82, subpart F. EPA is proposing to apply the same definition of ''appliance'' as appears in subpart F: any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer. Further, EPA is proposing to use the same definition of ''refrigerant'' that appears in 40 CFR part 82, subpart F: any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect. EPA believes that consistency in these definitions benefits the regulated community. For further clarification, EPA is providing below a listing of appliances that would be banned by this proposal, if they were pre-charged with HCFC–22, HCFC–142b or a blend containing one or both of these controlled substances. EPA notes that most of the pre-charged appliances are characterized as small appliances (*e.g.*; window air conditioning units, upright freezers, refrigerators) and that some of these (*e.g.*; refrigerators) have already transitioned away from HCFCs. However, EPA is including other appliances that commonly use HCFC refrigerants as well in case some significant change in industry and/or shipping practices results in pre-charging new categories of appliances.

EPA believes this is important both to ensure that EPA is not inadvertently excluding appliances that should be included and in recognition that business practices do change. Therefore, while certain items are not practical to pre-charge now, there may be significant changes at some future date. This is not intended to be an exhaustive list but can be used as guidance when for the reader to judge whether there is any potential now or in the future for a particular appliance to be covered by this proposal if it were sold or distributed in interstate commerce pre-charged. For example, EPA is not aware of any industrial process refrigeration appliances sold or distributed pre-charged, but for completeness, industrial process refrigeration appliances, chillers, and other appliances not currently sold or distributed pre-charged are included:

- Air-to-air heat pumps.
- Chest or upright freezers.
- Chillers.
- Cold storage warehouses.
- Ductless air conditioners.
- Dehumidifiers.
- Ground-source heat pumps.
- Industrial process refrigeration.
- Packaged air conditioners and heat pumps.
- Retail food refrigeration.
- Transport refrigeration.
- Unitary air conditioners.
- Window air conditioning units.

Furthermore, EPA is also including pre-charged components for appliances, such as line-sets and pre-charged compressors. When sold charged with refrigerants, these components present all the same concerns as the pre-charged appliances. EPA requests comments on using the definitions of appliance and refrigerant that appears in subpart F to determine what is subject to this proposed ban. EPA further requests comments on including pre-charged components.

4. Ban on Sale or Distribution in Interstate Commerce

EPA has previously banned the sale or distribution, and offer for sale or distribution in interstate commerce, of certain products containing or manufactured with class II substances, including most pressurized dispensers and plastic foam products (58 FR 69637). EPA has also previously banned the sale or distribution, and offer for sale or distribution in interstate commerce, of air-conditioning and refrigeration appliances containing class I substances (66 FR 57512). Consistent with those previous actions, EPA is proposing to apply the term ''interstate commerce'' to the product's entire distribution chain up to and including the point of sale to the ultimate consumer.

EPA's interpretation of interstate commerce for this purpose does not cover the sale, distribution, or offer of sale or distribution of an appliance if the appliance is completely manufactured, distributed, and sold without ever crossing state lines. However, to avoid coverage by this proposed rulemaking, the appliance must be manufactured, distributed, and sold exclusively within a particular state, and also all of the raw materials, components, equipment, and labor that went into the manufacturing, distributing, selling, or offering for sale or distribution of such a product originated within that state as well.

The sale and distribution of the affected appliance includes every sale and distribution up to and including the sale to the ultimate consumer and all these sales would need to occur without ever crossing a state line for the product to be considered not part of interstate commerce and thus not banned by this proposed rulemaking. This is consistent with the sales restriction promulgated under section 610 and housed at 40 CFR Part 82 subpart C. EPA requests comments on banning the sale or distribution or offer for sale or distribution of these appliances in interstate commerce.

5. Imports and Exports

EPA intends to treat both the domestic sale or distribution of any appliance imported into the United States, and the domestic sale or distribution of any appliance intended for ultimate export from the United States, as acts of interstate commerce within the meaning of today's proposal. This interpretation was previously discussed by EPA in the regulations implementing the ban on Nonessential Products containing or manufactured with a class II substance (58 FR 69638). The sale or distribution, or offer for sale or distribution, of imported products or products destined for export within the scope of this proposal would be subject to the same restrictions as the sale or distribution, or offer of sale or distribution, of products within the scope of that Nonessential Products ban. EPA is not proposing to regulate foreign commerce through this action. These proposed requirements would only apply to interstate commerce and would only affect appliances that would be in interstate commerce within the borders of the United States including those that would be in interstate commerce prior to export or subsequent to import. EPA requests comments regarding the import and export of banned appliances.

6. Sale and Distribution of Products Manufactured Prior to January 1, 2010

EPA recognizes that air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b or a blend where either or both of these substances are components, could be manufactured prior to January 1, 2010, but may not have reached the ultimate consumer by January 1, 2010. EPA contemplated mechanisms to either permit for a 'sell through' or 'grandfather' appliances that were previously manufactured and placed into an initial inventory—similar to the approaches in 40 CFR Part 82, subpart C. While such an approach could smooth the transition to non-ODS pre-charged appliances, given that this proposed regulation is based on meeting the criteria established by Section 615, EPA is concerned that any ''sell through'' or ''grandfathering'' provision would provide less environmental protection. Therefore, EPA would only adopt such an approach if it were very limited and narrowly defined. In addition, EPA is proposing that these provisions have an effective date of January 1, 2010 rather than 60 days from the date that the final rule is published in the **Federal Register**. EPA chose this date partly because it corresponds with other milestones, mostly notably the implementation of the reduction to 75 percent below the United States baseline for production and consumption of all HCFCs. However, a secondary reason for proposing this date is to provide adequate planning time for the various stakeholders to take actions to permit for a smooth transition to non-HCFC pre-charged appliances. EPA requests comments on whether the Agency should adopt a narrowly tailored sell-through or grandfathering provision.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because OMB believes that it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Rather, this rule proposed to ban the sale or

distribution of air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these substances, beginning January 1, 2010. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

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.

For purposes of assessing the impacts of this proposal on small entities, small entity is defined as: (1) An entity that is primarily engaged in Chlorofluorocarbon gas, air conditioner, and refrigerator importing, exporting and manufacturing, as defined by NAIC codes 333415 and 325120 (based on Small Business Size Standards.) See table below for examples and additional details; (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.

This proposal will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Manufacturers of air conditioners and refrigerators	333415		Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Importers of air conditioners and refrigerators	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

After considering the economic impacts of the proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined by the NAICS Codes listed above. 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 rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The requirements already established at § 82.16(c) will make it unlawful to produce or import HCFC–22 or HCFC–142b on or after January 1, 2010 for use in refrigeration or air-conditioning appliances manufactured on or after that date. The practical result is that already domestic manufacturers of air-conditioning and refrigeration appliances will not be able to charge newly manufactured appliances with newly produced or imported HCFC–22 or HCFC–142b, and thus will not be introducing appliances containing these newly produced substances into interstate commerce. Thus, this 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 stated above, this rule affects manufacturers of air-conditioning and refrigeration appliances, not 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. Today's proposal is expected to primarily affect producers, importers and exporters of air-conditioning and refrigeration appliances. Thus, the requirements of section 6 of the Executive Order do not apply. 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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule affects manufacturers of air-conditioning and refrigeration appliances, not tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because

it is not economically significant as defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994: 30A: 1647–54; (2) Elwood JM Japson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK, ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whieman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et al. ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma.'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, DK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early life exposure to UV radiation.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed regulation solely impacts the sale or distribution, or offer for sale or distribution of pre-charged appliances. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 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 involve 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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By restricting the sale and distribution of appliances charged with HCFC–22 and HCFC–142b, emissions of these ozone-depleting substances will be avoided lessening the adverse human health effects for the entire population.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: December 11, 2008.

Stephen L. Johnson,

Administrator.

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q)

2. A new subpart I is added to read as follows:

Subpart I—Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs

Sec.

Subpart I—Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs

§ 82.300 Purpose.

The purpose of this subpart is to protect stratospheric ozone by restricting the sale and distribution of HCFC appliances under authority of section 615 of the Clean Air Act as amended in 1990.

§ 82.302 Definitions.

As used in this subpart, the term:

Administrator means the Administrator of the United States Environmental Protection Agency or an authorized representative.

Appliance means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

Class I substance means any controlled substance designated as class I in 40 CFR part 82, appendix A to subpart A.

Class II substance means any controlled substance designated as class II in 40 CFR part 82, appendix B to subpart A.

Consumer, when used to describe a person taking action with regard to a product, means the ultimate purchaser, recipient or user of a product.

Distributor, when used to describe a person taking action with regard to a product, means:

(1) The seller of a product to a consumer or another distributor; or

(2) A person who sells or distributes that product in interstate commerce for export from the United States.

Hydrochlorofluorocarbon means any substance listed as class II in 40 CFR part 82, appendix B to subpart A.

Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

Pre-charged appliance means any appliance charged with refrigerant prior to sale or distribution, or offer for sale or distribution in interstate commerce.

Pre-charged appliance component means any portion of a pre-charged appliance including but not limited to condensers and line sets that are charged prior to sale or distribution or offer for sale or distribution in interstate commerce.

Product means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task.

Refrigerant means, for purposes of this subpart, any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.

§ 82.304 Prohibitions.

Effective January 1, 2010, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any product identified in § 82.306.

§ 82.306 Prohibited products.

Effective January 1, 2010, the following products are subject to the prohibitions specified under § 82.304—

(a) Any air-conditioning or refrigeration appliance manufactured on or after January 1, 2010 containing HCFC–22, HCFC–142b or a blend containing one or both of these controlled substances,

(b) Any air-conditioning or refrigeration appliance manufactured on or after January 1, 2010 that is suitable only for use with newly produced HCFC–22, HCFC–142b or a blend containing one or both of these controlled substances, and

(c) Any pre-charged appliance component for air-conditioning or refrigeration appliances manufactured on or after January 1, 2010 containing HCFC–22, HCFC–142b, or a blend containing one or both of these controlled substances, except

(d) This prohibition shall not apply where the HCFC–22 or HCFC–142b (including the HCFC–22 or HCFC–142b contained in any blend) is used, recovered and reclaimed.

[FR Doc. E8–29999 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–SFUND–2008–0873; FRL–8755–7]

RIN 2050–AG47

Amendment to Standards and Practices for All Appropriate Inquiries Under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the All Appropriate Inquiries Final Rule to reference ASTM International's E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' and allow for its use to satisfy the statutory requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In the ''Rules and Regulations'' section of this **Federal Register**, EPA is amending the All Appropriate Inquiries Final Rule to reference the ASTM E2247–08 Standard as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by January 22, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2008–0873 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Headquarters West Building, Room 3334, located at 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Headquarters Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2008–0873. Please reference Docket number EPA–HQ–SFUND–2008–0873 when submitting your comments.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*

Docket: You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

All documents in the docket are listed in the *http://www.regulations.gov* index. Certain types of information claimed as CBI, and other information whose

disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM Internationals' E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' will not be placed in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room at this docket facility 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 Superfund Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774, or *overmeyer.patricia@epa.gov*.

Regulated Entities

Today's action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries at certain properties. Parties purchasing large tracts (greater than 120 acres) of forested land and parties purchasing large rural properties may use the ASTM E2247–08 standard practice to comply with the all appropriate inquiries requirements of CERCLA. Today's proposed rule will not require any entity to use this standard. Any party who wants to claim protection from liability under CERCLA may follow the regulatory requirement of the All Appropriate Inquiries Final Rule at 40 CFR part 312, or use the ASTM E1527–05 Standard Practice for Phase I Environmental Site Assessments to comply with the all appropriate inquiries provision of CERCLA.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing large tracts of forested lands or large rural properties and intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property that consists of large tracts of forested land or a large rural property with a brownfields grant awarded under CERCLA Section 104(k)(2)(B)(ii) may be affected by today's action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/ Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

Why Is EPA Issuing This Proposed Rule?

This document proposes to amend the All Appropriate Inquiries Final Rule at 40 CFR part 312 to reference ASTM International's E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' and allow for its use to satisfy the statutory requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). We have published a direct final rule amending the All Appropriate Inquiries regulations to reference the ASTM E2237–08 standard and allow for its use to comply with the final rule in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Preamble

I. Statutory Authority

EPA is proposing to amend the All Appropriate Inquiries Final Rule that sets federal standards for the conduct of ''all appropriate inquiries'' at 40 CFR part 312. The All Appropriate Inquiries Final Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability relief and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Amendments''). In general, the Brownfields

Amendments to CERCLA provide funds to assess and cleanup brownfields sites; clarifies CERCLA liability provisions related to innocent purchasers of contaminated properties; and provides funding to enhance State and Tribal cleanup programs. In part, subtitle B of the Brownfields Amendments revises some of the provisions of CERCLA section 101(35) and limits Superfund liability under section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake ''all appropriate inquiries'' into prior ownership and use of property prior to purchasing the property to qualify for protection from CERCLA liability.

The Brownfields Amendments required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the final rule, the ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Standard Process.'' Therefore, the final rule (40 CFR part 312) allows for the use of the ASTM E1527–05 standard to conduct all appropriate inquiries, in lieu of following requirements included in the final rule.

Since EPA promulgated the All Appropriate Inquiries Final Rule setting standards and practices for the conduct of all appropriate inquiries, ASTM International published a new Phase I site assessment standard specifically tailored to conducting site assessments of large tracts of rural and forestland property. This standard, ASTM E2247–08, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' was reviewed by EPA, in response to a request for its review by ASTM International, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Final Rule.

With today's action, EPA is proposing to amend the All Appropriate Inquiries Final Rule to allow for the use of the recently revised ASTM standard, E2247–08, for conducting all appropriate inquiries, as required under CERCLA for establishing the innocent landowner defense, as well as qualifying for the bona fide prospective purchaser and contiguous property owner liability protections.

With today's action, EPA is proposing to establish that, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered to be in compliance with the requirements for all appropriate inquiries, as required in the Brownfields Amendments to CERCLA, if such parties comply with the procedures provided in the ASTM E2247–08, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.'' EPA determined that it is reasonable to make this determination based upon the Agency's finding that the ASTM E2247–08 standard is compliant with the all appropriate inquiries regulation. The Agency notes that today's action will not require any party to use the ASTM E2247–08 standard. Any party conducting all appropriate inquiries to comply with the CERCLA requirements at section 101(35)(B) for the innocent land defense, the contiguous property owner liability protection, or the bona fide prospective purchaser liability protection may continue to follow the provisions of the All Appropriate Inquiries Final Rule at 40 CFR part 312 or use the ASTM E1527–05 Standard.

In proposing today's action, the Agency is allowing for the use of an additional recognized standard or customary business practice, to comply with a federal regulation. Today's proposed action does not require any person to use the newly recognized standard. Today's proposed action merely will allow for the use of the ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' for those parties purchasing relatively large tracts of rural property or forestlands who want to use the ASTM E2247–08 standard in lieu of the following specific requirements of the All Appropriate Inquiries Final Rule or the ASTM E1527–05 standard.

The Agency notes that there are no significant differences between the regulatory requirements and the two ASTM standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Final Rule, the ASTM E1527–05 Phase I Environmental Site Assessment Standard and the ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' as well as the applicability of the E2247–08 standard for certain types of properties, EPA developed, and placed in the docket for today's proposed action, the document ''Comparison of All Appropriate Inquiries Regulation and ASTM E2247–08 Phase I Environmental Site Assessment Process or Forestland or Rural Property.'' The document provides a cross walk between the federal regulation and the two ASTM standards.

By proposing today's action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act (NTTAA).

III. This Action

EPA is proposing this action because the Agency wants to provide additional flexibility for brownfields grant recipients or other entities that may benefit from the use of the ASTM E2247–08 standard. We believe that today's proposed action will allow for the use of a tailored standard developed by a recognized standards developing organization and that was reviewed by EPA and determined to be equivalent to the Agency's final rule. Today's action does not disallow the use of the previously recognized standard (ASTM E1527–05) and it will not alter the requirements of the previously promulgated final rule. In addition, today's proposal potentially will increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527–05 standard or follow the requirements of the All Appropriate Inquiries Final Rule when conducting all appropriate inquiries.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735 (October 4, 1993)) and is therefore not subject to review by the Office of Management and Budget under the EO.

B. Paperwork Reduction Act

This proposed action includes no information collection requirements and therefore no associated burdens. The proposed action will not result in any change to the current regulation other than to allow for the use of an additional standard.

C. Regulatory Flexibility Act

Today's proposed action is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. (5 U.S.C. 601 *et seq.*). Although the proposed rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirements under the APA or any other statute. Today's action does not change the current regulatory status quo and it has no economic impact. Therefore, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action merely proposes to allow for the use of a voluntary consensus standard. This action would not require the newly recognized standard be used by any entity. The proposed rule includes no new regulatory requirements and will result in no additional burden to any entity. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act. This proposed 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. This proposed action imposes no enforceable duty on any State, local or tribal governments or the private sector.

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 EO 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 result in 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 EO 13132. Thus, EO 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, (November 9, 2000)). Today's action does not change any current regulatory requirements and therefore does not impose any impacts upon tribal entities. Thus, EO 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 F.R. 19885, (April 23, 1997)) because it is not economically significant as defined in EO 12866, and 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 28355 (May 22, 2001)), because it is not a significant regulatory action under EO 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards.

Today's proposed action is compliant with the spirit and requirements of the NTTAA. Today's proposed action allows for the use of the ASTM International standard known as Standard E2247–08 and entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.''

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. Today's proposed action will not change any regulatory requirements or impose any new requirements.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: December 17, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–30537 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2677; MB Docket No. 08–126; RM–11458]

Television Broadcasting Services; Canton, Ohio

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcast Network (''Trinity''), the licensee of WDLI-DT, post-transition DTV channel 39, Canton, Ohio. Trinity requests the substitution of DTV channel 49 for post-transition DTV channel 39 at Canton.

DATES: Comments must be filed on or before January 22, 2009, and reply comments on or before February 6, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Colby M. May, Esq., P.C., 205 3rd Street, SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–126, adopted December 8, 2008, and released December 10, 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 proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 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 Ohio, is amended by adding DTV channel 49 and removing DTV channel 39 at Canton.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–30544 Filed 12–22–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 73, No. 247
Tuesday, December 23, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of Draft Food for Peace Act Title II Program Policies and Proposal Guidelines for Prevention of Malnutrition in Children Under Two Approach (PM2A) Initiatives in Burundi and Guatemala; Notice

Notice is hereby given that Draft Food for Peace Act Title II Program Policies and Proposal Guidelines for Prevention of Malnutrition in Children Under Two Approach (PM2A) Initiatives in Burundi and Guatemala are available to interested parties for general viewing. Comments should be submitted to *FACG@amexdc.com* by January 15, 2009.

Individuals who wish to access the current Public Law 480 Title II guidelines including the draft PM2A guidelines, should visit the Food for Peace Web site at *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/*, or contact the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–102, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Juli Majernik,

Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. E8–30483 Filed 12–22–08; 8:45 am]

BILLING CODE 6116–02–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: United States Agency for International Development.

ACTION: Notice of renewal of advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Administrator has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period beginning January 15, 2009 is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Jocelyn Rowe, 202–712–4002.

Dated: December 17, 2008.

Jocelyn M. Rowe,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. E8–30491 Filed 12–22–08; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board Public Meeting Dates Announced

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) has announced its meeting dates for 2009. These meetings are open to the public, and public comment is accepted at any time in writing, at the pleasure of the Chair, and during the last 15 minutes of each meeting, limited to three (3) minutes per person for oral comments. Meeting dates are the third Wednesday of each month unless otherwise indicated:

January 7 (Previously announced);
February 18;
March 18;
April 15;
May 20;
June 17;
July 15;
August 19 (Summer Field Trip—TBA);
September 16;
October 21;
November 18;
December No meeting;
January 6, 2010 (Tentative).

ADDRESSES: Meetings will be begin at 1 PM and end no later than 5 PM at the Forest Service Center, 8221 S. Highway 16, Rapid City, SD 57731.

Agendas: The Board will consider a variety of issues related to national forest management. Agendas will be announced in advance but principally concern implementing phase two of the forest land and resource management plan. The Board will consider such topics as integrated vegetation management (wild and prescribed fire, fuels reduction, controlling insect epidemics, invasive species), travel management (off highway vehicles, the new OHV rule, and related topics), and continuing access to multiple-use management of public lands, among others.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Committee Management Officer, Black Hills National Forest, 25041 North Highway 16, Custer, SD, 57730, (605) 673–9200.

Dated: December 15, 2008.

Craig Bobzien,

Forest Supervisor.

[FR Doc. E8–30436 Filed 12–22–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–941

Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Postponement of the Preliminary Determination of the Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1394.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2008, the Department of Commerce (''Department'') published the initiation of the antidumping duty investigation of imports of certain kitchen appliance shelving and racks from the People's Republic of China (''PRC'') covering the period January 1, 2008, through June 30, 2008. *See*

Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Initiation of Antidumping Duty Investigation, 73 FR 50596 (August 27, 2008).

On October 8, 2008, the Department selected two mandatory respondents in the above referenced investigation based on section 777(c)(2)(B) of the Tariff Act of 1930, as amended (''Act''), and determined that it had the resources to fully investigate only the two largest companies, Guandong Wireking Housewares & Hardware Co., Ltd. (''Guandong Wireking'') and Asber Enterprises Co., Ltd. (China) (''Asber''), of the six exporters that filed quantity and value responses. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Julia C. Hancock, Senior International Trade Analyst, Office 9, Subject: Selection of Respondents for the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China (October 8, 2008). Additionally, on October 8, 2008, the Department sent its antidumping duty questionnaire to Asber and Guandong Wireking.[1]

On October 23, 2008, one of the two mandatory respondents, Asber, filed a letter stating that it will not participate as a mandatory respondent in this investigation. On October 31, 2008, in light of Asber's refusal to participate, Petitioners[2] submitted comments requesting that the Department select an additional mandatory respondent. Additionally, on November 7, 2008, and on November 10, 2008, Marmon Retail Services Asia Corporation and New King Shan (Zhu Hai) Co., Ltd. (''New King Shan'') submitted rebuttal comments arguing that the Department must maintain a consistent position with previous additional respondent selection decisions.

On November 19, 2008, the Department selected an additional mandatory respondent, New King Shan, pursuant to section 777(c) of the Act. *See* Memorandum to James C. Doyle, Office Director, through Catherine Bertrand, Program Manager, from Blaine Wiltse, Case Analyst, and Julia Hancock, Senior Case Analyst, Subject: Antidumping Duty Investigation: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China (''the PRC''): Selection of an Additional Mandatory Respondent (November 19, 2008).[3] Additionally, on November 21, 2008, the Department sent its antidumping duty questionnaire to New King Shan. The preliminary determination of this antidumping duty investigation is currently due on January 7, 2009.

Statutory Time Limits

Pursuant to section 733(c)(1)(B) of the Act, the Department can extend the period for a preliminary determination until not later than 190 days after the date on which the administrative authority initiates an investigation if the Department concludes that the parties concerned are cooperating and determines that:

> The case is extraordinarily complicated by the reason of (I) the number and complexity of the transactions to be investigated or adjustments to be considered, (II) the novelty of the issues presented, or (III) the number of firms whose activities must be investigated, and (ii) additional time is necessary to make the preliminary determination.

Extension of Time Limit of Preliminary Determination

The Department finds that all concerned parties, with the exception of Asber, are cooperating in this case, pursuant to section 733(c)(1)(B) of the Act. Additionally, the Department finds that this investigation is extraordinarily complicated, pursuant to section 733(c)(1)(B)(i) of the Act. Specifically, as requested by Petitioners, the Department selected an additional mandatory respondent and the Department requires additional time to gather information from this additional mandatory respondent. Further, the Department requires additional time to gather more information from all mandatory respondents regarding the sales process, affiliations, establishing the proper date of sale, surrogate values for all factors of production, and the methodology used to report factors of production. Moreover, the Department requires additional time to evaluate the separate rate applications. Finally, the Department has not yet received all responses to its initial questionnaire and supplemental questionnaires, and thus requires more time to analyze the responses and issue any additional supplemental questionnaires, as needed.

Therefore, for the reasons identified above, we are postponing the preliminary determination under section 733(c)(1)(B) of the Act by fifty days from January 7, 2009, to February 26, 2009.

This notice is published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 3, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–30571 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See* Letter to Asber from Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, Import Administration regarding the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Non-Market Economy Questionnaire, dated October 8, 2008.

[2] Nashville Wire Products, Inc., SSW Holding Company, Inc., the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union and the International Association of Machinists and Aerospace Workers, District Lodge 6 (Clinton, IA), collectively known as ''Petitioners''.

[3] Although Petitioners submitted surrebuttal comments regarding the selection of an additional mandatory respondent on November 19, 2008, the Department did not consider these comments because they were submitted after the Department had selected the additional mandatory respondent.

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–833

Certain Polyester Staple Fiber From Taiwan: Correction to the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 21, 2008, the Department of Commerce (the Department) published in the **Federal Register** the final results of its administrative review of the antidumping duty order on polyester staple fiber from Taiwan. Our notice of final results stated erroneously that the margin we found for the respondent was 1.72 percent, however, the correct margin is 1.74 percent. No other changes have been made to the final results.

EFFECTIVE DATE: October 21, 2008

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0410 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2008, the Department of Commerce (the Department) published in the **Federal Register** the final results of its administrative review of the antidumping duty order on polyester staple fiber from Taiwan. See *Certain Polyester Staple Fiber From*

Taiwan: Final Results of Antidumping Duty Administrative Review, 73 FR 62477 (October 21, 2008) (*Final Results*). In the *Final Results*, the Department stated incorrectly that the weighted–average percentage margin it found for Far Eastern Textile Limited (FET) is 1.72 percent. In fact, the margin we determined for FET is 1.74 percent. See the final results analysis memorandum for FET dated October 14, 2008. The Department has instructed U.S. Customs and Border Protection to collect a cash deposit of 1.74 percent for entries from FET, effective October 21, 2008.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 16, 2008.

Edward C. Yang,

Senior Enforcement Coordinator, China/NME Group for Import Administration.

[FR Doc. E8–30558 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Socioeconomic Impacts of Proposed Boundary Expansion and Research Only Area Alternatives in the Flower Gardens Bank National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 23, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be Dr. Vernon Leeworthy, 301–713–7261 or *Bob.Leeworthy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to obtain socioeconomic information in the Flower Gardens Bank National Marine Sanctuary (FGBNMS). The FGBNMS is in the process of revising its management plan, and two issues have emerged as top priorities: (1) boundary expansion and (2) research only area. Information is required to assess the potential socioeconomic impacts of boundary expansion and research only area alternatives. The study involves surveys of seven different user group/stakeholders: commercial fishing operations, recreational charter/party boat operations, private households that participate in recreational fishing, dive charter/guide operations, private households that participate in SCUBA diving, and oil and gas operations.

Information will be collected on spatial use for all user groups to assess the extent of potential displacement of activity from either a proposed boundary expansion alternative or a research only area alternative.

For business operations, costs and earnings will be obtained to assess the impact of regulatory alternatives on business profits. Socioeconomic/demographic information on owners/operators and number of employees and family members of owners/operators will also be obtained.

For members of households that participate in recreational fishing or recreational SCUBA diving, information will be collected on socioeconomic/demographic profiles, spending associated with their activity, economic user value associated with their activity, and knowledge, attitudes and perceptions about FGBNMS management strategies and regulations.

II. Method of Collection

Interviews will generally be used. For business operations, a team will go to the business establishment and work with the business owner/staff to compile the information requested. Questionnaire forms and maps will be used to guide the information collection. For members of private households engaging in recreational activities, combinations of face-to-face, mail and Internet surveys will be conducted.

III. Data

OMB Control Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; business or other for-profit organizations.
Estimated Number of Respondents: 360.
Estimated Time per Response: Commercial fishing operations, 2 hours; recreational fishing charter/party boat operations, 2 hours; members of private households participating in recreational activities, 30 minutes; dive charter/guide operations, 2 hours; and oil and gas operations, 2 hours.
Estimated Total Annual Burden Hours: 270.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 18, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–30472 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Fisheries Statistics Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 23, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erik Zlokovitz, Phone: (301) 713–2328 or *Erik.Zlokovitz@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of telephone surveys and on-site intercept surveys with recreational anglers. The recent amendments to MSA require the development of an improved data collection program for recreational fisheries. To meet the requirements of MSA, NOAA, National Marine Fisheries Service is developing pilot studies to test alternative approaches for surveying recreational anglers. Studies will test the effectiveness of mail surveys and panel surveys for contacting anglers and collecting recreational fishing data. The goal of these studies is to develop an efficient means of collecting fishing catch and effort data while maintaining complete coverage of the angling population.

II. Method of Collection

Information will be collected through telephone and mail interviews.

III. Data

OMB Control Number: 0648–0052.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 893,321.

Estimated Time Per Response: 9 minutes for mail interviews, and 35 minutes for panel survey phone interviews.

Estimated Total Annual Burden Hours: 46,459.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 18, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–30457 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM31

Marine Mammals; File Nos. 13583 and 13599

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that following two entities have been issued permits to collect/receive/import/export protected species parts for scientific research purposes:

National Marine Mammal Laboratory (NMML, Dr. John Bengtson, Responsible Party), 7600 Sand Point Way NE, Seattle, WA 98115 (File No. 13583) and

National Ocean Service Marine Forensic Lab (NOS Lab, Julie Carter, Responsible Party), 219 Fort Johnson Road, Charleston, SC 29412 (File No. 13599).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521 (File Nos. 13583 and 13599);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249 (File No. 13583); and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309 (File No. 13599).

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 11, 2008, notice was published in the **Federal Register** (73 FR 52829) that a request for scientific research permits had been submitted by the above–named organizations. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

File No. 13583: NMML has been issued a permit continuing the activities previously authorized under Permit No. 782–1694. This permit authorizes collection of cetacean and pinniped (except for walrus) specimens from dead animals, and for import, export, and possession of specimens taken legally worldwide. These samples may be archived, transported, shared, and analyzed by researchers in order to optimize the amount of biological information gained from each animal. No takes of live animals is authorized under this permit. There will be no non–target species taken incidentally under this permit because the permit would only cover collection, importation, exportation, and possession of samples from dead animals or live animals taken legally under other permits. This permit is valid for five years.

File No. 13599: The NOS Lab has been issued a permit authorizing the receipt, importation, exportation, transfer, archive, and analysis of marine mammal and endangered species parts. This permit includes all cetaceans, pinnipeds (except for walrus), sea turtles (in the water), smalltooth sawfish (*Pristis pectinata*), shortnose sturgeon (*Acipenser brevirostrum*) and white abalone (*Haliotis sorenseni*) under NMFS jurisdiction. No live animal takes or incidental harassment of animals would is authorized under this permit. Samples will be archived at the NOS Lab and used to support law enforcement actions, research studies (primarily genetics), and outreach education. This permit is valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of these permits, as required by the ESA, was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 16, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–30369 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XM34

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee, in January, 2009, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, January 22, 2009 at 9 a.m.

ADDRESSES: This meeting will be held at the Crowne Plaza, 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732–6000; fax: (401) 732–0261

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review and make final recommendations to the Council on the range of alternatives that should be analyzed under Scallop Amendment 15. The primary goal of Amendment 15 is to consider alternatives to comply with new requirements of the reauthorized Magnuson-Stevens Conservation and Management Act, specifically implementing annual catch limits. In addition, this action is considering alternatives to address excess capacity in the limited access scallop fishery. Alternatives are being considered that are designed to provide more flexibility for efficient use of the resourse such as permit stacking and leasing of days at sea and/or access area trips. Lastly, this action is considering a number of alternatives to adjust several aspects of the overall scallop management program such as revising the overfishing definition, specific adjustments to the general category management program, a specific alternative to address essential fish habitat (EFH) closures on Georges Bank, adjustments to the current scallop research set-aside program, and changing the scallop fishing year from March 1 to May 1.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 17, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–30362 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL41

Marine Mammals; File No. 10080

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Kathryn A. Ono, Department of Biological Sciences, University of New England, Biddeford, ME has been issued a major amendment to Permit No. 10080–02.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978) 281–9333.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 27, 2008, notice was published in the **Federal Register** (73 FR 63697) that a request for an amendment Permit No. 10080–02, to conduct research on gray seals (*Halichoerus grypus*) in the Gulf of Maine, had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The amended permit includes authorization to: (1) remotely mark the pelage of adult gray seals of both sexes (200 per year) using the various dyes and paints already permitted for use on pups; (2) use an additional type of marking agent, an alcohol based- dye (Rhodamine B 500%), on pups and adults; (3) disturb an additional 400 non-target gray seals per year during the additional marking activities; and (4) disturb an additional 300 gray seals annually during field camp operations associated with conduct of the research. The amendment also authorizes the incidental research-related mortality of up to four gray seal pups annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 17, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–30580 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Public User ID Badging

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 23, 2009.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0041 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding online access cards or user training should be directed to Diane Lewis, Manager, Public Search Facility, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8714; or by electronic mail to *Diane.Lewis@uspto.gov.*

Requests for additional information regarding security identification badges should be directed to J.R. Garland, Director, Security Office, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–6247; or by electronic mail to *Calib.Garland@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to provide patent and trademark collections for searching and retrieval of information. The Public Search Facility is maintained for public use with paper and electronic search files and trained staff to assist searchers. The USPTO also offers training courses to assist the public with using the advanced electronic search systems available at the facility.

In order to manage the patent and trademark collections that are available to the public, the USPTO issues online access cards to customers who wish to use the electronic search systems at the Public Search Facility. Customers may obtain an online access card by completing the application at the Public Search Facility reference desk and providing proper identification. The plastic online access cards include a bar-coded user number and an expiration date. Users may renew their cards by validating and updating the required information and may obtain a replacement for a lost card by providing proper identification.

Under the authority provided in 41 CFR Part 102–81, the USPTO issues security identification badges to members of the public who wish to use the facilities at the USPTO. Public users may apply for a security badge in person at the USPTO Office of Security by providing the necessary information and presenting a valid form of identification with photograph. The security badges include a color photograph of the user and must be worn at all times while at the USPTO facilities.

The USPTO has recently eliminated the $25 fee for the public training courses offered for the online search systems available at the Public Search Facility. There is still a $120 fee for users who request private instruction. The public training fee is being deleted from this collection. The estimated time for completing the user training registration forms has also been reduced from ten minutes to five minutes due to the removal of the payment information from the forms.

II. Method of Collection

The applications for online access cards and security identification badges are completed on site and handed to a USPTO staff member for issuance. User training registration forms may be mailed, faxed, or hand delivered to the USPTO.

III. Data

OMB Number: 0651–0041.

Form Number(s): PTO–2030, PTO–2224.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 10,500 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately five to ten minutes (0.08 to 0.17 hours) to complete the information in this collection, including gathering the necessary information, preparing the appropriate form, and submitting the completed request.

Estimated Total Annual Respondent Burden Hours: 1,045 hours per year. Estimated Total Annual Respondent Cost Burden: $177,650 per year. The USPTO estimates that approximately ⅓ of the users responding to this collection are attorneys and ⅔ are paraprofessionals. Using ⅓ of the professional rate of $310 per hour for attorneys in private firms and ⅔ of the paraprofessional rate of $100 per hour, the estimated rate for respondents to this collection is approximately $170 per hour.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Application for Public User ID (Online Access Card) (PTO–2030)	5	2,553	204
Issue Online Access Card	10	2,282	388
Renew Online Access Card	5	1,126	90
Replace Online Access Card	5	165	13

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
User Training Registration Forms	5	74	6
Security Identification Badges for Public Users (PTO–2224)	5	1,000	80
Renew Security Identification Badges for Public Users	5	3,200	256
Replace Security Identification Badge	5	100	8
Total	.....	10,500	1,045

Estimated Total Annual Non-hour Respondent Cost Burden: $1,982. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of fees and postage costs.

There are no application or renewal fees for online access cards or security identification badges. However, there is a $15 fee for issuing a replacement security identification badge. The USPTO estimates that it will reissue approximately 100 security badges annually that have been lost or need to be replaced, for a total of $1,500 per year in replacement fees.

The public training course fee is being deleted from this collection. However, there is a $120 fee for users who request private instruction for the online search systems available at the Public Search Facility. The USPTO estimates that it will receive 4 registrations for individual instruction per year, for a total of $480 in training fees. Therefore, this collection has a total of $1,980 per year in fees in the form of security badge replacement fees and training registration fees.

Users may incur postage costs when submitting a user training registration form to the USPTO by mail. The USPTO expects that approximately 4 of the estimated 74 training forms received per year will be submitted by mail. The USPTO estimates that the average first-class postage cost for a mailed training form will be 42 cents, for a total postage cost of approximately $2 per year for this collection.

The total annual (non-hour) respondent cost burden for this collection in the form of fees and postage costs is estimated to be $1,982 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 17, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–30488 Filed 12–22–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–04 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 16, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 0 9 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-04, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $520 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Iraq**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 420 million
Other	$ 100 million
TOTAL	$ 520 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 36 AT-6B Texan II Aircraft, 6 spare PT-6A-68 Turboprop engines, 10 spare ALE-47 Counter-Measure Dispensing Systems and/or 10 spare AAR-60 Missile Launch Detection Systems, global positioning systems with CMA-4124, spare and repair parts, maintenance, support equipment, publications and technical documentation, tanker support, ferry services, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.**

(iv) **Military Department: Air Force (SAC)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress:** DEC 09 2008

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Iraq – AT-6B Texan II Aircraft

The Government of Iraq has requested a possible sale of 36 AT-6B Texan II Aircraft, 6 spare PT-6 engines, 10 spare ALE-47 Counter-Measure Dispensing Systems and/or 10 spare AAR-60 Missile Launch Detection Systems, global positioning systems with CMA-4124, spare and repair parts, maintenance, support equipment, publications and technical documentation, tanker support, ferry services, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $520 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country.

The proposed sale of these aircraft, equipment, and support will enhance the ability of the Iraqi forces to sustain themselves in their efforts to bring stability to Iraq and to prevent overflow of unrest into neighboring countries.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors are:

Hawker Beechcraft Corporation, Wichita, Kansas
Pratt & Whitney Corporation, Quebec, Canada and Bridgeport, West Virginia
Martin Baker in Middlesex, United Kingdom
Hartzel Propeller, Piqua, Ohio
Canadian Marconi, Broken Arrow, Oklahoma
L-3 Vertex, Madison, Mississippi

There are no known offset agreements proposed in connection with this potential sale.

The proposed sale will involve multiple trips to Iraq involving many U.S. government and contractor representatives over a period of 15 years for program management, program and technical reviews, training, maintenance support, and site surveys.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AT-6B is a light attack variant of the T-6B military training aircraft designed to employ in a low threat scenario against unconventional threats. It is equipped with an integrated Electro-Optical/Infrared (EO/IR) Laser sensor suite, which gives it a day/night Intelligence Surveillance Reconnaissance (ISR) capability with a laser illuminator/ range finder/ designator to allow employment of the AGM-114M3 missile. The aircraft has six external hardpoints for weapons and fuel carriage. The Iraqi variant will be equipped for AGM-114 missiles, external fuel tanks, and HMP-400 .50 cal gun pods. The ISR package allows for datalink capabilities which are compatible with the current Iraqi ISR assets. Critical components (cockpit and engine) will have aircraft armor able to withstand small arms fire. The fuel system is also hardened to withstand small arms fire. The hardware and software are Unclassified. Technical data and documentation to be provided are Unclassified.

2. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing-guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board EW and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. Hardware and software are Unclassified. Technical data and documentation to be provided are Unclassified.

3. The AN/AAR-60 Missile Launch Detection System (MILDS) is a passive, true imaging sensor device that is optimized to detect the radiation signature of a threat missile's exhaust plume within the Ultra Violet (UV) solar blind spectral band. Functionally, the architecture detects incoming missile threats and indicates their direction of arrival with the maximum of warning time. The system is further noted as

featuring inherently high-spatial resolution, advanced temporal processing, a very high declaration rate, the virtual elimination of false alarm rates, fast threat detection and the automatic initiation of appropriate countermeasures. Physically, a typical application comprises four to six self-contained detector units each of which provides full signal processing. Hardware and software are Unclassified. Technical data and documentation to be provided are Unclassified.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–30438 Filed 12–22–08; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–07 with attached transmittal, and policy justification.

Dated: December 16, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 0 9 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-07, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $1.010 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Iraq**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .650 billion
Other	$ .360 billion
TOTAL	$1.010 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: (20) 30-35meter Coastal Patrol Boats and (3) 55-60 meter Offshore Support Vessels, each outfitted with the Seahawk MS1-DS30MA2 mount using a 30 x 173mm CHAIN gun and short range Browning M2-HB .50 cal machine gun, spare and repair parts, weapon system software, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.**

(iv) **Military Department: Navy (SAY and SAZ)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress:** DEC 0 9 2008

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Iraq –30-35 Meter Coastal Patrol Boats and 55-60 Meter Offshore Support Vessels

The Government of Iraq has requested a possible sale of (20) 30-35meter Coastal Patrol Boats and (3) 55-60 meter Offshore Support Vessels, each outfitted with the Seahawk MS1-DS30MA2 mount using a 30 x 173mm CHAIN gun and short range Browning M2-HB .50 cal machine gun, spare and repair parts, weapon system software, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $1.010 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraq people and the U.S.

The sale of these patrol boats and support vessels will enhance the ability of the Iraqi naval forces to sustain themselves in their efforts to bring stability to their country, prevent overflow of unrest into neighboring countries, and protect their maritime oil platforms and territorial waters.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor is unknown at this time, however, acquisition is subject to FAR and DFARS domestic sourcing requirements. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of two contractor representatives in Iraq for a period of 8 years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–30444 Filed 12–22–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–08 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 16, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 09 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-08, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $2.160 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Iraq**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .612 billion
Other	$1.548 billion
TOTAL	$2.160 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 140 M1A1 Abrams tanks modified and upgraded to the M1A1M Abrams configuration, 8 M88A2 Tank Recovery Vehicles, 64 M1151 A1B1 Armored High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), 92 M1152 Shelter Carriers, 12 M577A2 Command Post Carriers, 16 M548A1 Tracked Logistics Vehicles, 8 M113A2 Armored Ambulances, and 420 AN/VRC-92 Vehicular Receiver Transmitters. Also included are: 35 M1070 Heavy Equipment Transporter (HET) Truck Tractors, 40 M978A2 Heavy Expanded Mobility Tactical Truck (HEMTT) Tankers, 36 M985A2 HEMTT Cargo Trucks, 4 M984A2 HEMTT Wrecker Trucks, 140 M1085A1 5-ton Cargo Trucks, 8 HMMWV Ambulances w/ Shelter, 8 Contact Maintenance Trucks, 32 500 gal Water Tank Trailers, 16 2500 gal Water Tank Trucks, 16 Motorcycles, 80 8-ton Heavy/Medium Trailers, 16 Sedans, 92 M1102 Light Tactical trailers, 35 635NL Semi-Trailers, 4 5,500 lb Rough Terrain Forklifts, 20 M1A1 engines, 20 M1A1 Full Up Power Packs, 3 spare M88A2 engines, 10 M1070 engines, 20 HEMTT engines, 4 M577A2 spare engines, 20 5-ton truck engines, 20 spare HMMWV engines, ammunition, spare and repair parts, maintenance, support equipment, publications and documentation, personnel training and equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.**

(iv) **Military Department: Army (VDI)**

(v) **Prior Related Cases, if any: FMS case VPP-$684M–20Oct08**

*** as defined in Section 47(6) of the Arms Export Control Act.**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**

(viii) **Date Report Delivered to Congress:** DEC 09 2008

POLICY JUSTIFICATION

Iraq - M1A1 and Upgrade to M1A1M Abrams Tanks

The Government of Iraq has requested a possible sale of 140 M1A1 Abrams tanks modified and upgraded to the M1A1M Abrams configuration, 8 M88A2 Tank Recovery Vehicles, 64 M1151A1B1 Armored High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), 92 M1152 Shelter Carriers, 12 M577A2 Command Post Carriers, 16 M548A1 Tracked Logistics Vehicles, 8 M113A2 Armored Ambulances, and 420 AN/VRC-92 Vehicular Receiver Transmitters. Also included are: 35 M1070 Heavy Equipment Transporter (HET) Truck Tractors, 40 M978A2 Heavy Expanded Mobility Tactical Truck (HEMTT) Tankers, 36 M985A2 HEMTT Cargo Trucks, 4 M984A2 HEMTT Wrecker Trucks, 140 M1085A1 5-ton Cargo Trucks, 8 HMMWV Ambulances w/ Shelter, 8 Contact Maintenance Trucks, 32 500 gal Water Tank Trailers, 16 2500 gal Water Tank Trucks, 16 Motorcycles, 80 8-ton Heavy/Medium Trailers, 16 Sedans, 92 M1102 Light Tactical trailers, 35 635NL Semi-Trailers, 4 5,500 lb Rough Terrain Forklifts, 20 M1A1 engines, 20 M1A1 Full Up Power Packs, 3 spare M88A2 engines, 10 M1070 engines, 20 HEMTT engines, 4 M577A2 spare engines, 20 5-ton truck engines, 20 spare HMMWV engines, ammunition, spare and repair parts, maintenance, support equipment, publications and documentation, personnel training and equipment, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $2.160 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Government of Iraq and serves the interests of the people of Iraq and of the U.S.

This proposed sale would advance Iraq's effort to develop a strong, well-equipped, trained, and dedicated military force, to establish security and stability throughout Iraq, and to promote the stability and development of a friendly, democratic central government.

The proposed sale and upgrade will allow Iraq to operate and exercise a more lethal and survivable M1A1M tank for the protection of critical infrastructure. Iraq will have no difficulty absorbing these tanks, including the support vehicles, into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be General Dynamics Land Systems Division of Sterling Heights, Michigan; Honeywell International, and General Motors Allison Transmission Division of Detroit, Michigan. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of approximately 8 U.S. Government and 35 contractor representatives to Iraq for up to four years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The M1A1M Abrams Tank components considered to contain sensitive technology in the proposed program are as follows:

a. The M1A1M Thermal Imaging System (TIS) 2nd Generation Forward Looking Infrared (FLIR) constitutes a target acquisition system which, when operated with other tank systems, gives the tank crew a substantial advantage over a potential threat. The TIS provides the M1A1 crew with the ability to effectively aim and fire the tank main armament system under a broad range of adverse battlefield conditions. The hardware itself is Unclassified. The engineering design and manufacturing data associated with the detector and infrared (IR) optics and coatings are considered sensitive. The technical data package is Unclassified with exception of the specifications for target acquisition range (Confidential), nuclear hardening (Confidential, restricted data), and laser hardening (Secret).

b. Major components of Special Armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor vulnerability data for both chemical and kinetic energy rounds are classified Secret. Engineering design and manufacturing data related to the special armor are also classified Secret.

c. The 120mm Gun and 120mm KEW II Tungsten Ammunition with standard High Explosive Anti-Tank (HEAT) and training ammunition will be authorized for export. Performance characteristics of service rounds are sensitive since they reveal the penetration capabilities of the Abrams tank. Since the U.S. intends to offer only the most basic ammunition, the capability of the Abrams tank would not be seriously compromised. Most of the components of the training ammunition are not considered to be sensitive material or technology. These rounds could be reverse engineered given sufficiently capable analysis. Technical information available from testing and analysis of this ammunition could form the basis of research to develop more capable rounds.

d. The use of the Advanced Gas Turbine-1500 (AGT-1500) Gas Turbine Propulsion System in the MlA1M is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT-1500 engine and transmission, and is Unclassified. Manufacturing processes associated with the production of turbine blades, recuperator, bearings and shafts, and hydrostatic pump and motor, are proprietary and therefore commercially competition sensitive.

e. A major survivability feature of the Abrams Tank is the compartmentalization of fuel and ammunition. Compartmentalization is the positive separation of the crew and critical components from combustible materials. In the event the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected by the compartmentalization. Sensitive information includes the performance of the ammunition compartments as well as of the compartment design parameters.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–30445 Filed 12-22-08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–09]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–09 with attached transmittal, and policy justification.

Dated: December 16, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 0 9 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-09, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $366 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Regional Balance (Classified Document Provided Under Separate Cover)**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Iraq**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 309 million
Other	$ 57 million
TOTAL	$ 366 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 26 Bell Armed 407 Helicopters, 26 Rolls Royce 250-C-30 Engines, 26 M280 2.75-inch Launchers, 26 XM296 .50 Cal. Machine Guns with 500 Round Ammunition Box, 26 M299 HELLFIRE Guided Missile Launchers, test measurement and diagnostics equipment, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Army (VDN)**

(v) **Prior Related Cases, if any: FMS case VPN-$402M-24Oct08**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See attached annex.**

(viii) **Date Report Delivered to Congress:** DEC 09 2008

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Iraq – Helicopters and Related Munitions

The Government of Iraq has requested a possible sale of 26 Bell Armed 407 Helicopters, 26 Rolls Royce 250-C-30 Engines, 26 M280 2.75-inch Launchers, 26 XM296 .50 Cal. Machine Guns with 500 Round Ammunition Box, 26 M299 HELLFIRE Guided Missile Launchers, test measurement and diagnostics equipment, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $366 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the U.S.

The proposed sale of these helicopters and related munitions will be used to develop new Iraqi Air Force (IAF) squadrons and/or wings, and to enhance the ability of the IAF to sustain itself in its efforts to bring stability to Iraq.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors unknown at this time; however, acquisition is subject to FAR and DFARS domestic sourcing requirements. There are no known offset agreements proposed in connection with this potential sale.

With the volume and wide range of items and equipment in this proposed sale, levels of U.S. Government and Contractor technical assistance will be required but cannot be fully defined at this time.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–30447 Filed 12–22–08; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–10 with attached transmittal, and policy justification.

Dated: December 16, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 09 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-10, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $148 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Iraq**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$ 106 million**
Other	**$ 42 million**
TOTAL	**$ 148 million**

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: (80,000) M16A4 5.56MM Rifles, (25,000) M4 5.56MM Carbines, (2,550) M203 40MM Grenade Launchers, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support.**

(iv) **Military Department: Army (VBP, Amd #1 and VBX, Amd #1)**

(v) **Prior Related Cases, if any:**
FMS case VBP - $10M – Accepted
FMS case VBX - $4M - Accepted

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress:** DEC 0 9 2008

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Iraq –M16A4 Rifles, M4 Carbines, and M203 Grenade Launchers

The Government of Iraq has requested a possible sale of (80,000) M16A4 5.56MM Rifles, (25,000) M4 5.56MM Carbines, (2,550) M203 40MM Grenade Launchers, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $148 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the small arms and support will enable the Iraq Army to expand its force structure. This expansion will enable Iraq to equip new forces to assume the missions currently accomplished by U.S. and coalition forces and to sustain themselves in their efforts to bring stability to Iraq and to prevent overflow of unrest into neighboring countries.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors are Colt Manufacturing Company in Hartford, Connecticut and Fabrique Nationale Manufacturing Group Herstal, S. A. in Herstal, Belgium. There are no known offset agreements proposed in connection with this potential sale.

U.S. Government and Contractor technical assistance will be required but cannot be fully defined at this time. The use of existing, deployed U.S. military personnel will be maximized.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–30448 Filed 12–22–08; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 09–11 with attached transmittal, and policy justification.

Dated: December 16, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 09 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-11, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $485 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 09-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) (C) **Prospective Purchaser: Iraq**

(ii) (C) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 485 million
TOTAL	$ 485 million

(iii) (C) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: (64) Deployable Rapid Assembly Shelters (DRASH), (1,500) 50 watt Very High Frequency (VHF) Base Station Radios, (6,000) VHF Tactical Handheld Radios, (100) VHF Fixed Retransmitters, (200) VHF Vehicular Radios, (30) VHF Maritime 50 watt Base Stations, (150) 150 watt High Frequency (HF) Base Station Radio Systems, (150) 20 watt HF Vehicular Radios, (30) 20 watt HF Manpack Radios, (50) 50 watt Very High Frequency/Ultra High Frequency (VHF/UHF) Ground to Air Radio Systems, (50) 150 watt VHF/UHF Ground to Air Radio Systems, (50) 5 watt Multiband Handheld Radio Systems, accessories, warranties, installation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support.**

(iv) (C) **Military Department: Army (VDJ)**

(v) (C) **Prior Related Cases, if any: none**

(vi) (C) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) (C) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) (C) **Date Report Delivered to Congress:** DEC 0 9 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq –Deployable Rapid Assembly Shelters (DRASH) and Communication Equipment

The Government of Iraq has requested a possible sale of (64) Deployable Rapid Assembly Shelters (DRASH (1,500) 50 watt Very High Frequency (VHF) Base Station Radios, (6,000) VHF Tactical Handheld Radios, (100) VHF Fixed Retransmitters, (200) VHF Vehicular Radios, (30) VHF Maritime 50 watt Base Stations, (150) 150 watt High Frequency (HF) Base Station Radio Systems, (150) 20 watt HF Vehicular Radios, (30) 20 watt HF Manpack Radios, (50) 50 watt Very High Frequency/Ultra High Frequency (VHF/UHF) Ground to Air Radio Systems, (50) 150 watt VHF/UHF Ground to Air Radio Systems, (50) 5 watt Multiband Handheld Radio Systems, accessories, warranties, installation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $485 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the Shelters and Communications equipment will enable the Iraq Army to expand its force structure. This expansion will enable Iraq to equip new forces to assume the missions currently accomplished by U.S. and coalition forces and to sustain itself in its efforts to bring stability to Iraq.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors are DHS Systems, LLC, Orangeburg, New York; ITT Corporation, White Plains, New York; Harris Corporation, Melbourne, Florida; or Harris Corporation-Defense Systems, Rochester, New York. There are no known offset agreements proposed in connection with this potential sale.

With the number of shelters and volume of communication equipment in this proposed sale, levels of U.S. Government and Contractor technical assistance will be required but cannot be fully defined at this time. The use of existing, deployed U.S. military personnel will be maximized.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–30450 Filed 12–22–08; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education Overview Information High School Equivalency Program (HEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.141A.

DATES: *Applications Available:* December 23, 2008.

Deadline for Transmittal of Applications: February 23, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of HEP is to help migrant and seasonal farmworkers and their children obtain a general education diploma (GED) that meets the guidelines for high school equivalency established by the State in which the HEP project is conducted, and to gain employment or be placed in an institution of higher education (IHE) or other postsecondary education or training.

Priorities: This competition includes two competitive preference priorities and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority for ''novice applicant'' is from the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.225). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priority for ''prior experience of service delivery'' is from section 418A(e) of the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act (20 U.S.C. 1070d–2(e)).

Competitive Preference Priorities: For FY 2009, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets the ''novice applicant'' competitive preference priority, and up to a maximum of 15 additional points to an application that meets the ''prior experience of service delivery'' competitive preference priority.

These priorities are:

Novice Applicant:

The applicant must be a ''novice applicant'' as defined in 34 CFR 75.225(a).

Prior Experience of Service Delivery:

With respect to applicants with an expiring HEP project, the Secretary will consider the applicant's prior experience in implementing its expiring HEP project based on information contained in documents previously provided to the Department, such as annual performance reports, project evaluation reports, site visit reports, and the previously approved HEP application.

Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications that propose to engage faith-based and community organizations in the delivery of services under this program.

Program Authority: 20 U.S.C. 1070d–2, the Higher Education Act of 1965, as reauthorized by the Higher Education Opportunity Act (HEOA) (Pub. L. 110–315).

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 206. (c) The definitions of a *migratory agricultural worker* in 34 CFR 200.81(d), *migratory child* in 34 CFR 200.81(e), and *migratory fisher* in 34 CFR 200.81(f). (d) The regulations in 20 CFR 669.110 and 669.320.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The definition of terms in 34 CFR 200.81(d), (e), and (f) were published in the **Federal Register** on July 29, 2008 at 73 FR 44102, 44123–24.

Note: The regulations in 34 CFR part 206 were issued prior to the enactment of the HEOA. The application package identifies any provisions in part 206 that have been superseded by enactment of the HEOA.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $7,143,000 for new awards for this program for FY 2009. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $180,000–$475,000.

Estimated Average Size of Awards: $446,438.

Maximum Award: We will reject any application that proposes a HEP award exceeding $475,000 for a single budget period of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or private non-profit organizations (including faith-based organizations) that plan their projects in cooperation with an IHE and propose to operate some aspects of the project with the facilities of the IHE.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E344, Washington, DC 20202–6135. Telephone: (202) 260–8103 or by e-mail: *david.de.soto@ed.gov.*

The application package also can be obtained electronically at the following address: *http://www.ed.gov/programs/hep/applicant.html.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations,

references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Appendices must be limited to 15 pages and may include the following: Resumes, job descriptions, letters of support, and bibliography.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit; or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times: Applications Available:* December 23, 2008. *Deadline for Transmittal of Applications:* February 23, 2009.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the High School Equivalency Program, CFDA number 84.141A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the High School Equivalency Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.141, not 84.141A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-

Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: David De Soto, 400 Maryland Avenue, SW., room 3E344, Washington, DC 20202–6135. Telephone (202) 260–8103. FAX: (202) 205–0089.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.141A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.141A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of the HEP: (1) The percentage of HEP program exiters receiving a General Education Development (GED) credential, and (2) the percentage of HEP GED recipients who enter postsecondary education programs, upgraded employment, or the military.

Applicants may wish to demonstrate a sound capacity to provide reliable data on these measures, including the project's annual performance targets for addressing the GPRA performance measures, as is required by the OMB approved annual performance report that is included in the application package.

All grantees will be required to submit, as part of their annual performance report, information with respect to these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E344, Washington, DC 20202–6135. Telephone Number: (202) 260–8103, or by e-mail: *david.de.soto@ed.gov.*

If you use a TDD, you may call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 18, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–30583 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department of Education (Department) gives notice that on August 20, 2008, an arbitration panel rendered a decision in the matter of *Dwayne Zuppardo* v. *Louisiana Department of Social Services, Rehabilitation Services, Case no. R–S/06–5.* This panel was convened by the Department under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Dwayne Zuppardo.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Mr. Dwayne Zuppardo (Complainant) alleged violations by the Louisiana Department of Social Services, Rehabilitation Services, the state licensing agency (SLA), of the Act and the implementing regulations in 34 CFR part 395. Specifically, Complainant alleged that the SLA improperly administered the Randolph-Sheppard Vending Facility Program concerning his management of a snack bar in the East Pavilion of Charity Hospital (Charity Hospital) in New Orleans, Louisiana. From November 1991 until March 2004, Complainant managed the snack bar. In March 2004, the snack bar at Charity Hospital was closed. In April 2004, Complainant sent a letter to the SLA requesting a determination as to whether he should be treated as a Displaced Manager rather than being given another vending facility in the main building of Charity Hospital. The SLA denied Complainant's request for a determination on his Displaced Manager status. Thereafter, Complainant requested a state fair hearing. A hearing was held on this matter.

In June 2004, the Administrative Law Judge (ALJ) issued an opinion supporting Complainant's right to the new vending facility in the main building of Charity Hospital. The SLA

did not appeal and adopted the ALJ's decision. Following the ALJ's opinion, Complainant also alleged that the opinion required the SLA to pay him for his lost income at his former snack bar facility until he was placed as the manager of the new vending facility in the main building of Charity Hospital.

For the period of November 1991 until July 1997, while managing the snack bar, Complainant made monthly utility payments, each in the amount of $2,000, to Charity Hospital as directed by the SLA. While there was no requirement for Complainant to make these payments under his Vendor Operating Agreement with the SLA, the permit agreement to operate the snack bar between the SLA and Charity Hospital contained a requirement that the SLA would pay Charity Hospital for utilities at the rate of $2,000 per month.

In March 2005, Complainant learned that the SLA had reimbursed the previous operator of the snack bar for his utility payments to Charity Hospital. At this time, Complainant believed that he also was entitled to reimbursement by the SLA of his utility payments to Charity Hospital. Additionally, Complainant believed that the SLA should reimburse him for loss of income when the snack bar was closed.

On May 27, 2005 Complainant filed a request with the SLA to bypass the administrative review process and proceed with a state fair hearing on the issues of reimbursement for utility payments to Charity Hospital and loss of income as the result of the snack bar closure. On June 10, 2005, the Administrative Law Judge Supervisor denied Complainant's hearing request, citing time limitations for vendors to file for a hearing with the SLA.

It was this decision Complainant sought review of by a Federal arbitration panel. Due to Hurricane Katrina, a hearing on this matter was not held until April 26, 2007.

According to the arbitration panel, the issues to be resolved were as follows: (1) Whether the Complainant is entitled to reimbursement for utility payments paid to Charity Hospital while he operated the snack bar; and (2) whether Complainant is entitled to recover lost earnings from the time his snack bar was closed in March 2004 until he was given a new vending facility in September 2004.

Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel majority ruled as follows: On issue number one, the panel found that the SLA was obligated to treat Complainant in the same manner as the previous snack bar manager when it reimbursed the previous snack bar manager for utility payments paid to Charity Hospital. Thus, the panel majority directed that the SLA promptly pay Complainant the sum of $138,000 as reimbursement for utility payments Complainant paid to Charity Hospital while he was the licensed manager at the snack bar facility for the period November 1991 to March 2004.

Regarding issue number two, the panel majority ruled that the SLA complied with the June 2004 ruling of the ALJ and expeditiously provided Complainant with a new vending facility in the main building of Charity Hospital. However, the panel majority concluded that the ALJ's ruling did not require the SLA to pay the Complainant for lost earnings from the time he was displaced from the snack bar facility until the time he began to manage the new facility. Hence, the panel majority denied Complainant's claim on the merits, ruling that there was no basis for the SLA to pay Complainant for lost earnings from the time when the snack bar facility closed until he was placed in the new vending facility.

One panel member concurred in part and dissented in part. The panel member dissented from the panel majority on issue number one stating that, ''the imposition of fees for utility service upon blind vendors is not prohibited by either state for federal law.'' The panel member concurred with the panel majority on issue number two in denying the payment of lost earnings to Complainant.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 18, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–30551 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Indian Education Formula Grants to Local Educational Agencies; Notice Inviting Applications for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.060A.

DATES: *Part I of the Formula Grant Electronic Application System for Indian Education (EASIE) Applications Available:* December 23, 2008.

Deadline for Transmittal of Part I Applications: January 30, 2009.

Part II of the Formula Grant (EASIE) Applications Available: March 16, 2009.

Deadline for Transmittal of Part II Applications: April 22, 2009.

Applications not meeting the deadline for Part I applications will not be considered for funding in the initial allocation of awards. Part II applications or data submissions will be accepted only from those eligible applicants that meet the Part I application deadline.

Deadline for Intergovernmental Review: June 22, 2009.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Indian Education Formula Grants to Local Educational Agencies program provides grants to support local educational agencies (LEAs) and other eligible entities described in this notice in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The Department funds programs designed to help Indian students meet the same challenging State academic content and student academic achievement standards used for all students. In addition, under section 7116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary will, upon receipt of an acceptable plan for the integration of education and related services, authorize the entity receiving the funds under this program to consolidate, in accordance with the entity's plan, the funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, that are awarded under a statutory or administrative formula to the entity, for the purpose of providing

education and related services to Indian students. Instructions for submitting an integration of education and related services plan are included in the EASIE described elsewhere in this notice under *Application Process and Submission Information.*

Eligible Applicants: LEAs, including charter schools authorized as LEAs under State law, certain schools funded by the Bureau of Indian Education of the Department of the Interior, and Indian tribes under certain conditions, as prescribed by section 7112(c) of the ESEA.

Application Process and Submission Information: The application process for the Indian Education Formula Grants to Local Educational Agencies program utilizes the Formula Grant EASIE, an easy-to-use, electronic application system. Formula Grant EASIE provides special features that will progressively enhance data availability and performance reporting for applicants, including the use of data from State submissions to ED*Facts,* the Department's data collection system, which contains performance information from State educational agencies about schools and Federal education programs. To the extent that your State has provided the necessary ED*Facts* data files, Formula Grant EASIE will be able to interface with ED*Facts* and pull those LEA-specific data into the application. Additionally, this system allows the Department to review applications and interact online with applicants during the application review and approval process.

Although you may download and print sample forms from the system, the application must be submitted electronically through the Formula Grant EASIE unless you do not have Internet access and have made prior arrangements with the Department. For approval to submit a paper application, you must contact the ED*Facts* Partner Support Center (see the contact information listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**) prior to the deadline for transmittal of Part I or Part II applications. If you are approved to submit a paper application, you must meet the submission deadlines included in this notice.

Registration for Formula Grant EASIE is required. For information on how to register, contact the ED*Facts* Partner Support Center listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** .

The Formula Grant EASIE application is divided into two parts—Part I and Part II.

Part I, Student Count, provides the appropriate data entry screens to submit your Indian student count totals.

Part II, Program and Budget Information, provides your award amount based on the Indian student count total submitted under Part I. Part II also enables you to enter student performance data, identify your project's services and activities, and build a realistic program budget based on a known grant amount. Based on student assessment data, you will select your program objectives and services from a variety of menu options that were designed with grantee input.

Estimated Available Funds: The Administration has requested $96,613,000 for this program for FY 2009. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $4,000–$2,000,000.

Estimated Average Size of Awards: $75,775.

Estimated Number of Awards: 1,275.

Note: The Department is not bound by any estimates in this notice and funding levels may change based on final appropriations for the program.

Project Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Performance Measures: The Secretary has established the following key performance measures for assessing the effectiveness and efficiency of the Indian Education Formula Grants to Local Educational Agencies program: (1) The percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in reading on the National Assessment of Educational Progress (NAEP); (2) the percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in mathematics on the NAEP; (3) the percentage of American Indian and Alaska Native students in grades three through eight meeting State performance standards by scoring at the proficient or the advanced levels in reading and mathematics on State assessments; (4) the difference between the percentages of American Indian and Alaska Native students in grades three through eight at the proficient or advanced levels in reading and mathematics on State assessments and the percentage of all students scoring at those levels; (5) the percentage of American Indian and Alaska Native students who graduate from high school; and (6) the percentage of funds used by grantees prior to award close-out.

FOR FURTHER INFORMATION CONTACT: Contact the ED*Facts* Partner Support Center, telephone: 877–457–3336 (877–HLP–EDEN) or by e-mail at: *eden_OIE@ed.gov* .

If you use a telecommunications device for the deaf (TDD), call the ED*Facts* Partner Support Center, toll free, at 1–888–403–3336 (888–403–EDEN).

Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the ED*Facts* Partner Support Center.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7421 *et seq*.

Dated: December 17, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–30466 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences

AGENCY: Department of Education, Institute of Education Sciences.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National

Board for Education Sciences. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: January 13 and 14, 2009.

Time: January 13, 10 a.m. to 4 p.m.; January 14, 8:30 a.m. to 12:30 p.m.

ADDRESSES: 80 F Street, NW., Room 100, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Norma Garza, Executive Director, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 627H, Washington, DC, 20208; phone: (202) 219–2195; fax: (202) 219–1466; e-mail: *Norma.Garza@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On January 13 the Board will receive a briefing from the Acting Director and IES Commissioners and staff on its activities and progress reports on projects underway since September 2008. These presentations will begin at 10:15 a.m. and continue until 12:15 p.m.

From 1:30 p.m. to 4:45 p.m. the Board will have presentations (TBA) on recently released IES studies, two sessions for 1.5 hours each with a 15-minute break.

On January 14, the Board will review the prior day's activities and current agenda from 8:30 a.m. to 8:45 a.m., followed by a presentation and discussion from 8:45 a.m. to 10:15 a.m. on the What Works Clearinghouse. From 10:30 a.m. to noon, the Board will discuss its plans and agenda for the future. From noon to 12:30 p.m. summary views and next steps will be discussed. The meeting will adjourn at 12:30 p.m.

A final agenda will be available from Norma Garza (see contact information above) on January 6. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Norma Garza no later than January 6. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 627 H, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/federegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Sue Betka,

Acting Director, Institute of Education Sciences.

[FR Doc. E8–30459 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Readiness and Emergency Management for Schools Grant Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184E.

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed priorities and requirements.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes priorities and requirements for the Readiness and Emergency Management for Schools (REMS) grant program. The Assistant Deputy Secretary may use one or more of these priorities or requirements for competitions in fiscal year (FY) 2009 and later years. The REMS program was established in FY 2003 to provide resources to local educational agencies (LEAs) to supportimproving and enhancing emergency management plans. Since the initial competition, the program has undergone several program refinements designed to respond to changes in the emergency management field and the identification of key emergency management priorities. In an effort to continue to refine the REMS program, we are publishing these revised priorities and requirements. We propose this action in order to focus Federal financial assistance on supporting grants that will increase the capacity of LEAs to prevent and mitigate, prepare for, respond to, and recover from emergencies. This action is also intended to focus funding on LEAs that have not previously received funding under this program and to establish other core program requirements.

DATES: We must receive your comments on or before January 22, 2009.

ADDRESSES: Address all comments about the proposed priorities and requirements to Sara Strizzi, U.S. Department of Education, 1391 Speer Boulevard, Suite 800, Denver, CO 80204. Telephone: (303) 346–0924.

If you prefer to send your comments through the Internet, use the following address: *sara.strizzi@ed.gov.* You must include the term ''FY 09 REMS NPP'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Sara Strizzi. Telephone: (303) 346–0924 or by e-mail: *sara.strizzi@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities and requirements, we urge you to identify clearly the specific proposed priority or requirement that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 10001, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4

p.m., Washington, DC, time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: Past emergencies, such as the events of September 11, 2001, Hurricanes Katrina and Rita, and emergencies related to other natural and man-made hazards, reinforce the need for schools and communities to plan for traditional crises and emergencies, as well as other catastrophic events. The REMS grant program provides funds to LEAs to establish an emergency management process that focuses on reviewing and strengthening emergency management plans, within the framework or the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery). The program also provides resources to LEAs to provide training for staff on emergency management procedures and requires that LEAs develop comprehensive all-hazards emergency management plans in collaboration with community partners including local law enforcement, public safety, public health, and mental health agencies, and local government.

Program Authority: 20 U.S.C. 7131.

Applicable Program Regulations: 34 CFR part 299.

Proposed Priorities

This notice contains three proposed priorities.

Proposed Priority 1—LEA Projects Designed To Develop and Enhance Local Emergency Management Capacity

Background

The REMS grant program was established to provide Federal financial assistance to support LEAs in improving and strengthening emergency management plans at the LEA and school-building levels. Because emergency management planning is a continuous process in which plans should be reviewed and revised on a regular basis, the REMS program seeks to support activities designed to assist LEAs in developing sustainable emergency management efforts. A key aspect of ensuring sustainability is increasing LEA capacity to implement all aspects of emergency management, including conducting vulnerability assessments, developing and updating written emergency procedures, training staff, and conducting drills and exercises. Working with local community partners, such as law enforcement, public safety, mental health, and public health agencies, and local government, and ensuring that LEA staff possess the requisite knowledge and expertise to carry out key emergency management tasks are critical in ensuring sustainability.

Since the initial competition under this program in FY 2003, our experience in reviewing grantee program activities and outcomes suggests that grantees whose projects do not focus on developing the capacity of LEA staff and first responders are likely to find it challenging to sustain their project activities and continue to meet the LEA's ongoing emergency management needs. Based upon this experience, we have identified a need to focus this program more specifically on increasing local emergency management capacity.

Proposed Priority: Under this proposed priority, we support LEA projects designed to create, strengthen, or improve emergency management plans at the LEA and school-building levels and build the capacity of LEA staff so that the LEA can continue the implementation of key emergency management functions after the period of Federal funding. Projects must include a plan to create, strengthen, or improve emergency management plans, at the LEA and school-building levels, and within the framework of the four phases of emergency management: Prevention-Mitigation, Preparedness, Response, and Recovery. Projects must also include: (1) Training for school personnel in emergency management procedures; (2) coordination, and the use of partnerships, with local law enforcement, public safety, public health, and mental health agencies, and local government to assist in the development of emergency management plans at the LEA and school-building levels; (3) a plan to sustain the local partnerships after the period of Federal assistance; (4) a plan for communicating school emergency management policies and reunification procedures for parents/guardians and their children following an emergency; and (5) a written plan for improving LEA capacity to sustain the emergency management process through ongoing training of personnel and the continual review of policies and procedures.

Proposed Priority 2—Priority for LEAs That Have Not Previously Received a Grant Under the REMS Program (CFDA 84.184E) and Are Located in an Urban Areas Security Initiative Jurisdiction

Background

In FY 2003, the Department of Homeland Security established the Urban Areas Security Initiative (UASI) to focus Federal preparedness resources on the unique planning, equipment, training, and exercise needs of high-threat, high-density urban areas. The intent of the UASI is to create a sustainable national model program that will enhance security and overall preparedness in order to prevent, respond to, and recover from acts of terrorism. Jurisdictions' inclusion in the UASI is determined by a formula using a combination of current threat estimates, critical assets within the specific urban area, and population density.

The Governor of each State has designated a State Administrative Agency (SAA) as the entity responsible for applying for, and administering, funds under the U.S. Department of Homeland Security Grant Program (which includes the UASI). The SAA is also responsible for defining the geographic borders for jurisdictions included in the UASI.

Ensuring that LEAs are adequately prepared for multiple hazards is a significant national concern. LEAs located in vulnerable, high-density areas have unique emergency management planning needs. While many LEAs in UASI jurisdictions have received funding under the REMS program in prior years, a number of LEAs located in UASI jurisdictions have not received the resources needed to improve and enhance their emergency management plans. In order to help meet the needs of these LEAs, we propose a priority for LEAs, including educational services agencies (ESAs), that have not previously received a grant under this program and are located within UASI jurisdictions.

Proposed Priority: We give a priority to applications from LEAs that (1) have not yet received a grant under this program (CFDA 84.184E) and (2) are located in whole or in part within Urban Areas Security Initiative (UASI) jurisdictions, as determined by the U.S. Department of Homeland Security (DHS). Applicants, including educational services agencies (ESAs), must meet both of these criteria in order to meet this priority. Under a consortium application, all members of the LEA consortium, including any

ESAs, must meet both criteria to meet this priority.

Because DHS's determination of UASI jurisdictions may change from year to year, applicants under this priority must refer to the most recent list of UASI jurisdictions published by DHS when submitting their applications. In any notice inviting applications using this priority, the Department will provide applicants with information necessary to access the most recent DHS list of UASI jurisdictions.

Proposed Priority 3—Priority for Applicants That Have Not Previously Received a Grant Under the REMS Program (CFDA 84.184E)

Background

Ensuring that schools are attempting to prevent or mitigate, prepared to respond to, and equipped to recover from emergency situations that may arise from multiple hazards, including natural and man-made, is an issue of national importance. Since FY 2003, 606 projects have received funding under the REMS grant program to improve and enhance emergency management plans, a significant number but a small percentage of the total number of LEAs within the United States. To address the emergency management planning needs of LEAs that have not previously received funding under this program, we propose a priority for LEAs, including educational services agencies (ESAs), that have not yet received a grant under this program.

By establishing this priority, we hope to ensure that REMS grant funds reach greater numbers of schools and students whose emergency management planning needs have not previously been addressed.

Proposed Priority: We give priority to applications from LEAs that have not previously received a grant under this program (CFDA 84.184E). Applicants, including educational service agencies (ESAs), that have received funding under this program directly, or as the lead agency or as a partner in a consortium application under this program, will not meet this priority. Under a consortium application, all members of the LEA consortium must meet this criterion to meet this priority.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

Background

The REMS program is intended to provide resources to LEAs to assist in the development of comprehensive, sustainable emergency management plans at the LEA and school-building levels. Creating and maintaining such plans should be accomplished through close collaboration between the LEA and local community partners and should be coordinated with other State and local emergency management efforts. Collaboration and coordination at the local level will ensure that emergency management plans are customized to address local risks and vulnerabilities, taking local resources, assets, and response times into consideration, and will prevent duplication of effort.

Further under the REMS program, all LEAs will develop customized emergency management plans at the LEA and school-building levels that include plans for addressing the outbreak of infectious diseases, plans for ensuring food safety, and plans for addressing the needs of individuals with disabilities in an emergency.

Preventing infectious diseases and ensuring a safe and healthy school environment is a significant component of emergency management planning. In addition to causing widespread illness, an especially severe influenza pandemic could result in widespread school closings, absenteeism, and disruptions to the learning environment. Whether or not a pandemic strikes, seasonal influenza and other infectious diseases continue to pose a concern with respect to the health of students as well as the functioning of schools. Although it may be difficult to prevent a widespread pandemic or other infectious disease outbreak, the effects can be mitigated through proper prevention and planning strategies.

The protection of school food supplies against intentional contaminants is another critical component of emergency management. Effective food defense planning protects against intentional contamination of food, water, or facilities through the introduction of chemical or biological hazards by individuals seeking to harm students and staff. To help protect school food supplies, emergency management plans should include a written food defense plan designed to protect food storage, preparation, and delivery areas.

Comprehensive emergency management plans should include procedures that address the communication, medical, and evacuation needs of individuals with disabilities. Such procedures should be customized for each individual based upon input from parents and guardians, teachers, first responders, and the individuals themselves. Schools may also need to develop general plans for individuals with disabilities for use in congregate settings such as athletic events, graduations, or community meetings.

Emergency management plans should be based on the most current emergency management practices as established by the National Incident Management System (NIMS). In accordance with Homeland Security Presidential Directive/HSPD–5, the NIMS provides a consistent approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. Ensuring that public agencies at all levels of government, including LEAs, are implementing common emergency management principles, terminology, and organizational processes is critical to ensuring an effective and efficient response to an emergency.

Implementation of the NIMS is a dynamic process that will continue to evolve over time. In order to receive Federal preparedness funding under the REMS program, LEAs must cooperate with the efforts of their communities to meet the minimum NIMS requirements established for each fiscal year.

Proposed Requirements

The Assistant Deputy Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Partner Agreements: To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: The law enforcement agency, the public safety agency, the public health agency, the mental health agency, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency management plans at the LEA and school-building levels, a description of each partner's commitment to the continuation and continuous improvement of emergency management plans at the LEA and school-building levels, and the signature of an authorized representative of the LEA and each partner acknowledging the agreement. For consortium applications, each LEA to be served by the grant must submit a complete set of partner agreements with the signature of an authorized representative of the LEA and each corresponding partner acknowledging the agreement.

If one or more of the five partners listed in this requirement is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety agency, public health agency, mental health agency, or the head of the local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

Coordination with State or Local Homeland Security Plan: All emergency management plans receiving funding under this program must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with and follow the requirements of their State or local Homeland Security Plan for emergency services and initiatives.

Infectious Disease Plan: To be considered for a grant award, applicants must agree to develop a written plan designed to prepare the LEA for a possible infectious disease outbreak, such as pandemic influenza. Plans must address the four phases of emergency management (Mitigation/Prevention, Preparedness, Response, and Recovery) and include a plan for disease surveillance (systematic collection and analysis of data that lead to action being taken to prevent and control a disease), school closure decision making, business continuity (processes and procedures established to ensure that essential functions can continue during and after a disaster), and continuation of educational services.

Food Defense Plan: To be considered for a grant award, applicants must agree to develop a written food defense plan that includes the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) and is designed to safeguard the LEA's food supply, including all food storage and preparation facilities and delivery areas within the LEA.

Individuals with Disabilities: Applicants must agree to develop plans that take into consideration the communication, medical, and evacuation needs of individuals with disabilities within the schools in the LEA.

Implementation of the National Incident Management System (NIMS): Applicants must agree to implement their grant in a manner consistent with the implementation of the NIMS in their communities. Applicants must include in their applications an assurance that they have met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, applicants must refer to the most recent list of NIMS requirements published by DHS when submitting their applications. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements.

Note: An LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential in ensuring that first responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation and requirements is available at *http://www.fema.gov/emergency/nims/*.

Final Priorities and Requirements

We will announce the final priorities and requirements in a notice in the **Federal Register**. We will determine the final priorities and requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities or requirements, we invite applications through a notice in the **Federal Register**.

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities and requirements justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits

The potential costs associated with the proposed priorities and requirements are minimal while the benefits are significant.

Grantees may anticipate costs in developing written infectious disease and food defense plans, implementing the NIMS requirements, and developing emergency management plans for individuals with disabilities. Grantees may also anticipate costs in achieving increased local emergency management

capacity. However, these costs may be included in the grant budget and, therefore, will have little financial impact on the applicant.

The benefit of the proposed priorities and requirements is that grantees that develop a comprehensive, NIMS-compliant emergency management plan that includes training and capacity building for staff and plans for addressing the needs of individuals with disabilities, and is implemented in coordination with community partners, may prevent or mitigate the financial and human impact of an emergency in the LEA. In addition, by having written plans designed to address infectious diseases and protect the LEA's food supplies, LEAs may be able to prevent or mitigate the adverse effects of these hazards, which in turn could result in significant savings in health care and other financial costs for the school community.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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Dated: December 17, 2008.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E8–30578 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Teaching American History Grant Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215X.

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of final revisions to selection criteria.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces selection criteria under the Teaching American History Grant (TAH) Program. The Assistant Secretary may use these selection criteria for competitions in fiscal year (FY) 2009 and later years. We take this action to provide the Secretary with the flexibility to use selection criteria (i) Established for the TAH Program in the notice of final selection criteria and other application requirements, published in the **Federal Register** on April 15, 2005 (70 FR 19939) (2005 Notice); (ii) from the menu of general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210; (iii) based on statutory provisions in accordance with 34 CFR 75.209; or (iv) from any combination of (i) through (iii) for competitions in fiscal year (FY) 2009 and in subsequent years. We intend that this choice of selection criteria will provide greater flexibility to evaluate TAH Program applications.

DATES: *Effective Date:* These final revisions to selection criteria are effective January 22, 2009.

FOR FURTHER INFORMATION CONTACT: Mia D. Howerton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W212, Washington, DC 20202–5960. Telephone: (202) 205–0147 or by e-mail: *mia.howerton@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The TAH Program is authorized under Title II, Part C, Subpart 4 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The goal of the TAH Program is to support activities that raise student achievement by improving teachers' knowledge, understanding, and appreciation of American history.

Program Authority: 20 U.S.C. 6721.

We published a notice of proposed revisions to selection criteria for this program in the **Federal Register** on October 29, 2008 (73 FR 64310). That notice contained background information and our reasons for proposing these revisions to selection criteria.

There is only one difference between the proposed revisions to selection criteria and these final revisions to selection criteria.

Public Comment: In response to our invitation in the notice of proposed revisions to selection criteria, two parties submitted comments.

We group major issues according to subject. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the revisions to the selection criteria since publication of the notice of proposed revisions to selection criteria follows.

Comment: A commenter questioned what it means to expand the range of selection criteria.

Discussion: Expanding the range of selection criteria means that we will now have a larger pool of criteria from which to select for competitions under the TAH Program. In prior competitions, the Department was limited to using only the selection criteria that was established for the TAH Program in the 2005 Notice. With these final revisions to selection criteria, the Department will be able to use the selection criteria established for the TAH Program in the 2005 Notice as well as selection criteria chosen from the menu of general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210, selection criteria based on statutory provisions in accordance with 34 CFR 75.209, or selection criteria from any combination of these for competitions in fiscal year (FY) 2009 and in subsequent years.

Changes: None.

Comment: A commenter questioned whether the selection criteria and the point value assigned to each criterion would remain constant from year to year.

Discussion: The selection criteria for the TAH Program and the point value for each criterion (as well as the maximum number of points assigned to all selection criteria used for a competition) may change each year depending on the needs of the program. We will announce the maximum possible points assigned to each

criterion as well as the maximum possible points for all criteria in the notice inviting applications or the application package, or both.

Changes: We have clarified that we will announce the maximum possible points for all criteria (not just the maximum possible points for each criterion) in the notice inviting applications or the application package, or both.

Comment: A commenter questioned if the selection criteria established for the TAH Program in the 2005 Notice would be rescinded.

Discussion: The selection criteria established for the TAH Program in the 2005 Notice will not be rescinded. Those criteria may still be used in a particular competition. These final revisions simply ensure that the Department has the flexibility to use selection criteria in addition to or in combination with those established for the TAH Program in the 2005 Notice in its competitions for FY 2009 and subsequent years.

Changes: None.

Final Selection Criteria

The Assistant Deputy Secretary for Innovation and Improvement announces final revisions to the selection criteria under the Teaching American History Grant Program. In addition to the selection criteria established in the 2005 Notice, the Secretary may use any of the selection criteria in § 75.210, criteria based on statutory requirements under § 75.209, or any combination of these when establishing selection criteria for a particular TAH Program competition. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications or the application package, or both, we will announce the maximum possible points assigned to each criterion as well as the maximum possible points for all criteria.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these selection criterion, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final selection criteria justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed revisions to selection criteria.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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Dated: December 18, 2008.

Amanda L. Farris,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E8–30553 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Teaching American History Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215X

DATES: Applications Available: December 23, 2008. Deadline for Notice of Intent to Apply: January 22, 2009. Dates of Pre-Application Meetings: January 8, 2009 and January 12, 2009. Deadline for Transmittal of Applications: March 9, 2009. Deadline for Intergovernmental Review: May 7, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Teaching American History Grant Program supports projects that aim to raise student achievement by improving teachers' knowledge, understanding, and appreciation of traditional American history. Grant awards assist local educational agencies (LEAs), in partnership with entities that have extensive content expertise, to develop, implement, document, evaluate, and disseminate innovative, cohesive models of professional development. By helping teachers to develop a deeper understanding and appreciation of traditional American history as a separate subject within the core curriculum, these programs are intended to improve instruction and raise student achievement.

Priorities: This competition includes one absolute priority and one competitive preference priority that are explained in the following paragraphs.

Absolute Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 2351 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (the No Child Left Behind Act of 2001) (20 U.S.C. 6721(b)). For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Partnerships With Other Agencies or Institutions

Each applicant LEA must propose to work in partnership with one or more of the following:

- An institution of higher education.

• A non-profit history or humanities organization.

• A library or museum.

Competitive Preference Priority: This priority is from the notice of final discretionary grant priorities for FY 2009, published in the **Federal Register** on November 21, 2008 (73 FR 70627). For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

School Districts with Schools in Need of Improvement, Corrective Action, or Restructuring (up to 10 additional points).

Projects that help school districts implement academic and structural interventions in schools that have been identified for improvement, corrective action, or restructuring under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

Note: In addressing this priority, each applicant is encouraged to include a plan for how the applicant will assess the specific needs in the content area of traditional American history in schools that have been identified for improvement, corrective action, or restructuring. In addition, each applicant is encouraged to include a plan for how the applicant will recruit U.S. history teachers from schools that have been identified for improvement, corrective action, or restructuring. Further, each applicant is encouraged to describe how each of these two plans will be implemented.

Program Authority: 20 U.S.C. 6721.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final selection criteria and other application requirements for this program, published in the **Federal Register** on April 15, 2005 (70 FR 19939). (c) The notice of final revisions to selection criteria published elsewhere in this issue of the **Federal Register**. (d) The notice of final discretionary grant priorities for FY 2009, published in the **Federal Register** on November 21, 2008 (73 FR 70627).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $50,000,000 for new awards for this program for FY 2009. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

The Department assumes that Congress will appropriate sufficient funds to provide funding for the first three years (36 months) of the project period for each grantee. Thus, we anticipate that initial awards under this competition will be made for a three-year period.

Contingent upon the availability of funds and each grantee's substantial progress towards accomplishing the goals and objectives of the project as described in its approved application, we may make continuation awards to grantees for the remaining 24 months of the program. Review of each grantee's progress may include consideration of evidence of promising practice and strong evaluation design. Further, contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Maximum Award: The following maximum award amounts are from the notice of final selection criteria and other application requirements for this program, published in the **Federal Register** on April 15, 2005 (70 FR 19939).

(1) Total funding for a three-year project period is a maximum of $500,000 for LEAs with enrollments of less than 20,000 students; $1,000,000 for LEAs with enrollments of 20,000–300,000 students; and $2,000,000 for LEAs with enrollments above 300,000 students. LEAs may form consortia and combine their enrollments in order to receive a grant reflective of their combined enrollment. For districts applying jointly as a consortium, the maximum award is based on the combined enrollment of the individual districts in the consortium. See section III. Eligibility Information for information on joint applications.

(2) A maximum of one grant will be awarded per applicant per competition.

Estimated Number of Awards: 52–65.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools that are considered LEAs under State law and regulations, that must work in partnership with one or more of the following entities:

• An institution of higher education.

• A non-profit history or humanities organization.

• A library or museum.

An LEA may form a consortium with one or more other LEAs and submit a joint application for funds. The consortium must follow the procedures for joint applications described in 34 CFR 75.127–129 of EDGAR.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215X.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The

Secretary requests that this e-mail notification be sent to Alex Stein at: *alex.stein@ed.gov.*

Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative to the equivalent of no more than 25 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: December 23, 2008.

Deadline for Notice of Intent to Apply: January 22, 2009.

Dates of Pre-Application Meetings: There will be three pre-application meetings for prospective applicants: (1) January 8, 2009, from 2:00 p.m. to 4:00 p.m. in the Grand Ballroom of the Hilton New York Hotel, 1335 Avenue of Americas, New York, NY 10019; (2) January 12, 2009, from 10:00 a.m. to 12:00 p.m. in the LBJ Auditorium at the U.S. Department of Education headquarters, 400 Maryland Avenue, SW., Washington, DC 20202; and (3) January 12, 2009 from 2:00 p.m. to 4:00 p.m. in the LBJ Auditorium at the U.S. Department of Education headquarters, 400 Maryland Avenue, SW., Washington, DC 20202. The Department is accessible by Metro on the Blue, Orange, Green, and Yellow lines at the 7th Street and Maryland Avenue exit of the L'Enfant Plaza Metro Station. Please contact the U.S. Department of Education contact persons listed under **FOR FURTHER INFORMATION CONTACT** if you have any questions about the details of the pre-application meetings.

Deadline for Transmittal of Applications: March 9, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements of this notice.*

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact either one of the two individuals listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 7, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Teaching American History Grant Program, CFDA Number 84.215X, must be submitted electronically using the Government-wide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Teaching American History Grant Program at www.Grants.gov.

You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215X).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to

ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W206, Washington, DC 20202–5960. FAX: (202) 401–8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215X) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215X) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note: For Mail or Hand Delivery of Paper Applications:

If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from the notice of final selection criteria and other application requirements published in the **Federal Register** on April 15, 2005 (70 FR 19939) and from 34 CFR 75.210, as permitted under the notice of final revisions to selection criteria, published elsewhere in this issue of the **Federal Register**. They are as follows:

(1) *Project quality* (45 points). The Secretary considers the quality of the proposed project by considering:

(a) The likelihood that the proposed project will develop, implement, and strengthen programs to teach traditional American history as a separate academic subject (not as a component of social studies) within elementary school and secondary school curricula.

(b) How specific traditional American history content (including the significant issues, episodes, and turning points in the history of the United States; how the words and deeds of individual Americans have determined the course of our Nation; and how the principles of freedom and democracy articulated in the founding documents of this Nation have shaped America's struggles and achievements and its social, political, and legal institutions and relations) will be covered by the grant; the format in which the project will deliver the history content; and the quality of the staff and consultants responsible for delivering these content-based professional development activities, emphasizing, where relevant, their postsecondary teaching experience and scholarship in subject areas relevant to the teaching of traditional American history. The applicant may also attach curriculum vitae for individuals who will provide the content training to the teachers.

(c) How well the applicant describes a plan that meets the statutory requirement to carry out activities under the grant in partnership with one or more of the following:

(i) An institution of higher education.

(ii) A non-profit history or humanities organization.

(iii) A library or museum.

(d) The applicant's rationale for selecting the partner(s) and its description of specific activities that the partner(s) will contribute to the grant during each year of the project. The applicant should include a memorandum of understanding or detailed letters of commitment from the partner(s) in an appendix to the application narrative.

Note: The Secretary encourages applicants to describe how the proposed history content addresses traditional American history as discussed in section V. (1)(b) of the *Project quality* criterion. Applicants are also encouraged to submit a detailed course of study for project participants, including a rationale for selecting the course of study, and a schedule of activities to be carried out. Finally, applicants are encouraged to discuss the role and commitment of each partner and document that each partner has been apprised of the partner's responsibilities for the project.

(2) *Quality of the project evaluation* (25 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) How well the evaluation plans are aligned with the project design explained under the *Project quality* criterion.

(c) Whether the evaluation includes benchmarks to monitor progress toward specific project objectives, and outcome measures to assess the impact on teaching and learning or other important outcomes for project participants.

(d) Whether the applicant identifies the individual and/or organization that have agreed to serve as evaluator for the project and includes a description of the qualifications of that evaluator.

(e) The extent to which the applicant indicates the following:

(i) What types of data will be collected.

(ii) When various types of data will be collected.

(iii) What methods will be used to collect data.

(iv) What data collection instruments will be developed.

(v) How the data will be analyzed.

(vi) When reports of results and outcomes will be available.

(vii) How the applicant will use the information collected through the evaluation to monitor the progress of the funded project and to provide accountability information about both success at the initial site and effective strategies for replication in other settings.

(viii) How the applicant will devote an appropriate level of resources to project evaluation.

Note: The Secretary encourages each applicant to include a plan of how the project's evaluation plan will address the Teaching American History Grant Program performance measures established by the Department under the Government Performance and Results Act of 1993 (GPRA). (The specific performance measures established for the overall Teaching American History Grant Program are discussed under *Performance Measures* in section VI of this notice.) Further, each applicant is encouraged to describe how the applicant's evaluation plan will be designed to collect both output data (e.g., number of teachers participating in a project, number of workshops held) and outcome data (e.g., improvements in teacher classroom practice or increases in student history achievement). Finally, each applicant is encouraged to select an independent, objective evaluator who has experience in evaluating educational programs and who will play an active role in the design and development of the project. For resources on what to consider in designing and conducting project evaluations, go to *http://www.whatworkshelpdesk.ed.gov/.*

(3) *Need for project* (15 Points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers of the following factors:

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(c) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

Note: The Secretary encourages applicants to provide information on the district's history program, including the number of teachers, the teachers' qualifications and certifications, the history professional development currently being offered in the district, and student performance in American history class. The applicant is also encouraged to address how its proposed professional development strategy will significantly improve both history teachers' ability to teach traditional American history content and student performance in history.

(4) *Quality of the management plan* (15 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Note: Section 75.112 of EDGAR requires that an applicant (a) propose a project period for the project and (b) include a narrative that describes how and when, in each budget period of the project, the applicant plans to meet each project objective. The Secretary encourages each applicant to address this criterion by including in this narrative a clear implementation plan that includes annual timelines, key project milestones, and a schedule of activities, as well as a description of the personnel who would be responsible for each activity and the level of effort each activity entails.

2. *Applicant's Past Performance and Compliance History:* In accordance with 34 CFR 75.217(d)(3)(ii) and (iii), the Secretary may consider an applicant's past performance and compliance history when evaluating applications and in making funding decisions.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* We have established two performance measures for the Teaching American History Grant Program. The measures are: (1) The average percentage change in the scores (on a pre-post assessment of American history) of participants who complete at least 75% of the professional development hours offered by the project. The assessment will be aligned with the content provided by the Teaching American History project, and at least 50% of its questions will come from a validated test of American history, and (2) The percentage of Teaching American History participants who complete 75% or more of the total hours of professional development offered. Grantees will be expected to provide data on the two measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Alex Stein or Mia Howerton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W206, Washington, DC 20202–5960. Telephone: (202) 205–9085 or (202) 205–0147 or by e-mail: *TeachingAmericanHistory@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 18, 2008.

Amanda L. Farris,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E8–30554 Filed 12–22–08; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Proposed Collection, Comment Request; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice and request for comments.

SUMMARY: The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections; and recordkeeping requirements. Comments are invited on: (a) Whether the proposed

collections of information and/or recordkeeping requirements are necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collections and/or recordkeeping requirements, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected or records to be kept; and (d) ways to minimize the burden of the information collections and/or recordkeeping requirements on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval.

DATES: You must submit comments on or before 5 PM Eastern Standard Time on February 23, 2009.

ADDRESSES: You may submit comments on the proposed information collections and/or recordkeeping requirements by any of the following methods. Please submit your comments via only one of the methods described.

- *E-mail:* Send comments to *havainfo@eac.gov* with ''Comments for [Title of Regulation]'' in the subject line.
- *Fax:* Send to ''EAC Regulations'' at (202) 566–3128. Comments sent by fax must be limited to 6 pages.
- *Mail:* Send to ''EAC Regulations'' at U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005. Comments sent by mail must be unbound, be on paper no larger than 8.5″ by 11″; and be submitted in duplicate. Mailed comments will not accepted in electronic form (floppy disk, CD, etc.).
- *Hand Delivery/Courier:* Deliver to Suite 1100, 1225 New York Avenue, Washington, DC 20005 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. Comments submitted by hand delivery must be unbound, be on paper no larger than 8.5″ by 11″; and be submitted in duplicate. Comments sent by courier or hand delivery will not be accepted in electronic form (floppy disk, CD, etc.).

Instructions: All submissions must include the agency name and regulation title (*i.e.* ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'') for this information collection/recordkeeping requirement. Please also identify comments on regulatory text by subpart and section. Note that all comments received will be publicly posted, including any personal information provided. The EAC will post comments without change unless the comment contains profanity or material that is prohibited from disclosure by law.

FOR FURTHER INFORMATION CONTACT: Tamar Nedzar, Attorney, U.S. Election Assistance Commission, 1225 New York Avenue NW., Suite 1100, Washington, DC 20005. Telephone (202) 566–3100.

SUPPLEMENTARY INFORMATION:

Title: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

OMB Number: Pending.

Type of Review: Regular submission.

Summary of Information Collections and Recordkeeping Requirements: (Full text of regulation at *www.eac.gov*; and available upon written request).

11 CFR 9423.12(c)—Written notice to grantee or subgrantee. This section requires the awarding official to provide each of its grantees and subgrantees with written notice of any special conditions and/or restrictions on the grantee or subgrantee because it is considered ''high risk'' and the reasons for imposing the conditions or restrictions. The notice will also include any corrective actions to the grantees' management systems to meet required management standards that must be taken before the grantee or subgrantee will be removed from being high risk, the time allowed for completing these corrective actions, and the method of requesting reconsideration of the conditions/restrictions imposed.

11 CFR 9423.20(a)—Financial management systems. This section requires a State to create financial management systems for itself as well as its subgrantees and cost-type contractors. These systems must allow for States to prepare reports and permit the tracing of funds adequately enough to establish that such funds have not been used inappropriately.

11 CFR 9423.20(b)—Financial management systems. This section requires grantees and subgrantees to maintain financial management systems to support financial reporting; maintain accounting records; control and account for all cash, real and personal property, and other assets and assure that they are used for authorized purposes; show budget control; follow applicable regulations in determining allowable costs; maintain source documentation; and establish procedures to ensure the receipt of reports on cash balances and cash disbursements from subgrantees to prepare cash transactions reports to the awarding agency.

11 CFR 9423.20(c)—Awarding agency review. This section provides that the awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to the award.

11 CFR 9423.24(g)—Appraisal of real property. This section provides that an independent appraiser set the market value or fair rental value of real property held by the grantee and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

11 CFR 9423.30—Prior written approval of post-award budget/project changes. Section 9423.30(a) requires certain types of post-award changes in budget and projects specified in paragraphs (c) and (d) of this section to have prior written approval of EAC. The format for the request is specified in paragraph (f).

11 CFR 9423.30(f)(3)—Prior approval decision. This section provides that the grantee promptly review budget/program change requests from subgrantees and approve or disapprove the request in writing. If applicable, EAC would need to approve the grantee's request for changes to its project before the grantee could approve the subgrantee's request.

11 CFR 9423.32(b)—Equipment. This section requires that each grantee establish proper sales procedures to sell property and adequate maintenance procedures to keep the property in good condition.

11 CFR 9423.32(f)—Inventory list. This section requires a grantee to submit to EAC an annual inventory of all federally owned property for which it is accountable.

11 CFR 9423.36(g)(1)—Awarding agency review. This section provides that the awarding agency review technical specifications on proposed procurements to ensure that the item/service specified is the one being proposed for purchase.

11 CFR 9423.40(b)—Nonconstruction performance reports. This section provides that EAC may require grantees to submit performance reports annually or more frequently, as necessary. For the 55 HAVA grantees and 5 election data grantees, this report is due annually. The 20 college mock election grantees report twice a year.

11 CFR 9423.40(d)—Significant developments. This section requires grantees to inform EAC of any problems, delays, or adverse conditions which would inhibit the grantee's ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. Grantees must also inform EAC of any favorable developments that

would allow time schedules and objectives to be met sooner and/or at less cost than was anticipated.

11 CFR 9423.41(d)—Request for advance or reimbursement. This section requires that grantee requests for Treasury check advance payments and for reimbursement under nonconstruction grants be submitted on SF–270.

11 CFR 9423.42—Recordkeeping. This section requires grantees and subgrantees to retain all required records for three years from the starting date.

11 CFR 9423.42(b)(3)—Transfer of records. This section provides that the awarding agency may request transfer of records to its custody when it determines that the records possess long-term retention value.

11 CFR 9423.50—Closeout. This section requires the grantee to submit all financial, performance, and other reports required as a condition of the grant. This includes the final performance or progress report (SF–PPR), the Federal Financial Report (SF–425) or Outlay Report and Request for Reimbursement for Construction Programs (SF 271), the final request for payment (SF 270), invention disclosure, and Federally-owned property report.

Needs and Uses: On March 12, 1987, President Reagan signed a memorandum directing all affected Executive departments and agencies to simultaneously issue a common rule that adopted governmentwide terms and conditions for grants to State and local governments. The departments and agencies followed the guidelines of OMB Circular A–102, and adopted the wording of the Circular verbatim, with their statutory deviations. The common rule was issued on March 11, 1988, and has been updated periodically to reflect new legislation and Executive Orders. EAC, which was created by the Help America Vote Act of 2002, is codifying the common rule at 11 CFR part 9423, and this regulation includes the OMB-required reporting and recordkeeping. The pre-award information, (SF–424, Application for Federal Assistance), is used to qualify and select grant applications. The post-award information, (SF–425, Federal Financial Report; SF–270, Request for Advance or Reimbursement; and SF–271 Outlay Report & Request for Reimbursement for Construction Programs), is used to monitor grantee performance. The after-the-grant information, (SF–425, Federal Financial Report), is used to close out the grant awards. The information is necessary to ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste, and abuse.

Information Collection Associated With Regulations

Affected Public: EAC grant recipients.

Estimated Number of Respondents: 467.

Total Annual Responses: 467.

Estimated Total Annual Burden Hours: 347 hours.

Recordkeeping Requirement Associated With Regulations

Affected Public: EAC grant recipients.

Estimated Number of Respondents: 5,087.

Total Annual Responses: 5,087.

Estimated Total Annual Burden Hours: 33,913 hours.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E8–30538 Filed 12–22–08; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Department of Energy.

ACTION: Notice of the acceptance of Title X claims during fiscal year (FY) 2009.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2009 from eligible active uranium and thorium processing sites for reimbursement under Title X of the Energy Policy Act of 1992. For FY 2009, Congress has not completed the appropriation process for DOE, including funds for the reimbursement of certain costs of remedial action at these sites. If no funds are appropriated, the approved amount of claims submitted during FY 2008 and unpaid approved balances for claims submitted in prior years will be carried forward for payment in FY 2010, subject to the availability of funds. If FY 2009 funds are appropriated, and if the available funds are less than the total approved claims, these payments will be prorated based on the amount of available FY 2009 appropriations, unpaid approved claim balances (approximately $8.6 million), and claims received in May 2008 (approximately $34 million).

DATES: The closing date for the submission of claims in FY 2009 is May 1, 2009. These new claims will be processed for payment by April 30, 2010, together with unpaid approved claim balances from prior years, based on the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to Mr. David Alan Hicks, Title X Program Manager, U.S. Department of Energy/EMCBC, @ Denver Federal Center, P.O. Box 25547, Denver, Colorado 80225–0547. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Contact David Mathes at (301) 903–7222 of the U.S. Department of Energy, Office of Environmental Management, Office of Disposal Operations.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR Part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Public Law 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003 (68 FR 32955) to adopt several technical and administrative amendments (e.g., statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium milling sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work that is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR Part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington DC on this 15th of December 2008.

David E. Mathes,

Office of Disposal Operations, Office of Regulatory Compliance.

[FR Doc. E8–30501 Filed 12–22–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–398–002]

Gulf Crossing Pipeline Company LLC; Notice of Amended Certificate

December 16, 2008.

Take notice that on December 5, 2008, Gulf Crossing Pipeline Company LLC (Gulf Crossing), 9 East Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in Docket No. CP07–398–002, an amendment to its certificate of public convenience and necessity pursuant to section 7 (c) of the Natural Gas Act (NGA) which authorized the siting, construction, and operation of facilities on April 30, 2008. In its amendment, Gulf South proposes to increase the size of the turbine compressor units and increase the horsepower at the Mira Compressor Station, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. If necessary, a revised Notice of Schedule for Environmental Review will be issued within 90 days of this Notice. The instant filing may be also 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, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Houston, Texas 77046 or by telephone at 713–479–8033 or telecopy to 713–479–1846.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments 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 under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30392 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–027]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 16, 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 land.

b. *Project No.:* 2165–027.

c. *Date Filed:* December 5, 2008.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Warrior River Project.

f. *Location:* The proposed shoreline development is on Smith Lake in the town of Crane Hill, Winston County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jason Powers, Alabama Power Company, 600 18th St. North, Birmingham, AL 35203; (205) 257–4070.

i. *FERC Contact:* Mark Carter, (202) 502–6554, *mark.carter@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* January 16, 2009. 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 requests Commission approval to grant Mr. Carter Hughes (applicant) permission to install 68 boat slips, a boat ramp, three swim platforms, and a lakefront boardwalk on project lands. These installations would serve a 150-home planned community named Silver Rock Cove. In preparing the application,

Mr. Hughes consulted with the Alabama Department of Conservation and Natural Resources' Wildlife and Freshwater Fisheries Division, and State Lands Division; Alabama Historical Commission; and U.S. Fish and Wildlife Service.

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 1–866–208–3372 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. E8–30401 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–30–000]

Atmos Energy Corporation; Notice of Application

December 16, 2008.

Take notice that on December 10, 2008, Atmos Energy Corporation (Atmos), Lincoln Centre III, 5430 LBJ Freeway, Dallas, Texas 75240, filed in Docket No. CP09–30–000 an application pursuant to section 7(f) of the Natural Gas Act (NGA), as amended, and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), requesting the determination of a service area within which Atmos may, without further Commission authorization, provide natural gas distribution service, 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Douglas C. Walther, Associate General Counsel, Atmos Energy Corporation, P.O. Box 650205, Dallas, Texas 75265–0205 at (972) 855–3102 or by e-mail at *Douglas.Walther@atmosenergy.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's

environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30394 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 4, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–23–000.

Applicants: Shiloh Wind Project 2, LLC.

Description: Response to Staff Request for Additional Information and Request for Shortened Comment Period of Shiloh Wind Project 2, LLC.

Filed Date: 12/03/2008.

Accession Number: 20081203–5070.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–774–012.

Applicants: Eagle Energy Partners I, LP.

Description: Eagle Energy Partners I, L.P. Notice of Non-Material Change.

Filed Date: 12/01/2008.

Accession Number: 20081201–5121.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER06–739–014; ER08–649–005; ER07–501–010; ER06–738–014.

Applicants: Birchwood Power Partners, L.P.; EFS Parlin Holdings LLC, East Coast Power Linden Holding, LLC, Cogen Technologies Linden Venture, L.P.

Description: Birchwood Power Partners, LP *et al.* submits a combined triennial market power analysis.

Filed Date: 11/25/2008.

Accession Number: 20081202–0126.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER07–496–001; ER00–1372–004.

Applicants: Alcoa Power Marketing, Inc.; Alcoa Power Generating, Inc.

Description: Alcoa Power Generating, Inc. *et al.* submits a supplement to the 9/2/08 filing of the updated market power analysis.

Filed Date: 11/26/2008.

Accession Number: 20081202–0129.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER08–41–004.

Applicants: ISO New England Inc.

Description: ISO New England, Inc. *et al.* submits a report on a timetable for a stakeholder process to study modeling of internal transmission constraints and tie benefits associated with individual lines and develop proposals to resolve these issues.

Filed Date: 11/26/2008.

Accession Number: 20081203–0075.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER08–567–001.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits an Amended and Restated Settlement Agreement with the City of Anaheim, which supersedes the Settlement Agreement filed on 8/4/08, to be effective 1/14/09.

Filed Date: 11/18/2008.

Accession Number: 20081121–0132.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 09, 2008.

Docket Numbers: ER08–1323–001.

Applicants: Fowler Ridge Wind Farm LLC.

Description: Fowler Ridge Wind Farm LLC submits market-based power sales tariff designated as FERC Electric Tariff, Original Volume 1, Original Sheet 1–2.

Filed Date: 12/01/2008.

Accession Number: 20081204–0040.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER08–1423–001.

Applicants: PHI.

Description: PHI Companies *et al.* submits revised tariff sheets to the PJM Interconnection, LLC Open Access Transmission Tariff necessary to permit PHI Companies to recover the incentive rate treatments authorized by the Commission.

Filed Date: 12/01/2008.

Accession Number: 20081204–0041.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER09–315–001.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Consolidated Edison Company of New York, Inc. submits Notice of Cancellation of Service Agreement 8 for Wholesale Sales of Electricity at Market-Based Rates, FERC Electric Tariff, First Revised Volume 2 etc.

Filed Date: 11/25/2008.

Accession Number: 20081126–0125.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–343–000.

Applicants: SC Landfill Energy, LLC.

Description: SC Landfill Energy, LLC submits its Petition for Acceptance of FERC Electric Tariff, Waivers and Blanket Authorization.

Filed Date: 12/01/2008.

Accession Number: 20081204–0046.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER09–353–000.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits a notice of cancellation for one hundred eighty-four firm and non-firm transmission Service Agreements, pursuant to ConEdison's Open Access Transmission Tariff, etc.

Filed Date: 11/28/2008.

Accession Number: 20081202–0050.

Comment Date: 5 p.m. Eastern Time on Friday, December 19, 2008.

Docket Numbers: ER09–354–000.

Applicants: CAM Energy Trading LLC.

Description: CAM Energy Trading, LLC submits Notice of Cancellation of its market-based rate tariff, designated as Rate Schedule FERC 1 required by Order 614.

Filed Date: 12/01/2008.

Accession Number: 20081204–0042.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER09–355–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool submits an executed Service Agreement for Network Integration Transmission Service between SPP as Transmission Provider and City of Prescott, Arkansas as Network Customer, etc.

Filed Date: 12/01/2008.

Accession Number: 20081204–0043.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER09–356–000.

Applicants: ISO New England Inc. and New England Power.

Description: ISO New England, Inc. *et al.* submits revisions to the Forward Capacity Market Rules.

Filed Date: 12/01/2008.

Accession Number: 20081204–0045.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER09–357–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company request for waiver of Transmission Loading Relief-Eastern Interconnection standard developed by WEQ, etc. & submits revised tariff sheets to reflect the pending request for waiver for filing 11/26/08.

Filed Date: 11/26/2008.

Accession Number: 20081204–0038.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–358–000.

Applicants: National Grid Generation LLC.

Description: National Grid Generation LLC submits Original Sheet 91 *et al.* to its FERC Electric Rate Schedule 1, effective 1/15/09.

Filed Date: 12/01/2008.

Accession Number: 20081204–0039.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER09–359–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Co submits the General Transfer Agreement with Bonneville Power Administration.

Filed Date: 12/01/2008.

Accession Number: 20081204–0044.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 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 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. E8–30451 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 15, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–29–000.

Applicants: Smoky Hills Wind Project II, LLC.

Description: Smoky Hills Wind Project II, LLC submits a redline of the revised application showing the changes requested by the Class B Equity Investors and Exhibit B–1 to the Application, etc.

Filed Date: 12/10/2008.

Accession Number: 20081212–0127.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–1002–001.

Applicants: PJM Interconnection, LLC.

Description: Monongahela Power Company submits a filing related to Buckeye's Network Integration Transmission Service Agreement.

Filed Date: 09/19/2008.

Accession Number: 20080919–5036.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 24, 2008.

Docket Numbers: ER07–907–002.

Applicants: Bruce Power Inc.

Description: Bruce Power Inc. submits a request for Category 1 Seller classification for the Southeast Region et al etc.

Filed Date: 12/11/2008.

Accession Number: 20081212–0132.

Comment Date: 5 p.m. Eastern Time on Thursday, January 1, 2009.

Docket Numbers: ER09–399–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc. submits a rate filing relating to the jurisdictional agreement.

Filed Date: 12/10/2008.

Accession Number: 20081212–0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: ER09–400–000.

Applicants: Geysers Power Company, LLC.

Description: Geysers Power Co., LLC submits a notice of termination of its Rate Schedule FERC No. 5.

Filed Date: 12/10/2008.

Accession Number: 20081212–0112.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: ER09–401–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits the Inland Empire Energy Center Generation Tie-Line Facilities Agreement.

Filed Date: 12/10/2008.

Accession Number: 20081212–0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: ER09–402–000.

Applicants: Xcel Energy Operating Companies.

Description: Southwestern Public Service Co. submits a Connection

Agreement with Central Valley Electric Coop, Inc.

Filed Date: 12/11/2008.

Accession Number: 20081215–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, January 1, 2009.

Docket Numbers: ER09–403–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc. submits an executed Amended and Restated Generator Interconnection Agreement among the Midwest ISO, etc.

Filed Date: 12/10/2008.

Accession Number: 20081212–0126.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: ER09–404–000.

Applicants: Langdon Wind, LLC.

Description: Langdon Wind, LLC submits jurisdictional service agreement with Otter Tail Corp.

Filed Date: 12/11/2008.

Accession Number: 20081212–0134.

Comment Date: 5 p.m. Eastern Time on Thursday, January 1, 2009.

Docket Numbers: ER09–405–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits filing to formally notify FERC of a system modeling error in its Security Constrained Unit Commitment software that affected certain day-ahead market schedules and prices.

Filed Date: 12/11/2008.

Accession Number: 20081212–0133.

Comment Date: 5 p.m. Eastern Time on Thursday, January 1, 2009.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–30455 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 17, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP00–157–023.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits the third refund report for refunds paid December 1, 2008.

Filed Date: 12/10/2008.

Accession Number: 20081210–5137.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: RP04–274–013.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits the third refund report for refunds paid December 1, 2008.

Filed Date: 12/10/2008.

Accession Number: 20081210–5137.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: RP04–67–004.

Applicants: NGO Transmission, Inc.

Description: NGO Transmission, Inc. submits First Revised Sheet 170 to FERC Gas Tariff, Original Volume 1.

Filed Date: 12/15/2008.

Accession Number: 20081216–0020.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP08–347–004.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gas Transmission, LLC submits Forty Seventh Revised Sheet 18 *et al.* to FERC Gas Tariff Second Revised Volume 1.

Filed Date: 12/15/2008.

Accession Number: 20081216–0018.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–141–001.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gas Transmission, LLC submit Substitute First Revised Sheet 64 to FERC Gas Tariff Second Revised Volume 1.

Filed Date: 12/15/2008.

Accession Number: 20081216–0019.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–142–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Second Revised Sheet 506 *et al.* to FERC Gas Tariff Second Revised Volume 1.

Filed Date: 12/15/2008.

Accession Number: 20081216–0017.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–154–000.

Applicants: Young Gas Storage Company, Ltd.

Description: Young Gas Storage Company, Ltd submits Sixteenth Revised Sheet 4 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 12/1/08.

Filed Date: 12/12/2008.

Accession Number: 20081215–0268.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 24, 2008.

Docket Numbers: RP09–155–000.

Applicants: Canyon Creek Compression Company.

Description: Canyon Creek Compression Company submits Fourth Revised Sheet 1 to provide for the cancellation of FERC Gas Tariff, Third Revised Volume 1, to be effective 1/12/09.

Filed Date: 12/12/2008.

Accession Number: 20081215–0267.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 24, 2008.

Docket Numbers: RP09–156–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: Transwestern Pipeline Company, LLC submits Second Revised Sheet 169 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 1/10/09.

Filed Date: 12/12/2008.

Accession Number: 20081215–0266.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 24, 2008.

Docket Numbers: RP09–157–000.

Applicants: Barclays Bank PLC, Barclays Capital Energy Inc., UBS AG.

Description: Barclays Bank PLC, *et al.* submits Notice of Change of Ownership, Request for Temporary Waiver, Request for Expedited Action, and Request for Shortened Notice Period.

Filed Date: 12/15/2008.

Accession Number: 20081215–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 24, 2008.

Docket Numbers: RP09–158–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Corp submits Original Sheet 1 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1 and First Revised Volume 2, to be effective 12/31/08.

Filed Date: 12/15/2008.

Accession Number: 20081217–0043.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–30508 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 16, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–148–000.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company, Ltd submits Fifth Revised Sheet 63A *et al.* to FERC Gas Tariff, Second Revised Volume 2.

Filed Date: 12/09/2008.

Accession Number: 20081211–0251.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: RP09–149–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits an amended Rate Schedule FT–1 Transportation Service Agreement and two amended Rate Schedule FT–H TSAs with Salt River Project Agricultural Improvement and Power District.

Filed Date: 12/09/2008.

Accession Number: 20081212–0114.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: RP09–150–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission LLC filed a Notice of Name Change.

Filed Date: 12/11/2008.

Accession Number: 20081211–5055.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 23, 2008.

Docket Numbers: RP09–151–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Third Revised Sheet 500C to its FERC Gas Tariff, Second Revised Volume 1 effective 11/27/08.

Filed Date: 12/11/2008.

Accession Number: 20081212–0129.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 23, 2008.

Docket Numbers: RP09–152–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Fourth Revised Sheet 500C to its FERC Gas Tariff, Second Revised Volume 1 effective 11/27/08.

Filed Date: 12/11/2008.

Accession Number: 20081212–0128.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 23, 2008.

Docket Numbers: RP09–153–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company submits First Revised Sheet 206A *et al.* to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 1/5/09.

Filed Date: 12/05/2008.

Accession Number: 20081208–0577.

Comment Date: 5 p.m. Eastern Time on Friday, December 19, 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 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–30509 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–56–007; Docket No. EL07–58–007]

Allegheny Electric Cooperative, Inc., et al. v. PJM Interconnection, L.L.C.; Organization of PJM States, et al. v. PJM Interconnection, L.L.C.; Notice of Filing

December 16, 2008.

Take notice that on September 4, 2008, Public Utilities Commission of Ohio filed a State Certification in which they make certain representations and warranties regarding its legal obligations, pursuant to section 18.17.4 of the Operating Agreement of the PJM Interconnection, L.L.C.

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 December 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30397 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–138–006; EL03–181–007]

Aquila, Inc.; Notice of Filing

December 16, 2008.

Take notice that on December 12, 2008, Aquila, Inc. filed an amendment to the Agreement and Stipulation jointly filed with the Commission Trial Staff on August 29, 2003 in compliance with the Commission's November 14, 2008, Order Denying Rehearing. *Aquila Merchant Services, Inc.*, 125 FERC ¶ 61,175 (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. 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 January 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30396 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–1256–029]

Loup River Public Power District (Loup Power District); Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Identification of Issues and Associated Study Requests

December 16, 2008.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 1256–029.

c. *Dated Filed:* October 16, 2008.

d. *Submitted By:* Loup River Public Power District (Loup Power District).

e. *Name of Project:* Loup River Hydroelectric Project.

f. *Location:* On the Loup River in Nance and Platte Counties, Nebraska.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Applicant Contact:* Neal Suess, President/CEO, Loup Power District, P.O. Box 988, 2404 15th Street, Columbus, Nebraska 68602; (866) 869–2087.

i. *FERC Contact:* Kim Nguyen (202) 502–6015 or via e-mail at *kim.nguyen@ferc.gov*.

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Loup Power District as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. Loup Power District filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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, for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting study requests. All study requests should be sent to the address above in paragraph h. In addition, all study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Loup River Hydroelectric Project) and number (P–1256–029), and bear the heading ''Study Requests,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests and any agency requesting cooperating status must do so by February 10, 2009.

Study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30398 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RR08–6–002; RR07–14–003]

North American Electric Reliability Corporation; Notice of Filing

December 16, 2008.

Take notice that on December 15, 2008, the North American Electric Reliability Corporation submitted a compliance filing in response to the Commission's October 16, 2008 Order concerning the 2009 Business Plans and Budgets. *North American Electric Reliability Corporation*, 125 FERC ¶ 61,056 (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.

Comment Date: 5 p.m. Eastern Time on January 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30391 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12642–001]

Wilkesboro Hydroelectric Company, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

December 16, 2008.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12642–001.

c. *Date Filed:* October 1, 2008.

d. *Submitted by:* Wilkesboro Hydroelectric Company, LLC (Wilkesboro).

e. *Name of Project:* W. Kerr Scott Hydropower Project.

f. *Location:* At the U.S. Army Corps of Engineers' W. Kerr Scott Dam on the Yadkin River near Wilkesboro, Wilkes County, North Carolina.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's Regulations

h. *Potential Applicant Contact:* Kevin Edwards, Manager, Wilkesboro Hydroelectric Company, LLC, P.O. Box 143, Mayodan, NC 27027; (336) 589–6138; e-mail—*ph@piedmonthydropower.com*.

i. *FERC Contact:* Allyson Conner (202) 502–6082 or by e-mail at *allyson.conner@ferc.gov*.

j. Wilkesboro filed its request to use the Traditional Licensing Process on October 1, 2008. Wilkesboro filed public notice of its request on October 23, 2008. In a letter dated December 16, 2008, the Director of the Office of Energy Projects approved Wilkesboro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the North Carolina State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Wilkesboro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's Regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 paragraph h.

n. Register online at *http://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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30400 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–18–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Dominion Hub III Project and Request for Comments on Environmental Issues

December 16, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Dominion Hub III Project (Dominion Hub III) involving construction and operation of facilities by Dominion Transmission, Inc. (DTI) in Green County, Pennsylvania, and Wetzel County, West Virginia.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on January 15, 2009.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a DTI representative about survey permission and/or the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the natural gas company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

DTI propose to create the capability for an additional 224,000 dekatherms (dt) per day of natural gas to enter the DTI pipeline system supplies to meet the growing gas demands of the Northeast and Mid-Atlantic markets. The completion of the project would provide DTI customers access to natural gas from the Rocky Mountain area. DTI is proposing to:

- Install about 9.78 miles of 24-inch diameter natural gas loop [2] pipeline (TL–492 Ext. 4, in Greene County, Pennsylvania). The pipeline begins near Bluff, Pennsylvania, and extends northeast through Wayne, Center, and Franklin Townships to Cargo Avenue, south of Waynesburg, Pennsylvania. TL–492 Ext. 4 is an extension of TL–492 which is currently under construction;
- install a 24-inch diameter valve assembly with blow-offs at each end of TL–492 Ext. 4 in Greene County, Pennsylvania;
- install a 24-inch diameter pig receiver at the northeast end of TL–492 Ext. 4, near Cargo Avenue in Greene County, Pennsylvania; and
- rewheel the turbine at the Mockingbird Hill Compressor Station in Wetzel County, West Virginia.

The general location of the project facilities is shown in Appendix 1.[3]

[1] On October 31, 2008, DTI filed its application with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. The Commission issued its Notice of Application on November 13, 2008.

[2] A pipeline loop is constructed parallel to an existing pipeline to increase capacity.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

If approved, DTI proposes to commence construction of the proposed facilities in April 2010.

Land Requirements for Construction

Construction of the pipeline would temporarily impact about 101.4 acres and 22 additional temporary work spaces. Permanent land requirements for construction of the proposed pipeline would impact about 57.0 acres. Approximately 0.28 acres of land would be utilized at the kick-off, and approximately 0.28 acres of land would be utilized at the end point for permanent above-ground valve assemblies and pig receiver. All construction activities associated with rewheeling the turbine would be located within the compressor station building. Therefore, no ground disturbance would be associated with rewheeling.

DTI is proposing to utilize two existing access roads and existing right-of-way for the proposed project. A total of 1.1 acres would be temporarily disturbed by the utilization of the access roads during construction activities since the roads might require upgrades including grading and the addition of gravel.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [4] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by DTI. This preliminary list of issues may be changed based on your comments and our analysis.

- A potentially significant archeological site may be affected.
- Potential impacts may occur to Indiana Bat Habitat.
- Potential impacts on air quality and potential noise emissions may occur.

Public Participation

You can make a difference by providing us with your specific comments or concerns about Dominion Hub III. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before January 15, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP09–18–000 with your submission. The docket number can be found on the front of this notice. 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 2, PJ11.2.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the

[4] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC 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. 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 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 which 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. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30393 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–32–000]

SWEPI LP, EnCana Oil & Gas (USA) Inc.; Notice of Petition for Declaratory Order

December 16, 2008.

Take notice that on December 10, 2008, SWEPI LP and EnCana Oil & Gas (USA) Inc. (jointly ''Petitioners'') under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2007), filed a petition for a declaratory order requesting that the Commission disclaim jurisdiction over the pipeline construction project, referred to as the Magnolia Project located in Louisiana, because such facilities perform a gathering function exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act.

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 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 December 24, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30395 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–75–004 and CP05–361–002]

Freeport LNG Development, L.P.; Notice of Petition to Amend

December 16, 2008. Take notice that on December 9, 2008, Freeport LNG Development, L.P. (Freeport LNG), 333 Clay Street, Suite 5050, Houston, Texas 77002, filed in Docket Nos. CP03–75–004 and CP05–361–002, a petition to amend the orders issued June 18, 2004 in Docket No. CP03–75–000 and September 26, 2006 in Docket No. CP05–361–001, pursuant to section 3 of the Natural Gas Act for authorization to construct and operate a boil-off gas liquefaction system and a liquefied natural gas truck delivery system at its Quintana Island terminal, located in Brazoria County, Texas.

This filing 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 (866) 208–3676; or for TTY, contact (202) 502–8659.

Any initial questions regarding Freeport LNG's proposal in this petition should be directed to William Henry, Freeport LNG Development, L.P., 333 Clay Street, Suite 5050, Houston, Texas 77002, (713) 980–2888 or Lisa M. Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, New York 10103, (212) 318–3009, *ltonery@fulbright.com*.

The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. If necessary, a revised Notice of Schedule for Environmental Review will be issued within 90 days of this Notice.

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 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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission 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 the original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: January 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30403 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12569–001]

Public Utility District No. 1 of Okanogan County; Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

December 16, 2008.

a. *Type of Filings:* New Major License.

b. *Project No.:* 12569–001.

c. *Date Filed:* August 22, 2008.

d. *Submitted By:* Public Utility District No. 1 of Okanogan County (Okanogan PUD).

e. *Name of Project:* Enloe Hydroelectric Project.

f. *Location:* On the Similkameen River, near the Town of Oroville, Okanogan County, Washington. The project occupies about 35.47 acres of federal lands under the jurisdiction of the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Applicant Contact:* John R. Grubich, General Manager, Public Utility District No. 1 of Okanogan County, P.O. Box 912, Okanogan, Washington 98840, (509) 422–8485.

i. *FERC Contact:* Dianne Rodman, 888 First Street, NE., Room 63–11, Washington, DC 20426, (202) 502–6105, *dianne.rodman@ferc.gov*.

Kim A. Nguyen, 888 First Street, NE., Room 6B–02, Washington, DC 20426, (202) 502–6077. *kim.nguyen@ferc.gov*.

j. *Deadline for filing scoping comments:* February 16, 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 and Procedure require all interveners 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 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.

Scoping 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 the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The Enloe Project would consist of: (1) An existing 315-foot-long and 54-foot-high concrete gravity arch dam with an integrated 276-foot-long central overflow spillway with 5-foot-high flashboards; (2) an existing 76.6-acre reservoir (narrow channel of the Similkameen River) with a storage capacity of 775 acre-feet at 1049.3 feet mean sea level; (3) a 190-foot-long intake canal on the east abutment of the dam diverting flows into the penstock intake structure; (4) a 35-foot-long by 30-foot-wide penstock intake structure; (5) two above-ground 8.5-foot-diameter steel penstocks carrying flows from the intake to the powerhouse; (6) a powerhouse containing two vertical Kaplan turbine/generator units with a total installed capacity of 9.0 megawatts; (7) a 180-foot-long tailrace channel that would convey flows from the powerhouse to the Similkameen River, downstream of the Similkameen Falls; (8) a new substation adjacent to the powerhouse; (9) a new 100-foot-long, 13.2-kilovolt primary transmission line from the substation connecting to an existing distribution line; (10) new and upgraded access roads, and (11) appurtenant facilities.

m. Copies of the License Application (LA) and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on SD1. All comments on SD1 should be sent to the address above in paragraph j. In addition, all comments on the LA and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential applications (original and eight copies) must be filed with the

Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission relevant to the Enloe Hydroelectric Project must include on the first page, the project name and number (P–12569–001), and bear the heading, as appropriate, ''Comments on Scoping Document 1.''

Comments on SD1 and other permissible forms of communications with the Commission 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.

o. At this time, Commission staff intends to prepare a single Environmental Assessment for the project, in accordance with the National Environmental Policy Act.

p. *Scoping Meetings*

We will hold two scoping meetings for each project at the times and places noted below. The daytime meetings will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meetings are primarily for receiving input from the public. We invite all interested individuals, organizations, Indian tribes, and agencies to attend one or all of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

When: Wednesday, January 14, 2009, 7–9 p.m.
Where: The Depot, 1210 Ironwood Street, Oroville, WA 98844.

Daytime Scoping Meeting

When: Thursday, January 15, 2009, 2–4 p.m.
Where: The Depot, 1210 Ironwood Street, Oroville, WA 98844.

SD1, which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph m. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visits

Okanogan PUD and Commission staff will visit the site of the proposed project on Thursday, January 15, 2009, from 9 a.m. to 12 noon. To attend the site visit, participants should meet at 9 a.m. at The Depot, 1210 Ironwood Street, Oroville, Washington. Access to the site will require 4-wheel drive vehicles only. Anyone needing a ride to the site or with questions about the site visit should contact Nick Christoph, (509) 422–8472, E-mail: *NickC@okpud.org*; or Dan Boettger, (509) 422–8425, *Dan_B@okpud.org*, at the Okanogan PUD.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the LA the scoping meetings. Directions on how to obtain a copy of the LA and SD1 are included in item m of this notice.

Scoping Meeting Procedures

The scoping meetings will be recorded by a stenographer and will become part of the formal Commission records for the projects.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30399 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–42–000]

Hardy Storage Company, LLC; Notice of Technical Conference

December 16, 2008.

Take notice that the Commission will convene a technical conference in the above-referenced proceeding on Wednesday, January 14, 2009, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's November 25, 2008 Order [1] directed that a technical conference be held to address the issues raised by Hardy Storage Company, LLC's (Hardy) October 31, 2008 tariff filing regarding the proposed increase in Hardy's annual Retainage Adjustment Mechanism to recover company use gas and lost and unaccounted-for gas. Commission Staff and parties will have the opportunity to discuss all of the issues raised by Hardy's filing including, but not limited to, technical, engineering and operational issues, and issues related to the company's proposal to increase its total retainage percentage.

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 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Sebrina M. Greene at (202) 502–6309 or e-mail *sebrina.greene@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30402 Filed 12–22–08; 8:45 am]

BILLING CODE 6717–01–P

[1] *Hardy Storage Co. L.L.C.*, 125 FERC ¶ 61,226 (2008).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0696; FRL–8756–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters; EPA ICR No. 1292.08, OMB Control No. 2060–0135

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 January 22, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2008–0696, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 2822T, 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: Anne Wick, Air Enforcement Division (2242A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2063; fax number: (202) 564–0069; e-mail address: *wick.anne@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 September 30, 2008 (73 FR 56817), 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–OECA–2008–0696, which is available for online viewing at *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 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket is 202–566–9744.

Use EPA's electronic docket and comment system at *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 *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 *www.regulations.gov.*

Title: Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (Renewal).

ICR numbers: EPA ICR No. 1292.08, OMB Control No. 2060–0135.

ICR Status: This ICR is scheduled to expire on December 31, 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 aftermarket catalytic converter policy (AMCC Policy) (51 FR 28114–28119, 28113 (Aug. 5, 1986); 52 FR 42144 (Nov. 3, 1987)) allows aftermarket automobile catalytic converter (AMCC) manufacturers and reconditioners to compete with the automobile manufacturers for the AMCC replacement market. Without this policy, it would be illegal, under section 203 of the Clean Air Act, 42 U.S.C. 7522, to sell or install AMCCs that do not conform exactly to the automobile manufacturers' original equipment (OE) versions of these parts. The AMCC Policy makes it possible for automobile repair shops, which are often small businesses, to take on a significant share of the AMCC replacement market. In doing so, consumers are able to purchase AMCCs at a much lower price than they would pay for an OE catalytic converter. This helps to ensure that vehicles will not create excessive air pollution because motorists are more likely to replace damaged catalytic converters if they can be obtained at a cost that is significantly less than OE catalytic converters (cost savings resulting from the AMCC Policy are estimated to be about $716 million in 2007 dollars).

New AMCC manufacturers are required to report, on a one-time basis for each type or line of converter manufactured, the supplier identities, physical specifications of each AMCC line produced, and information regarding pre-production testing of the AMCCs that show they meet the AMCC Policy emission reduction standards for certain specified vehicle applications (a single AMCC line can be used on a large number of vehicle applications). The current AMCC Policy requires new AMCC manufacturers to retain warranty and sales records.

Reconditioners (sellers of used catalytic converters) must report, on a one-time basis, the identity of the company, a description of the test bench used for testing used catalytic converters, and the intended vehicle application(s) for each catalytic converter type. All used catalytic converters must be tested individually to ensure they are still functional. The current AMCC Policy also requires reconditioners to retain sales and customer records.

Installers of AMCCs have no reporting requirements. They must fill out a written warranty and give it to the retail customer, include a brief statement with each invoice stating the need for replacing the original converter, and tag each removed converter with a reference to the invoice for repair, retain the replaced (tagged) catalytic converters for 15 days, and retain the invoices for 6 months.

The reporting and recordkeeping requirements for manufacturers of new AMCCs and sellers of reconditioned

catalytic converters help ensure that proper AMCCs are manufactured/tested and distributed to installers and help ensure proper retail level installation of AMCCs. The installer requirements enable EPA to monitor whether correct AMCCs are installed at the retail level and whether AMCCs are used only in appropriate circumstances (*i.e.*, where the OE catalytic converter is damaged or missing, or the vehicle is no longer covered under its emissions warranty).

The information required to be maintained or reported is not otherwise available and is not covered under any other information request since it is unique to the AMCC Policy. The collection of information is necessary for the proper performance of the functions of the Agency, particularly its enforcement function. The information collected has practical utility. For example, neither EPA nor a reconditioner can determine whether a used converter is effective by conducting a visual inspection of the converter. As another example, the efficacy of new aftermarket converters for particular vehicle applications cannot be determined without prototype testing and information on specifications.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 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: Manufacturers, Reconditioners, and Installers of Aftermarket Catalytic Converters.

Estimated Number of Respondents: 30,014.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 220,928.

Estimated Total Annual Cost: $7,457,469, includes $740,786 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 8,827 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to increased volume of cars and the corresponding increase in the number of installations of aftermarket catalysts. Thus, the increase reflects an adjustment in ICR estimates and not a change to program requirements.

Dated: December 17, 2008.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E8–30543 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0312; FRL–8756–3]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; Servicing of Motor Vehicle Air Conditioners (Renewal), EPA ICR Number 1617.06, OMB Control Number 2060–0247

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: Comments must be submitted on or before January 22, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2008–0312, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mailcode 2822T, 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: Karen Thundiyil, Stratospheric Protection Division, Office of Atmospheric Programs, (MC 6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9464; fax number: (202) 343–2163; e-mail address: *thundiyil.karen@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 June 9, 2008 (73 FR 32570), 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–OAR–2008–0312, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air 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 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

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: Servicing of Motor Vehicle Air Conditioners (Renewal).

ICR numbers: EPA ICR No. 1617.06, OMB Control No. 2060–0247.

ICR Status: This ICR is scheduled to expire on December 31, 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: Section 609 of the Clean Air Act Amendments of 1990 (Act) provides general guidelines for motor vehicle air conditioning (MVAC) refrigerant handling and MVAC servicing. It states that ''no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recovery and/or recovery and recycling equipment (hereafter referred to as ''refrigerant handling equipment'') and no such person may perform such service unless such person has been properly trained and certified.''

In 1992, EPA developed regulations under section 609 that were published in 57 FR 31242, and codified at 40 CFR part 82, Subpart B (§ 82.30 et seq.). The information required to be collected under the Section 609 regulations is currently approved for use through December 31, 2008. This supporting statement is submitted to justify an extension of the approval of use of this information. Descriptions of the recordkeeping and reporting requirements mandated by section 609 and delineated in 40 CFR part 82, subpart B are summarized below in this section. *Approved Refrigerant Handling Equipment:* In accordance with Section 609(b)(2)(A), 40 CFR 82.36 requires that refrigerant handling equipment be certified by EPA or independent standards testing organization. Certification standards are particular to the type of equipment and the refrigerant to be recovered, and must be consistent with the Society of Automotive Engineers (SAE) standards for MVAC equipment.

Approved independent standards testing organizations: Section 609(b)(2)(A) of the Act requires independent laboratory testing of refrigerant handling equipment to be certified by EPA. The Stratospheric Protection Division (SPD) requires independent laboratories to submit an application that documents: the organization's capacity to accurately test equipment compliance with applicable standards consistent with the SAE standards for handling refrigerant, an absence of conflict of interest or financial benefit based on test outcomes, and an agreement to allow EPA access to verify application information. Once an independent laboratory has been approved by EPA, the application is kept on file in the SPD. Two laboratories—Underwriters Laboratories Inc. and ETL Testing Laboratories—are currently approved to test refrigerant handling equipment. EPA does not anticipate that any organizations will apply to EPA in the future to become approved independent standards testing organizations. Therefore, annual hours and costs related to information submitted by these organizations have been eliminated.

Technician training and certification: According to Section 609(b)(4) of the Act, automotive technicians are required to be trained and certified in the proper use of approved refrigerant handling equipment. Programs that perform technician training and certification activities must apply to the SPD for approval by submitting verification that its program meets EPA standards. The information requested is used by the SPD to guarantee a degree of uniformity in the testing programs for motor vehicle service technicians.

Due to rapid developments in technology, the Agency requires that each approved technician certification program conducts periodic reviews and updates of test material, submitting a written summary of the review and program changes to EPA every two years. After the test has been approved by EPA, a hard copy remains on file with SPD. Currently, 24 testing programs are approved by EPA to train technicians in the proper use of refrigerant handling equipment. Six of these programs are designed specifically for individual company's own employees.

Certification, reporting and recordkeeping: To facilitate enforcement under Section 609, EPA has developed several recordkeeping requirements. All required records must be retained on-site for a minimum of three years, unless otherwise indicated.

Section 609(c) of the Act states that by January 1, 1992, no person may service any motor vehicle air conditioner without being properly trained and certified, nor without using properly approved refrigerant handling equipment. To this end, 40 CFR 82.42(a) states that by January 1, 1993, each service provider must have submitted to EPA on a one-time basis a statement signed by the owner of the equipment or another responsible officer that provides the name of the equipment purchaser, the address of the service establishment where the equipment will be located, the manufacturer name, equipment model number, date of manufacture, and equipment serial number. The statement must also indicate that the equipment will be properly used in servicing motor vehicle air conditioners and that each individual authorized by the purchaser to perform service is properly trained and certified. The information is used by the SPD to verify compliance with Section 609 of the Act.

Any person who owns approved refrigerant handling equipment must maintain records of the name and address of any facility to which refrigerant is sent. Additionally, any person who owns approved refrigerant handling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified technicians.

Finally, any person who sells or distributes a class I or class II refrigerant that is in a container of less than 20 pounds must verify that the purchaser is a properly trained and certified technician, unless the purchase of small containers is for resale only. In that case, the seller must obtain a written statement from the purchaser that the containers are for resale only, and must indicate the purchaser's name and business address. When a certified technician purchases small containers of refrigerant for servicing motor vehicles, the seller must have a reasonable basis for believing the accuracy of the information presented by the purchaser. In all cases, the seller must display a sign where sales occur that states the certification requirements for purchasers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average less than one hour 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Affected Entities: Entities potentially affected by this action are new and used motor vehicle dealers, gasoline service stations, general automotive repair shops, and automotive repair shops not elsewhere classified.

Estimated Number of Potential Respondents: 64,382.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 6,700 hours.

Estimated Total Annual Costs: $262,980.47. This includes an estimated labor cost of $262,980.47 and an estimated cost of $0 for capital or O&M costs.

Changes in the Estimates: There is an increase of 3,835 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The primary reason for this increase is the increase in the number of technicians certified annually. EPA has revised its estimate based on data collected in June 2007 from 11 out of 24 technician certification centers. It is estimated that 55,000 new MVAC technicians are certified each year, rather than 14,000 as assumed in the last ICR. A major part of this ICR burden is based on how many technicians are certified annually.

Dated: December 17, 2008.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E8–30547 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8756–6]

Notice of Availability of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Small Municipal Separate Storm Sewer Systems (MS4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Draft NPDES General Permits.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency—Region 1 (EPA), is issuing this Notice of Availability of Draft NPDES general permits for discharges from small MS4s to certain waters of the states of New Hampshire and Vermont, and to certain waters on Indian Country lands in the states of Connecticut and Rhode Island. These draft NPDES general permits establish Notice of Intent (NOI) requirements, prohibitions, and management practices for stormwater discharges from small MS4s. EPA is proposing to issue six general permits. Throughout this document the terms ''this permit'' or ''the permit'' will refer to all six general permits.

Owners and/or operators of small MS4s that discharge stormwater will be required to submit a NOI to EPA—Region 1 to be covered by the general permit and will receive a written notification from EPA of permit coverage and authorization to discharge under the general permit. The eligibility requirements are discussed in the draft permit. The small MS4 must meet the eligibility requirements of the permit prior to submission of the NOI.

The draft general permits, appendices, and fact sheet are available at *http://www.epa.gov/region1/npdes/stormwater/MS4_2008_NH.html.*

DATES: The public comment period is from the December 23, 2008 to January 30, 2009. Interested persons may submit comments on the draft general permit as part of the administrative record to the EPA—Region 1, at the address given below, no later than midnight January 30, 2009. The general permit shall be effective on the date specified in the **Federal Register** publication of the Notice of Availability of the final general permit. The final general permit will expire five years from the effective date.

ADDRESS: Submit comments by one of the following methods:

- *E-mail: Murphy.thelma @epa.gov.*
- *Mail:* Thelma Murphy, USEPA—Office of Ecosystem Protection, One Congress Street—Suite 1100 (CIP), Boston, MA 02114.

No facsimiles (faxes) will be accepted.

The draft permit is based on an administrative record available for public review at EPA—Region 1, Office of Ecosystem Protection (CIP), One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. The following **SUPPLEMENTARY INFORMATION** section sets forth principal facts and the significant factual, legal and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

Public Meeting Information: EPA—Region 1 will hold a public meeting to provide information about the draft general permit and its requirements. The public meeting will include a brief presentation on the draft general permit and a brief question and answer session. Written, but not oral, comments for the official draft permit record will be accepted at the public meeting. The public meeting will be at the following location: Wednesday—January 28, 2009, Portsmouth City Council Chambers, Portsmouth City Hall, One Junkins Avenue, Portsmouth, NH 03801, 9 a.m.–10 a.m.

Public Hearing Information: Following the public meeting, a public hearing will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official draft permit record. The public hearing will be at the following location: Wednesday—January 28, 2009, Portsmouth City Council Chambers, Portsmouth City Hall, One Junkins Avenue, Portsmouth, NH 03801, 10:10 a.m.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Thelma Murphy, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100 (CIP), Boston, MA 02114–2023; telephone: 617–918–1615; e-mail: *murphy.thelma@epa.gov*

SUPPLEMENTARY INFORMATION:

I. Background of Proposed Permit

As stated previously, the Director of the Office of Ecosystem Protection, EPA—Region 1, is proposing to reissue six NPDES general permits for the discharge of stormwater from small MS4s to waters within the states of New Hampshire and Vermont (federal facilities only) and Indian lands within the states of Connecticut and Rhode Island. The six permits are:

NHR041000—State of New Hampshire—Traditional.

NHR042000—State of New Hampshire—Non-Traditional.

NHR043000—State of New Hampshire—Transportation.

CTR04000I—State of Connecticut—Indian Lands.

RIR04000I—State of Rhode Island—Indian Lands.

VTR04000F—State of Vermont—Federal Facilities.

The conditions in the draft permit are established pursuant to Clean Water Act (CWA) Section 402(p)(3)(iii) to ensure that pollutant discharges from small MS4s are reduced to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate

water quality requirements of the CWA. The regulations at 40 CFR 122.26(b)(16) define a small municipal separate storm sewer system as ''* * * all separate storm sewers that are:

(1) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of United States.

(2) Not defined as 'large' or 'medium' municipal separate storm sewer systems pursuant to paragraphs (b)(4) or (b)(7) or designated under paragraph (a)(1)(v) of this section [40 CFR 122.26].

(3) This term includes systems similar to separate storm sewer systems in municipalities such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.''

For example, an armory located in an urbanized area would not be considered a regulated small MS4.

The draft general permit sets forth the requirements for the small MS4 to ''reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods * * *'' (See section 402(p)(3)(B)(iii) of the CWA). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve. EPA believes implementation of best management practices (BMPs) designed to control storm water runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the technology standard of MEP. Pursuant to 40 CFR 122.44(k), the draft permit contains BMPs, including development and implementation of a comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of CWA also authorizes EPA to include in an MS4 permit ''such other provisions as [EPA] determines appropriate for control of * * * pollutants.'' EPA believes that this provision forms a basis for imposing water quality-based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. *See Defenders of Wildlife* v. *Browner.* 191 F.3d 1159 (9th Cir. 1999): *see also* EPA's preamble to the Phase II regulations, 64 FR 68722, 68753, 68788 (Dec 8, 1999). Accordingly, the draft general permits contains the water quality-based effluent limitations, expressed in terms of BMPs, which EPA has determined are necessary and appropriate under the CWA.

EPA—Region 1 issued a final general permit to address stormwater discharges from small MS4s on May 1, 2003. The 2003 general permit required small MS4s to develop and implement a SWMP designed to control pollutants to the maximum extent practicable and protect water quality. This draft general permit builds on the requirements of the previous general permit.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. EPA believes that compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the draft general permits reflect the iterative process of MEP. Accordingly, the draft general permit contains more specific tasks and details than the 2003 general permit.

II. Summary of Permit Conditions

Obtaining Authorization

In order for a small MS4 to obtain authorization to discharge, it must submit a complete and accurate NOI containing the information in Appendix E of the draft general permit. The NOI must be submitted within 90 days of the effective date of the final permit. The effective date of the final permit will be specified in the **Federal Register** publication of the Notice of Availability of the final permit. A small MS4 must meet the eligibility requirements of the general permit found in Part 1.2 and Part 1.9 prior to submission of its NOI. A small MS4 will be authorized to discharge under the permit upon the effective date of coverage. The effective date of coverage is upon receipt of written notice by EPA following a public notice of the NOI.

The draft general permit provides interim coverage for permittees covered by the previous permit and whose coverage was effective upon the expiration of that permit (May 1, 2008). For those discharges covered by the pervious permit, authorization under the previous permit is continued automatically on an interim basis for up to 180 days from the effective date of the final permit. Interim coverage will terminate earlier than the 180 days when a complete and accurate NOI has been submitted by the small MS4 and coverage is either granted or denied. If a permittee was covered under the previous permit and submitted a complete and accurate NOI in a timely manner, and notification of authorization under the final permit has not occurred within 180 days of the effective date of the final permit, the permittee's authorization under the previous permit can be continued beyond 180 days on an interim basis. Interim coverage will terminate after authorization under this general permit, an alternative permit, or denial of permit coverage.

EPA—Region 1 will provide an opportunity for the public to comment on each NOI that is submitted. Following the public notice, EPA—Region 1 will authorize the discharge, request additional information, or require the small MS4 to apply for an alternative permit or individual permit.

Water Quality Based Effluent Limitations

The draft general permit includes provisions to ensure that discharges do not cause or contribute to exceedances of water quality standards. The provisions in Part 2.1 of the general permit constitute the water quality based effluent limitations of the permit. The purpose of this part of the permit is to establish the broad inclusion of water-quality based effluent limitations for those discharges requiring additional controls in order to achieve water quality standards and other water quality-related objectives, consistent with 40 CFR 122.44(d). The water quality-based effluent limitations supplement the permit's non-numeric effluent limitations. The non-numeric effluent limitation requirements of this permit are expressed in the form of control measures and BMPs (see Part 2.3 of the general permit).

Non-Numeric Effluent Limitations

If EPA has not promulgated effluent limitations for a category of discharges, or if an operator is discharging a pollutant not covered by an effluent guideline, permit limitations may be based on the best professional judgment (BPJ) of the agency or permit writer. The BPJ limits in this permit are in the form of non-numeric control measures, commonly referred to as best management practices (BMPs). Non-

numeric limits are employed under limited circumstances, as described in 40 CFR 122.44(k). EPA has interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 CFR 122.44(k) provides that permits may include BMPs to control or abate the discharge of pollutants when: ''(1) [a]uthorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) [a]uthorized under section 402(p) of the CWA for the control of stormwater discharges; (3) [n]umeric effluent limitations are infeasible; or (4) [t]he practices are reasonable to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.'' The permit regulates stormwater discharges using BMPs. Due to the variability associated with stormwater, EPA believes the use of BMPs is the most appropriate method to regulate discharges of stormwater from municipal systems in accordance with the above referenced regulation.

The draft permit requires small MS4s to continue to control stormwater discharges for the municipal system in a manner designed to reduce the discharge of pollutants to the maximum extent practicable and to protect water quality. The small MS4s are required to implement a SWMP consisting of control measures. These control measures include the following: Public Education and Outreach, Public Participation, Illicit Discharge Detection and Elimination, Construction Stormwater Management, Stormwater Management in New Development and Redevelopment, and Good Housekeeping in Municipal Operations. Implementation of the SWMP involves the identification of BMPs and measurable goals for the BMPs. The draft permit identifies the objective of each control measure. The small MS4 must implement the control measures required by the general permit and document actions in the SWMP demonstrating progress towards achievement of the objective of the control measure. The permit also contains requirements for outfall monitoring associated with illicit detection and elimination, recordkeeping and reporting.

III. Other Legal Requirements

A. Environmental Impact Statement Requirements

The draft general permit does not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. sections 4321 *et seq.*, does not apply to the issuance of this general NPDES permit.

B. Section 404 Dredge and Fill Operations

This draft permit does not constitute authorization under 33 U.S.C. Section 1344 (Section 404 of the Clean Water Act) of any stream dredging or filling operations.

C. CWA 401 Water Quality Certification

Section 401(a)(1) of the CWA states that EPA may not issue a permit until a certification is granted or waived in accordance with that section of the CWA by the state in which the discharge originates or will originate. The 401 certification affirms that the conditions of the general permit will be protective of the water quality standards and satisfy other appropriate requirements of state law. The 401 certification may also include additional conditions that are more stringent than those in the draft permit that the state finds necessary to meet the requirements of appropriate laws. Regulations governing state certification are set forth in 40 CFR 124.53 and 124.55. Concurrent with the public notice of this general permit, EPA—Region 1 will request 401 water quality certifications.

Section 401(a) of the CWA states in part that in any case where a state, interstate agency or tribe has no authority to issue a water quality certification, EPA shall issue such certification. At this time, none of the tribes in Connecticut or Rhode Island have approved water quality standards or Section 401 authority for the purpose of regulating water resources within the border of Indian lands pursuant to Section 518(e) of the CWA. As provided for under Section 401(a)(1) of the CWA, EPA—Region 1 will provide certification of this permit for tribal lands.

D. Executive Order 12866

EPA has determined that this draft general permit 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.

E. Paperwork Reduction Act

The information collection requirements of this draft permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Monitoring Reports).

F. Regulatory Flexibility Act

EPA's current guidance, entitled ''Federal Guidance for EPA Rule Writers: Regulatory Flexibility Act [RFA] as Amended by the Small Business Regulatory Enforcement and Fairness Act,'' was issued in November 2006 and is available on EPA's Web site: *http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf.* After considering the guidance, EPA concludes that since this general permit affects less than 100 small entities, it does not have a significant economic impact on a substantial number of small entities. The RFA defines a ''small governmental jurisdiction'' as the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

G. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on tribal, state, and local governments and the private sector. The UMRA defines ''regulatory actions'' to include proposed or final rules with Federal mandates. The draft permit proposed today, however, is not a ''rule'' and is therefore not subject to the requirements of UMRA.

Dated: December 16, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E8–30549 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8756–4; Docket ID No. EPA–HQ–ORD–2008–0663]

An Exposure Assessment of Polybrominated Diphenyl Ethers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an extension of the public comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for the draft document titled, ''An Exposure Assessment of Polybrominated Diphenyl Ethers'' (EPA 600/R–08/086A). The public comment period was announced on December 4, 2008 (FR73, 73930).

The draft document was prepared by the National Center for Environmental Assessment within EPA's Office of

Research and Development to provide a comprehensive assessment of the exposure of Americans to polybrominated diphenyl ethers, PBDEs, a class of brominated flame retardants. The document is being distributed solely for the purpose of pre-dissemination review under applicable information quality guidelines. It does not represent and should not be construed to represent any Agency policy, viewpoint, or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period began on December 4, 2008. This notice announces the extension of the deadline for public comment from January 5, 2008, to February 2, 2008. Comments must be received on or before February 2, 2008.

ADDRESSES: The draft document entitled, ''An Exposure Assessment of Polybrominated Diphenyl Ethers,'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. Please provide your name, your mailing address, and the draft document title, ''An Exposure Assessment of Polybrominated Diphenyl Ethers'' (EPA/600/R–08/086A) to facilitate processing of your request. Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Matthew Lorber, NCEA; telephone: 703–347–8535; facsimile: 703–347–8692; or e-mail: *lorber.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The United States Environmental Protection Agency (EPA) has formed a working group comprised of individuals from several program offices including the Offices of Pesticides, Prevention, and Toxic Substances; the Office of Water; the Office of Research and Development; and the Office of Policy, Economics, and Innovation, to study production, use, alternatives, environmental fate, exposure, and health effects of polybrominated diphenyl ethers (PBDEs). This working group issued a project plan in 2006 that outlined projects in these areas. EPA reports regularly on progress in completing the activities identified in the project plan, with the most recent status report issued in March 2008. The Web site that describes this working group, including the project plan, is *http://www.epa.gov/oppt/pbde.* This draft document addresses the exposure assessment needs identified in that project plan. It provides a comprehensive assessment of the exposure of Americans to this class of persistent organic pollutants. Individual chapters in this document address: The production, use, and lifecycle of PBDEs; environmental fate; environmental and exposure media levels; and human exposure.

II. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2008–0663, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0663. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 16, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–30517 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8755–8]

Good Neighbor Environmental Board; Notification of Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory committee teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on January 8, 2009 from 1 p.m. to 3 p.m. Eastern Standard Time. The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Mark Joyce at the number listed below.

Background: GNEB is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to discuss and approve the Good Neighbor Environmental Board's Twelfth Report: Innovative Approaches to Addressing Environmental Problems along the U.S./Mexico Border.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or e-mail him at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: December 17, 2008.

Mark Joyce,

Designated Federal Officer.

[FR Doc. E8–30535 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8756–1]

Notice of Availability of Preliminary Residual Designation of Certain Stormwater Discharges in the State of Massachusetts Under the National Pollutant Discharge Elimination System of the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice and Request for Public Comment.

SUMMARY: The Regional Administrator of the Environmental Protection Agency's (EPA) New England Regional Office is providing notice of the availability of a preliminary determination that certain stormwater discharges in the Charles River watershed located in Bellingham, Milford, and Franklin, Massachusetts will be required to obtain permit coverage under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act. EPA is seeking public comment on the nature and scope of this preliminary residual designation. The period for comment on this preliminary residual designation will remain open until the close of the public comment period on any NPDES general or individual permit related to this preliminary residual designation. However, EPA strongly encourages interested parties to submit their comments within 45 days of the commencement of the comment period, after which EPA intends to review this preliminary residual designation and to decide whether to make any changes to it. It is EPA's intention to make a final residual designation following the close of the comment period on any associated NPDES permit. Copies of the preliminary residual designation are available for inspection online and in hardcopy as described elsewhere in this document.

DATES: Comments must be submitted on or before February 6, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OW–2008–0857 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: beck.erik@epa.gov.*
- *Mail and hand delivery:* U.S. Environmental Protection Agency, New England Region, One Congress Street, Suite 1100, Mailcode CWN, Boston, MA 02114–2023. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R01–OW–2008–0857. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, New England Region, One Congress Street, Suite 1100, Boston, Massachusetts. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. To inspect the hard copy materials, please schedule an appointment during normal

business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Erik Beck, EPA New England Region, One Congress Street, Suite 1100, Mailcode CWN, (617) 918–1606, *beck.erik@epa.gov.*

SUPPLEMENTARY INFORMATION:

The Regional Administrator of EPA's New England Regional Office is providing notice of availability of a preliminary determination that certain stormwater discharges in the Charles River watershed located in Bellingham, Milford, and Franklin, Massachusetts will be required to obtain NPDES permits. Under Clean Water Act (CWA) Section 402(p) (33 U.S.C. 1342(p)), Congress required the EPA to establish permitting requirements for certain stormwater discharges. In addition, CWA Sections 402(p)(2)(E) and 402(p)(6) and implementing regulations at 40 CFR 122.26 (a)(9)(i)(C) and (D) provide that the EPA Regional Administrator may designate additional stormwater discharges as requiring NPDES permits where he determines that:

1. Stormwater controls are needed for the discharge based on wasteload allocations that are part of ''total maximum daily loads'' that address the pollutant of concern (in this case phosphorus), or

2. The discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

The EPA Regional Administrator for the New England Region has made a preliminary determination pursuant to Section 402(p) of the Clean Water Act and 40 CFR 122.26 (9)(i)(C) and (D) that stormwater controls and NPDES permits are needed for discharges to waters of the United States from impervious surfaces equal to or greater than two acres, with certain exceptions, in the Charles River watershed located in Bellingham, Milford, and Franklin, Massachusetts. Details on these exceptions, as well as other details of the preliminary determination, are available in the preliminary residual designation document. This document and ancillary materials may be viewed on the EPA New England Regional Office's Web page pertaining to excessive nutrients in the Charles River, *http://www.epa.gov/region1/charles/tmdl.html* and at *http://www.regulations.gov.*

Dated: December 12, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E8–30540 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 15, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). 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; (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; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees. An agency may not conduct or sponsor a collection of information unless it displays a currently 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 that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before February 23, 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 contact listed below as soon as possible.

ADDRESSES: Submit your comments by e-mail to *PRA@fcc.gov.* Include in the email 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 email 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 or contact Judith Boley Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None.

Title: Section 10.350, Testing Requirements for the Commercial Mobile Alert System (CMAS).

Form Number: N/A

Type of Review: New collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 146 respondents; 1,752 responses.

Estimated Time per Response: 0.000694 hours (2.5 seconds).

Frequency of Response: Monthly and on occasion reporting requirements and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain a benefit. Statutory authority for this information collection is contained in Warning, Alert, and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006, Public Law No. 109–347, 120 Stat. 1884, (2006).

Total Annual Burden: 2 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: As required by the Warning Alert and Response Network (WARN) Act, the Federal Communications Commission had adopted rules to establish a Commercial Mobile Alert System (CMAS), under which Commercial Mobile Service (CMS) providers may elect to transmit emergency alerts to the public. In order to ensure that the CMAS operates efficiently and effectively, the Commission will require participating CMS providers to participate in required monthly tests (RMT) of the CMAS that are initiated by the Federal Alert Gateway Administrator. Participating CMS providers must distribute these RMT messages to their CMAS coverage area within 24 hours of receipt by the CMS Provider Gateway unless pre-empted by actual alert traffic or inability to do so due to an unforeseen condition. A participating CMS provider shall indicate such an unforeseen condition

by a response code to the Federal Alert Gateway. A participating CMS provider must retain an automated log of the RMT messages received by the CMS Provider Gateway from the Federal Alert Gateway. In addition to the RMTs, participating CMS providers must participate in periodic testing of the interface between the Federal Alert Gateway and its CMS Provider Gateway that is not intended to test the CMS provider's infrastructure or mobile devices, but rather is required to ensure the availability/viability of both gateway functions. Each CMS Provider Gateway shall send an acknowledgement to the Federal Alert Gateway upon receipt of such an interface test message. The Commission will use this information to ensure the continued functioning of the CMAS, thus complying with the WARN Act and the Commission's obligation to promote the safety of life and property through the use of wire and radio communication.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–30421 Filed 12–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 17, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments February 23, 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an email to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1015.

Title: Section 15.525, Coordination Requirements—Ultra Wideband Transmission Systems Operating Under Part 15.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion and one time reporting requirements and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in sections 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended.

Total Annual Burden: 50 hours.

Annual Cost Burden: $2,500.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. All information is available for public inspection.

Needs and Uses: This collection will be submitted as an extension (no change in the reporting requirements and/or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Section 15.525 and Part 15 requires operators of the Ultra Wideband (UWB) imaging systems to coordinate with other Federal agencies via the FCC to obtain approval before the UWB equipment may be used. Initial operation in a particular area may not commence until the information has been sent to the Commission and no prior approval is required. The information will be used to coordinate the operation of the Ultra Wideband transmission systems in order to avoid interference with sensitive U.S. government radio systems. The UWB operators will be required to provide the name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA) under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications. Since initial operation in a particular area does not require approval from the FCC to operate the equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–30542 Filed 12–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

December 17, 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 January 22, 2009. 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: 3060–1042.

Title: Request for Technical Support—Help Request Form.

Form No.: N/A—electronic only.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 42,300 respondents; 42,300 responses.

Estimated Time Per Response: 8—10 minutes (.133 hours).

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Voluntary. There is no statutory authority for this information collection. The Commission developed this information collection (IC) on its own motion to assist users of the Universal Licensing System (ULS) or other electronic FCC systems.

Total Annual Burden: 5,640 hours.

Total Annual Cost: $569,640.

Privacy Act Impact Assessment: Yes. The FCC has a system of records notice, FCC/WTB–7, ''Remedy Action Request System (RARS)'' to cover personally identifiable information affected by these information collection requirements. At this time, the FCC is required to complete a Privacy Act Impact Assessment.

Nature and Extent of Confidentiality: Submission of the electronic form is voluntary. In general, there is no need for confidentiality. On a case-by-case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of historic property, including traditional religious sites.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as a revision during this comment period to obtain the full three-year clearance from them. The Commission is reporting an increase in the number of respondents/responses; burden hours and annual costs.

The Commission is streamlining this collection to improve the quality of information provided by the respondents. The revised form uses a wizard design in which applicants select the type of inquiry they are submitting and then provide data relevant to that on-line system. The form is also being expanded to facilitate the collection of information regarding problems customers are having with the FCC Web site. This results in incomplete submissions and an additional burden is being placed on both the public customer and the FCC staff.

The FCC's Wireless Telecommunications Bureau (WTB) maintains Internet software used by the public to apply for licenses, participate in auctions for spectrum, and maintain license information. In this mission, FCC has created a ''help desk'' that answers questions/inquiries to these systems as well as resetting passwords and/or issuing the Web site *https://www.esupport.fcc.gov/request.htm/* under this OMB control number (displayed above).

This form will continue to substantially decrease public and FCC staff burden since all the information needed to a support request will be submitted in a standardized format but be available to a wider audience. This eliminates or at least minimizes the need to follow up with public customers to obtain all the information necessary to respond to their request. This form also presorts requests into previously defined categories to appropriate FCC staff to respond in a timelier manner.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–30548 Filed 12–22–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

December 17, 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, 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 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 22, 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the 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 Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–0685.

Title: Updating Maximum Permitted Rates for Regulated Services and Equipment, FCC Form 1210; Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC Forms 1210 and 1240.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,400 respondents; 5,350 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 44,800 hours.

Total Annual Cost: $2,034,375.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection.

Needs and Uses: Cable operators use Form 1210 to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities. Form 1240 is filed by cable operators seeking to adjust maximum permitted rates for regulated cable services to reflect changes in external costs. Cable operators submit Form 1240 to their respective local franchising authorities (''LFAs'') to justify rates for the basic service tier and related equipment or with the Commission (in situations where the Commission has assumed jurisdiction).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–30550 Filed 12–22–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before February 23, 2009.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control

number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income (FFIEC 031 and 041)'' or ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S),'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include reporting form number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Herbert J. Messite, (202) 898–6834, Counsel, Attn: Comments, Room F–1052, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–0023 (TFR: Schedule DI Revisions),'' by any of the following methods:

- *E-mail address: infocollection.comments@ots.treas.gov.* Please include ''1550–0023 (TFR: Schedule DI Revisions)'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–0023 (TFR: Schedule DI Revisions).''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''1550–0023 (TFR: Schedule DI Revisions).''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0).*

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Herbert J. Messite, Counsel, (202) 898–6834, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, the TFR, the FFIEC 002, and the FFIEC

002S, which are currently approved collections of information.[1]

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,620 national banks.

Estimated Time per Response: 45.42 burden hours.

Estimated Total Annual Burden: 297,589 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 877 state member banks.

Estimated Time per Response: 52.55 burden hours.

Estimated Total Annual Burden: 184,345 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,130 insured state nonmember banks.

Estimated Time per Response: 36.64 burden hours.

Estimated Total Annual Burden: 751,853 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 650 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

OTS

OMB Number: 1550–0023.

Estimated Number of Respondents: 774 savings associations.

Estimated Time per Response: 37 burden hours.

Estimated Total Annual Burden: 186,085 burden hours.

3. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

Board

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: FFIEC 002—264; FFIEC 002S—65.

Estimated Time per Response: FFIEC 002—25.02 hours; FFIEC 002S—6 hours.

Estimated Total Annual Burden: FFIEC 002—26,421 hours; FFIEC 002S—1,560 hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, the Call Report, the TFR, and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstracts

Call Report and TFR: Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Current Actions

Section 141 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. No. 102–242 (Dec. 19, 1991), added Section 13(c)(4)(G) to the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). That section authorizes action by the federal government in circumstances involving a systemic risk to the nation's financial system. On October 13, 2008, in response to the

[1] The proposed changes to the Call Report, the TFR, and the FFIEC 002 that are the subject of this notice have been approved by OMB on an emergency clearance basis and will take effect December 31, 2008. OMB's emergency approval for these reports expires May 31, 2009. The OCC, the Board, and the FDIC have also proposed other revisions to the Call Report that would take effect on a phased-in basis in March, June, and December 2009 (73 FR 54807, September 23, 2008). The OTS has also proposed other revisions to the TFR that would take effect on a phased-in basis in March, June, and December 2009 (73 FR 57205, October 1, 2008).

unprecedented disruption in credit markets and the resultant effects on the abilities of banks to fund themselves and to intermediate credit, the Secretary of the Treasury (after consultation with the President) made a determination of systemic risk following receipt of the written recommendation of the FDIC Board, along with the written recommendation of the Federal Reserve Board, in accordance with Section 13(c)(4)(G). The systemic risk determination allows the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions or financial stability. Pursuant to the systemic risk determination, the FDIC Board established the Temporary Liquidity Guarantee (TLG) Program.

To facilitate the FDIC's administration of the TLG Program, the FDIC Board approved an interim rule on October 23, 2008,[2] and (after a 15-day comment period that ended on November 13, 2008) a final rule on November 21, 2008.[3] The TLG Program is comprised of (1) a Debt Guarantee Program under which, in general, the FDIC will guarantee certain newly-issued senior unsecured debt issued by participating entities on or after October 14, 2008, through and including June 30, 2009, up to a specified limit; and (2) a Transaction Account Guarantee Program under which the FDIC will provide a 100 percent guarantee of certain noninterest-bearing transaction accounts held by participating insured depository institutions through December 31, 2009. The TLG Program includes a system of fees to be paid by participating entities for such guarantees beginning November 13, 2008.

In order for the FDIC to calculate the fees to be assessed under the Transaction Account Guarantee Program, the FDIC needs to collect information from participating insured depository institutions on the amount and number of noninterest-bearing transaction accounts, as defined in the final rule, of more than $250,000. Given the nature of these data items, the best method for obtaining this information from participating institutions is through the Call Report, the TFR, and the FFIEC 002. Accordingly, the agencies submitted an emergency clearance request to OMB seeking approval to begin collecting these two data items in these reports as of December 31, 2008. OMB approved this emergency clearance request on November 26, 2008. Because OMB's approval of the agencies' emergency clearance request expires on May 31, 2009, the agencies are now proposing under OMB's normal clearance procedures to collect these two items each quarter until the Transaction Account Guarantee Program ends.

The new items that institutions participating in the Transaction Account Guarantee Program must complete are being added to the Call Report as Memorandum items 4.a and 4.b of Schedule RC–O, to the TFR as items DI570 and DI575 of Schedule DI, and to the FFIEC 002 as Memorandum items 6.a and 6.b of Schedule O.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: December 15, 2008.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, December 17, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 12th day of December 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: December 15, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. E8–30555 Filed 12–22–08; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

[2] 73 FR 64179, October 29, 2008. The FDIC amended the interim rule effective November 4, 2008. 73 FR 66160, November 7, 2008.

[3] 73 FR 72244, November 26, 2008.

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 23, 2009.

ADDRESSES: You may submit comments, identified by FR 2502q, Reg K, or FR 3059 by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission including, the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report(s):

1. *Report title:* Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

Agency form number: FR 2502q.

OMB control number: 7100–0079.

Frequency: Quarterly.

Reporters: Large foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 1,176 hours.

Estimated average hours per response: 3.5 hours.

Number of respondents: 84.

General description of report: This information collection is required (12 U.S.C. § 248(a)(2), 353 et seq., 461, 602, and 625) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: This reporting form collects data quarterly on the geographic distribution of the assets and liabilities of major foreign branches and subsidiaries of U.S. commercial banks and of Edge and agreement corporations. Data from this reporting form comprise a piece of the flow of funds data that are compiled by the Federal Reserve.

Current Actions: The Federal Reserve proposes the following revisions to the FR 2502q reporting form: (1) Update the country list to conform more closely to the U.S. Department of State's official country list, (2) add regional subtotals for countries that are not listed on the reporting form, and (3) clarify the country list sub-header to indicate that the areas listed may be countries or dependencies. The Federal Reserve proposes minor revisions to the FR 2502q instructions to indicate that countries or dependencies not listed on the reporting form should be summed in each proposed regional subtotal, rather than current data item, ''UNALLOCATED''. In addition, the Federal Reserve proposes to make minor changes to the FR 2502q instructions to enhance clarity. The proposed changes would be effective as of March 31, 2009.

2. *Report title:* Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs.

Agency form number: Reg K.

OMB control number: 7100–0310.

Frequency: Annually.

Reporters: State member banks; Edge and agreement corporations; and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve.

Annual reporting hours: 3,592 hours.

Estimated average hours per response: Establish compliance program, 16 hours; and maintenance of compliance program, 4 hours.

Number of respondents: Establish compliance program, 13; and maintenance of compliance program, 1,173.

General description of report: This information collection is mandatory pursuant to the Bank Secrecy Act (BSA) (31 U.S.C. 513(h)). In addition, sections 11, 21, 25, and 25A of the Federal Reserve Act (12 U.S.C. 248(a), 483, 602, and 611(a)) authorize the Federal Reserve to require the information collection and recordkeeping requirements set forth in Regulations K and H. Section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) provide further authority for sections 211.5(m) and 211.24(j)(1) of Regulation K. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, if a BSA compliance program becomes a Federal Reserve record during an examination, the information may be protected from disclosure under exemptions (b)(4) and (8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K require Edge and agreement corporations and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve to establish and maintain procedures reasonably designed to ensure and monitor compliance with the BSA and related regulations.

Current Actions: The Federal Reserve proposes to revise this information collection by combining with it the recordkeeping requirements for state member banks associated with the Section 208.63 of Regulation H. Although state member banks have been required to comply with Section 208.63 of Regulation H for some time, no formal information collection has been on the Federal Reserve's OMB inventory. At this time, the Federal Reserve is correcting this administrative oversight.

Proposal to conduct under OMB delegated authority the following survey:

Report title: 2010 Survey of Consumer Finance (SCF).

Agency form number: FR 3059.

OMB control number: 7100–0287.

Frequency: One-time survey.

Reporters: U.S. families.

Annual reporting hours: 9,322 hours.

Estimated average hours per response: Business pretest, 15 minutes; and Main pretest, Main survey, Re-interview 1, and Re-interview 2, 75 minutes each.

Number of respondents: Business pretest, 30; Main pretest, 150; Main survey, 7,000; Re-interview 1, 150; and Re-interview 2, 150.

General description of report: This information collection is voluntary (12 U.S.C. 225a and 263). The names and other characteristics that would directly identify respondents would be retained by the Federal Reserve's contractor and are exempt from disclosure pursuant to the Confidential Information Protection and Statistical Efficiency Act and section (b)(3) of the Freedom of Information Act [5 U.S.C. 552 (b)(3)].

Abstract: For many years, the Federal Reserve has sponsored consumer surveys to obtain information on the financial behavior of households. The 2010 SCF would be the latest in a triennial series, which began in 1983, that provides comprehensive data for U.S. families on the distribution of assets and debts, along with related information and other data items necessary for analyzing financial behavior. The SCF is the only survey conducted in the United States that provides such financial data for a representative sample of households.

Current Actions: The Federal Reserve proposes to conduct (1) Up to 30 interviews averaging about 15 minutes (business pretest) to evaluate a new set of questions on the finances of small businesses in 2009; (2) up to 150 interviews averaging about 75 minutes (main pretest) to be obtained in a series of tests of the survey procedures in 2009; (3) up to 7,000 interviews averaging about 75 minutes (main survey) between May 2010 and March 2011; (4) up to 150 re-interviews averaging about 75 minutes (re-interview 1) in 2011 with participants from the main survey; and (5) up to 150 re-interviews averaging about 75 minutes (re-interview 2) in 2012 with participants from the main survey. The surveys would be conducted by a survey research organization selected through a competitive process.

Board of Governors of the Federal Reserve System, dated December 18, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30475 Filed 12–22–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed P. Nelson—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

Agency form number: Reg B.

OMB control number: 7100–0201.

Frequency: Event-generated.

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

Annual reporting hours: 170,000 hours.

Estimated average hours per response: Notice of action, 2.5 minutes; credit history reporting, 2 minutes; recordkeeping for applications & actions, 8 hours; monitoring data, 0.50 minutes; appraisal report upon request, 5 minutes; notice of right to appraisal, 0.25 minutes; recordkeeping of self test, 2 hours; recordkeeping of self corrective action, 8 hours; and disclosure of optional self-test, 1 minute.

Number of respondents: 1,205.

General description of report: This information collection is mandatory (15 U.S.C. 1691(b)(a)(1)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)).

Abstract: The Equal Credit Opportunity Act and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation.

Current Actions: On October 15, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 61126) requesting public comment for 60 days on the extension, without revision, of this information collection. The comment period for this notice expired on December 15, 2008. The Federal Reserve did not receive any comments.

2. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Funds Transfer).

Agency form number: Reg E.

OMB control number: 7100–0200.

Frequency: Event-generated.

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by

foreign banks, and Edge and agreement corporations.

Annual reporting hours: 59,902 hours.

Estimated average hours per response: Initial terms disclosure, 1.5 minutes; change in terms disclosure, 1 minute; periodic disclosure, 7 hours; and error resolution rules, 30 minutes.

Number of respondents: 1,205.

General description of report: This information collection is mandatory (15 U.S.C. 1693 *et seq.*). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (6), and (8)).

Abstract: The Electronic Funds Transfer Act and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. EFT services include automated teller machines, telephone bill payment; point-of-sale transfers in retail stores, fund transfers initiated through the internet, and preauthorized transfers to or from a consumer's account.

Current Actions: On October 15, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 61126) requesting public comment for 60 days on the extension, without revision, of this information collection. The comment period for this notice expired on December 15, 2008. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, dated December 18, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30493 Filed 12–22–08; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0204]

General Services Administration Acquisition Regulation; Information Collection; Commercial Delivery Schedule Clause and Notice of Shipment

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration 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 regarding commercial delivery schedule clause and notice of shipment. The clearance currently expires on December 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary 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; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Suzanne Neurauter, Procurement Analyst, Contract Policy Division, at telephone (202) 219–0310 or via e-mail to *suzanne.neurauter@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Commercial Delivery Schedule (Multiple Award Schedule) clause required offerors to provide their commercial delivery terms and conditions. FSS awards contracts to commercial firms under terms and conditions that mirror commercial practices for the supplies and services. In order to ensure the Government obtains the supplies within the offeror's commercial delivery timeframe, the offeror must provide the information requested in the GSAR clause, Commercial Delivery Schedule (Multiple Award Schedule). Such a notice is necessary when preparations need to be made for docking arrangements, storage, trans-shipment of materials handling equipment of supplies and equipment upon delivery, labor and inside delivery at destination.

B. Annual Reporting Burden

Total Responses annually: 10,305.
Hours Per Response: .26.
Total Burden Hours: 2741.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4225. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment, in all correspondence.

Dated: December 18, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–30504 Filed 12–22–08; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through November 30, 2010.

For information, contact Jeffrey Kohler, Ph.D., Executive Secretary, Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, 626 Cochrans Mill Road, Mailstop P05, Pittsburgh, Pennsylvania 15236, Telephone (412) 386–5301 or fax (412) 386–5300.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee

management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–30487 Filed 12–22–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Health Promotion (BSC, CCHP)

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 of the aforementioned committee:

Times and Dates: 1 p.m.–5 p.m., January 14, 2009; 8:30 a.m.–3:30 p.m., January 15, 2009.

Place: CDC, 1825 Century Boulevard, NE., Century Center Building 2400, Room 1042, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This BSC is charged with providing advice and guidance to the Secretary of Health and Human Services, the Director of CDC, and the Director of CCHP concerning strategies and goals for the programs and research within the National Center on Birth Defects and Developmental Disabilities and the National Center for Chronic Disease Prevention and Health Promotion.

Matters To Be Discussed: The agenda will include an introduction to the federal advisory committee process for new members; an overview of the CDC, CCHP, and the national centers; and a discussion of the secondary review process.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of the BSC, CCHP to accept written public comments and provide a brief period for oral public comments. Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To ensure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. Written Comments: For individuals or groups unable to attend the meeting, the CCHP BSC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the BSC for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Karen Steinberg, PhD, Senior Science Officer, Coordinating Center for Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop E–70, Atlanta, Georgia 30341; telephone (404) 498–6700; fax (404) 498–6880; or via e-mail at *Karen.Steinberg@cdc.hhs.gov.*

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 12, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–30486 Filed 12–22–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee, (CLIAC)

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 of the aforementioned committee:

Times and Dates: 8:30 a.m.–5 p.m., February 4, 2009, 8:30 a.m.–3:30 p.m., February 5, 2009.

Place: CDC, 1600 Clifton Road, NE., Tom Harkin Global Communications Center, Building 19, Room 232, Auditorium B, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from the CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; and presentations and discussions addressing studies and evaluation of laboratory practices and standards.

Agenda items are subject to change as priorities dictate.

New Information—Online Registration Required: In order to expedite security clearance process at the CDC Roybal Campus located on Clifton Road, all CLIAC attendees are required to register for the meeting online at least 14 days in advance at *http://wwwn.cdc.gov/cliac/default.aspx* by clicking the ''Register for a Meeting'' link and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than January 21, 2009.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, National Center for Preparedness, Detection, and Control of Infectious Diseases, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop F–11, Atlanta, Georgia 30333; telephone (404) 498–2741; fax (404) 498–2219; or via e-mail at *Nancy.Anderson@cdc.hhs.gov*

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–30485 Filed 12–22–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Developmental Disabilities Protection & Advocacy Program Statement of Goals and Priorities.

OMB No.: 0980–0270.

Description: Federal statute and regulation require each State Protection and Advocacy (P&A) System to prepare and submit to public comment a Statement of Goals and Priorities (SGP) for the P&A for Developmental Disabilities (PADD) program for each coming fiscal year. While the P&A is mandated to protect and advocate under a range of different Federally authorized disabilities programs, only the PADD program requires an SGP. Following the required public input for the coming fiscal year, the P&As submit the final version of this SGP to the Administration on Developmental Disabilities (ADD). ADD will aggregate the information in the SGPs into a national profile of programmatic emphasis for P&A Systems in the coming year. This aggregation will provide ADD with a tool for monitoring of the public input requirement. Furthermore, it will provide an overview of program direction, and permit ADD to track accomplishments against goals/targets, permitting the formulation of technical assistance and compliance with the Government Performance and Results Act of 1993.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A SGP	57	1	44	2,508
Estimated Total Annual Burden Hours:				2,508

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 18, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–30456 Filed 12–22–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories for FFY 2010–2011 (ACF–118).

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Pub. L. 104–193, and 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the States or the Territories child care program. The ACF–118 is currently approved through June 30, 2009, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2009 Plan Period. However, in July 2009, States and Territories will be required to submit their FY 2010–2011 Plans. Consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modifications. The Tribal Plan (ACF–118a) is not affected by this notice.

Respondents: State and Territorial CCDF Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	0.50	162.57	4,551.96
Estimated Total Annual Burden Hours:				4,551.96

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 18, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–30458 Filed 12–22–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: TANF Quarterly Financial Report, ACF–196.

OMB No.: 0970–0247.

Description: This information collection is authorized under Section 411(a)(3) of the Social Security Act. This request is for renewal of approval to use the Administration for Children and Families' (ACF) 196 form for periodic financial reporting under the Temporary Assistance for Needy Families (TANF) program. Approval of this information collection expires on March 31, 2009. States participating in the TANF program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs, and to prepare budget submissions required by Congress. Financial reporting under the TANF program is governed by 45 CFR part 265.

Respondents: TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	51	4	8	1,632

Estimated Total Annual Burden Hours: 1,632

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 18, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–30470 Filed 12–22–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Issuance of Final Policy Directive

AGENCY: Administration for Native Americans, Administration for Children and Families, HHS.

ACTION: Notice of Issuance of Final Policy Directive.

SUMMARY: The Administration for Native Americans (ANA) herein issues final interpretive rules, general statements of policy and rules of agency organization, procedure or practice relating to the Social and Economic Development Strategies (hereinafter referred to as SEDS), Social and Economic Development Strategies for Alaska (hereinafter referred to as SEDS-AK), Native Language Preservation and Maintenance Assessment (hereinafter referred to as Native Language Assessment), Native Language Preservation and Maintenance Planning (hereinafter referred to as Native Language Planning), Native Language Preservation and Maintenance Implementation (hereinafter referred to as Native Language Implementation), Native Language Preservation and Maintenance Immersion (hereinafter referred to as Native Language Immersion), Family Preservation—Improving the Well-Being of Children Project Planning (hereinafter referred to as Family Preservation Planning), Family Preservation—Improving the Well-Being of Children Project Implementation (hereinafter referred to as Family Preservation Implementation) and Environmental Regulatory Enhancement (hereinafter referred to as ERE).

DATES: November 21, 2008.

FOR FURTHER INFORMATION CONTACT: Sheila K. Cooper, Director of Program Operations, at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs

Act of 1974, as amended, requires ANA to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy and rules of agency organization, procedure or practice, and to give notice of the final adoption of such changes at least 30 days before the changes become effective.

ANA published a Notice of Public Comment (NOPC) in the **Federal Register** on October 7, 2008 (73 FR 58594), on the proposed ANA policy and program clarifications, modifications and activities for the FY 2009 Program Announcements (PAs). The NOPC closed November 5, 2008. ANA did not receive any public comments on the NOPC, and this notice shall suffice as ANA's final policy.

Introduction: This Notice of Issuance of Final Policy Directive (NOI) addresses two groups of changes:

- Changes made across all program areas (Part I of NOI). Changes in Part I apply to all PAs.
- Changes made to specific program areas (Part II of NOI). ANA has made significant changes to the SEDS, SEDS–AK, Native Language Assessment, Native Language Planning, Native Language Implementation, Native Language Immersion, Family Preservation Planning, Family Preservation Implementation and ERE. These changes are outlined in Part II.

Note: The Environmental Mitigation program area is no longer offered through ANA. Most funds from the appropriation under 8094A of Pub. L. 103–335 were expended. A nominal amount of funding was returned to the Treasury due to low public demand for the program area.

I. All PAs will be revised to clarify program and application submission requirements for the public. These changes appear in the following sections: ANA Administrative Policies (Part A of NOI), Definitions (Part B of NOI) and Application Evaluation Criteria (Part C of NOI).

(A) *ANA Administrative Policies:* Two statements will be revised to clarify ANA's policies. The first statement relates to the CFDA number and clarifies that grantees cannot be funded in more than one program area at the same time. The division of Program Announcements from four to nine does not impact this policy. Furthermore, the statement clarifies that grantees cannot have both a SEDS project and a Family Preservation Planning or a Family Preservation Implementation grant at the same time. The second statement relates to applications from Tribally authorized divisions.

The revised statements in the FY 2009 PA will be:

An applicant can have only one active ANA grant per CFDA number operating at any given time.

ANA will not accept applications from Tribal components that are Tribally chartered or authorized divisions of a Tribe unless the ANA application includes a Tribal Resolution.

(B) *ANA Definitions:* ANA has added two new definitions and clarified the definition of two words. These new and revised definitions are provided for areas that applicants have found difficult to interpret, have previously prompted numerous questions or have created application and project development inconsistencies. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3.)

i. *New Definitions:* The FY 2009 PA includes definitions for the following terms: *contingency plan* and *governing body.*

The FY 2009 PAs will include these new definitions:

Contingency plan: A plan that identifies specific actions to be taken in the event a specific challenge arises. The purpose of a contingency plan is to reduce the negative impacts on the project. The contingency plan should ensure that the project will be successfully completed within the proposed funding timeframe. A contingency plan is not to pre-empt challenges, but rather to address challenges if they arise.

Governing Body: A body: (1) Consisting of duly elected or designated representatives, (2) appointed by duly elected officials or (3) selected in accordance with traditional Tribal means. The body must have authority to provide service to, and to enter into contracts, agreements and grants under this part on behalf of the organization or individuals who elected, designated, appointed or selected them in accordance with traditional Tribal means.

ii. *Revised Definitions:* The FY 2009 PA clarifies definitions for the following terms: *leveraged resources* and *resolution.*

The FY 2009 PA revised definitions will be:

Leveraged Resources: The non-ANA resources, as expressed as a dollar figure, acquired during the project period that support the project and exceed the 20 percent applicant match required for ANA grants. Such resources may include any natural, financial and physical resources available within the Tribe, organization or community to assist in the successful completion of the project. An example would be an organization that agrees to provide a supportive action, product, service, human or financial contribution that will add to the potential success of the project.

Resolution: Applicants are required to include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. Tribally chartered or authorized divisions must submit a Resolution from the Tribe's official governing body if the division falls under the jurisdiction of the Tribe. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution must indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any eligible matching funds (if applicable).

(C) *ANA Application Evaluation Criteria:* In order to clarify for the applicant specific information requests in the evaluation criteria, additional explanation is included for the following sub-criteria: Community Involvement in Objectives and Need for Assistance criterion; Project Strategy, Project Challenges and Contingency Planning, and Objective Work Plan in Approach criterion; and Budget Justification/Cost Effectiveness in Budget and Budget Justification criterion.

i. *Community Involvement sub-criterion in Objectives and Need for Assistance criterion.* A sentence was added to identify for applicants what details are needed for documentation of community meetings. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Community Involvement will be:

Community Involvement (6 points): Describe in detail how the community to be served was involved in the planning process and the origins of the project idea. Describe within the project proposal how the identified community participated in the development of the project. Demonstrate and document community and/or Tribal government support for the project. Discuss the relationship of any non-ANA-funded activities supportive of the project. Documented support is a critical element of this evaluation criterion and includes, but is not limited to, materials such as letters of support, testimonials and community meeting minutes. Documented support should include the

date and topic of the meeting and a summary of the meeting outcome.

ii. *Project Strategy sub-criterion in Approach criterion.* The description was expanded to clarify for applicants that the strategy should be an overview of the Objective Work Plan and that the applicants should clearly identify how the proposed project is different from similar, previously ANA-funded projects. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Project Strategy will be:

Project Strategy (10 points): Present a narrative on the project strategy and implementation plan (Objective Work Plan—see below) for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals. Discuss how the current proposed project differs from previously ANA-funded projects, which may be similar in nature to the current proposed project.

iii. *Project Challenges and Contingency Planning in Approach criterion.* The description was expanded to clarify for applicants what ANA is requesting in a contingency plan. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Project Challenges and Contingency Planning will be:

Project Challenges and Contingency Planning (5 points): Based on ANA's project funding history and information gathered from project impact evaluations, ANA has determined that all projects encounter challenges and therefore need to have a contingency plan should a significant challenge arise. Challenges can arise because applicants make assumptions about critical events, conditions and/or decisions outside of the control of project management. The applicant needs to identify challenges that may arise during the project's initial start up and throughout the project period. Consider such challenges as difficulty hiring and retaining key staff, difficulty recruiting community members and/or volunteers for project activities, difficulty recruiting target audience (e.g., students, children, elders), difficulty securing agreed-upon support from partners to provide services/funding, planning shortfalls, possible disruption of the project timeline due to Tribal elections and difficulty securing permits or licensing from government entities. Identify potential challenges and explain the contingency plans (see Definitions) that will be implemented to overcome those challenges. The contingency plan should ensure that the project will be successfully completed within the proposed funding timeframe. A contingency plan is not to pre-empt challenges, but rather to address challenges if they arise.

iv. *Objective Work Plan sub-criterion in Approach criterion.* The description was expanded to clarify for applicants the instructions for completing the OWP form (OMB Control No. 0980–0204). (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new FY 2009 PA text for Project Strategy will be:

Objective Work Plan (20 points): The ANA Objective Work Plan (OWP) form is the blueprint for the project. The OWP provides detailed descriptions of the project goal, the project objectives, supporting activities and the results and benefits to be expected. It provides the what, how, when, where and by whom of the project. As such, it is a stand-alone document that should provide sufficient information for an application reviewer, ANA staff or a project manager to understand the project and how it will be implemented. The OWP is the basis for reporting on the project.

A project cannot exceed three objectives per project period. Complete an ANA OWP form for each objective per budget period. If submitting an electronic application, some objectives will require more than one form. In addition, some objectives may last more than one budget period. Ensure that the objective is correctly stated in the OWP, the project narrative and on the ANA Abstract form.

The objective statement should contain the following basic elements: what will be accomplished during the project period and when it will be accomplished. Each objective should be Specific, Measurable, Achievable, Results-oriented and Time-bound (SMART).

For each objective, list activities that provide a road map to achieve the objective. Each activity is a step in the logical progression of the project. Include specific and significant activities (e.g., hiring staff, developing first draft), ongoing activities (e.g., meetings and classes), the type of activity (e.g., workshops, retreats and seminars), the type of audience, the submission of required ANA reports and attendance at ANA post-award training. Especially useful are activities that show progress and/or results on a quarterly basis. Explain how the activities outlined in the OWP will lead to the successful achievement of the project objectives and goal.

Identify the position responsible for the completion of each activity by identifying the title(s) of the salaried project staff person(s). Identify time periods that are realistic to complete each activity. Use elapsed times from the start of the project (e.g., month 1, month 2) rather than absolute dates. September 30 is the start date for each budget period. Identify the non-salary personnel hours, including non-salaried contributors (paid or in-kind) to the project. List hours according to who is providing them (e.g., Committee person–10 hours; ABC Consultant–5 hours). Provide supporting documentation for the hours listed in this column.

The preceding instructions are recommended for the OWP form found on the ANA Web site *http://www.acf.hhs.gov/programs/ana/,* which can be added as an attachment to an application on *http://www.grants.gov.* This form allows for an unlimited number of activities and characters so applicants can adequately communicate the project plan. For applicants using the form in www.grants.gov, note that each objective is limited to eight activities and each section has a limitation of 180 characters, which may not allow the applicant enough space to adequately communicate the project plan. Furthermore, those applicants that use www.grants.gov must use absolute dates for timeframe and can identify the source of the non-salaried personnel hours in the narrative. Therefore, it is recommended that applicants use the OWP available on the ANA Web site and attach the completed OWP to the *http://www.grants.gov* submission.

The results and benefits section of the OWP is used to track the grantee's quarterly progress of accomplishing an individual objective and should be broken down by quarter. The results and benefits must directly relate to the activities that support the accomplishment of an objective in the OWP. The results and benefits are used to monitor the project's quarterly progress and must include target numbers. The criteria for evaluating the results and benefits expected are of the applicant's choosing and need to be documented and verifiable.

v. *Budget Justification/Cost Effectiveness sub-criterion in Budget*

and Budget Justification criterion. The first paragraph was expanded to clarify for applicants that a separate justification is requested for each budget period. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

The new first paragraph text for the FY 2009 PA Project Strategy will be:

Budget Justification/Cost Effectiveness (10 points): Submit justification narratives that support and align with the Federal and applicant match requirement. A budget justification narrative must be submitted for each budget period. The justification should identify how the calculations for each of the line items were developed and explain how they are important to the project. Include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

II. *ANA FY 2009 Program Specific Changes.* ANA FY 2009 PAs will be revised to break down Program subcategories into a stand-alone PA. ANA is developing individual PAs to comply with new guidance established by the Administration for Children and Families. Therefore, in FY 2009 ANA will publish nine PAs. Furthermore, to support this new requirement for separate PAs, it is necessary that ANA make additional programmatic changes to support and clarify each new PA.

(A) *ANA Native Language Preservation and Maintenance:* The former PA, Native Language Preservation and Maintenance, included all four separate program categories under one PA; namely, Native Language Preservation and Maintenance Assessment (hereinafter referred to as Native Language Assessment), Native Language Preservation and Maintenance Planning (hereinafter referred to as Native Language Planning), Native Language Preservation and Maintenance Implementation (hereinafter referred to as Native Language Implementation), Native Language Preservation and Maintenance Immersion (hereinafter referred to as Native Language Immersion). Except for where noted in this notice, these four PAs are the same as the 2008 Native Languages PA, but in order to clarify submission requirements and program areas for the public, ANA will now release each category as a separate PA. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

i. *Native Language Assessment.* The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. The Priority Area Description was revised to include analysis in language assessment. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Assessment program area. Native Language Assessment grants are used to conduct the assessments necessary to identify the current status of the Native American language(s) to be addressed.

2. Funding Opportunity Description

Paragraphs seven and eight of the Funding Opportunity Description for the FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

The ANA Native Language program areas of interest are projects that ANA considers supportive to Native American communities. Funding is not restricted to projects of the type listed in this program announcement.

3. Priority Area Description

The Priority Area Description for the FY 2009 PA will be:

The purpose of a Native Language Assessment project is to conduct an assessment of the current status of the Native language(s) within an established community. The program area of interest is:

- A project that compiles, collects, analyzes and organizes Native language data in order to have a current description of the community's language status obtained through a ''formal'' method (e.g., work performed by a linguist and/or a language survey conducted by community members) or an ''informal method'' (e.g., a community consensus of the language status based on elders, Tribal scholars and/or other community members).

ii. *Native Language Planning.* The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. The Priority Area Description was revised to include all areas of language program planning. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Planning program area. Native Language Planning grants are used to plan a language project.

2. Funding Opportunity Description

Paragraphs seven and eight of the Funding Opportunity Description for FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

The ANA Native Language program areas of interest are projects that ANA considers supportive to Native American communities. Funding is not restricted to projects of the type listed in this program announcement.

3. Priority Area Description

The Priority Area Description for FY 2009 PA will be:

The purpose of a Native Language Planning project is to encourage Tribes and Native organizations to plan and design Native language projects. Applicants are encouraged to develop a project that results in a comprehensive plan to preserve the Native language that uses current community language assessment data, reviews innovative methods that bring older and younger Native Americans together to teach and learn the language, and considers all essential elements needed to sustain and implement a language project. Planning projects are for planning and

design only, and do not include activities that call for direct language learning or instruction. Testing of any material and curriculum developed is limited to a maximum of five students. Program areas of interest include:

- *Projects to plan and design Master/Apprentice programs;*
- *Projects to plan and design comprehensive Native language immersion programs for a language nest or survival school;*
- *Projects that plan, design and test curriculum for students, parents and language instructors;*
- *Projects that plan and design teaching materials;*
- *Projects to record, transcribe and archive oral testimony;*
- *Projects to plan and design language resource materials using recorded oral testimony;*
- *Projects that plan and design multi-media language learning tools;*
- *Projects that plan and design teacher certification programs;*
- *Projects to train teachers, interpreters or translators of Native languages.*

iii. *Native Language Implementation.* The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. The Priority Area Description was revised to identify all areas of language program implementation. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Implementation program area. Native Language Implementation grants are used to implement a preservation language project that will contribute to the achievement of the community's long-range language goal(s).

2. Funding Opportunity Description

Paragraphs seven and eight of the Funding Opportunity Description for FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

The ANA Native Language program areas of interest are projects that ANA considers supportive to Native American communities. Funding is not restricted to projects of the type listed in this program announcement.

3. Priority Area Description

The Priority Area Description for FY 2009 PA will be:

The purpose of Native Language Implementation grants is to provide support to Tribes and Native organizations in the implementation of a Native language project to achieve the community's long-range language goal(s). Program areas of interest include:

- *Projects to produce and disseminate culturally relevant printed stories for children using the Native language of the community;*
- *Projects to facilitate and encourage intergenerational teaching of Native American language skills;*
- *Projects to disseminate culturally relevant materials to be used to teach and enhance the use of Native American languages;*
- *Projects to implement an immersion, mentor or distance learning model;*
- *Projects to produce, distribute or participate in television, radio or other media forms to broadcast Native languages;*
- *Projects to implement an educational site-based immersion project.*

iv. *Native Language Immersion.* The Executive Summary and Funding Area Description were revised to reflect the separation of priority areas. Furthermore, in order to clearly identify the certification that is required at the time of application submission, a definition of certification was added and statements about the certification were included in the following sections: Forms, Assurances and Certifications, Program Areas of Interest and Organizational Profiles evaluation criterion. In addition, the weighted scores for the sub-criterion found in the Organizational Profiles evaluation criterion were changed to highlight the importance of the certification. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based activities under ANA's Native Language Preservation and Maintenance Immersion program area. Native Language Immersion grants will only be awarded to applicants that meet the Statutory requirements for immersion projects with language nests or language survival schools in accordance with Public Law 109–394.

2. *Funding Opportunity Description.* To clarify the new PAs for language, paragraphs seven and eight were changed.

Paragraphs seven and eight of the Funding Opportunity Description for FY 2009 PA will be:

ANA will release four separate program announcements for funding opportunities for the Native Language Preservation and Maintenance program area: Native Language Preservation and Maintenance Assessment, Native Language Preservation and Maintenance Planning, Native Language Preservation and Maintenance Implementation and Native Language Preservation and Maintenance Immersion.

For the ANA Native Language Preservation and Maintenance Immersion program areas of interest, applicants must abide by the parameters established by Public Law 109–394.

3. Administrative Policies

An additional Administrative Policy will be added to FY 2009 PA:

Upon application submission, a certification is required that the applicant has not less than three years of experience in operating and administering a Native American language survival school, Native American language nest, or any other educational program in which instruction is conducted in a Native American language.

4. Definitions

An additional Definition will be added to FY 2009 PA:

Certification: A document on letterhead signed by the applicant that shows the applicant has not less than three years of experience in operating and administering a Native American language survival school, Native American language nest or any other educational program in which instruction is conducted in a Native

American language. This document is required by statue in order to consider an applicant eligible for competition in this program area.

5. Program Area of Interest

An additional instruction will be included at the end of Program Area of Interest description in the FY 2009 PA:

A certification needs to be included by the applicant (please see certification definition).

6. Forms, Assurances and Certifications.

The instruction for the FY 2009 PA on certification required for Native Languages—Immersion projects will be:

The applicant must provide a certification by the applicant that the applicant has not less than three years of experience in operating and administering a Native American language survival school, Native American language nest or any other educational program in which instruction is conducted in a Native American language.

7. Evaluation Criteria—Organizational Profiles

The FY 2009 PA Organizational Profiles criterion will be:

ORGANIZATIONAL PROFILES—17 points

Organizational Capacity: This criterion will be evaluated to the extent the applicant demonstrates their organizational capacity and ability to staff and implement the proposed project.

Organizational Capacity (6 points): Provide information on the management structure of the applicant, such as personnel and financial policies. Describe the administrative structure of the applicant and the systems used to track the funding and progress of the project. Demonstrate the applicant's capacity and ability to administer and implement a project of the proposed scope. Include an organizational chart that indicates where the ANA project will fit in the existing administrative structure.

List all sources of Federal funding the applicant currently oversees. Include information on the funding agency, purpose of the funding and amount. Provide the most recent certified signed audit letter for the organization. If the applicant has audit exceptions, these issues should be discussed within this criterion, detailing any steps taken to overcome the exceptions.

Applicants are required to affirm that they will credit ANA and reference the ANA-funded project on any audio, video and/or printed materials developed in whole or in part with ANA funds.

A consortium applicant must identify the consortium membership and describe their roles and responsibilities. One member of the consortium must be the recipient of the ANA funds. A consortium applicant must be an eligible entity as defined by this program announcement and the ANA regulations. Include documentation signed by the membership supporting the ANA application. ANA will not fund activities by a consortium of Tribes that duplicate activities for which member Tribes also receive funding from ANA. Include a copy of the consortia legal agreement or memorandum of agreement.

List all of the applicant's current and existing partners that will be providing support to the project's implementation. Include information on the current organizational relationship between the applicant and partner. The experience and expertise of these partners must align with the activities stated in the OWP that they will be supporting. This information should state the nature, amount and conditions under which another agency, organization or individual will support a project funded by ANA.

Certification (6 points): Applicants applying for a Native Language Immersion grant must include the certification at the time the application is submitted for consideration. Applications will be reviewed to the extent that the following area specific wording is included on their Certification:

Native American language nest certification

The (Name of Applicant) is seeking funding from the Administration for Native Americans (ANA) under Native Language Preservation and Maintenance Immersion program for a site-based ''Language Nest.'' In accordance with Pub. L. 109–394, (Name of Applicant) certifies that it:

(1) Provides instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student;
and

(2) provides classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents);
and

(3) ensures that a Native American language is the dominant medium of instruction in the Native American language nest;
and

(4) the applicant has not less than three years of experience in operating and administering a Native American language nest.

Certification for a Native American language nest should include all four requirements, be on letterhead and be signed by the applicant.

Native American language survival school certification

The (Name of Applicant) is seeking funding from the Administration for Native Americans (ANA) under Native Language Preservation and Maintenance Immersion program for a site-based survival school. In accordance with Public Law 109–394, (Name of Applicant) certifies that it:

(1) Provides an average of at least 500 hours of instruction through the use of one or more Native American languages for at least 15 students for whom a Native American survival school is their principal place of instruction;
and

(2) develops instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages;
and

(3) provides for teacher training fluency in a Native American language and academic proficiency in mathematics, reading (or language arts) and science;
and

(4) is located in areas that have high numbers or percentages of Native American students;
and

(5) the applicant has not less than three years of experience in operating and administering a Native American language survival school.

Certification for a Native American language survival school should include all five requirements, be on letterhead and be signed by the applicant.

Project Staffing Plan (5 points): Provide staffing and position data that includes a proposed staffing pattern for the project. Describe the process and general timeframe to hire staff (such as advertising or recruiting from within the community). Explain how the current and future staff will manage the proposed project. Full project position descriptions are required to be submitted as an attachment. Brief biographies and/or resumes of identified key positions or individuals will be included as an attachment. Project positions discussed in this section must match the positions identified in the OWP and in the itemized budget. Note:

Applicants are strongly encouraged to give preference to qualified Native Americans, in accordance with applicable laws, in hiring project staff and in contracting services under an approved ANA grant.

(B) *Family Preservation—Improving the Well-Being of Children:* In FY 2009, Family Preservation—Improving the Well-Being of Children (hereinafter referred to as Family Preservation) program area will replace the Native American Healthy Marriage Initiative program area. This action was taken to broaden the ANA Native American Healthy Marriage Initiative to include other children and family projects. In addition, as per the Administration for Children and Families requirement, two PAs will be published for FY 2009. The PAs reflect the two types of projects, project planning and project implementation. The changes identified below are to clearly identify the expanded scope of these program areas and separate the planning and implementation project categories. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. Family Preservation—Project Planning

a. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for projects that plan for approaches to improve child well-being by removing barriers associated with strengthening families (including fatherhood, parenting, foster parenting, grandparents raising grandchildren and absentee parent activities), forming and preserving healthy families, relationships and marriages (including Traditional Native American and Pacific Basin marriages) and sustaining healthy families, relationships and marriages in Native American and Pacific Basin communities. ANA's FY 2009 goals and program areas of interest are focused on strengthening children, families and communities through financial assistance to community-based organizations including faith-based organizations, Tribes and Village governments.

The goals of the ANA Family Preservation PA is to increase the well-being of children through family preservation activities; increase the percentage of children who are raised in a healthy environment free of child abuse and neglect; increase the percentage of youth and young adults who have the skills and knowledge to make informed decisions about healthy relationships; increase the percentage of couples who are equipped with the skills and knowledge necessary to form and sustain healthy relationships and marriages; increase the percentage of children who are raised by two parents in a healthy family environment that is also free of domestic violence; increase the percentage of involvement by absentee parents in the lives of their children, increase public awareness in communities about the value of healthy families, relationships, marriages and responsible fatherhood and encourage and support research on healthy families, relationships and marriages and healthy marriage education.

b. Funding Opportunity Description

The FY 2009 PA Funding Opportunity Description will be:

This program announcement specifically promotes planning culturally competent strategies for strengthening families, fostering child well-being, healthy relationships and marriages and responsible fatherhood to preserve healthy families within the Native American and Pacific Basin Communities.

This program announcement seeks to fund projects that engage in the planning of approaches to remove barriers to forming lasting families, healthy relationships and healthy marriages in Native American and Pacific Basin communities. Projects funded under this program announcement will include activities that design and engage in a community planning process that identifies barriers to forming healthy families, relationships and marriages (including Traditional Native American and Pacific Basin marriages); assesses the needs and interest of the community to participate in a family strengthening project; assesses existing absentee parenting programs, fatherhood programs, grandparents raising grandchildren programs, and foster parent programs; identifies strategies to implement a family strengthening project; plans and develops curricula for family strengthening programs; and develops projects that are designed to reduce or eliminate the challenges and barriers identified by the community.

c. Priority Area Description

The FY 2009 PA Priority Area Description will be:

The purpose of a planning project is to engage in a community-based planning process that assesses the current status of available resources and barriers to family preservation, healthy relationships, healthy marriages and child well-being within an established Native American or Pacific Basin community. Applicants are encouraged to develop a project that results in a comprehensive plan that includes a community assessment of the challenges and barriers that negatively impact families, child well-being, relationships, marriages and parenting within Native American and Pacific Basin communities; identifies resources and partnerships; and develops a strategy to help sustain healthy families, relationships, marriages and responsible fatherhood within Native American and Pacific Basin communities. Eligibility for funding is restricted to projects of the type listed in this program announcement. Project Planning is for planning and design of projects only.

Applicants may only choose one or more program areas of interest from the list below:

Healthy Marriage

Projects that develop a

- *Curriculum focused on pre-marital and marital education.*
- *Plan to provide youth education in high schools, youth organizations and community centers on the value of healthy relationships and marriages. This can include education on healthy relationship skills including conflict resolution, communication and commitment. Projects should use a pre-marital education focused on youth.*
- *Plan to offer marriage education and marriage skills, which may include relationship skills, communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.*
- *Plan to offer pre-marital education and marriage skills training for couples, individuals or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (communication, conflict resolution, commitment) necessary to choose marriage for themselves if they so desire.*
- *Plan to provide marriage enhancement/enrichment and marriage skills training programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.*
- *Plan to use married couples as role models and mentors in at-risk*

communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.

- *Plan to conduct research on the benefits of healthy relationships and marriages and healthy relationship and marriage education.*
- *Plan to provide public advertising campaigns in Native American and Pacific Basin communities on the value of healthy relationships and marriage as a way to improve relationships and marriages and strengthen family relationships.*

Family Strengthening/Preservation

Projects that develop a

- *Curriculum focused on responsible fatherhood and family preservation education (including parenting, foster parenting, grandparents raising grandchildren and absentee parent activities).*
- *Plan to provide youth education in high schools, youth organizations and community centers on the value of responsible fatherhood and family preservation.*
- *Plan to offer services to fathers to help them overcome barriers to positive involvement in their children's lives.*
- *Plan to offer education and activities focused on Responsible Fatherhood and Parenting.*
- *Plan to offer family preservation activities in a culturally appropriate and traditional manner within Native American and Pacific Basin communities.*
- *Plan to offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement and also promote the value and importance of healthy families.*
- *Plan to offer education on communication and conflict resolution for absentee parents to improve the custodial and non-custodial parental relationship and increase absentee parents' involvement in their children's lives.*
- *Plan to reduce child/infant abuse and neglect and family domestic violence.*
- *Plan to address the needs of grandparents raising grandchildren.*
- *Plan to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected and abandoned Native American children, youth and their families.*
- *Plan to target family strengthening services to individuals with substance abuse issues as a way to support a strong healthy family environment.*
- *Plan to provide public advertising campaigns in Native American and Pacific Basin communities on the value of parental involvement, family preservation and responsible fatherhood as a way to strengthen family relationships.*

d. Funding Restrictions

The following funding restriction will be added to the FY 2009 PA:

Counseling or therapeutic activities that are medically based.

e. *Evaluation Criteria.* Changes were made to the Approach evaluation criterion, specifically Project Strategy sub-criterion and Objective Work Plan sub-criterion.

The FY 2009 PA Project Strategy sub-criterion will be:

Project Strategy (10 points): Present a narrative on the project strategy and implementation plan (Objective Work Plan—see below*) for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals. Discuss how the current proposed project differs from previously ANA-funded projects which may be similar in nature to the current proposed project.

* See section I.C.iv Objective Work Plan sub-criterion in Approach Criterion in this NOI for the Objective Work Plan Instructions.

The FY 2009 PA Objective Work Plan sub-criterion will have the following text added:

If planning a project focused on healthy relationships, healthy marriages or fatherhood, include an activity to plan and design the Domestic Violence Protocol (see Definitions) the proposed project will use to identify and provide appropriate referral or services for individuals or couples where violence may be occurring.

ii. Family Preservation—Implementation Projects

a. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for projects that implement approaches to improve child well-being by removing barriers associated with strengthening families (including fatherhood, foster parenting, absentee parent activities and grandparents raising grandchildren), forming and preserving healthy families, relationships and marriages (including Traditional Native American and Pacific Basin marriages). ANA's FY 2009 goals and program areas of interest are focused on strengthening children, families and communities through financial assistance to community-based organizations (including faith-based organizations, Tribes and Village governments).

The goal of the ANA Family Preservation PA is to increase the well-being of children through family preservation activities; increase the percentage of children who are raised in a healthy environment free of child abuse and neglect; increase the percentage of youth and young adults who have the skills and knowledge to make informed decisions about healthy relationships; increase the percentage of couples who are equipped with the skills and knowledge necessary to form and sustain healthy relationships and marriages; increase the percentage of children who are raised by two parents in a healthy family environment that is also free of domestic violence; increase the percentage of involvement by absentee parents in the lives of their children, increase public awareness in communities about the value of healthy families, relationships, marriages and responsible fatherhood; and encourage and support research on healthy families, relationships and marriages and healthy marriage education.

b. Funding Opportunity Description

The FY 2009 PA Funding Opportunity Description will be:

This program announcement specifically promotes implementing culturally competent strategies for strengthening families, fostering child well-being, healthy relationships and marriages, and responsible fatherhood to preserve healthy families within the Native American and Pacific Basin communities.

This program announcement seeks to fund projects that engage in the implementation of approaches to remove barriers to forming lasting families and healthy relationships and marriages in Native American and Pacific Basin communities. Projects funded under this program

announcement will include activities that provide community resources such as family strengthening programs (fatherhood, parenting, absentee parental involvement, foster parenting and grandparents raising grandchildren); healthy relationships; healthy marriages (including Traditional Native American and Pacific Basin marriages); marriage education/enrichment training; pre-marital education; relationship skills education on communication, conflict resolution and commitment; and other support activities such as family outings, family strengthening groups, and weekend pre-marital/marital education and family retreats.

c. Priority Area Description

The FY 2009 PA Priority Area Description will be:

Family Preservation—Improving the Well-Being of Children Project Implementation

The purpose of an implementation project is to support a community-based project focused on family preservation, healthy relationships, marriage, parenting, foster parenting, grandparents raising grandchildren, fatherhood and absentee parent involvement in Native American and Pacific Basin communities. ANA will not fund curriculum development in an implementation project. Minor text and/or activity modification to existing curricula to make the curricula community-appropriate will be allowed in the first two months of an implementation project. Eligibility for funding is restricted to projects of the type listed in this program announcement. Project Implementation is for implementation of projects only.

Applicants may only choose one or more program areas of interest from the list below:

Healthy Marriage

- *Projects that provide youth education in high schools, youth organizations and community centers on the value of healthy relationships and marriages. This can include education on healthy relationship skills, including conflict resolution, communication and commitment. Projects should use a pre-marital education focused on youth.*
- *Projects that offer marriage education and marriage skills, that may include relationship skills, communication skills, conflict resolution, commitment and parenting skills to expectant couples, both married and unmarried, absentee parents, as well as new parents, both married and unmarried.*
- *Projects that offer pre-marital education and marriage skills training for couples, individuals or engaged couples interested in marriage. Training would include a marital educational course and couples would learn the knowledge and skills (communication, conflict resolution, commitment) necessary to choose marriage for themselves if they so desire.*
- *Projects that provide marriage enhancement/enrichment and marriage skills training programs for married couples to improve or strengthen their relationship through a certified marital education course. The course should include lessons on communication, conflict resolution and commitment.*
- *Projects that use married couples as role models and mentors in at-risk communities to teach healthy relationship and marriage skills. Projects should include a marital educational course that emphasizes communication, commitment and conflict resolution; weekend retreats; and mentor groups.*
- *Projects that conduct research on the benefits of healthy relationships and marriages and healthy relationship and marriage education.*
- *Projects that provide public advertising campaigns in Native American, and Pacific Basin communities on the value of healthy relationships and marriage as a way to improve relationships and marriages and strengthen family relationships.*

Family Strengthening/Preservation

- *Projects that provide youth education in high schools, youth organizations and community centers on the value of responsible fatherhood and family preservation.*
- *Projects that offer services to fathers to help them overcome the barriers to positive involvement in their children's lives.*
- *Projects that offer education and activities focused on Responsible Fatherhood and Parenting.*
- *Projects that offer family preservation activities in a culturally appropriate and traditional manner within Native American and Pacific Basin communities.*
- *Projects that offer absentee parents services that help them to overcome barriers that prevent them from consistent involvement in their children's lives. Services would include activities that provide the absentee parents opportunities to interact with their children and increase parental involvement, and also promote the value and importance of healthy families.*
- *Projects that offer education on communication and conflict resolution for absentee parents to improve the custodial and non-custodial parental relationship and increase absentee parents' involvement in their children's lives.*
- *Projects to reduce child/infant abuse and neglect and family domestic violence.*
- *Projects that address the needs of grandparents raising grandchildren.*
- *Projects to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected, and abandoned Native American children, youth and their families.*
- *Projects that target family strengthening services to individuals with substance abuse issues as a way to support a strong healthy family environment.*
- *Projects that provide public advertising campaigns in Native American, and Pacific Basin communities on the value of parental involvement, family preservation and responsible fatherhood as a way to strengthen family relationships.*

d. Funding Restrictions

The following funding restriction will be added to the FY 2009 PA:

Counseling or therapeutic activities that are medically based.

e. *Evaluation Criteria.* Changes were made to the Approach evaluation criterion, Project Strategy sub-criterion and Organizational Profiles, Project Staffing sub-criterion.

The FY 2009 PA Project Strategy sub-criterion will be:

Project Strategy (10 points): Present a narrative on the project strategy and implementation plan (Objective Work Plan—see below*) for the entire project period. Be clear and concise. Provide a clear relationship between the proposed project goal and the project objectives. Discuss how the project objectives will support and assist the achievement of the project goal. Discuss how the project goal will support and assist the achievement of the community's long-range goals. Discuss how the current proposed project differs from previously ANA-funded projects which may be similar in nature to the current proposed project.

Applicants should provide information on the curricula they will be utilizing within their project and how it is community appropriate to the project. ANA will not fund curriculum development in an implementation grant. Minor text and/or activity modification to existing curricula to

make the curricula community-appropriate will be allowed in the first two months of an implementation project.

Applicants are required to discuss the Domestic Violence Protocol (see Definitions) that the proposed project will use to identify and provide appropriate referral or services for individuals or couples where violence is occurring if implementing a project focused on healthy relationships, healthy marriages or fatherhood. Applicants should be able to demonstrate knowledge of the information and services provided by domestic violence coalitions within the community.

* See section I.C.iv Objective Work Plan sub-criterion on Approach Criterion in this Notice Of Public Comment for the Objective Work Plan Instructions.

The FY 2009 PA Project Staffing Plan sub-criterion will be:

Project Staffing Plan (5 points): Provide staffing and position data that includes a proposed staffing pattern for the project. Describe the process and general timeframe to hire staff (such as advertising or recruiting from within the community). Explain how the current and future staff will manage the proposed project. Full project position descriptions are required to be submitted as an attachment. Brief biographies and/or resumes of identified key positions or individuals will be included as an attachment. Project positions discussed in this section must match the positions identified in the OWP and in the itemized budget. Note: Applicants are strongly encouraged to give preference to qualified Native Americans, in accordance with applicable laws, in hiring project staff and in contracting services under an approved ANA grant. Applicants should state any required training they will need in order to be certified in a particular curriculum. Certification should occur within the first two months of an implementation project.

(C) *ANA SEDS:* ANA FY 2009 PAs were revised from FY 2008 to split categories into separate PAs, according to Administration for Children and Families requirements. Therefore, ANA will publish two PAs, namely Social and Economic Development Strategies (hereinafter referred to as SEDS) and Social and Economic Development Strategies for Alaska (hereinafter referred to as SEDS-AK). (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

i. *SEDS.* The Priority Area Descriptions for social projects were changed. The priority areas focused on family preservation have been moved to the Family Preservation program area, see previous section. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and Pub. L. 109–394.)

Priority Area Description for Social Development

The FY 2009 PA Priority Area Description for Social Development Projects removes the following bullets:

- Projects to reduce child/infant abuse and neglect and family domestic violence.
- Projects that address the needs of grandparents raising grandchildren.
- Projects to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected and abandoned Native American children, youth and their families.

ii. *SEDS–AK.* The Executive Summary has been changed to reflect the new PA for SEDS–AK. A priority area for economic development projects was added addressing traditional energy activities. Three Priority Areas for social projects were removed to reflect their movement to the Family Preservation and Children program area, see previous section. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Pub. L. 109–394.)

1. Executive Summary

The FY 2009 PA Executive Summary will be:

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of Fiscal Year (FY) 2009 funds for new community-based projects under the ANA Social and Economic Development Strategies for Alaska (SEDS–AK) program. ANA's FY 2009 SEDS–AK goals and program areas of interest are focused on strengthening children, families and communities through community-based organizations, Tribes and Village governments. The purpose of ANA is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, Alaskan Natives and other Native American Pacific Islanders, including American Samoa Natives.

2. Priority Area Description for Economic Development

The FY2009 PA Priority Area Description for Economic Development Projects adds the following bullet:

- Projects to promote traditional energy activities and practices that support conservation and help to mitigate the high costs associated with the purchase, transportation, and storage of fuel in remote Alaskan Villages.

3. Priority Area Description for Social Development

The FY 2009 PA Priority Area Description for Social Development Projects removes the following bullets:

- Projects to reduce child/infant abuse and neglect and family domestic violence.
- Projects that address the needs of grandparents raising grandchildren.
- Projects to recruit, train and certify new Native American foster parents or promote appropriate extended family placements or to assist abused, neglected and abandoned Native American children, youth and their families.

(D) *ANA ERE:* The FY 2009 PA includes an additional instruction in the Approach evaluation criterion, Project Strategy sub-criterion. This change reflects the need for additional information related to the land area and natural resources over which the applicant has jurisdiction. (Legal authority: Section 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3 and Pub. L. 109–394.)

The FY 2009 PA Approach evaluation criterion, Project Strategy sub-criterion will have the following statement added:

Applicants are required to describe a land base or other resources, *e.g.* , river or body of water, over which they exercise jurisdiction to implement Tribal regulation of environmental quality. Maps and photos of the area are encouraged.

Dated: November 30, 2008.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. E8–30625 Filed 12–22–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0648]

Agency Information Collection Activities; Proposed Collection; Comment Request; PDUFA Pilot Project Proprietary Name Review

AGENCY: Food and Drug Administration, HHS

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the evaluation of proposed propriety names by pharmaceutical firms and the submission of the data generated from those evaluations to FDA for review under a pilot program. FDA plans to begin enrollment in the pilot program by the end of fiscal year (FY) 2009.

DATES: Submit written or electronic comments on the collection of information by February 23, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)), requires Federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with the pilot program, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

PDUFA Pilot Project Proprietary Name Review

In the **Federal Register** of October 7, 2008 (73 FR 58604), FDA announced the availability of a concept paper entitled ''PDUFA Pilot Project Proprietary Name Review.'' The concept paper describes how pharmaceutical firms may evaluate proposed proprietary names and submit the data generated from those evaluations to FDA for review under a pilot program to begin by the end of FY 2009.

On September 27, 2007, the President signed into law the Food and Drug Administration Amendments Act of 2007 (Public Law 110–85, 121 Stat. 823), which includes the reauthorization and expansion of the Prescription Drug User Fee Act (PDUFA IV). As part of the reauthorization of PDUFA IV, FDA committed to certain performance goals, including the goal of using user fees to implement various measures to reduce, among other things, medication errors related to look-alike and sound-alike product proprietary names. FDA also agreed to develop and implement a voluntary pilot program to enable pharmaceutical firms participating in the pilot to evaluate proposed proprietary names and to submit the data generated from those evaluations to FDA for review. The concept paper is intended to help pharmaceutical firms choose appropriate proprietary names for their drug and biological products before submitting marketing applications to FDA and describes how pharmaceutical firms may use ''best practices'' to carry out their own proprietary name reviews and provide FDA with the data that result from those reviews. The goals of the concept paper and the voluntary pilot program are to minimize the use of names that are misleading or that are likely to lead to medication errors, to make FDA's marketing application review more efficient, and to make regulatory decisions more transparent. The concept paper explains how an applicant who chooses to participate in the pilot program could assess a proposed proprietary name for safety (i.e., potential for medication errors) and, at the applicant's option, for promotional implications, before marketing application approval and subsequent marketing of a drug or biological product in the United States, and how to submit the results of the assessment for review under the pilot program.

As required by the PRA, this document is the first of two **Federal Register** notices that FDA must publish to provide an opportunity for public comment on the information collection that will result from the pilot program. The information described in the concept paper and the data collected may not be submitted to FDA until OMB has approved the information collection associated with the pilot program. After OMB approval, FDA will accept requests to register for the pilot program. FDA will announce OMB's approval and other details on participating in the pilot program in the **Federal Register**. FDA expects that the pilot program will begin by the end of FY 2009.

The information collection that will result from the voluntary pilot program, as described in the concept paper, consists of the following:

- Applicants should contact FDA to register and indicate the approximate date of their proprietary name submission, as described in the concept paper and as will be described in more detail when FDA announces OMB's approval and the specific information on participating in the pilot program.
- Applicants should contact the appropriate FDA Center 120 days prior to the intended date of the proposed proprietary name submission to discuss the specific details of the planned submission. Applicants should communicate with the Director in the Division of Medication Error Prevention and Analysis in the Office of

Surveillance and Epidemiology in the Center for Drug Evaluation and Research, or the Branch Chief at the Advertising and Promotion Labeling Branch of the Division of Case Management in the Office of Compliance and Biologics Quality in the Center for Biologics Evaluation and Research, concerning any questions about their proposed submissions. For prescription products, applicants should inform the appropriate center at the 120-day pre-submission discussion if they plan to use alternative or additional methods to evaluate the safety of their proposed proprietary name. For nonprescription products, sponsors should discuss with FDA different protocols that could be used for their specific drug products prior to the submission of the proprietary name.

- Applicants should submit two separate sets of product name-related information to enable parallel reviews by FDA as follows: (1) A comprehensive evaluation of the proposed proprietary name including the information and data listed in Appendix B (''Proposed Template For A Pilot Program Submission'') of the concept paper; and (2) the proprietary name information that they would ordinarily submit under FDA's current practice. (Note: The proprietary name information ordinarily submitted under FDA's current practice is not included in the estimates in table 1 of this document because this information collection is already approved under OMB Control Numbers 0910–0001 and 0910–0338).
- After review of the proprietary name submissions, and if FDA informs the applicant that the proposed first-choice proprietary name is unacceptable, the applicant should confirm in writing that it would like its originally submitted second-choice name reviewed, or the applicant should submit an alternative second-choice name along with the information described in the concept paper. At that time, FDA will begin review of the second-choice name. If an applicant has submitted a complete proprietary name analysis for the second-choice name, the responsible center will use discretion to determine whether to review the applicant's analysis in addition to conducting its own analysis using the traditional approach. Although FDA would ideally review the applicant's completed proprietary name analysis for the second-choice name, factors such as staffing and timelines will be used in making this determination.

FDA estimates the burden of this collection of information in table 1 of this document. The ''hours per response'' is for all of the submissions and notifications to FDA described under the bulleted paragraphs above and is based on information provided by industry as well as FDA's familiarity with the time required for this information collection.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pilot Project Proprietary Name Review	20	1	20	480	9,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: December 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30587 Filed 12–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0375] (formerly Docket No. 2004D–0555)

Guidance for Industry and Food and Drug Administration Staff; ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300.'' This guidance document describes a means by which male condoms made of natural rubber latex (latex condoms) may comply with the requirement of special controls for class II devices. FDA believes that the labeling recommendations contained in this guidance, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of latex condoms without spermicidal lubricant. In the **Federal Register** of November 10, 2008 (73 FR 66522), FDA published a final rule that amended the classification regulation for condoms from class II (performance standards) to class II (special controls) and designated this guidance document as the special control for male condoms made of natural rubber latex classified under that regulation.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for

information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Paul Tilton, Center for Devices and Radiological Health (HFZ–332), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 240–276–0115.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, Congress enacted Public Law 106–554, which directed FDA to ''* * * reexamine existing condom labels'' and ''* * * determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness of condoms in preventing sexually transmitted diseases, including [human papillomavirus].'' Under this mandate, FDA conducted a review of scientific information and of existing latex condom labeling, and concluded that existing latex condom labeling was medically accurate in presenting the conclusion that, as an overall matter, condoms are effective in reducing the risk of sexually transmitted infections (STIs). To help consumers make appropriate choices for their particular needs, and therefore to ensure the safe and effective use of latex condoms, FDA issued a proposed rule to establish a labeling guidance as a special control to address some additional, more nuanced information about latex condoms and STIs, as well as to provide information about contraception, and about appropriate directions and precautions for use of latex condoms (the 2005 proposed rule) (70 FR 69102, November 14, 2005). The rule proposed to amend existing classification regulations to designate a labeling guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex'' as the special control for condoms made of natural rubber latex (latex condoms), classified under § 884.5300 (21 CFR 884.5300), and latex condoms with spermicidal lubricant containing nonoxynol-9, classified under § 884.5310 (21 CFR 884.5310). Also in the **Federal Register** of November 14, 2005 (70 FR 69156), FDA announced the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex'' (the 2005 draft guidance). FDA invited interested persons to comment on the 2005 proposed rule and 2005 draft guidance by February 13, 2006.

In response to FDA's requests for comments, more than 100 commenters submitted information and comments to the docket for the 2005 proposed rule and the docket for the 2005 draft guidance. Because of the intertwined nature of the 2005 proposed rule and the 2005 draft guidance, and because of the significant overlap in comments, FDA considered all comments in preparing both the final rule and special controls guidance. The analysis of comments is contained in the final rule.

In the **Federal Register** of November 10, 2008 (73 FR 66522), FDA issued a final rule which amended the classification regulation for condoms in § 884.5300 and designated the guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300,'' which is the subject of this notice, as the special control for latex condoms classified under that regulation. This guidance is based on the draft guidance proposed as a special control in November 2005 entitled ''Class II Special Controls Guidance Document: Labeling for Male Condoms Made of Natural Rubber Latex.'' FDA assigned a new title to the final special control guidance document designated as a special control by § 884.5300 in order to avoid confusion with the 2005 draft guidance, which remains available (but not for implementation) as the proposed special control for latex condoms with spermicidal lubricant (classified under § 884.5310) in association with the proposal to amend that classification regulation. FDA is continuing to study the issues surrounding latex condoms with spermicidal lubricant and has not yet issued a new final rule regarding those devices.

II. Significance of Special Controls Guidance Document

FDA believes that adherence to the labeling recommendations described in this guidance document, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of latex condoms classified under § 884.5300. The final rule establishing this guidance document as a special control will be effective January 9, 2009. Following the effective date of the final rule, latex condoms classified under § 884.5300 must comply with the requirement of special controls; manufacturers must address the issues requiring special controls as identified in the guidance, either by following the recommendations in the guidance or by some other means that provides equivalent assurances of safety and effectiveness.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number (1688) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The new collections of information in this guidance were approved under OMB control number 0910–0633.

This guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 801, including those in 21 CFR 801.435, referenced in the guidance, have been

approved under OMB control number 0910–0485. The latex allergy caution required by 21 CFR 801.437 and referenced in the guidance does not constitute a ''collection of information'' under the PRA. Rather, it is a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.'' (5 CFR 1320.3(c)(2)).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: December 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30586 Filed 12–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0644]

SEQC—The Sequencing Quality Control Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of solicitation.

SUMMARY: The Food and Drug Administration (FDA) is soliciting volunteers to participate in the SEQC (Sequencing Quality Control) project to objectively assess the technical performance of different next-generation sequencing technologies in DNA (deoxyribonucleic acid) and RNA (ribonucleic acid) analyses and to evaluate the advantages and limitations of various bioinformatics solutions in handling and analyzing the massive new data sets. The SEQC project is a natural extension of the MicroArray Quality Control (MAQC) project (*http://www.fda.gov/nctr/science/centers/toxicoinformatics/maqc/*) and is being coordinated by the FDA. This project is open to the public. Vendors of next-generation sequencing technologies and institutions interested in the generation, management, analysis, and interpretation of the resulting sequence data are welcome to participate.

DATES: Requests to participate in the SEQC project at the National Center for Toxicological Research (NCTR) should be submitted on or before 4:30 p.m., CST, January 9, 2009, or be postmarked on or before January 9, 2009.

ADDRESSES: Requests to participate in the SEQC project should be sent to Leming Shi, National Center for Toxicological Research, Food and Drug Administration, 3900 NCTR Rd., Jefferson, AR 72079, 870–543–7387, FAX: 870–543–7854; e-mail: *leming.shi@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA's Critical Path Initiative (*http://www.fda.gov/oc/initiatives/criticalpath/*) identifies pharmacogenomics as a key opportunity in advancing medical product development and personalized medicine. FDA has issued the ''Guidance for Industry: Pharmacogenomic Data Submissions'' (*http://www.fda.gov/cder/guidance/6400fnl.pdf*) to facilitate scientific progress in the field of pharmacogenomic data integration in drug development and medical diagnostics.

Microarrays represent a core technology in pharmacogenomics and toxicogenomics; however, next-generation sequencing technologies promise to provide some unique advantages in DNA and RNA analyses and are expected to be adopted by the pharmaceutical and medical industries for advancing personalized nutrition and medicine.

The SEQC project, with broad participation from scientists and reviewers within FDA and collaborators across the public, academic, and private sectors, is expected to help prepare FDA for the next wave of submission of genomic data generated from the next-generation sequencing technologies.

Dated: December 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30410 Filed 12–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Panel for BGES and BMRD.

Date: January 7, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Scott Osborne, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782, *osbornes@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IMM Member Application Review.

Date: January 9, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology of Chronic and Acute Outcomes.

Date: January 15, 2009.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Kidney and Urology Member Conflicts.

Date: January 15, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Applications: GMPB.

Date: January 16, 2009.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Najma Begum, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Neuropsychopharmacology and Electrophysiology.

Date: January 27–28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Oxidative Metabolism and Death Study Section.

Date: February 2, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Carol Hamelink, PhD, Scientific Review Officer Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes, Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.

Date: February 2–3, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Estina E. Thompson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes, Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: February 2, 2009

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30467 Filed 12–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 19, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30461 Filed 12–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 19–20, 2009.

Open: February 19, 2009, 8:30 a.m. to 3 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 19, 2009, 3 p.m. to 5 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 20, 2009, 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Dennis R Lang, PhD, Acting Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233/EC–3431, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–7729, *lang4@niehs.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30462 Filed 12–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; State Administrative Data.

Date: January 8, 2009.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 16, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30468 Filed 12–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2457–08; DHS Docket No. USCIS–2008–0036]

RIN 1615–ZA74

Revision to Direct Mail Program for Submitting Form N–400, Application for Naturalization, Implementation of Program

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is revising its Direct Mail Program so that certain filings of Form N–400, Application for Naturalization, will now be filed at a designated lockbox facility instead of a USCIS Service Center. Furthermore, if you are the spouse of a current member of the Armed Forces, this notice instructs you to now file your Form N–400 at the Nebraska Service Center (NSC), whether you are filing from within the U.S. or abroad. This notice does not change the filing location for Forms N–400 filed by members or certain veterans of the Armed Forces who are eligible to apply for naturalization under sections 328 or 329 of the Immigration and Nationality Act (the Act). All naturalization applicants filing under the military provisions, sections 328 or 329 of the Act, should file their application at the NSC regardless of geographic location.

DATES: This notice becomes effective January 22, 2009.

FOR FURTHER INFORMATION CONTACT: Kathleen Stanley, Chief, Lockbox Operations Division, Office of the Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 4th Floor, Washington, DC 20529–2130, Telephone (202) 233–2385.

SUPPLEMENTARY INFORMATION:

Background

What Is the Direct Mail Program?

The Direct Mail Program allows applicants for certain immigration benefits to send their application or petition directly to a USCIS service center or lockbox facility instead of submitting it to their local USCIS office.

The Direct Mail Program allows USCIS to:

- Standardize and more efficiently process applications by eliminating duplicative work;

- Increase staff productivity; and
- Introduce better information management tools.

The purpose and strategy of the Direct Mail Program has been discussed in detail in previous rulemaking and notices. (See 59 FR 33903, 59 FR 33985, 60 FR 22408, 61 FR 2266, 61 FR 56060, 62 FR 16607, 63 FR 891, 63 FR 892, 63 FR 13434, 63 FR 13878, 63 FR 16828, 63 FR 50584, 63 FR 8688, 63 FR 8689, 64 FR 67323, 69 FR 3380, 69 FR 4210, 70 FR 30768, 72 FR 3402, 73 FR 50336 and 73 FR 53034.)

Explanation of Changes

Will this notice change my eligibility for naturalization?

No. This notice will not affect your eligibility for naturalization. This notice only affects the filing instructions where certain Form N–400s must be mailed. Some Form N–400s that were previously filed at USCIS Service Centers must now be sent to a designated lockbox facility.

Please note that applicants filing under the military provision, sections 328 or 329 of the Act, as well as spouses of current members of the Armed Forces, have separate filing instructions. Filing changes will be discussed in detail in the following charts.

Where should I send my Form N–400 and all supporting documentation?

Please refer to the following charts for the filing location to send your completed Form N–400 and supporting documentation.

ARMED FORCES APPLICANTS AND SPOUSES OF CURRENT MEMBERS OF THE ARMED FORCES

If . . .	Then mail to . . .
You are a member of the Armed Forces or a veteran, and you are eligible to apply for naturalization under sections 328 or 329 of the Immigration and Nationality Act (the Act); or.	Nebraska Service Center, P.O. Box 87426, Lincoln, NE 68501–7426.
You are the spouse of a current member of the Armed Forces	Courier and Express Mail Deliveries: Nebraska Service Center, 850 S. Street, Lincoln, NE 68508.

NON-ARMED FORCES APPLICANTS

If . . .	Then mail to . . .
You reside in:	
Alaska	USCIS Lockbox Facility USCIS, P.O. Box 21251, Phoenix, AZ 85036. Courier and Express Mail Deliveries, Attn: N400, 1820 E Skyharbor Circle S Floor 1, Phoenix, AZ 85034.
Arizona.	
California.	
Colorado.	
Hawaii.	
Idaho.	
Illinois.	
Indiana.	
Iowa.	
Kansas.	
Michigan.	
Minnesota.	
Missouri.	
Montana.	
Nebraska.	
Nevada.	
North Dakota.	
Ohio.	
Oregon.	
South Dakota.	
Utah.	
Washington.	
Wisconsin.	
Wyoming.	
Territory of Guam.	
Northern Marina Islands.	
You reside in:	
Alabama	USCIS Lockbox Facility USCIS, P.O. Box 299026, Lewisville, TX 75029. Courier and Express Mail Deliveries, USCIS, Attn: N400, 2501 S State Hwy 121 Bldg. #4, Lewisville, TX 75067.
Arkansas.	
Connecticut.	
Delaware.	
DC.	
Florida.	
Georgia.	
Kentucky.	
Louisiana.	
Maine.	
Maryland.	

NON-ARMED FORCES APPLICANTS—Continued

If . . .	Then mail to . . .
Massachusetts. Mississippi. New Hampshire. New Jersey. New Mexico. New York. North Carolina. Oklahoma. Pennsylvania. Puerto Rico. Rhode Island. South Carolina. Tennessee. Texas. Vermont. Virginia. West Virginia. U.S. Virgin Islands.	

What happens if I file a Form N–400 covered by this notice at the wrong location?

During the first 30 days after this notice takes affect, USCIS will forward incorrectly addressed Form N–400s to the proper address, rather than reject it. USCIS will forward any improperly addressed Form N–400s covered by this notice as follows:

- Any Form N–400 from non-Armed Forces applicants will be forwarded to either the Dallas or Phoenix lockbox facilities.
- Any Form N–400 from Armed Forces applicants and the spouses of current members of the Armed Forces will be forwarded to the Nebraska Service Center.

Any applications forwarded within this time period will be considered properly filed when received at either the Dallas or Phoenix lockbox facilities, or the Nebraska Service Center. After this 30-day transition period, any Form N–400 covered by this notice, which is received at a location other than the appropriate location as defined in the updated Form N–400 filing instructions provided in this notice, will be returned with an explanation directing the applicant to mail it to the appropriate processing facility.

Is USCIS amending the Form N–400 Instructions?

Yes. USCIS is currently amending the instructions to the Form N–400. The revisions will include the new filing addresses, the requirement for passport style photos and the revision will provide clarification of the grounds for rejection of an application. When available, the new form will be posted on the USCIS Web site (*http://www.uscis.gov*).

Where may I find information related to eligibility requirements for naturalization?

You may find general eligibility requirements for naturalization at our Web site (*http://www.uscis.gov*). You may also download ''A Guide to Naturalization (Form M–476),'' which provides information on the benefits and responsibilities of citizenship, an overview of the naturalization process, and eligibility requirements.

Paperwork Reduction Act

We will be amending the instructions to the Form N–400 to reflect the new filing instructions. Accordingly, we will provide the Office of Management and Budget with a copy of the amended form through the automated Regulatory Office Combined Information System (ROCIS). Changing the filing instructions will not have any effect on the reporting burden hours. The OMB control number for this collection is 1615–0052.

Dated: December 17, 2008.

Michael Aytes,

Acting Deputy Director, U.S. Citizenship and Immigration Services.

[FR Doc. E8–30531 Filed 12–22–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I–333, Obligor Change of Address.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 24, 2008, Vol. 73 No. 186, 55123, allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days January 22, 2009. Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

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 proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–333. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on the Form I–333 is necessary for U.S. Immigration and Customs Enforcement (ICE) to provide immigration bond obligors a standardized method to notify ICE of address updates. Upon receipt of the formatted information records will then be updated to ensure accurate service of correspondence between ICE and the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Acting Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: December 16, 2008.

Lee Shirkey,

Acting Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E8–30473 Filed 12–22–08; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–76]

Study of Capital Needs in the Public Housing 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.

Survey a statistically significant sample of housing authorities and a set of public housing developments, buildings and units, using instruments that include systems inspection coding and information, costs, and modernization and conversion actions. Using these instruments, the study will generate estimates in constant dollars of existing and accrued total and per-unit capital needs at the national level and for important subcategories such as HA size (measured by number of ACC units) and region. The sample and data instruments shall enable statistically significant comparison with results from the 1998 capital needs study. The Study responds to a Congressional mandate.

DATES: *Comments Due Date: January 22, 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–NEW) 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: Study of Capital Needs in the Public Housing Program.

OMB Approval Number: 2577–NEW.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Survey a statistically significant sample of housing authorities and a set of public housing developments, buildings and units, using instruments that include systems inspection coding and information, costs, and modernization and conversion actions. Using these instruments, the study will generate estimates in constant dollars of existing and accrued total and per-unit capital needs at the national level and for important subcategories such as HA size (measured by number of ACC units) and region. The sample and data instruments shall enable statistically significant comparison with results from the 1998 capital needs study. The Study responds to a Congressional mandate.

Frequency of Submission: Other one-time.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	970	1		4.97		4,820

Total Estimated Burden Hours: 4,820.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 16, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–30463 Filed 12–22–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[FWS–R3–ES–2008–N0263; 30120–1113–0000 D2]

Approved Recovery Plan for the Copperbelly Water Snake Northern Distinct Population Segment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the approved recovery plan for the copperbelly water snake (*Nerodia erythrogaster neglecta*) northern distinct population segment (DPS). The threatened copperbelly water snake northern DPS occurs in Michigan, Ohio, and Indiana. This plan includes specific recovery objectives and criteria to achieve delisting of the species from the Endangered Species Act (Act).

ADDRESSES: You may obtain a copy of the recovery plan by sending a request to Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–6316 (printed copies will be available for distribution within 4 to 6 weeks), or download it from the Internet at *http://www.fws.gov/endangered/recovery/index.html#plans*.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Hosler, at the above address or by telephone at (517) 351–6326. TTY users may contact Ms. Hosler through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting listed species, and estimate time and cost for implementing the measures needed.

The Act (16 U.S.C. 1531 *et seq.*) requires us to develop recovery plans for listed species unless such a plan will not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires us to provide the public notice and an opportunity for public review and comment during recovery plan development. We provided the draft copperbelly water snake recovery plan to the public and solicited comments from September 6, 2007, through November 5, 2007 (72 FR 51242). We considered information received during the public comment period and information from peer reviewers in our preparation of the recovery plan, and also summarized that information in Appendix E of this approved recovery plan.

We listed the copperbelly water snake northern DPS as threatened on January 29, 1997 (62 FR 4183). The northern DPS occurs in Michigan, Indiana, and Ohio, north of 40 degrees north latitude. The current distribution of the copperbelly water snake is limited to only five, very small scattered and isolated populations in south central Michigan, northeastern Indiana, and northwestern Ohio. Surveys indicate that the species is in decline throughout these areas.

Copperbelly water snakes have both wetland and terrestrial habitat requirements. The species is associated with wetland complexes characterized by a preponderance of shallow wetlands, many of which draw down seasonally. Such complexes may predominantly occur as isolated wetlands distributed in a forested upland matrix, floodplain wetlands fed by seasonal flooding, or a combination of both. Fishless wetlands, suitable for high anuran (frog and toad) productivity, are required to provide habitat and a suitable prey base.

The copperbelly water snake northern DPS is threatened by habitat loss and fragmentation, human persecution, inadequate habitat management, and road crossings. The principal limiting factor for this species is the availability of wetland/upland habitat complexes of sufficient size. Individuals move hundreds of meters or more between wetlands and routinely use multiple wetlands over the course of an active season. They also spend substantial periods of time in upland habitat aestivating, foraging, and shedding. Populations may require many hundreds of hectares of contiguous habitat in order to persist.

The principal recovery strategy is to establish and conserve multiple wetland/upland habitat complexes that provide adequate habitat for population persistence. The recovery strategy focuses on targeted habitat restoration and implementation of ''best management practices'' for land managers. The objective of the recovery plan is to provide a framework for the recovery of copperbelly water snake northern DPS so that protection by the Act is no longer necessary. The copperbelly water snake will be considered for delisting when section 4(a)(1) threat factors under the Act are assessed and when the following criteria are met: (1) Multiple population viability is assured; (2) sufficient habitat is conserved and managed; and (3) significant threats due to lack of suitable management, adverse land features and uses, collection, and persecution have been reduced or eliminated.

We will achieve these criteria through the following actions: (1) Identify and conserve habitat complexes sufficient for recovery; (2) monitor known copperbelly water snake populations and their habitat; (3) improve baseline understanding of copperbelly water snake ecology; (4) develop recovery approaches to enhance recruitment and population size; (5) develop and implement public education and outreach efforts; (6) review and track recovery progress; and (7) develop a plan to monitor copperbelly water snake after it is delisted.

Criteria to reclassify the copperbelly water snake northern DPS to endangered status is also provided. The species will be considered for reclassification from threatened to endangered status when section 4(a)(1) threat factors under the Act are assessed

and when either of the following criteria is met: (1) There are no known populations of more than 500 adults, or (2) the cumulative population size is less than 1000 adults.

Authority: Sec. 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 5, 2008.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. E8–30489 Filed 12–22–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–21981, F–22009, F–22890, F–22894, F–22892, F–22874, F–22870, F–22873, F–22865, F–22866, F–22867, F–22877; 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 Bering Straits Native Corporation for lands located in the vicinity of Council and Elim, Alaska. Notice of the decision will also be published four times in the Nome Nugget.

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 January 22, 2009 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.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E8–30502 Filed 12–22–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10620, AA–10666, AA–11868, AA–11869, AA–11878; 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 Bristol Bay Native Corporation for lands located in the vicinity of Twin Hills and Perryville, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

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 January 22, 2009 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.

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Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E8–30503 Filed 12–22–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–169; CA169 1610 025B]

Call for Nominations for the Bureau of Land Management's Carrizo Plain National Monument Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The Bureau of Land Management (BLM) is soliciting nominations from the public to fill positions on the Carrizo Plain National Monument Advisory Committee. Committee members provide advice and recommendations to the BLM on the management of public lands in the Carrizo Plain National Monument.

ADDRESSES: Nominations should be sent to the Monument Manager, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

FOR FURTHER INFORMATION CONTACT: Johna Hurl, Monument Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, (661) 391–6093, *Johna_Hurl@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The Monument Advisory Committee provides representative citizen counsel and advice to the Secretary of the Interior through the BLM with respect to the revision and implementation of the comprehensive plan for the Carrizo Plain National Monument.

The Committee consists of nine members:

(1) A member of, or nominated by, the San Luis Obispo Board of Supervisors.

(2) A member of, or nominated by, the Kern County Board of Supervisors.

(3) A member of, or nominated by, the Carrizo Native American Advisory Council.

(4) A member of, or nominated by, the Central California Resource Advisory Council.

(5) A member representing individuals or companies authorized to graze livestock within the Monument.

(6) Four members with recognized backgrounds reflecting:

(i) The purposes for which the Monument was established; and

(ii) The interests of other stakeholders, including the general public, that are affected by or interested in the planning and management of the Monument.

Terms of all present committee members expire on February 1, 2009. In order to provide continuity, BLM will transition to three-year terms, with

terms for one-third of the committee members expiring each year. In order to make this transition, the committee members will be appointed to one, two, or three-year terms, for the period beginning February 1, 2009.

Individuals may nominate themselves or others. Nominees must be residents of the region in which the MAC has jurisdiction. The BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical resource.

The following must accompany nominations received in this call for nominations:

Letters of reference from represented interests or organizations;

A completed background information nomination form;

Any other information that speaks to the nominee's qualifications.

Nominations will be accepted for a 45-day period beginning the date this notice is published.

Johna Hurl,

Monument Manager, Carrizo Plain National Monument.

[FR Doc. E8–30482 Filed 12–22–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZC03000 L51050000.EA0000 LVRCSA0010000, AZ–SRP–330–07–01 and AZ–SRP–330–07–02]

Temporary Closure of Selected Public Lands in La Paz County, AZ, During the Operation of the 2009 Parker 250 and Parker 425 Desert Races

AGENCY: Bureau of Land Management.

ACTION: Temporary Closure of Selected Public Lands in La Paz County, Arizona, during the operation of the 2009 Parker 250 and Parker 425 Desert Races.

SUMMARY: The Bureau of Land Management (BLM) Lake Havasu Field Office announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the permitted running of the Best in the Desert 2009 Parker 250, and 2009 Blue Water Resort and Casino Parker 425 Desert Races. Areas subject to this closure include all public land, including county maintained roads and highways located on public lands that are located within two miles of the designated course. The race course and closure areas are described in the Supplementary Information section of this notice and maps of the designated race course are maintained in the Bureau of Land Management Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406.

DATES: *Event Dates:* The Parker 250 on January 10, 2009, and the Parker 425 on February 7, 2009.

FOR FURTHER INFORMATION CONTACT: Michael Dodson, Field Staff Ranger, BLM Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (928) 505–1200.

SUPPLEMENTARY INFORMATION:

Description of Race Course Closed Area: Beginning at the eastern boundary of the Colorado River Indian Tribe (CRIT) Reservation, the race course closed area runs east along Shea Road, then east into Osborne Wash on to the Parker-Swansea Road to the Central Arizona Project Canal (CAP), then north on the west side of the CAP Canal, crossing the canal on the county-maintained road, running northeast into Mineral Wash Canyon, then southeast on the county-maintained road, through the four-corners intersection to the Midway (Pit) intersection, then east on Transmission Pass Road, through State Trust Land located in Butler Valley, turning north into Cunningham Wash to North Tank, continuing back south to Transmission Pass Road and east (reentering public land) within two miles of Alamo Dam Road. The course turns south and west onto the wooden power line road, onto the State Trust Land in Butler Valley, turning southwest into Cunningham Wash to the Graham Well, intersecting Butler Valley Road, then north and west on the county-maintained road to the ''Bouse Y'' intersection, two miles north of Bouse, Arizona. The course proceeds north, paralleling the Bouse-Swansea Road to the Midway (Pit) intersection, then west along the north boundary (powerline) road of the East Cactus Plain Wilderness Area to Parker-Swansea Road. The course turns west into Osborne Wash crossing the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area; it continues west staying in Osborne Wash and crossing Shea Road along the southern boundary of Gibraltar Wilderness, rejoining Osborne Wash to the CRIT Reservation boundary.

Times of the Temporary Land Closure: The Parker 250 Desert Race closure is in effect from 2 p.m. (MST) on Friday, January 9, 2009, through 6 p.m. (MST) on Saturday, January 10, 2009. The Blue Water Resort and Casino Parker 425 Desert Race closure is in effect from 2 p.m. (MST) on Friday, February 6, 2009, through 11:59 p.m. (MST) on Saturday, February 7, 2009.

Prohibited Acts: The following acts are prohibited during the temporary land closure:

1. Being present on, or driving on, the designated race course. Spectators may not be within 200 feet of the designated race course. This does not apply to race participants, race officials nor emergency vehicles authorized by or operated by local, State or federal government agencies. Emergency medical response shall only be conducted by personnel and vehicles operating under the guidance of La Paz County Emergency Medical Services (EMS) and Fire, or the Arizona Department of Public Safety (DPS), or the Bureau of Land Management (BLM).

2. Vehicle parking or stopping in areas affected by the closure, except where such is specifically allowed (designated spectator areas).

3. Camping in any area, except in the designated spectator areas.

4. Discharge of firearms.

5. Possession or use of any fireworks.

6. Cutting or collecting firewood of any kind, including dead and down wood or other vegetative material.

7. Operating any vehicle (except registered race vehicles), including off-highway vehicles, not registered and equipped for street and highway operation.

8. Operating any vehicle in the area of the closure at a speed of more than 35 mph. This does not apply to registered race vehicles during the race, while on the designated race course.

9. Failure to obey any official sign posted by the Bureau of Land Management, La Paz County, or the race promoter.

10. Parking any vehicle in a manner that obstructs or impedes normal traffic movement.

11. Failure to obey any person authorized to direct traffic, including law enforcement officers, BLM officials and designated race officials.

12. Failure to observe Spectator Area quiet hours of 10 p.m. to 6 a.m.

13. Failure to keep campsite or race viewing site free of trash and litter.

14. Allowing any pet or other animal to be unrestrained by a leash of not more than six feet in length.

The above restrictions do not apply to emergency vehicles owned by the United States, the State of Arizona, or La Paz County. Authority for closure of public lands is found in Title 43 CFR 8340, Subpart 8341; Title 43 CFR 8360, Subpart 8364.1; and Title 43 CFR 2930. Persons who violate this closure order are subject to arrest, and upon conviction may be fined not more than

$100,000 and/or imprisoned for not more than 12 months.

Date Signed: December 15, 2008.

David Jaynes,

Acting Field Manager, Lake Havasu Field Office.

[FR Doc. E8–30480 Filed 12–22–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV056000.L58530000.EU0000; N–81965 et al.; 9–08807; TAS: 14X5232]

Notice of Realty Action: Competitive Online Auction of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Land Sale.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer 14 parcels of public land of approximately 117.50 in the Las Vegas Valley by competitive online auction at not less than the fair market value (FMV). The sale will be conducted pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Public Law 105–263, 112 Stat. 2343, as amended. The online sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, and BLM land sale and mineral conveyance regulations at 43 CFR 2710 and 2720.

DATES: Interested parties may submit written comments regarding the proposed sale of public lands and the environmental assessment (EA) until February 6, 2009.

ADDRESSES: Mail written comments to the BLM District Manager, Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Manuela Johnson at *manuela_johnson@nv.blm.gov* or (702) 515–5224. For general information on previous BLM public land sale, refer to the following Web address: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html*.

SUPPLEMENTARY INFORMATION: This public sale is in conformance with the *Las Vegas Resource Management Plan* (RMP), approved on Oct. 5, 1998. BLM has determined that the proposed action conforms to the RMP decision LD–1 under the authority of FLPMA.

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
sec. 13, W½NE¼NW¼SE¼NW¼, NW¼NW¼SE¼NW¼, SW¼NW¼SE¼NW¼, SE¼NE¼SW¼NW¼, W½NW¼SW¼SE¼NW¼, SE¼SE¼SW¼NE¼;
sec. 19, N½NW¼NE¼SE¼NW¼;
sec. 30, SW¼NE¼NW¼NE¼, W½SE¼NW¼NE¼, S½NW¼NW¼NE¼, SW¼NW¼NE¼, W½SW¼NE¼, SW¼SE¼NE¼NE¼, SE¼SW¼NE¼NE¼, NE¼NE¼SE¼NE¼, W½NE¼SE¼NE¼, NW¼SE¼NE¼.
T. 22 S., R. 61 E.,
sec. 14, E½SW¼NE¼SW¼SE¼;
sec. 30, NW¼NW¼NE¼SE¼, NW¼SW¼NE¼SE¼, SW¼NW¼NE¼SE¼, SW¼SW¼NE¼SE¼, NE¼SE¼NW¼SE¼, W½NE¼SE¼SE¼, N½NW¼SE¼SE¼.
T. 23 S., R. 61 E.,
sec. 9, N½SW¼NW¼NE¼;
sec. 20, S½NW¼SE¼NE¼, N½SE¼SE¼NE¼.

The area described contains 117.5 acres, more or less.

Maps delineating the individual proposed sale parcels are available for public review at *http://www.propertydisposal.gsa.gov,* and at the Las Vegas Field Office (LVFO), which is located at the BLM Southern Nevada District Office. The FMV for each parcel will be available 60 days prior to the sale date.

The lands are being offered for sale online via the internet using competitive sale procedures pursuant to 43 CFR 2711.3–1. Bidding on the subject parcels will begin at FMV and remain open for sale for a period of 60 days in accordance with the competitive sale procedures. Bidders may go to the GSA Web site at *http://www.auctionrp.com* to register, obtain maps and get information on how to submit competitive online bids via the internet for the sale. A submitted online internet bid is a binding offer.

At the conclusion of the auction, the highest qualified bid for any parcel will be declared the apparent high bidder under 43 CFR 2711.3–1(d). The declared high bidder will have 10 days from closure of the online auction to submit a bid deposit of not less than 20 percent of the successful high bid amount. Payment must be made in the form of a cashiers check, certified check or U.S. postal money order, and made payable in U.S. dollars to ''General Services Administration.'' Personal or company checks will not be accepted. Failure to submit the 20 percent bid deposit amount following the sale will result in cancellation of the bid. At the conclusion of the 10 days, the successful bidder will receive a high bidder letter from the BLM with detailed information for full payment. No contractual or other rights against the United States may accrue until BLM officially accepts the offer to purchase and the full bid price is paid.

Terms and Conditions: Certain minerals for each parcel will be reserved in accordance with the BLM's approved Mineral Potential Report, dated January 22, 1999. Information pertaining to the reservation of minerals specific to the parcel is located in the case file and available for review at the LVFO. An offer to purchase these parcels will constitute an application for mineral conveyance of the ''no known value'' mineral interests. In conjunction with the final payment, an applicant for ''no known value'' mineral interests will be required to pay a $50 non-refundable filing fee for processing the conveyance of the ''no known value'' mineral interests which will be sold simultaneously with the surface interests.

The following numbered terms and conditions will appear on the conveyance documents for these parcels:

1. Discretionary leasable and saleable mineral deposits on the lands in Clark County, if any, reserved to the United States, in accordance with the above referenced Mineral Potential Report. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. A right-of-way for federal aid highway purposes (Blue Diamond Road) reserved to the Federal Highway Administration, its successors or assigns, by right-of-way No. Nev-012728, pursuant to the Act of August 27, 1958 (23 U.S.C. 107 (D)) within sale parcel N–85660;

4. All parcels are subject to valid existing rights;

5. The parcels are subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans;

6. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and

judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of federal, state, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by federal and state environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; (6) Or natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and

7. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, all parcels are subject to the requirements of section 120(h) of the CERCLA.

Federal law requires that bidders must be (1) United States citizens 18 years of age or older; (2) a corporation subject to the laws of any State or of the United States; (3) an entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) a State, State instrumentality, or political subdivision authorized to hold real property. U.S. citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to BLM within 30 days from receipt of the high bidder letter shall result in the cancellation of the bid.

Parcels may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of a parcel. Encumbrances of record that may appear in the BLM public files for the parcels proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time (PT), Monday through Friday, at the LVFO, except during federally recognized holidays.

All parcels are subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the parcels may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or to an easement.

BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. Each valid holder will be notified in writing of their rights and then must apply for the conversion of their current authorization.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the LVFO prior to 30 days before the bidder's scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the LVFO 30 days from the date on the high bidder letter by 4:30 p.m. PST. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change on the Certificate of Eligibility form to the LVFO in writing. Certificate of Eligibility forms are available at the LVFO and the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html*.

The remainder of the full bid price for each parcel must be paid prior to the expiration of the 180th day following the close of the online auction. Payment must be submitted in the form of a certified check, postal money order, bank draft or cashier's check made payable in U.S. dollars to the ''Department of Interior—Bureau of Land Management.'' Personal checks will not be accepted. Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made.

BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Services regulations. BLM is not a party to any 1031 Exchange.

All sales are made in accordance with and subject to the governing provisions of law and applicable regulations.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

Any parcels not sold by competitive sale or through an online auction may be identified for sale at a later date without further legal notice.

On publication of this notice and until completion of the sale, BLM is no longer accepting land use applications affecting the parcels identified for sale. However, land use applications may be considered after completion of the sale for parcels that are not sold.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all

applicable federal, state, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any federal or state law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The proposed SNPLMA sale parcels were analyzed in the *Las Vegas Valley Disposal Boundary Environmental Impact Statement* (EIS), approved Dec. 23, 2004. Two parcels being offered in this sale were previously analyzed through EAs and approved for sale. Copies of the applicable EAs for N–81965 and N–81967 are available for review upon request at the LVFO. The remaining twelve parcels identified in this notice are analyzed in an EA for this sale which tiers to the EIS. On publication of this notice, this EA is available for public review and comment at the LVFO.

Only written comments submitted by postal service or overnight mail will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered as properly filed.

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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.

Dated: December 5, 2008.

Kimber Liebhauser,

Assistant Field Manager, Division of Lands.

[FR Doc. E8–30460 Filed 12–22–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 17, 2008, a proposed Consent Decree in *United States of America et al.* v. *Standard Metals Corporation,* Civil Action No. 08–CV–02741 was lodged with the United States District Court for the District of Colorado.

In this action the United States, on behalf of the Administrator of the United States Environmental Protection Agency, the Chief of the United States Department of Agriculture Forest Service, and the Secretary of the Interior, and the State of Colorado, on behalf of the Executive Director of the Colorado Department of Public Health and Environment, the Director of the Colorado Department of Natural Resources, and the Attorney General of the State of Colorado (together, the ''government''), sought to recover response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Standard Mine Site in Gunnison County, Colorado, the Ross Adams Site on Prince of Wales Island, Alaska, six sites in San Juan County, Colorado, and the Antler Mine and Mill Site in Mohave County, Arizona (collectively, the ''Sites''), and to recover damages for injury to, destruction of, or loss of natural resources at the Sites and surrounding riparian corridors, including the reasonable costs of assessing such injury, destruction or loss, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9607.

The Consent Decree resolves the government's CERCLA response cost claims at the Sites by requiring that Standard pursue insurance recovery and pay to the government 50% of the first $180,000 recovered and 90% of all recovery thereafter. The Consent Decree resolves the government's CERCLA natural resource damage claims at the Sites by requiring that Standard transfer to the United States approximately 800 acres of real property to which it holds title, at the government's option.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Standard Metals Corporation,* Civil Action No. 08–CV–02741 (D.CO), D.J. Ref. 90–11–3–08831.

The Decree may be examined at U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket Nos. 06–19 & 06–20]

Nirmal Saran, M.D.; Nisha Saran, D.O.; Affirmance of Suspension Orders

On September 19, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to both Nirmal Saran, M.D., and Nisha Saran, D.O. (Respondents), of Arlington, Texas. The Orders immediately suspended each Respondent's DEA Certificate of Registration as a practitioner, on the grounds that each had issued numerous controlled-substance prescriptions over

the internet without a legitimate medical purpose and had acted outside of the course of professional practice, because they did so without establishing a bona fide doctor-patient relationship with the persons they prescribed to, in violation of 21 CFR 1306.04(a). Nirmal Saran OTSC at 6; Nisha Saran OTSC at 6–7.

More specifically, the Show Cause Orders alleged that each Respondent had participated in a scheme run by Mr. Johar Saran, the owner of Carrington Healthcare System/Infiniti Services Group (CHS/ISG), and the son of Respondent Nirmal Saran and brother of Respondent Nisha Saran. *See* Nirmal Saran OTSC at 5; Nisha Saran OTSC at 5. The Orders alleged that as part of the scheme, CHS/ISG operated several pharmacies and created sham corporations in order to obtain the DEA registrations necessary for the pharmacies to order controlled substances, and that the drugs were eventually delivered to CHS/ISG, where its employees downloaded prescriptions from several internet sites, filled them, and shipped them to customers. *See* Nirmal Saran OTSC at 5; Nisha Saran OTSC at 5. The Orders further alleged that CHS/ISG was shipping 3,000 to 4,000 drug orders a day. *See* Nirmal Saran OTSC at 5; Nisha Saran OTSC at 5.

With respect to Nirmal Saran, the Show Cause Order alleged that his ''primary practice area is ophthalmology.'' Nirmal Saran OTSC at 6. The Show Cause Order further alleged that between May 1 and June 17, 2005, he had prescribed thirty-seven different controlled substances to persons in at least forty-four States, and that between May 18 and June 8, 2005, he issued 1,248 controlled substance (cs) prescriptions and had issued as many as 217 prescriptions in a day to persons in thirty-four States. *Id.* at 7. The Order further alleged that sixty-four percent of the prescriptions he issued through the scheme were for schedule III drugs containing hydrocodone. *Id.* at 6.

With respect to Nisha Saran, the Show Cause Order alleged that between May 27 and June 3, 2005, she had issued 303 cs prescriptions to persons in at least forty States, and that she had issued as many as 101 cs prescriptions to persons in twenty-six States in a single day. Nisha Saran OTSC at 6. Relatedly, the Show Cause Order alleged that fifty-nine percent of the prescriptions she wrote were for schedule III drugs containing hydrocodone. *Id.*

Both Show Cause Orders further alleged that each Respondent's cs prescriptions were not issued ''for a legitimate medical purpose in the usual course of professional practice,'' and violated 21 CFR 1306.04(a). *Id.* at 7; *see also* Nirmal Saran OTSC at 7. I further found that the allegations supported the conclusion that each Respondent's ''continued registration during the pendency of [the] proceedings would constitute an imminent danger to the public health and safety.'' Nisha Saran OTSC at 7; Nirmal Saran OTSC at 7.

On October 20, 2005, counsel for each Respondent requested a hearing on the allegations of the respective Show Cause Orders. ALJ Exs. 3 & 4. The matters were placed on the docket of Administrative Law Judge (ALJ) Gail Randall, who consolidated the cases and conducted pre-hearing procedures.

On March 28–30, 2006, a hearing was held in Forth Worth, Texas. During the hearing, both the Government and Respondents put on testimony and entered documentary evidence into the record. Following the hearing, the parties submitted briefs containing their proposed findings, conclusion of law, and argument.

On November 22, 2006, while the decision of the ALJ was still pending, the Government moved to terminate both proceedings on the ground that each Respondent's registration had expired on February 28, 2006, and neither Respondent had submitted a renewal application. ALJ Exs. 13a & 13b. Thereafter, Respondents' counsel filed oppositions to both termination motions. ALJ Exs. 14a & 14b.

In support of her opposition, Nisha Saran submitted an affidavit establishing that in February 2006, and before the expiration of her registration, she had attempted to renew her registration electronically at the Agency's Web site, but was unable to do so. ALJ Ex. 14A (attached as RX 1). In her affidavit, Nisha Saran further stated that ''I have at no time abandoned my desire to obtain DEA registration during the pendency of this case.'' *Id.*

In support of his opposition, Nirmal Saran submitted an affidavit in which he stated that in February 2006, and before the expiration of his registration, he had asked his daughter to renew his registration at the Agency's Web site, but she was unable to do so. ALJ Ex. 14B (attached as RX 1). In his affidavit, Nirmal Saran also stated that ''I have at no time abandoned my desire to obtain DEA Registration during the pendency of this case.'' *Id.*

Thereafter, the Government moved to withdraw both termination motions noting my then-recent decision in *William R. Lockridge,* 71 FR 77791 (2006), which held, in a case arising under similar circumstances, that the proceeding was not moot. In its withdrawal motions, the Government acknowledged that each Respondent had indicated that he/she ''intend[ed] to continue the practice of medicine and intend[ed] to obtain a DEA registration in order to do so.'' ALJ Exs. 15A at 3; 15B at 3. The Government also acknowledged the unequivocal statements of each Respondent that he/she had not abandoned his/her desire to obtain a DEA Registration. ALJ Exs. 15A at 3; 15B at 3.

The ALJ granted the Government's motion and further ordered that the parties brief various issues including whether ''the record as a whole establishes by a preponderance of the evidence that the DEA properly immediately suspended'' each Respondent's registration, because his/her ''handling of controlled substances creates an imminent danger to the public health or safety.'' ALJ Exs. 16A at 2–3; 16B at 2–3. The ALJ also ordered the parties to address what factual findings were relevant and what legal standard should be applied in determining the validity of the suspension order. ALJ Exs. 16A at 3; 16B at 3.

On March 7, 2007, after the parties submitted their briefs, the ALJ submitted a Query to the Deputy Administrator. ALJ Ex. 22. In the Query, the ALJ asked whether in light of the expiration of each Respondent's registration she should make findings of fact, whether she should simply forward the record to me for a final order, or whether the Government should forward the investigative file to me with the materials contained therein at the time the immediate suspension orders were issued. ALJ Ex. at 8.

On April 22, 2007, I answered the ALJ's Query. In my ruling, I noted that both the Government and the Respondents agreed that the case was not moot because even though the Respondents' registrations had expired, each Respondent maintained that they had not ''abandoned their desire to obtain DEA registrations during the pendency of this case.'' ALJ Ex. 23, at 2. I also explained that DEA's rules do not prohibit a former holder of a registration from reapplying immediately for a new registration and that ''neither Respondent ha[d] notified the Agency that [he/she] intended to permanently cease professional practice.'' *Id.*

In light of these circumstances, I ''conclude[d] that principles of judicial economy are best served by making findings of fact and conclusions of law based on the record established in this

proceeding rather than subjecting the parties to the potential re-litigation of the same issues in a future proceeding.'' *Id.* I further directed that ''[t]he ALJ's findings of fact and conclusion of law should be made based on the factors set forth in * * * 21 U.S.C. 824(a),'' as this section ''applies to all suspensions regardless of whether a suspension is imposed before, or after, a hearing.'' *Id.* I further noted that ''my additional findings that Respondents posed 'an imminent danger to public health or safety' [was] not reviewable in the proceeding before'' the ALJ. *Id.* at 2–3 (quoting 21 U.S.C. 824(d)).

Thereafter, the ALJ issued her recommended decisions in each case. With respect to Respondent Nirmal Saran, the ALJ concluded that between May 18 and June 8, 2005, he had issued over 1,000 prescriptions for controlled substances to treat pain, and that these ''prescriptions were issued outside the scope of professional practice, and were not issued for legitimate medical purposes'' in violation of DEA regulations. *In re Nirmal Saran,* ALJ Dec. at 32. In support of her conclusion, the ALJ noted that Respondent practices as an ophthalmologist, that he was licensed to practice medicine only in Texas and yet issued prescriptions to patients in other States, and that he failed to comply with basic standards of the medical profession for establishing a doctor-patient relationship. *Id.* at 31–32.

The ALJ also noted that Respondent had failed to properly safeguard his controlled substance prescribing authority because he ''allow[ed] his signature to be scanned into a computer database'' with the result that ''non-medical personnel were approving the dispensing of controlled substances in [his] name.'' *Id.* at 33. Finally, the ALJ noted that Respondent did not maintain patient records and that there was ''no indication that [he] interacted with the patient[s] to advise [them] concerning the risks involved in taking the controlled substances,'' or that he ''used any of the available control mechanisms to ensure these individuals were not abusing'' the drugs. *Id.* Finally, the ALJ noted that Respondent chose not to testify and thus offered no assurance that he would comply with Federal law and regulations in the future. *Id.* at 34. The ALJ thus concluded that Respondent's ''registration would be adverse to the public interest.'' *Id.*

With respect to Respondent Nisha Saran, the ALJ concluded that she too had issued cs prescriptions ''outside the scope of professional practice'' and without ''legitimate medical purposes.'' *In re Nisha Saran,* ALJ Dec. at 30. In support of her conclusion, the ALJ adopted the conclusion of the Government's expert that Respondent issued prescriptions in violation of DEA regulations based on his review of her ''prescriptions, log sheets, [her] type of practice, and the vast numbers of prescriptions that she wrote during a given period of time.'' *Id.* The ALJ also found that ''non-medical personnel were approving the dispensing of controlled substances in [her] name,'' and that ''Respondent provided these individuals with the ability to act in such a manner by allowing her signature to be scanned into a computer database.'' *Id.* at 30–31. The ALJ thus concluded that ''[s]uch a cavalier way of safeguarding her authority to prescribe controlled substances is certainly outside the public interest.'' *Id.* at 31.

The ALJ further observed that between May and June 2005, Respondent had issued ''approximately 220 controlled substance drug orders,'' but did not ''maintain adequate patient records.'' *Id.* at 31. More specifically, the ALJ observed that ''the record contains no charts documenting the Respondent's diagnosis for which the controlled substances were prescribed, no treatment plan, and no indication that the Respondent interacted with the patient to advise the patient concerning the risks involved in taking the controlled substances and the need for the patient to follow her directions concerning the appropriate quantities to take.'' *Id.* The ALJ also explained that there was also ''no evidence that * * * Respondent used any of the available control mechanisms to ensure these individuals were not abusing the'' drugs she prescribed. *Id.*

Finally, the ALJ noted that Respondent chose not to testify and thus had offered no assurance that she would comply with Federal law and regulations in the future. *Id.* at 32. The ALJ therefore concluded that Respondent's registration would be ''adverse to the public interest.'' *Id.*

Thereafter, Respondents' counsel filed exceptions to the ALJ's recommended decisions in each matter and the record was forwarded to me for final agency action. Having considered the entire record, as well as the exceptions filed in both matters, I hereby issue this Decision and these Final Orders. I adopt the ALJ's ultimate conclusion of law in each matter that the respective Respondent's registration would be inconsistent with the public interest. I make the following findings of fact.

Findings

Respondent Nisha Saran formerly held DEA Certificate of Registration, BS8415956, which authorized her to handle controlled substances as a practitioner in schedules II through V. GX 1 (Docket No. 06–19). Respondent's registration expired on February 28, 2006. *Id.* Respondent has not submitted an application to renew her registration.[1] I further find that Respondent is licensed to practice medicine only in the State of Texas. ALJ Ex. 5, at 2.

Respondent Nirmal Saran formerly held DEA Certificate of Registration, AS7091894, which authorized him to handle controlled substances as a practitioner in schedules II through V. GX 1 (Docket No. 06–20). Respondent's registration expired on February 28, 2006. *Id.* Respondent has not submitted an application to renew his registration. Respondent is licensed to practice medicine only in the State of Texas. ALJ Ex. 6, at 2. Respondent practices as an ophthalmologist. Tr. 216.

Mr. Johar (a.k.a. Joe) Saran is the son of Respondent Nirmal Saran and the brother of Respondent Nisha Saran. Tr. 210; *id.* at 116. Johar Saran owned Carrington Health Care System (which later changed its name to Infiniti Services Group), a corporate entity located in Arlington, Texas, which owned approximately eighteen to twenty pharmacies. *Id.* at 55, 60, 421. Carrington/Infiniti used the pharmacies to fill orders for controlled substances and non-controlled drugs on behalf of ''numerous web sites'' at which persons could order drugs, including Rx Great

[1] According to the Chief of the Registration and Program Support Section, on February 6, 2006, someone made several attempts to renew DEA Registration, BS8415956, through the Agency's Web page but was informed that ''[t]he DEA Registration number you provided is not eligible for online renewal. Please call the DEA Registration Call Center if you have any questions.'' ALJ Ex. 15A, Appendix I, at 4. The Chief of the Registration Unit further stated that on November 27, 2006, an additional attempt was made to renew the registration which resulted in the same message that online renewal was not available. *Id.* at 2.

The Chief of the Registration Unit also testified that on February 6 and November 27, 2006, attempts were made to renew Respondent Nirmal Saran's DEA Registration #AS7091894; each of these attempts resulted in the message that online renewal was not available. *Id.* at 1–2; *see also* ALJ Ex. 15B, Appendix I, at 1–2. According to the Chief of the Registration Unit, if the registrants had called the Registration Call Center, they would have been sent a renewal form and ''the notation 'Renewal Notice Sent' would have been documented in DEA records but, no such documentation was in the computer history for either DEA number.'' *Id.* at 2–3.

The Chief of the Registration Unit further explained that the Respondents were prevented from renewing their registration online because their registrations had been immediately suspended. *Id.* at 2. I find, however, that the Respondents could have obtained renewal applications from the Agency and submitted them via mail.

Prices and Nations Drug Supply.[2] *Id.* at 52.

Rx Great Prices was owned by Gil Lozano, *id.* at 617; Lozano also co-owned with his wife two limited liability corporations, Global One Marketing and First Management. *Id.* at 623. Lozano's niece, Tania Lozano, was the director of marketing for Global One and Rx Direct. *Id.* at 611. Rx Great Prices used Joe Saran's businesses exclusively to fill its orders. *Id.* at 624.

Nations Drug Supply (NDS) was a Web site owned and operated by Johar Saran and Infiniti. *Id.* at 418. The NDS Web site was developed by Concussion Interactive and became operational sometime in May 2005. *Id.* at 399–400. The Web site was managed by Tara Jones.[3] *Id.* at 531 & 535.

The Investigation

In June 2004, a DEA Diversion Investigator (DI) with the Fort Worth, Texas Resident Office, initiated an investigation of Carrington/Infiniti's activities. *Id.* at 58–60. As part of the investigation, DEA Investigators conducted trash runs at Infiniti's headquarters during which they found numerous documents including prescription labels for controlled substances dispensed by the Triphasic Pharmacy, a pharmacy owned by Johar Saran, to out of state persons, which listed Nirmal Saran as the prescribing physician. *Id.* at 75; GX 104 at 2 (Plea Agreement of Johar Saran); *see* GXs 2, 3, 4, 5, 6, 7, 8, 9, & 10 (No. 06–20). During some of the trash runs, the DIs also recovered several daily reports which listed hundreds of prescriptions for schedule III controlled substances containing hydrocodone which were dispensed by Triphasic; the reports listed Nirmal Saran as the prescriber. *See* GX 5, at 28–41 (No. 06–20), GX 11, at 1–161 (No. 06–20).[4]

Thereafter, DEA investigators obtained a court order under 18 U.S.C. 2516, which authorized them to intercept electronic communications from Infiniti's Internet protocol (IP) address between April 26 and June 23, 2005.[5] Tr. 30–32. According to the DI who served as a minimizer of the intercept, Nisha and Nirmal Saran's names appeared as approvers of prescriptions in database files that were downloaded by persons at Infiniti from the Nations Drug Supply Web site. *Id.* at 35–36. Moreover, their names also appeared in various e-mails that were intercepted.[6] *Id.* at 35.

After intercepting the database files, the DI used Microsoft Excel to extract the data and put it into spreadsheet form. *Id.* at 37. The Government introduced into evidence spreadsheets listing the prescriptions which were dispensed by pharmacies that were controlled by Joe Saran and Infiniti between May 27 and June 17, 2005. *See* GXs 4–58 (06–19).[7] The spreadsheets list numerous controlled substance prescriptions that were issued by each Respondent for persons located throughout the country.[8] *See generally id.* Among the drugs prescribed by each Respondent were such highly abused controlled substances as schedule III combination drugs containing hydrocodone, and schedule IV benzodiazepines such as diazepam and lorazepam.[9]

As part of the investigation, a DI went to the Nations Drug Supply Web site and made two undercover buys. On June 2, 2005, the DI, using the name Dwight E. Anderson and an address in Forth Worth, Texas, ordered ninety tablets of hydrocodone/acetaminophen 10/650 mg., for a price of $ 373.50 plus shipping. GX 89 (06–20). While visiting the Web site, the DI was able to select the drug he wanted and place it in his

[2] On September 20, 2005, a federal grand jury indicted Joe Saran, Gil Lozano, Fred Word, as well as the various coporations controlled by Saran including Carrington, Infiniti, and the pharmacies, on numerous counts including violations of the Controlled Substances Act. GX 85 (06–20). On November 14, 2006, Joe Saran entered into a plea agreement with the United States Attorney for the North District of Texas in which he pled guilty to, *inter alia,* conspiring to distribute controlled substances, in violation of 21 U.S.C. 846, 841(a)(1) & 841(b)(1)(D). GX 104 (06–20) at 1–2.

[3] The record also establishes that Colin McConnell was an employee of Concussion Interactive, Tr. 112, and Fred Word was Infiniti's Chief Financial Officer. *Id.* at 114.

[4] In his exceptions, Respondent notes that while the daily reports list him as the prescriber, it also listed ''an incorrect DEA number.'' Nirmal Saran Exceptions at 12. Respondent thus contends that this ''implies that someone attempted to use Respondent's name in association with the incorrect DEA number.'' *Id.* at 12–13.

It is acknowledged that the daily reports do not contain Respondent's correct DEA number. As found below, however, Respondent admitted to investigators that he prescribed over the Internet. Moreover, Respondent did not testify at the hearing and thus did not deny that he issued the prescriptions dispensed by Triphasic. I therefore reject the exception and find that he did issue the prescriptions.

Respondent further contends that because the ''labels were all found in the trash * * * they were, in fact, *trash,*'' and thus the probative value of this evidence is limited to showing that the Government found his name on pieces of paper ''during a time period unconnected to the'' allegations of the Show Cause Order. *Id.* at 11–12. According to Respondent's argument, the labels are not evidence of prescriptions at all. I conclude, however, that a pharmacy's employees would not prepare hundreds, if not thousands, of prescription labels which included the patient's name and address, dispensing instructions, and various warnings, unless they were to be used to dispense the prescriptions. I therefore reject Respondent's contention.

Respondent also objects to the admission of numerous exhibits on the ground that they pre-date the events which form the basis of the Show Cause Order. At the hearing, however, Respondent did not object to the admission of any of these exhibits on the ground that they were irrelevant because they involved prescribings which pre-dated the period alleged in the Show Cause Order. *See* Tr. 66 (GX 2), 69 (GX 3), 73 (GX 4), 133 (GX 6), 75 (GX 7), 137 (GX 9), 139 (GX 10), 141 (GX 11) (All exhibit numbers are from Case No. 06–20). Respondent objected only to portions of GXs 5 and 8, and did so on the limited basis that they contained a few prescriptions written by other doctors. *See* Tr. 130–32 (discussing GX 5); *id.* at 135–36 (discussing GX 8). The prescriptions issued by other doctors were removed from the exhibits and the exhibits were entered into the record. *See id.* at 132–33, 136. I therefore conclude that Respondent has waived his objection to the admission of these exhibits.

[5] According to a DI, the court also authorized the interception of Infiniti's e-mail for an additional thirty days. Tr. 31.

[6] These include an April 6, 2005 e-mail from Tara Jones, an employee of Joe Saran and Infiniti, to Colin McConnell, an employee of Concussion Interactive, the developer of the Nations' Web site. GX 75 (06–19). In this e-mail, Ms. Jones provided Nisha and Nirmal Saran's addresses, phone numbers, and medical license numbers. *Id.* In concluding the e-mail, Ms. Jones apologized for taking ''so long,'' and added that ''Nisha was in LA and just got back today. She said you were both playing phone tag, so if you still need to talk to her * * * try her cell number now.'' *Id.*

The record also contains an e-mail (dated 5/27/2005) from another employee of Concussion Interactive to Ms. Jones forwarding a username and password so that Nisha Saran could ''login to the shopping cart admin.'' GX 79 (06–19).

[7] The exhibits are numbered as GXs 14–68 in No. 06–20.

[8] According to my review of the record, between May 19, 2005 and June 8, 2005, Respondent Nirmal Saran issued the following amounts of controlled substance prescriptions to persons in these States: Eighty-six to persons in Florida, eighty-seven to persons in California, sixty-four to persons in Tennessee, thirty-two to persons in Ohio, and twenty-nine to persons in North Carolina. Moreover, between May 27, 2005 and June 3, 2005, Nisha Saran issued controlled substance prescriptions in the following amounts to persons in these States: Seventeen to persons in Florida, eleven to persons in California, ten to persons in North Carolina and four to persons in Ohio.

[9] Respondent Nisha Saran contends that ''her name was used without her permission or knowledge by NDS employees, most likely Tara Jones.'' Nisha Saran Exceptions at 11; *see also id.* at 12 (noting that as systems administrator, Jones could log in '' 'as one of the doctors' and insert a doctor's signature and it would appear that a doctor had approved the prescription'') (quoting Tr. 420, testimony of J.B.).

While one of Respondent's witnesses testified that Tara Jones had approved an order using Ms. Saran's signature, Tr. 547, this witness subsequently testified that she had observed this ''only the one time,'' *id.* at 585, which occurred toward the ''end of August, beginning of September 2005.'' *Id.* at 568. The spreadsheets containing the intercepted prescriptions show, however, that Respondent issued numerous prescriptions months earlier. Moreover, even if Respondent's name was used on some prescriptions without her permission, I note that Respondent did not testify and thus did not deny that she issued the prescriptions. Nor did she explain why her signature was found in a hard drive of a computer at Infiniti, her brother's business. Tr. 183–84. Moreover, as explained above, other evidence links Respondent to the Nations' and Rx Great Prices' schemes.

shopping cart.[10] Tr. 152. While the Web site used a program that required that a customer provide information to establish his identity, the DI testified that by contacting the site's customer service department he was able to obtain a ''skip code'' which allowed him to bypass this process. *Id.* at 155.

The DI was then required to complete a patient questionnaire. *Id.* at 155–56. The questionnaire asked him about his height, weight, allergies, past medications including whether he had previously taken the requested medication, and why he was seeking the medication. *Id.* at 155–56. With respect to the latter question, the DI ''simply put '[m]y leg hurts.'' ' *Id.* at 157.

After indicating that he would pay for the drugs by cash on delivery, *id.*, the Web site displayed an order confirmation page. *Id.* at 158; GX 89 (No. 06–20). This page indicated that the DI's order number was 817, that the order was placed on ''2005–06–02'' at ''15:15:56,'' that it was sold to and would be shipped to ''Dwight E. Anderson'' with an address of 819 Taylor St. in Forth Worth, that it was for 90 tablets of hydrocodone 10/650 mg., and that the drugs cost $ 373.50, plus $ 22.00 for overnight shipping for a total cost of $ 395.50. GX 89.

The following day, the DI received a prescription vial containing tablets. The label on the vial indicated that the prescription had been filled by ''Reliance Pharmacuetical [sic], Inc.,'' with an address of 2805 W. Arlansas Lane, Suite 303, Arlington, Texas. GX 91 (No. 06–20). The label provided instructions for taking the drug, indicated that the vial contained 90 tablets of ''Hydrocodone (Lorcet)—10/650,'' and that the prescribing doctor was ''Nirmal Saran''; the label also included the name ''Dwight E. Anderson,'' the prescription number of ''817:10294,'' and the order number of ''817.'' *Id.*

Notably, the information on the order confirmation page and the vial label matched the information for order 817 contained in the spreadsheets that were compiled from the internet files that were intercepted by the Government. See GX 43 (06–20) at 8–14 (line 21).[11] Moreover, at no time did the DI speak with Nirmal Saran or any other physician regarding why he was ordering the drugs. Tr. 182.

The following day, the DI revisited the Nations Drug Supply Web site and ordered sixty tablets of alprazolam 2 mg., a schedule IV benzodiazepine. GX 92 (No. 06–20); Tr. 169. In completing the questionnaire necessary to order the drug, the DI indicated that the reason he needed the drug was because he was ''stressed out from work.'' Tr. 172. The DI also indicated that he was not taking any other drugs although he had already obtained the hydrocodone that he purchased the day before. *Id.* This time, however, the Web page indicated that the DI would have to fill out a patient history form which was to be completed by his doctor and faxed in. *Id.* at 173. The DI testified, however, that he never sent in the form and yet still was able to order and obtain the drugs. *Id.* at 173–74, 176, 178–80; *see also* GX 92 (No. 06–20). The label on the drug vial was missing the name of the prescribing doctor. GX 94 (No. 06–20).

The Government also elicited the testimony of J.P., a Florida resident, regarding his obtaining of controlled substances through the Nations Drug Supply Web site. According to his testimony and the intercepted prescription data, on at least three separate occasions, J.P. purchased controlled substances through Nations. More specifically, on May 30, 2005, J.P. purchased ninety tablets of Norco 10 mg., a schedule III drug containing hydrocodone based on a prescription issued by Respondent Nisha Saran. Tr. 18–19; GX 9 (06–19) at 1–7 (line 10). On June 2, 2005, J.P. purchased another ninety tablets of Norco 10 mg., as well as ninety tablets of Adipex-P 37.5 mg. (phentermine), a schedule IV stimulant; both prescriptions were authorized by Nirmal Saran. GX 30 (06–19) at 17–24 (lines 37 & 38). Finally, on June 6, 2005, J.P. purchased two orders of ninety tablets of Norco 10 mg., as well as two orders of ninety tablets of Valium (10 mg); each of the four prescriptions were approved by Nirmal Saran. GX 51 (06–19) at 17–24 (lines 35, 37, 40, & 42).[12]

J.P. testified that he was not required to send his medical records to Nations to purchase the controlled substances, that he did not speak with anyone to obtain the drugs, and that he did not know either Respondent. Tr. 18. J.P. further testified that at the time he purchased the drugs, he was not under the care of a physician, id. at 17, and that he ''became physically dependent'' on them. *Id.* at 22.

On September 21, 2005, law enforcement authorities executed a federal search warrant at the residence

[10] At the hearing, the Government introduced into evidence a DVD which showed the various Web pages that the DI visited in ordering the drugs; the DVD was made using a software program which records as a video ''anything that happens on the computer screen.'' Tr. 145–46.

[11] In his exceptions, Respondent argues that ''the name of Dwight E. Anderson * * * *does not appear on the Government's spreadsheet evidence*, rather, order number 817 is shown as having been filled for a 'Robin Daub,' *and not* 'Dwight E. Anderson.' '' Nirmal Saran Exceptions at 26 (citing GX 87, at 178–80). Relatedly, Respondent argues that ''*No order no. 953 is reflected on the Government's spreadsheet of 'Nirmal Saran's Original Rx's.*' '' *Id.* at 27. Respondent further argues that ''[i]f the information on the spreadsheets was in fact downloaded from the servers and put into an Excel file as testified to by Government's agents, *and not manipulated as they testified*, there should be no discrepancies in the tables/spreadsheets showing different information on them and definitely should show the undercover buys.'' *Id.* Based on the testimony of one of his witnesses, Respondent further asserts that ''the IP addresses reflected on the Government's exhibit would not instruct a computer to transfer any data, and that [GX 90] does not reflect the transmission of an actual customer's order.'' *Id.* (citing Tr. 426 & 429). Respondent contends that ''[t]his information * * * suggests that these purchases were fabricated.'' *Id.*

Respondent misrepresents what exhibit (GX 90) represents. As the DI testified, GX 90 does not represent the time that the DI purchased the drug, but rather, the time ''that that file was transferred that contained the information of the undercover buy'' to Infiniti. Tr. 164. Consistent with the DI's testimony, the order confirmation that he printed from the Nations Drug Supply Web site indicates that the order was place at 15:15:56 (or 3:15:56 p.m.), *see* GX 89; by contrast, GX 90 indicated that the file was transferred to Infiniti at 10:37:52 p.m, Greenwich Mean Time, or 4:37 p.m. Fort Worth Time. See GX 90; Tr. 164.

To be sure, GX 87, which lists Nirmal Saran's prescriptions, indicates that order number 817 was placed by R.D. and not Dwight E. Anderson. GX 87, at 178. However, the original spreadsheet listing order number 817, and which was created following the intercept, clearly shows that the DI ordered hydrocodone as he testified to, and that the prescription was authorized by Nirmal Saran. *See* GX 43 (06–20) at 8–14 (line 21). While the person who created GX 87 testified that she had copied information from the original spreadsheet files to this file, Tr. 333, there appear to be other errors in this document as well. For example, the evidence shows that the hydrocodone prescription given order number 817 cost $373.50, yet GX 87 indicates that the drugs were paid for with a COD in the amount of $87. GX 87, at 180. Moreover, Dwight Anderson is nonetheless listed as having purchased another drug which Nirmal Saran prescribed, Zydone, a branded drug which also contains hydrocodone, for a total COD amount of $395.50, even though the product price is listed at $74.70; the entries for this prescription also indicate that the purchase was prepaid while simultaneously indicating a COD amount. *See* GX 87 at 106–08 (line entry 598). Given these errors, and the derivative nature of the exhibit, I do not rely on it.

Based on the great weight of the evidence, which includes the DI's testimony, the DVD showing the DI's visit to the Web site, the order confirmation, the evidence showing that the drugs were delivered, and the original spreadsheet of the intercepted prescriptions, I reject Respondent's contention that the purchase was fabricated. I further conclude that it is more likely than not that the purchase occurred and that Nirmal Saran authorized the prescribing. As for Respondent's contention regarding order no. 953, no doctor was listed as the prescriber on either the drug vial's label, GX 94 (06–20), or on the spreadsheet. GX 54 (06–20) at 8–10 (line 21). It is therefore no surprise that the order is not listed on GX 87.

[12] I have considered and reject the suggestion that these were duplicate prescriptions. Cf. Nirmal Saran's Exceptions at 23. Notably, the two Norco prescriptions had different order numbers (as did the two Valium prescriptions). See GX 51 (06–19) at 17. Moreover, the evidence shows that two different pharmacies, with different addresses, filled the prescriptions. *Id.* at 19.

of Joe Saran. *Id.* at 208. While the search was proceeding, Nirmal Saran arrived at his son's residence, identified himself to a DI as Joe Saran's father, and said that he wanted to talk to the investigators about what they were doing. *Id.* at 209–10. The DI contacted another DI, who advised him that he needed to serve Nirmal Saran with the Suspension Order and that he was willing to talk to Dr. Saran. *Id.* at 212.

Following his arrival at the residence, the other DI served Nirmal Saran with the Order and after explaining why the Agency had issued the Order, proceeded to interview him. *Id.* at 215. During the interview, ''Dr. Saran admitted to prescribing controlled substances via the [i]nternet for his son's company, Nations Drug Supply.'' *Id.* at 216. Dr. Saran explained ''that Nations Drug Supply had a Web site, and that the Web site list[ed] all the names and the information as to why the person needed the drug, the person's allergies, blood pressure, and weight.'' *Id.* at 216–17. Dr. Saran also stated ''that he would read the questionnaire and he would prescribe that way.'' *Id.* at 217. Dr. Saran further stated that back in May or June 2005, his son and another employee of Nations had approached him, and that his son had given him a password which allowed him to access the Web site. *Id.* Dr. Saran also told the DIs that his internet prescribing mostly involved painkillers. *Id.* at 218.

Dr. Saran further admitted that he did not know any of the persons he prescribed to, and that during the entire period in which he prescribed over the internet, he telephoned ''approximately 12 to 15 patients.'' *Id.* at 219. Dr. Saran also said that in reviewing the questionnaires, ''he took the person's word for it,'' id., and that the ''questionnaire with all the information for the patient was good enough for him.'' *Id.* at 217.

Dr. Saran admitted, however, that in his practice as an ophthalmologist, ''he would initially examine the patient, take their blood pressure and weight, review their history, and then prescribe the medication, which [was] totally opposite of'' how he prescribed online. *Id.* at 219. He also told the DIs that he did not ''keep any records of whatever he prescribed.'' *Id.* at 220. Finally, he acknowledged that he was licensed only in Texas, but ''but felt that [because] the prescriptions were issued in Texas, it was okay for him to prescribe'' to persons residing in other States. *Id.* at 221.

Respondents' Relationship With Rx Great Prices

During the investigation of Infiniti, DEA Investigators also intercepted several e-mails which link both Respondents to Rx Great Prices, the Web site owned and operated by Gil Lozano and the corporations he controlled. *Id.* at 613. Moreover, on the same day that the search warrant was executed at Joe Saran's residence, other investigators executed a search warrant at Lozano's residence in Florida.[13] *Id.* at 604–05.

During the search of Lozano's residence, the investigators seized two documents entitled ''EMPLOYMENT AGREEMENT.'' *See* GX 101 (06–19), GX 101 (06–20). While the header on both documents stated ''Attorney-Client Draft Document'' and ''Discussion: Not for Execution,'' each document also stated that ''THIS EMPLOYMENT AGREEMENT * * * is made and entered into this 20[th] day of January 2005, by and between [each Respondent] [14] a physician ('Employee') and First Management, LLC, a Florida Limited Liability Company ('Employer').'' *See* GX 101 (06–19) at 1; GX 101 (06–20) at 1. Each agreement gave an effective date (March 1, 2005 on Nisha Saran's agreement; February 1, 2005 on Nirmal Saran's agreement), indicated that each Respondent's ''Bonus and Additional Compensation'' was ''To Be Negotiated,'' and was signed by the respective Respondent.[15] *See id.* (06–19) at 1, 8, & *id.* (06–20) at 1, 8 & 12.

Each agreement stated that ''Employer operated an on-line, Internet pharmacy business,'' that the ''Employer hereby employs Employee, and Employee accepts such employment, as a physician to render professional medical services [on] behalf of Employer,'' and that the ''Employee shall be required to check and receive patient files for review via the Internet or facsimile multiple times per days at least (5) days per week, and spend at least two—three hours per day reviewing patient files and/or supervising nurse practitioners.'' *Id.* (06–19) at 1 & *id.* (06–2) at 1 & 6. Moreover, the agreements stated that the ''Employee shall have * * * authority, in their [sic] sole discretion to reject the patient's file for any request for a prescription or to request further medical information or history of the patient prior to making any final decision as to the issuing of any prescription to a patient.'' *Id.* (06–19) at 6; *id.* (06–20) at 6.

The record contains several e-mails which further support the conclusion that both Respondents entered into a contractual arrangement with Gil Lozano and his corporation to prescribe over the Internet. For example, on March 21, 2005, Joe Saran sent an e-mail to Gil Lozano with the subject line ''Malpractice Information''; the e-mail also indicated that the matter was of ''High'' importance. GX 77 (06–19). In the e-mail, Joe Saran wrote: ''I do hope that we can get this resolved quickly as both my father and sister are quite anxious to get started with you.'' *Id.* Continuing, Joe Saran explained that ''the insurance companies have a few questions. If you can please answer these, then I believe that the underwriters will approve and this will get done quickly.'' *Id.* Saran then listed five things that were needed, including ''the projected number of prescriptions on a daily basis,'' ''a copy of the medical questionnaire from your Web site,'' and ''guidelines as to the range of pharmaceuticals being prescribed.'' *Id.*

The record also includes a series of e-mails which discuss the payment of malpractice insurance premiums for Nisha Saran. *See* GX 99 (06–19). On July 6, 2005, Tania Lozano sent an e-mail to Gil Lozano with the subject line of ''Nisha info.'' *Id.* at 1. This e-mail related that Nisha Saran had paid $19,830 for a year of malpractice insurance, and that the policy was ''[v]alid until December 12, 2005.'' *Id.* Ms. Lozano further stated that Nisha Saran ''said if you want to cover just for the months that she has been working

[13] In their exceptions, both Respondents moved to strike the testimony of the DI and seek to exclude the documentary evidence which includes the employment agreements and e-mails linking them to Gil Lozano and his corporation, First Management, L.L.C. *See* Nisha Saran Exceptions at 15, Nirmal Saran Exceptions at 15. At the hearing, however, Respondents did not object to the admission of the employment agreements, *see* Tr. 607–8, or the e-mails which link them to Lozano. *Id.* at 614. Respondents have therefore waived any argument that the employment agreement and e-mails were improperly admitted into evidence.

The DI also testified regarding an interview he conducted of Tania Lozano. Respondents objected to a single question on the ground that the DI's testimony was hearsay; the ALJ overruled the objection. *Id.* Moreover, the Supreme Court has held that hearsay evidence can still constitute substantial evidence under the Administrative Procedure Act. *See Richardson* v. *Perales*, 402 U.S. 389 (1971). Notably, Respondents did not seek to subpoena Ms. Lozano. *See* 21 CFR 1316.52(d). I therefore deny Respondents' motions to strike the DI's testimony.

[14] To clarify, on GX 101 (No. 06–19), ''Nisha M. Saran, D.O.'' was listed as ''a physician ('Employee'),'' and party to the agreement; on GX 101 (No. 06–20), ''Nirmal Saran, M.D'' was listed as ''a physician ('Employee')'' and party.

[15] It is acknowledged that neither agreement was signed by someone on behalf of First Management. *See* GX 101 (No. 06–19) at 12; GX 101 (06–20) at 12. Notwithstanding this, for the reasons explained in the text, I conclude that each Respondent entered into a contractual arrangement with First Management to issue Internet prescriptions.

for Rxgreatprice, that would be fine.'' *Id.* The e-mail also stated: ''First order approved on 5/31/2005 at 11:48 p.m.'' *Id.*

On July 7, 2005, Tania Lozano e-mailed Nisha Saran and asked her: ''Can you please provide me the address of your bank, as well as your dad's office address so that Gil can process the funds for you[?]'' *Id.* at 2. Continuing, the e-mail stated: ''We will pay 50% of $ 19,830 for the professional liability insurance on a monthly basis for the amount of $ 826.25 per month. I will get you a precise day of deposit as well once I get the above info from you.'' *Id.* at 2.

The record also contains a July 18, 2005 (10:13 a.m.) e-mail from Tania Lozano to Gil Lozano and another individual at Global One Marketing, which appears to forward the text of another e-mail sent by Nisha Saran to Tania Lozano. *Id.* The e-mail began: ''Tania * * *. Here is the information that you requested[,]'' and gives routing and account information for Nirmal Saran's bank.[16] *Id.* Continuing, the e-mail stated: ''My dad's office address is as follows, but please send any and all correspondence to his home address[,]'' and appeared to list his office and home addresses. *Id.* Next, the e-mail stated: ''Thanks for the info this morning, as well!'' *Id.* The e-mail ended by stating: ''Talk to you soon,'' and is signed ''Nisha Saran.'' *Id.*

Later that day, Tania Lozano sent another e-mail to Gil Lozano, the subject being ''Question from Nisha.'' The text reads:

> Nisha called me to verify that you were covering 100% of the malpractice insurance from the months of June 05—Dec 05. If so, the total due to her from June is 1652.50, not 826.25 as stated in the last invoice. Can we send her another transfer for just 826.25 to cover the month of June, then on the following invoice, she will include 1652.50 to cover the month of July. From there on out, she will get paid once a month for the insurance on the 30th of each month. Please let me know if this is okay or if you want to handle this another way. Thanks!

Id. at 3.

A DI subsequently interviewed Tania Lozano. Tr. 615. Among other things, Ms. Lozano told the DI that in July 2005, Gil Lozano had told her ''to stop using the other doctors and [to] direct all of the requested drug orders through Nisha and Nirmal Saran,'' because he ''was paying the other doctors $25 through a management company, and it was only costing $12 a prescription through Nirmal and Nisha.'' *Id.* Ms. Lozano also told the DI that she talked to Nisha Saran ''frequently, normally two, three or four times a day, at least ten times per week, and that they developed a close business relationship over the July, August and September months that they worked together.'' *Id.* at 616.

The DI further testified that Tania Lozano told him that she would call Nisha Saran on her cell phone and tell her: ''We're having problems getting these orders approved.'' *Id.* Nisha Saran ''would tell'' Tania: ''You're going to have to wait until I get off work; I'm working at the hospital. My father approves the orders in the morning; I approve in the afternoon.'' *Id.* Ms. Lozano further told the DI that she had discussed with Nisha Saran ''problems with the pull-down menus that had instructions'' for taking a drug, and that ''Nisha was very particular about what instructions were placed on her drug orders.'' *Id.*[17]

The Expert Testimony

George J. Van Komen, M.D., testified on behalf of the Government as an expert on the standards of medical practice and the use of the Internet to prescribe controlled substances. At the time of the hearing, Dr. Van Komen, who is board certified in internal medicine and a Fellow of the American College of Physicians, had served as an Assistant Professor of Clinical Medicine at the University of Utah School of Medicine for fifteen years and had practiced medicine for more than thirty years. Tr. 234; GX 71 (06–20) at 1. From 1995 to 2002, he served on the Board of Directors of the Federation of State Medical Boards (FSMB), and was the Federation's President in 2001 to 2002. GX 71 (06–20) at 3. Dr. Van Komen also was a member of the State of Utah's Physicians Licensing Board from 1989 to 1999, and served as the Board's Chairman from 1991 to 1999. *Id.* Dr. Van Komen testified that he had a particular interest in prescription drug abuse and the proper use of controlled substances in medical practice. Tr. 234, 236–37.

In his testimony, Dr. Van Komen acknowledged that the American Medical Association (AMA) is ''not a government organization'' and therefore does not ''have any authoritative capabilities.'' *Id.* at 238. Dr. Van Komen explained, however, that the AMA's policies and recommendations are ''well received by government organizations'' and ''by state legislatures.'' *Id.* Relatedly, Dr. Van Komen testified that ''[t]he Federation of State Medical Boards has no authority'' over the practice of medicine, but that its membership is comprised of members of state medical boards and that it does provide guidance and policy statements to assist the nation's state boards on various issues. *Id.* at 251.[18]

Dr. Van Komen further testified, however, that there is a standard of care for prescribing controlled substances that is ''well accepted and recognized throughout the medical community.'' *Id.* at 268. As Dr. Van Komen testified:

> [T]he standard of care is that * * * on any new patient who comes with a problem that may require a controlled substance, that the physician has personal contact with the patient, that a careful, detailed history is undertaken, that that careful, detailed history is utilized in doing a careful physical examination, and then a carefully outlaid differential diagnosis or etiology of the patient's symptoms is derived, and then from that, after appropriate testing and evaluation when further laboratory tests are in, then the physician may choose to utilize controlled substances in the treatment of the patient's ailment and disease.

Id. at 268–69.

After explaining what telemedicine is, Dr. Van Komen was asked what is the standard for ''forming a legitimate doctor-patient relationship?'' *Id.* at 271. Dr. Van Komen answered:

> [W]e feel that there needs to be documented a face-to-face history and physical and evaluation of the patient, and then if this patient chooses to receive further consultative work or be established with a physician who practices on the Internet, that the physician first of all and most formally needs to be identified, and he needs to have a license in the state in which the patient resides. * * *
>
> And we also feel that that primary care doctor who did the history and physical needs to stay in touch with the patient, even

[16] The e-mail also includes a redacted portion above Nirmal Saran's account information. GX 99, at 2.

[17] The DI also testified that he had obtained Ms. Lozano's cell phone records ''for the months that she was involved with Rx Great Prices,'' and that both Nisha and Nirmal Saran's phone numbers were contained in them. Tr. 617.

The DI further testified that he had interviewed a third doctor, who had attended a meeting with Nirmal, Nisha, and Joe Saran, at which Joe Saran attempted to recruit him to approve orders for his Web site. Tr. 618. The third doctor related that in a later discussion, Joe Saran again attempted to recruit him and told him that he was paying Nisha and Nirmal $12,000 each per month. *Id.* at 618–19.

Relatedly, the record contains an exchange of e-mails on August 16, 2005, between Gil Lozano and Joe Saran in which the former sought the latter's help in recruiting ''one or two more medical doctors for our sites.'' GX 78 (06–19) at 2. Later that day, Joe Saran wrote to Lozano: ''I do know another doctor who may be interested. I will talk to him and see what his response may be. Is the payment rate the same as for my dad and sister? This will be a question that I will need to answer for him.'' *Id.* at 1.

[18] In light of Dr. Van Komen's testimony that neither the AMA nor the FSMB have authority to promulgate binding standards of medical practice, I conclude that it is unnecessary to discuss the contents of the various policy statements that these organizations have issued.

though the patient might be seeking further consultation from another physician through the Internet.

Id. at 271. Dr. Van Komen's subsequent testimony suggested, however, that he was discussing the standard of care as set forth in policy statements of the AMA and FSMB. *See id.* at 272 (testifying that the policy statement of the FSMB and AMA ''absolutely'' outline the standard of care for Internet prescribing).

After he explained that medical doctors and osteopathic physicians are subject to the same standard of care,[19] *id.* at 275, Dr. Van Komen was asked whether he had ''formed an opinion on whether the prescriptions issued by Dr. Nisha Saran and Dr. Nirmal Saran were issued outside the usual course of professional practice?'' *Id.* at 276. Dr. Van Komen answered that ''[f]rom the records that I have seen, there gives me no reason to believe that they meet even closely the standard of care that would be an acceptable practice of medicine.'' *Id.* Dr. Van Komen explained that his opinions were based on the ''prescriptions that were written by them, as well as log sheets, outlining the type of practice that they have, the number of prescriptions that they wrote during a particular * * * period of time, and all of those records lead me to believe that they are far out from the accepted standard of care.'' *Id.*

Subsequently, Dr. Van Komen added:

> [T]here is no documentation of any doctor-patient contact. There is no indication of any record being kept. There is no formulation of a working diagnosis for which the medications were prescribed, and there is no indication that the patient understood the potential of addiction or danger of the drugs that were prescribed.

Id. at 277.

Next, with respect to Nirmal Saran, Dr. Van Komen testified that while an ophthalmologist ''may prescribe * * * an occasional pain medication * * * it's been my understanding that ophthalmologists rarely prescribe opioid medication, even after some eye surgery that they perform.'' *Id.* at 277–78. Finally, Dr. Van Komen stated that he was ''100 percent sure'' that the prescriptions that he reviewed were not issued for legitimate medical purposes, and that he was also ''100 percent'' certain that the prescriptions were issued outside of the usual course of professional practice because ''[t]here [was] no indication * * * from the records[20] that I reviewed that there [was] any attempt to appropriately practice medicine according to even the minimal standard of care.'' *Id.* at 278.[21]

On cross-examination, however, Dr. Van Komen was asked if he was ''familiar with the way the Texas Medical Board deals with this particular type of problem?'' *Id.* at 302. Dr. Van Komen answered: ''Not specifically. I would assume that they have, as many medical boards, accepted the model guidelines that have been distributed through the Federation of State Medical Boards.'' [22] *Id.*

Pursuant to 5 U.S.C. 556(e), I take official notice of the following state standards of medical practice as set forth in statutes, regulations, and administrative notices: [23] Cal. Bus. & Prof. Code §§ 2052 [24] (prohibiting unlicensed practice of medicine) & 2242.1(a) (''No person * * * may prescribe * * * dangerous drugs * * * on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication. * * *''). Cal. Health & Safety Code § 11352(a) (prohibiting furnishing a controlled substance ''unless upon the written prescription of a physician * * * licensed to practice in this state''); N.C. Gen. Stat. § 90–18 (2005) (''prescribing medication by use of the Internet or a toll-free telephone number, shall be regarded as practicing medicine'' in the State).[25]

Relatedly, the administrative rules of the medical boards of Ohio and Tennessee expressly prohibit—with only limited exceptions—a physician's prescribing to a person he/she has not personally physically examined. For example, under the rules of the Tennessee Board of Medical Examiners:

[19] He also explained that an ophthalmologist performs eye surgery and treats diseases of the eye. Tr. 276.

[20] While Nirmal Saran admitted to a DI that he did not maintain any records on the persons he prescribed to, Tr. 220, there is no evidence as to whether Nisha Saran also failed to maintain records. The Government, however, had the burden of proving that Nisha Saran failed to maintain patient records. Because Dr. Van Komen's opinion testimony with respect to Nisha Saran was based in part on the alleged absence of documentation to support her prescribings, his testimony is rejected to this extent.

[21] Dr. Van Komen also testified that ''if the patient asks for a drug by name, you can almost for sure understand that that individual is going to abuse that drug. It's interesting that on the internet, you allow the patient to pick whatever drug they want exactly by name and order it.'' *Id.* at 279–80. He also explained the importance of monitoring closely those patients to whom he prescribed hydrocodone. *Id.* Moreover, Dr. Van Komen testified that reviewing an online questionnaire was ''absolutely no way'' for a physician to detect whether a person who was seeking a controlled substance was a drug abuser, ''because you have no way of knowing that the person that filled out the questionnaire filled it out honestly.'' *Id.* at 285.

[22] Respondent Nisha Saran also elicited testimony from Rony Dev, D.O., one of her colleagues at a hospital where she practiced. Dr. Dev acknowledged, however, that it would not be appropriate to prescribe to a patient without knowing her medical history, what medications the patient was on, and her vital signs. Tr. 471. While Dr. Dev testified that in his experience, Nisha Saran would not prescribe in this manner, *id.* at 471–72; he subsequently testified that he had no direct knowledge of her prescribing over the internet, *id.* at 503; and had never discussed her internet prescribing with her. *Id.* at 520.

[23] In accordance with the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute the facts of which I take official notice, Respondent may file a motion for reconsideration within fifteen days of service of this order which shall commence with the mailing of the order.

[24] *In Hageseth* v. *Superior Court*, 59 Cal. Rptr.3d 385 (Ct. App. 2007), the California Court of Appeal upheld the State's jurisdiction to criminally prosecute an out-of-state physician, who prescribed a drug to a California resident over the internet, for the unauthorized practice of medicine.

[25] The North Carolina Medical Board has also issued a Position Statement on the steps which a physician must take before prescribing a drug. *See* North Carolina Medical Board, *Position Statement: Contact With Patients Before Prescribing* (Nov. 1999). More specifically, the North Carolina Medical Board has stated that:

> It is the position of the North Carolina Medical Board that prescribing drugs to an individual the prescriber has not personally examined is inappropriate except as noted * * * below. Before prescribing a drug, a physician should make an informed medical judgment based on the circumstances of the situation and on his or her training and experience. Ordinarily, this will require that the physician personally perform an appropriate history and physical examination, make a diagnosis, and formulate a therapeutic plan, a part of which might be a prescription. This process must be documented appropriately.

Id. The exceptions are for ''admission orders for newly hospitalized patients, prescribing for a patient of another physician for whom the prescriber is taking call, or continuing medication on a short-term basis for a new patient prior to the patient's first appointment.'' *Id.* The North Carolina Board has further declared that ''prescribing drugs to individuals the physician has never met based solely on answers to a set of questions, as is common in Internet or toll-free telephone prescribing, is inappropriate and unprofessional.'' *Id.*

Finally, while North Carolina recently amended the State's Medical Practice Act, it is a felony offense ''if the person so practicing without a license is an out-of-state practitioner who has not been licensed and registered to practice medicine * * * in th[e] State.'' N.C. Gen. Stat. § 90–18(a); *see also id.* § 90–1A(5)(f) (defining ''[t]he practice of medicine'' as including ''[t]he performance of any act, within or without this State, described in this subdivision by use of any electronic or other means, including the Internet or telephone'').

* * * it shall be a prima facie violation of T.C.A. § 63–6–214(b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and

2. Made a diagnosis based upon the examination and all diagnostic and laboratory tests consistent with good medical care; and

3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatment options, a part of which might be the prescription or dispensed drug, with the patient; and

4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

Tenn. Comp. R. & Regs. 0880–2–.14(7). *See also id.* R. 0880–2.16 (requiring telemedicine license).[26] *See* Ohio Admin. R. 4731–11–09 (''Except in institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, and situations involving nurses practicing in accordance with standard care arrangements * * * a physician shall not prescribe, dispense, or otherwise provide, or cause to be provided, any controlled substance to a person who the physician has never personally physically examined and diagnosed.'').[27]

[26] I also take official notice of the Medical Board of California's Decision and Order in *Jon Steven Opsahl, M.D.*, at 3 (Med. Bd. Cal. 2003) (revoking medical license and finding that ''a physician cannot do a good faith prior examination based on a history, a review of medical records, responses to a questionnaire and a telephone consultation with the patient, without a physical examination of the patient'' and that ''[a] physician cannot determine whether there is a medical indication for prescription of a dangerous drug without performing a physical examination''); *see also id.* at 17.

In addition, the Medical Board of California has issued numerous Citation Orders to out-of-state physicians for internet prescribing to State residents. *See, e.g., Citation Order Harry Hoff* (June 17, 2003); *Citation Order Carlos Gustavo Levy* (Nov. 30, 2001). It has also issued press releases announcing its position on the issuance of prescriptions by physicians who do not hold a California license. *See* Medical Board of California, *Record Fines Issued by Medical Board to Physicians in Internet Prescribing Cases* (News Release Feb. 10, 2003) (available at *http://www.mbc.ca.gov/NR_2003_02-10_Internetdrugs.htm*). I also take official notice of these materials.

[27] On September 14, 2003, the Florida Board of Medicine issued Fla. Admin. R. 64B8–9.014, Standards for Telemedicine Prescribing Practice. This rule states *inter alia* that:

Physicians * * * shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met: (a) A documented patient evaluation, including history and physical examination to establish the diagnosis for which any legend drug is prescribed. (b) Discussion between the physician * * * and the patient regarding treatment options and the risks and benefits of treatment. (c) Maintenance of contemporaneous medical records meeting the requirements of Rule 64B8–9.003, F.A.C.

Fla. Admin Code R. 64B8–9.014(2); *see also* Fla. Admin Code R. 64B15–14.008 (adopting similar rule for osteopathic physicians).

Discussion

Section 304(a) of the Controlled Substance Act (CSA) provides that ''[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a).[28] In determining the public interest, the CSA directs that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem appropriate in determining whether a registration'' is consistent with the public interest and whether a registrant has committed acts which warranted the suspension of his/her registration. *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

I acknowledge that neither Respondent's state license has been the subject of disciplinary proceedings and that neither Respondent has been convicted of an offense under Federal or State laws related to controlled substances. I nonetheless conclude that the evidence as to each Respondent's experience in dispensing controlled substances and compliance with applicable Federal and State laws establish that both Respondents committed acts which rendered their registrations inconsistent with the public interest and which justified the suspension orders.[29]

Factors Two and Four—Respondents' Experience in Dispensing Controlled Substances and Record of Compliance with Applicable Federal and State Laws

Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his [or her] professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.* As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon*, 546 U.S. 243, 274 (2006) (citing *Moore*, 423 U.S. 122, 135, 143 (1975)).

It is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to be acting ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *See United States* v. *Moore*, 423 U.S. 122 (1975). Under numerous state standards of medical practice, before issuing a treatment recommendation, a physician must, *inter alia*, physically examine a patient to establish a bona-fide doctor patient relationship and properly diagnose his/her patient. *See*, *e.g.*, Cal. Bus. & Prof. Code § 2242.1; Cal. Health & Safety Code § 11352(a); Ohio Admin. R. 4731–11–09; Tenn. Comp. R. & Regs. 0880–2–.14(7); North Carolina Med. Bd., *Position Statement: Contact With Patients Before Prescribing.*

[28] Section 304(d) further provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d).

[29] While each Respondent's registration has expired and neither Respondent has submitted a renewal application, each Respondent asserts that he/she intends to continue the practice of medicine and that he/she has not abandoned his/her desire to obtain a new registration. *See* ALJ Exs. 14A & 14B. The Government does not dispute these assertions. For the reasons stated in my answer to the ALJ's Query, I hold that neither Respondent's case is moot. *See* ALJ Ex. 23.

Furthermore, a physician who engages in the unauthorized practice of medicine is not a ''practitioner acting in the usual course of * * * professional practice.'' 21 CFR 1306.04(a). Under the CSA, the ''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). *See also* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As the Supreme Court has explained: ''In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicine* and to dispense drugs in connection with his professional practice.'' *Moore*, 423 U.S. at 140–41 (emphasis added). A controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the CSA. Cf. 21 CFR 1306.03(a)(1) (''A prescription for a controlled substance may be issued only by an individual practitioner who is * * * [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession[.]'').[30]

The record establishes that each Respondent committed numerous violations of the CSA and various state laws by issuing prescriptions which lacked a legitimate medical purpose and which were far outside of the course of professional practice. With respect to Respondent Nirmal Saran, the evidence shows that in just the limited period between May 19 and June 8, 2005, he issued through internet sites, eight-seven controlled substance (cs) prescriptions to persons in California, eighty-six cs prescriptions to person in Florida, sixty-four cs prescriptions to persons in Tennessee, thirty-two cs prescriptions to person in Ohio, and twenty-nine controlled substance prescriptions to persons in North Carolina. Nirmal Saran was not licensed in any of these five States, and admitted to investigators that he prescribed based on the questionnaires submitted by the Web sites' customers, that he had only telephoned ''approximately 12 to 15 patients'' during the entire period he prescribed over the internet, and obviously did not perform physical examinations (as also demonstrated by the DI's undercover buy) as required by the standards of medical practice of the States of California, Ohio, Tennessee, and North Carolina, among others.

Moreover, given the limited number of phone calls he made to patients, it is also obvious that he violated state rules requiring that he explain to his ''patients,'' the risks and benefits of treatment options including the taking of controlled substances. Tenn. Comp. R. & Regs. 0880–2–.14(7), Fla. Admin. Code R 64B8–9.014(2). Furthermore, Nirmal Saran admitted that he did not keep any records of his internet prescribings and thus violated state medical practice standards for this reason as well. *See*, *e.g.* , Fla. Admin. Code R 64B8–9.014(2); N.C. Med. Bd., *Position Statement.* I thus find that Nirmal Saran did not establish a bona fide doctor-patient relationship with those persons he prescribed to over the internet, that these prescriptions lacked a legitimate medical purpose, and that he acted outside of the usual course of professional practice in issuing them. 21 CFR 1306.04(a). *See also* Tr. 278 (testimony of Gov. Expert). I further conclude that Nirmal Saran repeatedly violated the CSA in issuing prescriptions over the internet and thus committed numerous acts which rendered his registration ''inconsistent with the public interest,'' 21 U.S.C. 824(a)(4), and which warranted the suspension of his registration.

The record likewise establishes that Nisha Saran issued numerous prescriptions in violation of the CSA and various state laws. As found above, in just the limited period between May 27 and June 3, 2005, Nisha Saran issued over the internet, seventeen cs prescriptions to persons in Florida, eleven cs prescriptions to persons in California, ten cs prescriptions to persons in North Carolina, and four cs prescriptions to persons in Ohio.[31] Nisha Saran practiced in the State of Texas and was not licensed to practice medicine in any of these other States. For this reason alone, the prescriptions she issued to these persons were issued outside of the ''usual course of * * * professional practice'' and violated the CSA. 21 CFR 1306.04(a); Moore, 423 U.S. at 140–41.

With respect to the Nations Drug Supply Web site (which was owned by her brother, a now convicted drug dealer), J.P. testified that on May 30, 2005, he purchased ninety tablets of Norco (hydrocodone/apap); the intercepted data shows that Nisha Saran approved this prescription. GX 9 (06–19) at 1–7 (line 10). J.P., a Florida resident, further testified that he never spoke with anyone in making his various purchases at Nations, that he was not required to send in any medical records, and that he did not know Nisha Saran (or her father). It is thus clear that Nisha Saran did not comply with State of Florida's standards for telemedicine practice, *see* Fla. Admin. Code R.64B15–14.0088–9.014, and that she did not establish a bona-fide doctor-patient relationship with J.P. I therefore conclude that Nisha Saran lacked ''a legitimate medical purpose'' and acted outside of the usual course of professional practice in issuing the Norco prescription to J.P. *See* 21 CFR 1306.04(a).

Moreover, given the extensive evidence as to the *modus operandi* used by the Nations Drug Supply and Rx Great Prices Web sites, both of which dispensed controlled substances based on prescriptions issued by physicians who had not personally performed a physical exam on the person seeking the prescription, I further conclude that Nisha Saran failed to establish bona-fide doctor patient relationships with persons to whom she prescribed controlled substances as required by the standards of medical practice adopted by the States of California, North Carolina, and Ohio, among others. See, *e.g.* , Cal. Bus & Prof. Code § 2242.1(a); Ohio Admin. R. 4731–11–09; N.C. Med. Bd., *Contact With Patients Before Prescribing.* I therefore hold that in issuing these prescriptions, Nisha Saran lacked ''a legitimate medical purpose'' and acted far outside of the ''usual course of [her] professional practice'' and therefore violated the CSA. 21 CFR 1306.04(a); *see also* Tr. 278.

I acknowledge that Nisha Saran offered the testimony of one of her colleagues regarding the appropriateness of her prescribing practices in a hospital setting. This evidence is not, however, relevant in assessing whether her internet prescribing constituted acts ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Because her internet

[30] As the California Court of Appeal has noted: the ''proscription of the unlicensed practice of medicine is neither an obscure nor an unusual state prohibition of which ignorance can reasonably be claimed, and certainly not by persons * * * who are licensed health care providers. Nor can such persons reasonably claim ignorance of the fact that authorization of a prescription pharmaceutical constitutes the practice of medicine.'' *Hageseth* v. *Superior Court*, 59 Cal. Rptr.3d 385, 403 (Ct. App. 2007).

[31] My identification of the specific number of prescriptions issued by each Respondent in violation of various state medical practice standards during a limited time period is not an all inclusive list of the violations each committed. Each Respondent also issued prescriptions to persons in numerous other States; the Agency is not required to identify each and every instance in which they violated the CSA and state laws to support the conclusion that they committed acts inconsistent with the public interest.

prescribings violated the CSA and numerous state laws, they were acts that were inconsistent with the public interest,'' [32] and which warranted the suspension of her registration.[33] *Id.*

Orders

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100(b) & 0.104, I affirm my order which immediately suspended the now-expired DEA Certificate of Registration, AS7091894, issued to Nirmal Saran. Pursuant to the above cited authority, I also affirm my order which immediately suspended the now-expired DEA Certificate of Registration, BS8415956, issued to Nisha Saran. These orders are effective immediately.

Dated: December 12, 2008.

Michele M. Leonhart,

Deputy Administrator.

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[32] As both J.P.'s and Dr. Van Komen's testimony shows, the prescribing of controlled substances over the internet creates a grave threat to public health and safety. As Dr. Van Komen explained, reviewing an online questionnaire is ''absolutely no way'' for a physician to detect whether a person seeking a controlled substance has a legitimate medical need for the drug or is a drug abuser. Tr. 285. This Agency has discussed the threat to public health and safety posed by internet prescribing in numerous cases. *See, e.g. , William R. Lockridge*, 71 FR 77791 (2006); *Mario Alberto Diaz,* 71 FR70788 (2006); *Mario Avello*, 70 FR 11695 (2005).

[33] Neither Respondent has an application pending before the Agency. I note, however, that even if the Respondents had submitted applications, I would have denied their applications.

Under agency precedent, where the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must '' 'present[] sufficient mitigating evidence to assure the Administrator that [it] can be entrusted with the responsibility carried by such a registration.' '' *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988)). Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs., Inc.,* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for his/her actions and demonstrate that he/she will not engage in future misconduct. *See Jackson,* 72 FR at 23853; *John H. Kennedy*, 71 FR 35705, 35709 (2006); *Prince George Daniels*, 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA*, 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

Notably, neither Respondent testified in this proceeding. I therefore further find that neither Respondent has accepted responsibility for his/her misconduct.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions involving: 2008–15, Popular, Inc., Banco Popular de Puerto Rico, and Popular Financial Holdings, Inc. (collectively, the Applicants), D–11396; and 2008–16, BlackRock, Inc. (BlackRock, and The PNC Financial Services Group, Inc. (PNC) (collectively, the Applicants), D–11453

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Popular, Inc., Banco Popular de Puerto Rico, and Popular Financial Holdings, Inc. (collectively, the Applicants) Located in the Commonwealth of Puerto Rico.

[Prohibited Transaction No. 2008–15; Exemption Application No: D–11396]

Exemption

Section I: Transactions

(a) The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act shall not apply, effective November 23, 2005, to:

(1) The acquisition of stock rights (the Rights) by certain plans, described, below, in Section I(a)(1)(A) through (D) of this exemption, in connection with an offering of such Rights (the Offering) by Popular, Inc. (Popular), a party in interest with respect to such plans:

(A) Popular, Inc. Retirement Savings Plan for Puerto Rico Subsidiaries (the Popular PR Plan);

(B) Banco Popular de Puerto Rico Savings and Stock Plan (the BPPR Savings Plan),

(C) Popular, Inc. U.S.A. Profit Sharing/401(k) Plan (the Popular USA Plan),

(D) Popular Financial Holdings, Inc. Savings and Retirement Plan (the PFH Savings Plan) [1], and

(2) The holding of the Rights by the certain plans, described, above, in Section I(a)(1)(A) through (D) of this exemption, until the expiration of such Rights; provided that the conditions in Section II of this exemption, as set forth, below, are satisfied and

(b) The sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the U.S. Code), by reason of section 4975(c)(1)(A) through (E) shall not apply, effective November 23, 2005, to the acquisition of the Rights by certain plans, described, above, in Section I(a)(1)(C), and Section I(a)(1)(D) of this exemption; [2] provided

[1] The BPPR Savings Plan, the Popular PR Plan, the Popular USA Plan, and the PFH Savings Plan are referred to, herein, collectively, as the Participant Directed Plans.

[2] The Applicants represent that, because the fiduciaries for the BPPR Savings Plan, and the Popular PR Plan have not made an election under

Continued

that the conditions in Section II of this exemption, as set forth, below, are satisfied.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described herein and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

a. The receipt by each of the Participant Directed Plans of the Rights occurred in connection with the Offering made available by Popular on the same terms to all shareholders of the common stock of Popular (the Popular Stock);

b. The acquisition of the Rights by the Participant Directed Plans resulted from an independent act of Popular as a corporate entity, and all holders of the Rights, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition of the Rights;

c. All shareholders of the Popular Stock, including the Participant Directed Plans received the same proportionate number of Rights based on the number of shares of Popular Stock held by such Participant Directed Plans;

d. The acquisition of the Rights by the Participant Directed Plans was made pursuant to provisions of each such plan for individually-directed investment of participant accounts (the Account(s));

e. All decisions regarding the Rights made by the Participant Directed Plans were made in accordance with the provisions of each such plan for individually-directed investment of participant Accounts, by the individual participants whose Accounts in each such plan received the Rights in connection with the Offering; and

f. Popular must refund to the Banco Popular de Puerto Rico Profit Sharing Plan and the Banco Popular de Puerto Rico Profit Restoration Plan (collectively, the P/S Plans), and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of a dealer manager/solicitation fee (the Fee) in the aggregate amount of $81,261.34. This Fee was received by Popular Securities, Inc., the co-dealer/manager of the Rights Offering, as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular must refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the *pro rata* portion of the Fee attributable to each such plan and each such Account, plus interest, on such lost earnings, Popular will use the Online Calculator for the Voluntary Fiduciary Correction Program [3] that appears on the Web site of the Employee Benefits Security Administration.

Effective Date: This exemption is effective as of November 23, 2005, the date of the announcement of the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Exemption published on September 3, 2008, at 73 FR 51516.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

BlackRock, Inc. (BlackRock), and the PNC Financial Services Group, Inc. (PNC) (Collectively, the Applicants) Located in New York, New York

[Prohibited Transaction No. 2008–16; Exemption Application No: D–11453]

Exemption

Section I—Covered Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section IV(k), by an Asset Manager, as defined, below, in Section IV(f), from any person other than the Asset Manager or PNC/BlackRock Related Entities, as defined, below, in Section IV(c), during the existence of an underwriting or selling syndicate with respect to such Securities, where the Asset Manager purchases such Securities, as a fiduciary on behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section IV(h); or on behalf of Client Plans, and/or In-House Plans, as defined, below, in Section IV(o), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section IV(i) under the following circumstances:

(a) Where a PNC/BlackRock Related Broker-Dealer, as defined, below, in Section IV(b), is a manager or member of such syndicate (an affiliated underwriter transaction (AUT)); or

(b) Where a PNC/BlackRock Related Broker-Dealer, as defined, below, in Section IV(b), is a manager or member of such syndicate and an Affiliated Servicer, as defined below in Section IV(p), serves as servicer of a trust that issued the Securities (whether or not debt securities) (an affiliated servicer transaction (AUT and AST); or

(c) Where an Affiliated Servicer serves as servicer of a trust that issued the Securities (whether or not debt securities) (AST).

This exemption applies to transactions, as described, above, in Section I(a) and (b) of this exemption only if the applicable conditions as set forth, below, in Section II, are satisfied. This exemption applies to the transaction, as described, above, in Section I(c) of this exemption, only if all of the conditions, as set forth, below, in Section III are satisfied.

Section II—Conditions for Transactions Described in Section I(a) and (b).

The exemption is conditioned upon satisfaction of the following requirements:(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et seq.). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) Are issued by a bank, (C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject

section 1022(i)(2) of the Act, whereby such plans would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the U.S. Code, that jurisdiction under Title II of the Act does not apply. Accordingly, the Department is not providing any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition of the Rights by these plans.

[3] 70 FR 17516, April 6, 2005.

to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f 3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings, Inc., DBRS Limited, DBRS, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) Are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such Guarantor:

(A) Is a bank, or

(B) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(C) Is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the Asset Manager with: (i) The assets of all Client Plans; and (ii) The assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and (iii) the assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3 21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) 25 percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or

understanding designed to benefit any PNC/BlackRock Related Entity.

(f) If the transaction is an AUT, no PNC/BlackRock Related Broker-Dealer receives, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this exemption. In this regard, a PNC/BlackRock Related Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) If the transaction is an AUT, the amount a PNC/BlackRock Related Broker Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating such PNC/BlackRock Related Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding a PNC/BlackRock Related Broker-Dealer from receiving management fees for serving as manager of an underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this exemption; and

(2) Each PNC/BlackRock Related Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of such PNC/BlackRock Related Broker-Dealer, stating the amount that each such PNC/BlackRock Related Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined below, in Section IV(j).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the Asset Manager to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption; and provided further that the information described, below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the PNC/BlackRock Related Broker-Dealer and/or the Affiliated Servicer and will provide the address of the Asset Manager. The instructions will state that this exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the PNC/BlackRock Related Entities. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined below in Section IV(j).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I of this exemption for each plan be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the

fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described above, in Section II(k)(2)(i) and (ii); provided that the Notice and the Grant, described above, in Section II(k)(2)(i) are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I of this exemption for each plan proposing to invest in a Pooled Fund be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the securities from the issuer and the price at which the securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold;

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold; and

(x) In the case of an AST, the basis upon which the Affiliated Servicer is compensated;

(4) The Quarterly Report contains:

(i) A representation that the Asset Manager has received a written certification signed by an officer of each PNC/BlackRock Related Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, such PNC/BlackRock Related Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption. In the case of an AST, a representation of the Asset Manager affirming that, as to each AST, the transaction was not part of an arrangement or understanding designed to benefit the Affiliated Servicer; and

(ii) a representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased under this exemption in that quarter because of its relationship to a PNC/BlackRock Related Broker-Dealer or of an Affiliated Servicer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50

Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described, above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of In-House Plans for which the Asset Manager, a PNC/BlackRock Related Entity or the Affiliated Servicer exercises investment discretion.

(q) The Asset Manager and the PNC/BlackRock Related Broker Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described below, in Section II(r), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than the Asset Manager, and the PNC/BlackRock Related Broker-Dealer or Affiliated Servicer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(r); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager, or the PNC/BlackRock Related Broker Dealer, or the Affiliated Servicer, as applicable, such records are lost or destroyed prior to the end of the six year period. (r)(1) Except as provided below, in Section II(r)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(q) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in Section II(r)(1)(ii)—(iv) shall be authorized to examine trade secrets of the Asset Manager, or the PNC/BlackRock Related Broker-Dealer, or the Affiliated Servicer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager, or the PNC/BlackRock Related Broker-Dealer or the Affiliated Servicer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(r)(2), above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III—Conditions for Transactions Described in Section I(c)

The exemption is conditioned upon satisfaction of the following requirements:

(a) The Securities to be purchased are pass-through certificates or trust certificates that represents a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property (including obligations secured by leasehold interests on commercial real property) that are rated in one of the four highest rating categories by the Rating Organizations; provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category (CMBS).

(b) The purchase of the CMBS meets the conditions of an applicable underwriter exemption (the Underwriter Exemption(s)). The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is PTE 2007–05, 72 FR 13130 (March 20, 2007), Technical Correction at 72 FR 16385 (April 4, 2007) (PTE 2007–05).

(c)(1) The aggregate amount of CMBS of an issue purchased, pursuant to this exemption, by the Asset Manager with:

(i) The assets of all Client Plans; and

(ii) The assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and

(iii) The assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR § 2510.3–21(c) does not exceed 35 percent (35%) of the total amount of the CMBS being offered in an issue.

(2) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section III(c)(1) of this exemption, the amount of CMBS in any issue purchased, pursuant to this exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a

Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue, and;

(3) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages, described in this Section III(c), is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any CMBS which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such CMBS through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit any PNC/BlackRock Related Entity.

(f) The covered transactions are performed under a written authorization executed in advance by an Independent Fiduciary of each single Client Plan, as defined, below, in Section IV(j).

The written authorization requirement of this paragraph shall be deemed satisfied with respect to the covered transactions involving ASTs if the Asset Manager provides to the Independent Fiduciary the materials described in Section III(g), below, together with a termination form expressly providing an election for the Independent Fiduciary to terminate the authorization with respect to the covered transactions and a statement to the effect that the Asset Manager proposes to engage in the covered transactions on a specified date (that shall be not less than 45 days after the notice is sent to the Independent Fiduciary) unless the Independent Fiduciary signs and returns the termination form to the Asset Manager prior to such date.

(g) The following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary not less than 45 days prior to such Asset Manager engaging in the covered transactions pursuant to this exemption:

(1) A notice of the intent of the Asset Manager to purchase CMBS pursuant to Section I(c) of this exemption, a copy of the Notice, and a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(2) A notice describing the relationship of the Affiliated Servicer to the Asset Manager.

(3) The basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(4) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(h) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(i)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to Section I(c) of this exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described below, in this Section III(i)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption; and provided further that the information described below, in this Section III(i)(2)(i) and (iii) is supplied simultaneously

(i) A notice of the intent of such Pooled Fund to purchase CMBS pursuant to this exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) A notice describing the relationship of the Affiliated Servicer to the Asset Manager;

(iii) Information on the basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(iv) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(v) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described above, in Section III(i)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the Affiliated Servicer and will provide the address of the Asset Manager.

For purposes of this Section III(i), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I(c) of this exemption for each plan be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(j)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the

case may be), following the receipt by such Independent Fiduciary of the plan (or by the fiduciary of the In-House Plan, as the case may be) of the written information described above, in Section III(i)(2); provided that the Notice and the Grant, described above, in Section III(i)(2)(i) are provided simultaneously. The written authorization requirement of this paragraph shall be deemed satisfied with respect to the covered transactions involving ASTs if the Asset Manager provides to the Independent Fiduciary the materials described in Section III(i)(2) above, together with a termination form expressly providing an election for the Independent Fiduciary to terminate the authorization with respect to the covered transactions and a statement to the effect that the Asset Manager proposes to engage in the covered transactions on a specified date (that shall be not less than 45 days after the notice is sent to the Independent Fiduciary) unless the Independent Fiduciary signs and returns the termination form to the Asset Manager prior to such date.

(2) For purposes of this Section III(j), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I(c) of this exemption for each plan proposing to invest in a Pooled Fund be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(k) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(l) The requirements of Section II(o), (p) and (q) are met.

Section IV—Definitions

(a) The term, ''the Applicants,'' means BlackRock Inc. and The PNC Financial Services Group, Inc.

(b) The term, ''PNC/BlackRock Related Broker Dealer,'' means any broker dealer that is a PNC/BlackRock Related Entity that meets the requirements of this exemption. Such PNC/BlackRock Related Broker Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined, below, in Section IV(k), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term, ''PNC/BlackRock Related Entity(s)'' includes all entities listed in this Section IV(c)(i) and (ii):

(i) PNC and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with PNC, and

(ii) BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, BlackRock. For purposes of this exemption, the definition of a PNC/BlackRock Related Entity shall include any entity that satisfies such definition in the future.

(d) The term, ''BlackRock Related Entity'' or ''BlackRock Related Entities,'' means BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with BlackRock.

(e) The term, ''PNC Related Entity'' or ''PNC Related Entities,'' means PNC and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with PNC.

(f) The term, ''Asset Manager,'' means a BlackRock Related Entity, as defined, above, in Section IV(d) or a PNC Related Entity, as defined above, in Section IV(e). For purposes of this exemption, the Asset Manager must qualify as a ''qualified professional asset manager'' (QPAM), as that term is defined under section V(a) of PTE 84–14. In addition to satisfying the requirements for a QPAM under section V(a) of PTE 84–14, (49 Fed. Reg. 9494 (Mar. 13, 1984), as amended, 70 Fed. Reg. 49305 (Aug. 23, 2005)), the Asset Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million

(g) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(h) The term, ''Client Plan(s),'' means an employee benefit plan or employee benefit plans that are subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section IV(o).

(i) The term, ''Pooled Fund(s),'' means a common or collective trust fund(s) or a pooled investment fund(s):

(1) in which employee benefit plan(s) subject to the Act and/or Code invest,

(2) which is maintained by an Asset Manager, and

(3) for which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(j)(1) The term, ''Independent Fiduciary,'' means a fiduciary of a plan who is unrelated to, and independent of any PNC/BlackRock Related Entity. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of any PNC/BlackRock Related Entity, if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of any PNC/BlackRock Related Entity, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section IV(j), a fiduciary of a plan is not independent:

(i) If such fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with any PNC/BlackRock Related Entity;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from any PNC/BlackRock Related Entity for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager responsible for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of a plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described, above, in

Section I. However, if such individual is a director of the sponsor of a plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) the choice of such plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described, above, in Section I, then Section IV(j)(2)(iii) shall not apply.

(3) The term, ''officer,'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for a PNC/BlackRock Related Entity.

(k) The term, ''Securities,'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a 2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset backed securities rated by one of the Rating Organizations, as defined, below, in Section IV(n), will be treated as debt securities.

(l) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act).

(m) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(n) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., DBRS Limited, or DBRS, Inc., or any successors thereto.

(o) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by:

(1) a PNC Related Entity, as defined, above, in Section IV(e), or

(2) a BlackRock Related Entity, as defined, above, in Section IV(d), for their respective employees.

(p) The term ''Affiliated Servicer'' means a PNC/BlackRock Related Entity that serves as a servicer of one or more of the commercial mortgage loans in a Pooled Fund that issues commercial mortgage-backed securities.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

Effective Date: This exemption is effective as of the date it is published in the **Federal Register**.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on October 10, 2008. All comments and requests for a hearing were due by November 24, 2008. During the comment period, the Department received no requests for a hearing. However, in an e-mail dated November 24, 2008, the Department did receive a comment from the Applicants. Specifically, the Applicants seek to correct certain typographical errors found in the operant language of the Notice and to clarify the description of a term found in footnote 1 of the Summary of Facts and Representations (SFR). The Applicants' comments are discussed in the numbered paragraphs below.

1. Section II(n)(4)(i), as set forth in the Notice, at 73 FR 60334, column 3, lines 40–45, reads as follows, ''In the case of an AST, a representation of the asset Manager affirming that, as to each AST, the transaction was not part of an arrangement or understanding designed to benefit the Affiliated Servicer.'' The Applicants have informed the Department that the word, ''asset,'' should have been capitalized in the term, ''Asset Manager.'' The Department has made the requested change to Section II(n)(4)(i) in the final exemption.

2. Section IV(a), as set forth in the Notice, at 73 FR 60337, column 2, line 62, reads as follows: ''The term, 'the Applicants,' means BlackRock Inc. and the PNC Financial Services Group, Inc.'' The Applicants have informed the Department that the word, ''the,'' before PNC Financial Services Group, Inc. should have been capitalized. The correct name is The PNC Financial Services Group, Inc. The Department has made the requested change to Section IV(a) in the final exemption.

3. Footnote 1 in the SFR, as set forth in the Notice, at 73 FR 60327, column 2, reads as follows:

> Commercial mortgage-backed securities are non-convertible debt securities, pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property including obligations secured by leasehold interests on commercial real property that are rated in one of the four highest rating categories by the Rating Organizations (such CMBS are described as ''investment grade'').

The Applicants point out that the language of footnote 1, as set forth in the Notice, can be read to imply that the term, commercial mortgage-backed securities or CMBS includes only securities with investment-grade ratings. Alternatively, the passage can be read to imply that the ''obligations'' (*i.e.*, the collateral of the trust rather than the securities issued by the trust) receive the ratings. Accordingly, the Applicants request an amendment to the language of footnote 1, as set forth in the SFR. The Applicants requested changes are indicated by the underlined phrases, as set forth below:

> Commercial mortgage-backed securities are non-convertible debt securities, pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property including obligations secured by leasehold interests on commercial real property. *CMBS* that are rated in one of the four highest rating categories by the Rating Organizations (such CMBS are described as ''investment grade'') *may be acquired under the terms of this proposed exemption, provided that certain conditions are met.*

The Department concurs that the Applicants' requested amendment of footnote 1 clarifies the language of the footnote.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption, as described and clarified, above. In this regard, the comment submitted by the Applicants to the Department have been included as part of the public record of the exemption application. The complete application file, including the comment received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefit Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption refer to the Notice of Proposed Exemption published on October 10, 2008, at 73 FR 60325.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of December 2008.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8–30512 Filed 12–22–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11341]

Notice of Proposed Individual Exemption To Replace Prohibited Transaction Exemption (PTE) 2000–45, Involving Citigroup Global Markets Inc. (CGMI), Formerly Salomon Smith Barney Inc. (Salomon Smith Barney), Located in New York, NY

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 2000–45.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption which, if granted, would replace PTE 2000–45 (65 FR 54315, September 7, 2000). On December 1, 2005, PTE 2000–45 became ineffective due to a material change in the exemption.

PTE 2000–45 related to the operation of the TRAK Personalized Investment Advisory Service (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust). If granted, the new exemption would affect participants and beneficiaries of and fiduciaries with respect to employee benefit plans (the Plans) participating in the TRAK Program.

DATES: *Effective Dates:* If granted, this proposed exemption will be effective: (1) From December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions described in Sections I, II and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

DATES: Written comments and requests for a public hearing should be received by the Department on or before February 23, 2009.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Application No. D–11341. Interested persons are also invited to submit comments and/or hearing requests to the Department by facsimile to (202) 219–0204 or by electronic mail to *Vaughan.Anna@dol.gov* by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mrs. Anna Vaughan, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would replace PTE 2000–45. PTE 2000–45 provided an exemption from certain prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code, for the purchase or redemption of shares in the Trust by an employee benefit plan, an individual retirement account, a retirement plan for a self-employed individual, or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan; collectively, the Plans) in connection with such Plans' participation in the TRAK Program.

PTE 2000–45 also provided exemptive relief from the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by the Consulting Group of Salomon Smith Barney (the Consulting Group), of (1) investment advisory services or (2) an automatic reallocation option to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.[1]

[1] PTE 2000–45 superseded PTE 99–15 (64 FR 1648, April 5, 1999), PTE 94–50 (59 FR 32024, June 21, 1994) and PTE 92–77 (57 FR 45833, October 5, 1992).

PTE 99–15 allowed Salomon Smith Barney to create a broader distribution of TRAK-related products, adopt an automated recordkeeping reimbursement offset procedure under the TRAK Program, adopt an automated reallocation option under the TRAK Program that would reduce the

As of May 31, 2008, the TRAK Program held assets that were in excess of $9.4 billion. Of those assets, approximately $5.6 billion were held in Plan accounts of ERISA-covered plans or individual retirement accounts. At present, the Trust consists of eleven Portfolios (CGCM funds) that are managed by the Consulting Group and advised by one or more unaffiliated sub-advisers (the Sub-Advisers) selected by the Consulting Group.

PTE 2000–45 required, as did each prior exemption, that any Sub-Adviser that acted on behalf of the Trust and exercised investment discretion over a Portfolio be independent of Salomon Smith Barney and its affiliates to ensure that the Sub-Adviser would not have a significant role in the decisions made by the Consulting Group, and that the Consulting Group would not have significant influence in or exert control over, or have a significant economic interest in the Sub-Adviser.

In granting PTE 2000–45 to Salomon Smith Barney, the Department also modified the definition of the term ''affiliate,'' as set forth in Section II(h) of the General Conditions and Section III(b) of the Definitions. Section II(h) provides that ''[a]ny Sub-Adviser that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Salomon Smith Barney and its affiliates.'' [2] Section III(b)(3) of the Definitions defines the term ''affiliate'' to include ''[a]ny corporation or partnership of which Salomon Smith Barney, or an affiliate described in subparagraph (b)(1), is a 10 percent or more partner or owner.'' Thus under PTE 2000–45, an ''affiliate'' of Salomon Smith Barney would cover only those persons and entities that had a significant role in the decisions made by, or which were managed or influenced by, Salomon Smith Barney. An affiliate would also include any corporation or partnership of which Salomon Smith Barney or an affiliate was a 10 percent or more partner or owner.

CGMI (formerly, Salomon Smith Barney) and its predecessor and related companies (collectively, the Applicants) have requested a modification of PTE 2000–45. Specifically, the Applicants have requested that the term ''affiliate,'' as originally set forth in Section II(h) of the General Conditions and in Section III(b) of the Definitions of PTE 2000–45, be clarified as it relates to the past merger (the Merger Transaction) between Citigroup Inc. (Citigroup) and Legg Mason, Inc. (Legg Mason), a financial services holding company. In this regard, the Applicants have requested that a limited and temporary exception to the definition of ''affiliate'' be incorporated in a new Section IV.

As a result of the Merger Transaction, which is described in detail below, it is the view of the Department that PTE 2000–45 was no longer effective for the transactions described therein when Section II(h) of the General Conditions and Section III(b) of the Definitions were not met. Therefore, the Department has decided to propose a new exemption that would replace PTE 2000–45. The new exemption would incorporate by reference (unless otherwise noted), the facts, representations, operative language and definitions of PTE 2000–45. To the extent applicable, the new exemption, if granted, would update the operative language of PTE 2000–45.

The Department's exemption procedures (the Procedures), which are codified in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), expressly mandate that ''an exemption is effective only under the conditions set forth in the exemption.'' [3] To the extent a condition is not met, the Department has taken the position that the exemption is null and void. Under such circumstances, the parties must obtain another individual exemption from the Department.

If granted, the new exemption would provide retroactive relief, effective as of December 1, 2005, with respect to the Covered Transactions, the General Conditions and the Definitions that are set forth in Sections I, II and III of this proposal. The new exemption would also provide, in Section IV, limited retroactive relief from December 1, 2005 until March 10, 2006 for the period during which the Applicants were in noncompliance. Further, the new exemption would provide relief for a fee offsetting procedure implemented by the Applicants on January 1, 2008.

The proposed exemption has been requested in an application filed on behalf of the Applicants pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the Procedures. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, the proposed exemption is being issued solely by the Department.

I. The Merger Transaction

The Applicants represent that on December 1, 2005, Citigroup sold to Legg Mason substantially all of its asset management business in accordance with the terms of an agreement dated June 23, 2005. Legg Mason, whose principal executive offices are located in Baltimore, Maryland, provides asset management, securities brokerage, investment banking and related financial services to its clients through its subsidiaries. As of March 31, 2008, Legg Mason's affiliated asset management operations had aggregate assets under management of approximately $950 billion.

The assets sold by Citigroup to Legg Mason included Smith Barney Mutual Funds Management Inc. (now Smith Barney Fund Management LLC) but excluded the Consulting Group and the TRAK Program. In exchange for its asset management business, Citigroup received the securities brokerage and investment banking business of Legg Mason and approximately 4 percent of the voting common stock of Legg Mason (Legg Mason Common Stock) or 5,395,545 shares. In addition, Citigroup received 13.346632 shares of non-voting, convertible preferred stock of Legg Mason (Legg Mason Preferred Stock) [4] which could be converted into approximately 10 percent of Legg Mason Common Stock.[5] Legg Mason Stock was to be held by AMAD Holdings, Inc., a subsidiary of Citigroup. Further, Citigroup received approximately $550 million in the form of a five year loan

asset allocation fee paid to Salomon Smith Barney by a Plan investor, and expand the scope of the exemption to include Section 403(b) Plans. The exemption also replaced references to Shearson Lehman and Smith Barney in PTEs 92–77 and PTE 94–50, which it superseded.

PTE 94–50 permitted Smith, Barney Inc. (Smith Barney), Salomon Smith Barney's predecessor, to add a daily-traded collective investment fund (the GIC Fund) to the existing Portfolios of mutual funds (the Funds) comprising the Trust, and to describe the various entities operating the GIC Fund. PTE 94–50 also replaced references to Shearson Lehman Brothers, Inc. (Shearson Lehman) with Smith Barney and amended and replaced PTE 92–77.

Finally, PTE 92–77 permitted Shearson Lehman to make the TRAK Program available to Plans that acquired shares in the former Trust for TRAK Investments and allowed the Consulting Group to provide investment advisory services to an Independent Plan Fiduciary which might result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

[2] Although the term ''independent'' is not defined in PTE 2000–45, the Applicants note that this condition was added to the original Shearson Lehman exemption request when Shearson Lehman agreed not to use affiliated Sub-Advisers. As noted in the proposed exemption to PTE 99–15 (63 FR 60391, November 9, 1998), the term ''independent'' has been construed to mean ''not an affiliate.''

[3] See 29 CFR 2570.49(b).

[4] Legg Mason Common Stock and Legg Mason Preferred Stock are together referred to as ''Legg Mason Stock.''

[5] Legg Mason Preferred Stock will only convert after it has been sold by Citigroup.

facility provided by Legg Mason to Citigroup Corporate and Investment Banking.

In addition to the above, Citigroup agreed with Legg Mason to sell Legg Mason Preferred Stock under the terms of an underwritten, broadly-distributed public offering or, if sold privately, in a manner such that no person acquired more than 1% of the voting power of Legg Mason. Moreover, Citigroup was required not to participate in any proxy contest or other activities concerning the management of Legg Mason. Finally, Citigroup agreed not to acquire more than 5% of Legg Mason Common Stock at any time.

Consummation of the Merger Transaction was subject to certain customary terms and conditions, including: (1) Required regulatory approvals obtained by Citigroup and Legg Mason;

(2) consent obtained from certain advisory clients of Citigroup Asset Management (CAM) to continue their advisory relationship with CAM following the consummation of the Merger Transaction; [6] and (3) the conversion of Legg Mason's subsidiary, Legg Mason Trust, fsb, from a federal thrift charter to a trust company.

II. Subsequent Developments

On March 10, 2006, Citigroup announced that it had priced an offering of 9,000,000 shares of Legg Mason Common Stock in an underwritten public offering. The shares consisted of 5,393,545 shares of Legg Mason Common Stock as well as 3,606,455 shares of Legg Mason Common Stock, which were issuable upon the conversion and sale of 3.606455 shares of Legg Mason Preferred Stock. These shares had been received by Citigroup as part of the consideration for the Merger Transaction described above.

Citigroup also granted the underwriter a customary 15% over-allotment option to purchase additional shares of Legg Mason Common Stock. Citigroup Corporate and Investment Banking acted as sole bookrunner in this transaction. Upon completion of the offering, and assuming no exercise of the over-allotment option, Citigroup would own 9.740177 shares of Legg Mason Preferred Stock, which would be convertible upon sale into 9,740,177 shares of Legg Mason Common Stock. Completion of the offering was subject to market and other conditions.

Currently, Citigroup owns no Legg Mason Common Stock and 8.390177 shares of Legg Mason Preferred Stock that is convertible upon sale into 8,390,177 shares of Legg Mason Common Stock. Such stock continues to be held by AMAD Holdings, Inc. The Legg Mason Preferred Stock represents a less than 10% ownership interest in Legg Mason.

III. The Sub-Advisers

Brandywine Asset Management LLC (Brandywine) and Western Asset Management Company (Western), both of which are investment adviser subsidiaries of Legg Mason, have served as Sub-Advisers to a portion of the assets of certain Portfolios of the Trust offered under the TRAK Program. The Applicants represent that Brandywine had served as a Sub-Adviser since July 2001, but it was removed from this position on June 17, 2008. Until its removal, Brandywine managed assets in excess of $300 million for the Consulting Group Capital Markets (CGCM) International Equity Investments Fund. Western has been a Sub-Adviser since October 2001, and since June 30, 2008, it has managed $186,506,248 in assets for CGCM's Core Fixed Income Fund, and $59,602,052 for the CGCM High Yield Fund.

The Applicants represent that Brandywine and Western have operated as separate and autonomous companies. Each Sub-Adviser has made its own decisions regarding the business that it has conducted with CAM. In particular, Brandywine and Western have entered into a ''Revenue Sharing Agreement'' with Legg Mason, whereby Legg Mason has received a specified percentage of Brandywine's and Western's respective gross revenues on an annual basis. With the remaining revenues, Brandywine and Western have each developed its own business plan and operating budget. Both Sub-Advisers have retained complete control over its investment processes, and have made its own decisions as to what business to accept from existing and potential clients, and on what terms.

The Applicants state that these principles have applied to each of Brandywine's and Western's relationship with the TRAK Program. Therefore, no changes to these arrangements were anticipated as a result of the Merger Transaction. Furthermore, the Applicants state that the Consulting Group has never had any ability to exercise control or influence over the business of Brandywine or Western. In this regard, the Consulting Group, in its role as the Investment Manager to the Trust's Funds, has continued to recommend to the Board of Trustees of the Trust the selection and retention of Fund Sub-Advisers, but has not had any control over how any Sub-Adviser, including Brandywine or Western, would fulfill its obligations to the Funds under the Sub-Adviser agreements.

Similarly, the Applicants point out that neither Brandywine nor Western, as separate entities, has had any control over the recommendations of the Consulting Group, or the decisions made by the Board of Trustees of the Trust with respect to selection of the Sub-Advisers or asset allocations. Thus, no special arrangements that would give either the Consulting Group or Brandywine and Western any ability to exercise control over each other were possible.

Although Citigroup at no time controlled a greater than 5% voting interest in Legg Mason, the Applicants explain that an affiliate of Citigroup temporarily held an aggregate ownership interest in Legg Mason (*i.e.*, including Legg Mason Stock) of approximately 14%.[7] As a result, Legg Mason may have been considered an ''affiliate'' of CGMI under PTE 2000–45. While the definition of ''affiliate'' in Section III(b) of the Definitions section of PTE 2000–45 does not include ''affiliates'' of Legg Mason, the Applicants note that it is possible that Brandywine and Western, as wholly owned subsidiaries of Legg Mason, may not have been considered ''independent'' of CGMI and its affiliates for purposes of Section II(h) of the General Conditions of PTE 2000–45.[8] Counsel for Citigroup has also confirmed that the Merger Transaction did not result in Legg Mason being considered an ''affiliate'' of CGMI for purposes of applicable securities laws or an ''affiliated person'' of CGMI for purposes of the Investment Company Act of 1940.

IV. Limited Exception and Rationale

Accordingly, the Applicants request a limited exception to the definition of ''affiliate'' so that during the three month period within which Citigroup held a 10% or greater economic ownership interest in Legg Mason (including Legg Mason Stock), Brandywine and Western would continue to be considered ''independent'' of CGMI and its

[6] The Applicant states that CAM was sold to Legg Mason subsequent to the Merger Transaction.

[7] As mentioned above, on March 10, 2006, Citigroup sold its entire position in Legg Mason Common Stock that was received in connection with the Merger Transaction, and since then has held a less than 10% ownership interest in Legg Mason.

[8] When the term ''affiliate'' was modified in PTE 2000–45, it was not in the context of and did not address a transaction in which an affiliate of CGMI would exceed the 10% standard by holding, in part, Legg Mason Preferred Stock as described above.

affiliates. This limited exception has been incorporated herein into a new Section IV.

Without the requested relief, the Applicants state that the Consulting Group would have been forced to terminate services received from Brandywine and Western on or prior to the closing date of the Merger Transaction. The Applicants request exemptive relief because (1) forcing the sale of interests held by Plans in Portfolios advised by Brandywine and Western and precluding Plan investors in the TRAK Program from making investments in these Portfolios would not have been in the best interests of the Plans and their participants and beneficiaries; (2) eliminating Brandywine and Western as Sub-Advisers would have caused a significant disruption to the TRAK Program and would not have been in the best interests of the Funds' shareholders, including Plans; and (3) Brandywine and Western had never exercised control over the decisions made by the Consulting Group under the TRAK Program, nor had the Consulting Group ever exercised control over Brandywine's or Western's business. The Applicants also represent that Brandywine and Western were retained as Sub-Advisers under the TRAK Program prior to contemplation of the Merger Transaction and that any temporary ''affiliation'' that Legg Mason may have had with Citigroup could not have been anticipated at the time of their retention, or affected the consideration of whether to retain them. Further, the Applicants note that the retention of Brandywine and Western as Sub-Advisers under the TRAK Program was not a condition of, or in any way a part of, the Merger Transaction.

On the basis of the Applicants' request, the Department has added a new Section IV to this proposed exemption. Paragraph (a) of Section IV and the relevant conditions are set forth as follows:

(a) Notwithstanding the condition set forth in Section II(h) of the General Conditions or the definition of ''affiliate'' set forth in Section III(b) of the Definitions herein, during the period, December 1, 2005 through March 10, 2006, within which Citigroup held a 10 percent or greater economic ownership interest in Legg Mason, Inc. (Legg Mason) as a result of the merger transaction (the Merger Transaction) consummated on December 1, 2005 between Citigroup and Legg Mason, Brandywine Asset Management LLC (Brandywine) and Western Asset Management Company (Western), both of which are wholly-owned subsidiaries of Legg Mason, continued to be deemed ''independent'' of Citigroup Global Markets Inc. (CGMI) and its affiliates for purposes of Section II(h) of the General Conditions and Section III(b) of the Definitions section, as long as the following conditions were met:

(1) The Merger Transaction resulted in Citigroup receiving, among other things, approximately 4 percent of Legg Mason voting common stock (Legg Mason Common Stock), and non-voting convertible preferred stock (Legg Mason Preferred Stock) which was convertible into approximately 10 percent of Legg Mason Common Stock (together, Legg Mason Stock).

(2) Following the Merger Transaction, Legg Mason Stock was being held by a subsidiary of Citigroup that was not in the vertical chain of ownership with CGMI, and CGMI was not controlling or controlled by, the entity holding Legg Mason Stock.

(3) Legg Mason Preferred Stock was converted into Legg Mason Common Stock only after it was sold by Citigroup.

(4) Citigroup engaged in efforts to sell Legg Mason Preferred Stock within a reasonable amount of time pursuant to an underwritten broadly distributed public offering.

(5) Citigroup reduced its holdings in Legg Mason Stock below 10 percent within three months following the consummation of the Merger Transaction.

(6) Citigroup did not participate in any proxy contest or other activities concerning the management of Legg Mason.

(7) Citigroup did not acquire more than 5 percent of Legg Mason Common Stock at any time.

(8) Brandywine and Western operated as separate and autonomous business units within Legg Mason.

(9) The Consulting Group had no ability to exercise control or influence over the business of Brandywine or Western. Similarly, Brandywine and Western had no ability to exercise control or influence over the business of the Consulting Group.

(10) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, with respect to each Portfolio for which Brandywine or Western currently serves as a Sub-Adviser, the percentage of Portfolio assets allocated for management purposes to these entities by the Consulting Group was not increased.

(11) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, Brandywine and Western were not permitted to manage assets for any other Portfolio in the TRAK Program.

(12) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, the fee rates paid to Brandywine and Western were not increased.

(13) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, no other affiliates of Legg Mason were retained to act as Sub-Advisers in the TRAK Program.

(14) The Board of Trustees of the Trust for the Consulting Group subjected Brandywine and Western to the same review process and fiduciary requirements as in effect for all other Sub-Advisers, and to the same performance standards.

V. Revised General Conditions

The proposed exemption incorporates the General Conditions that were set forth in PTE 2000–45. However, the Department has revised these General Conditions in the proposal by making the language more comprehensible and consistent with other recently-granted individual and class exemptions. In addition, the Department has updated the General Conditions to include references to ''Citigroup Global Markets Inc.'' (*i.e.*, CGMI), which was formerly known, until April 7, 2003, as ''Salomon Smith Barney Inc.'' (*i.e.*, ''Salomon Smith Barney''). Accordingly, Section II of the proposed exemption has been modified as follows:

Section II. General Conditions

(a) The participation of Plans in the TRAK Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Citigroup Global Markets Inc. (CGMI) and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates constitute not more than reasonable compensation.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary is implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that:

(1) If such Independent Plan Fiduciary elects in writing (the Election), on a form designated by CGMI from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account is automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election continues in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change is adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures, may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (*e.g.*, a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), CGMI sends out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation may be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies CGMI, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model remains at the current level, or at such other level as the Independent Plan Fiduciary then expressly designated, in writing. If the Independent Plan Fiduciary does not affirmatively opt out of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation is automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary receives a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (*i.e.*, 401(k) Plan accounts), CGMI mails trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification depends upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group generally gives investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Consulting Group provides investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of CGMI and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by CGMI and/or its affiliates such as Citigroup common stock (the Citigroup Common Stock), the percentage of that Portfolio's net assets invested in such securities does not exceed one percent. However, this percentage limitation may be exceeded if:

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third-party index (the Index).

(2) The Index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating the Index is:

(i) Engaged in the business of providing financial information;

(ii) A publisher of financial news information; or

(iii) A public stock exchange or association of securities dealers.

The Index is created and maintained by an organization independent of CGMI and its affiliates and is a generally-accepted standardized Index of securities which is not specifically tailored for use by CGMI and its affiliates.

(3) The acquisition or disposition of Citigroup Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring the Citigroup Common Stock, which is intended to benefit CGMI or any party in which CGMI may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds Citigroup Common Stock and the Sub-Adviser is responsible for voting any shares of Citigroup Common Stock that are held by an Index Fund on any matter in which shareholders of Citigroup Common Stock are required or permitted to vote.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and the Trust retains no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan receives the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, CGMI and its subsidiaries and the compensation paid to such entities.[9]

(B) Upon written or oral request to CGMI, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan which relates to participation in the TRAK Program and describes the Automatic Reallocation Option.

(D) Upon written request of CGMI, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a CGMI Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of the Proposed Exemption and the Final Exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (*i.e.*, the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary is required to represent in writing to CGMI that such fiduciary is (a) independent of CGMI and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to CGMI that such fiduciary is (a) independent of CGMI and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report including a financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants meet periodically with

[9] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including the fees paid directly to CGMI or to other third parties.

Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and give market commentary and toll-free numbers that enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of (a) the percentage of each Portfolio's brokerage commissions that are paid to CGMI and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to CGMI and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than CGMI and its affiliates, both expressed as cents per share.

(m)(1) CGMI maintains or causes to be maintained for a period of (6) six years the records necessary to enable the persons described in paragraph (m)(2) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (2) of this section.

(2) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (1) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any fiduciary of a participating Plan or any duly authorized employee of such employer;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(3) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of CGMI, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than CGMI is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (2) of this section.

(4) None of the persons described in subparagraphs (ii)–(iv) of this section (m)(2) is authorized to examine the trade secrets of CGMI or commercial or financial information which is privileged or confidential.

VI. Fee Offset Modification

The Applicants have also requested that the Department include a new method for computing ''fee offsets'' that are required under the exemption. Specifically, the Applicants are referring to Section II(j) of the General Conditions which states:

> The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan will be offset by such amount that is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and the Trust will retain no investment management fees) which contains investments attributable to the Plan investor.

According to the Applicants, this condition relates back to PTE 92–77, the original exemption granted to Shearson Lehman, Citigroup's predecessor. In PTE 92–77, it was stated that the inside fees retained by the Consulting Group (*i.e.*, the management fees paid by the Portfolios), after the payment of management fees to the Portfolio's Sub-Advisers, would vary from 20 to 30 basis points depending on the Portfolio. Because the Consulting Group can retain no more than 20 basis points with respect to Plan investments in each Portfolio, it applies a reduction factor with respect to the advisory fee or ''outside fee'' that it charges directly to Plans. The reduction factor is 10, 5 or 0 basis points depending on the Portfolio.

The Applicants represent that this system of fee offsets has been uniformly used since the TRAK Program's inception in accordance with the terms of the exemption. However, the Applicants explain that, over time, many of the Portfolios began to retain new Sub-Advisers, some of which charged higher fees than the Sub-Advisers that were in place when the original exemption was issued. Because the aggregate management fee (*i.e.*, the ''inside fee'') paid to both the Consulting Group and the Sub-Advisers by each Portfolio was not increased, and because the reduction factors remained the same across the Portfolios, the Applicants state that the Consulting Group sometimes retained less than 20 basis points.

The Applicants explain that in the course of developing a new system for computing the reduction factor, the Consulting Group discovered the computation anomaly in January 2007. Unknown to the Applicants, this problem has been present since the inception of the TRAK Program. The Applicants further indicate that the inside fee is computed daily and paid monthly based on the value of the Portfolio's average daily net assets. However, the outside fee is computed on a ''snapshot'' basis at the end of each calendar quarter, and is based on the value of the client's assets on that date. Because the timing and method for calculating the two fees are different, Plans which change investments during a quarter could end up with an imprecise offset.

The Applicants also point out that similar anomalies result when Plan clients invest or redeem assets in the TRAK Program within a quarter, or even without any action by the Plan or the Consulting Group by virtue of daily fluctuations in market values among the Portfolios. In this regard, when a Plan client invests during a quarter or as a Portfolio's value increases, its total assets at the end of the quarter may be greater than the average assets during the quarter. Thus, the Plan would receive a higher than necessary offset. If the Plan is redeeming assets or as a Portfolio's value decreases, the Plan's total assets at the end of the quarter may be lower than its average assets during the quarter. Therefore, the Plan would receive a lower than necessary offset.

The Applicants believe that they have remained in compliance with the terms of the original exemption and the various amendments, at all times. However, in light of the above situation, effective January 1, 2008, the Applicants have recalculated the fee offset formula and request that the exemption cover the new formula mechanism.

The following definitions are relevant to the new formula:

''CG Fee'' is the inside fee that the Consulting Group retains for managing each of the Portfolios.

''Maximum CG Fee'' means the lower of 20 basis points (annualized) or the lowest CG Fee payable on any given day with respect to a Portfolio (excluding the Government Money Investments Portfolio and the GIC Fund Portfolio where the Consulting Group retains no fee).

''Reduction Factor'' means the CG Fee minus the Maximum CG Fee.

''Fee Offset Adjustment'' means the Reduction Factor multiplied by the daily market value of a Plan's assets of a particular Portfolio on any given day, divided by 365.

According to the Applicants, the Fee Offset Adjustment is being computed and accumulated on a daily basis. The aggregate offset for each quarter to be applied against the outside fee is the sum of the daily fee offsets for that quarter. The adjustment to the outside

fee is being computed on a daily basis, based on the average daily market value of the Plan's assets invested in any Portfolio, in the same way that the inside fee is calculated. The Applicants represent that this new approach allows the Consulting Group to apply precise offsets even for Portfolios with multiple Sub-Advisors charging different fees, where the aggregate inside fee accumulated to Sub-Advisers can change each day as the relative percentage of assets under management by each Sub-Adviser changes.

The Applicants state that the fee offset modification ensures that the Consulting Group always retains a net fee of 20 basis points even when there are investments, redemptions or drastic market swings during a quarterly billing cycle. The Applicants also explain that the fee offset modification ensures proper leveling where sub-advisory fees do not correspond to the 5 and 10 basis point offers. Furthermore, the Applicants maintain that the fee offset modification ensures that the TRAK Program will at all times operate in a manner consistent with the leveling requirements described in PTE 92–77.

The Department agrees that the Applicant's modifications to the procedure for calculating the fees that are paid to the Consulting Group satisfy the requirements of Section II(j) of the proposed exemption. Therefore, the Department is not providing any exemptive relief with respect to such revised fee calculations beyond that provided in the proposed exemption.

VII. Effective Dates

The Applicants request that the limited exception described above be effective from December 1, 2005, the closing date of the Merger Transaction, until March 10, 2006, when Legg Mason Stock held by Citigroup represented a less than 10% ownership interest in Legg Mason. Because the Department has determined that PTE 2000–45 was no longer effective as a result of the Merger Transaction, the proposed new exemption will be effective as of December 1, 2005, and will include limited relief from the definition of affiliate for the period from December 1, 2005, through March 10, 2006. The proposed new exemption will also include relief for the fee offset procedure which was implemented by CGMI as of January 1, 2008. Thus, Section V of the proposed exemption reads as follows:

SECTION V. EFFECTIVE DATES

If granted, this proposed exemption will be effective: (1) December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions that are described in Sections I, II and III, respectively; and (3) January 1, 2008 with respect to the new fee offset procedure.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the Covered Transactions. This exemption is available to each specific party to whom the exemption grants relief, provided such party satisfies the terms and conditions of the exemption.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first class mail to the Independent Plan Fiduciary of each Plan currently participating in the TRAK Program, or, in the case of a Section 404(c) Plan, to the recordholder of the Trust shares. Such notice will be given within 30 days of the publication of the notice of pendency in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 60 days of the publication of the proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified persons from certain other provisions of the Act and the Code, including any prohibited transaction provisions of the Act and the Code to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption accurately describe, where relevant, the material terms of the transactions that will be consummated if this exemption is granted.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

A. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply,

effective December 2005, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (an IRA), a retirement plan for self-employed individuals (a Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan) (collectively, the Plans) in the Trust for Consulting Group Capital Market Funds (the Trust), established by Citigroup, Inc. (Citigroup), in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service (the TRAK Program).

B. If the exemption is granted, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective December 1, 2005, with respect to the provision, by Citigroup's Consulting Group (the Consulting Group), of (1) investment advisory services or (2) an automatic reallocation option (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.

The proposed exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Citigroup Global Markets Inc. (CGMI) and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates constitute not more than reasonable compensation.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary is implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that:

(1) If such Independent Plan Fiduciary elects in writing (the Election), on a form designated by CGMI from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account is automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election continues in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change is adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures, may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (e.g., a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), CGMI sends out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation may be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies CGMI, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model remains at the current level, or at such other level as the Independent Plan Fiduciary then expressly designated, in writing. If the Independent Plan Fiduciary does not affirmatively opt out of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation is automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary receives a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (*i.e.*, 401(k) Plan accounts), CGMI mails trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification depends upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group generally gives investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Consulting Group provides investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of CGMI and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by CGMI and/or its affiliates such as Citigroup common stock (the Citigroup Common Stock), the percentage of that Portfolio's net assets invested in such securities does not exceed one percent. However, this percentage limitation may be exceeded if:

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third-party index (the Index).

(2) The Index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating the Index is:

(i) Engaged in the business of providing financial information;

(ii) A publisher of financial news information; or

(iii) A public stock exchange or association of securities dealers.

The Index is created and maintained by an organization independent of CGMI and its affiliates and is a generally-accepted standardized Index of securities which is not specifically tailored for use by CGMI and its affiliates.

(3) The acquisition or disposition of Citigroup Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring the Citigroup Common Stock, which is intended to benefit CGMI or any party in which CGMI may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds Citigroup Common Stock and the Sub-Adviser is responsible for voting any shares of Citigroup Common Stock that are held by an Index Fund on any matter in which shareholders of Citigroup Common Stock are required or permitted to vote.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and the Trust retains no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan receives the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, CGMI and its subsidiaries and the compensation paid to such entities.[10]

(B) Upon written or oral request to CGMI, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan which relates to participation in the TRAK Program and describes the Automatic Reallocation Option.

(D) Upon written request of CGMI, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a CGMI Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of the Proposed Exemption and the Final Exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (*i.e.*, the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary is required to represent in writing to CGMI that such fiduciary is (a) independent of CGMI and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to CGMI that such fiduciary is (a) independent of CGMI and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report including a financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and give market commentary and toll-free numbers that enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of (a) the percentage of each Portfolio's brokerage commissions that are paid to CGMI and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to CGMI and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than CGMI and its affiliates, both expressed as cents per share.

(m)(1) CGMI maintains or causes to be maintained for a period of (6) six years the records necessary to enable the persons described in paragraph (m)(2) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (2) of this section.

(2) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (1) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

[10] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including the fees paid directly to CGMI or to other third parties.

(ii) Any fiduciary of a participating Plan or any duly authorized employee of such employer;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(3) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of CGMI, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than CGMI is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (2) of this section.

(4) None of the persons described in subparagraphs (ii)–(iv) of this section (m)(2) is authorized to examine the trade secrets of CGMI or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''CGMI'' means Citigroup Global Markets Inc. and any affiliate of Citigroup Global Markets Inc., as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of CGMI includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with CGMI. (For purposes of this subparagraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any individual who is an officer (as defined in Section III(d) hereof), director or partner in CGMI or a person described in subparagraph (b)(1);

(3) Any corporation or partnership of which CGMI, or an affiliate described in subparagraph (b)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of CGMI is a 10 percent or more partner or owner.

(c) An ''Independent Plan Fiduciary'' is a Plan fiduciary which is independent of CGMI and its affiliates and is either:

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct, the investment of assets of his or her account in such Plan.

(d) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policymaking function for the entity.

Section IV. Limited Exception

(a) Notwithstanding the condition set forth in Section II(h) of the General Conditions or the definition of ''affiliate'' set forth in Section III(b) of the Definitions herein, during the period, December 1, 2005 until March 10, 2006, when Citigroup Inc. (Citigroup) held a 10 percent or greater economic ownership interest in Legg Mason, Inc. (Legg Mason) as a result of the merger transaction (Merger Transaction) consummated on December 1, 2005, between Citigroup and Legg Mason, Brandywine Asset Management LLC (Brandywine) and Western Asset Management Company (Western), both of which are wholly owned subsidiaries of Legg Mason, continued to be deemed ''independent'' of Citigroup Global Markets Inc. (CGMI) and its affiliates for purposes of Section II(h) of the General Conditions and Section III(b) of the Definitions, as long as the following conditions were met:

(1) The Merger Transaction resulted in Citigroup receiving, among other things, approximately 4 percent of the Legg Mason voting common stock (Legg Mason Common Stock), and non-voting convertible preferred stock (Legg Mason Preferred Stock) which was convertible into approximately 10 percent of Legg Mason Common Stock (together, Legg Mason Stock).

(2) Following the Merger Transaction, Legg Mason Stock was being held by a subsidiary of Citigroup that is not in the vertical chain of ownership with CGMI, and CGMI was not controlling or controlled by the entity holding Legg Mason Stock.

(3) Legg Mason Preferred Stock was converted into Legg Mason Common Stock only after it was sold by Citigroup.

(4) Citigroup engaged in efforts to sell Legg Mason Preferred Stock within a reasonable amount of time pursuant to an underwritten broadly distributed public offering.

(5) Citigroup reduced its holdings in Legg Mason Stock below 10 percent within three months following the consummation of the Merger Transaction.

(6) Citigroup did not participate in any proxy contest or other activities concerning the management of Legg Mason.

(7) Citigroup did not acquire more than 5 percent of Legg Mason Common Stock at any time.

(8) Brandywine and Western operated as separate and autonomous business units within Legg Mason.

(9) The Consulting Group had no ability to exercise control or influence over the business of Brandywine or Western. Similarly, Brandywine and Western had no ability to exercise control or influence over the business of the Consulting Group.

(10) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, with respect to each Portfolio for which Brandywine or Western currently serves as a Sub-Adviser, the percentage of Portfolio assets allocated for management purposes to these entities by the Consulting Group was not increased.

(11) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, Brandywine and Western were not permitted to manage assets for any other Portfolio in the TRAK Program.

(12) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, the fee rates paid to Brandywine and Western were not increased.

(13) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, no other affiliates of Legg Mason were retained to act as Sub-Advisers in the TRAK Program.

(14) The Board of Trustees of the Trust for the Consulting Group subjected Brandywine and Western to the same review process and fiduciary requirements as in effect for all other Sub-Advisers, and to the same performance standards.

Section V. Effective Dates

If granted, this proposed exemption will be effective: (1) December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the

General Conditions and the Definitions that are described in Sections I, II and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the Covered Transactions. This exemption is available to each specific party to whom the exemption grants relief, provided such party satisfies the terms and conditions of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 92–77, PTE 94–50, PTE 99–15 and PTE 2000–45, refer to the proposed exemptions and the grant notices which are cited above.

Signed at Washington, DC, this 18th day of December, 2008.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E8–30511 Filed 12–22–08; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Draft Regulatory Guide DG–1190.

FOR FURTHER INFORMATION CONTACT: Khoi Nguyen, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7453 or e-mail *Khoi.Nguyen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''Manual Initiation of Protective Actions,'' is temporarily identified by its task number, DG–1190, which should be mentioned in all related correspondence. This guide describes a method that the staff of the NRC considers acceptable for use in complying with the NRC's regulations with respect to the means for manual initiation of protective actions provided by otherwise automatically initiated safety systems. To meet these objectives, the means for manual initiation of protective actions must serve a safety-related function to complete all required protective actions for the safety system.

The regulatory framework that the NRC has established for nuclear power plants consists of a number of regulations and supporting guidelines applicable to manual initiation of protective actions, including, but not limited to, General Design Criterion (GDC) 1, ''Quality Standards and Records,'' GDC 13, ''Instrumentation and Control,'' GDC 21, ''Protection System Reliability and Testability,'' and GDC 22, ''Protection System Independence,'' as set forth in Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the Code of Federal Regulations (10 CFR Part 50). GDC 13 requires that appropriate controls shall be provided to maintain variables and systems that can affect the fission process, the integrity of the reactor core, the reactor coolant pressure boundary, and the containment and its associated systems within prescribed operating ranges. GDC 21 requires that the protection system shall be designed for high functional reliability. GDC 22 requires that design techniques, such as functional diversity or diversity in component design and principles of operation, shall be used to the extent practical to prevent loss of the protection function.

II. Further Information

The NRC staff is soliciting comments on DG–1190. Comments may be accompanied by relevant information or supporting data, and should mention DG–1190 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. Mail comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. E-mail comments to: *nrcrep.resource@nrc.gov.*

3. Fax comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–1190 may be directed to Khoi Nguyen at (301) 251–7453 or e-mail to *Khoi.Nguyen@nrc.gov.*

Comments would be most helpful if received by February 20, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1190 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML080720443.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

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Dated at Rockville, Maryland, this 16 day of December, 2008.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–30490 Filed 12–22–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides: Granting Extension of Comment Periods

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Granting of Request to Extend the Comment Period of Draft Regulatory Guides, DG–1186 and DG–4013.

FOR FURTHER INFORMATION CONTACT: Steve Garry, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–2766 or e-mail to *Steve.Garry@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) issued for public comment DG–1186, ''Measuring, Evaluating, and Reporting Radioactive Materials in Liquid and Gaseous Effluents and Solid Wastes,'' which was published in the **Federal Register**, 73 FR 65705, on November 4, 2008. DG–1186 is proposed Revision 2 of Regulatory Guide 1.21.

NRC also issued for public comment DG–4013, ''Environmental Monitoring for Nuclear Power Plants,'' which was published in the **Federal Register**, 73 FR 66685, on November 10, 2008. DG–4013 is proposed Revision 2 of Regulatory Guide 4.1.

The DGs are in the agency's ''Regulatory Guide'' series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

II. Further Information

The NRC staff requested receipt of comments on DG–1186 by December 30, 2008, and the receipt of comments on DG–4013 by January 9, 2009. By this action, the NRC staff is extending the comment period until January 30, 2009, for DG–1186 and DG–4013. Comments received after January 30, 2009 for DG–1186 and DG–4013, would be considered if practical to do so, but the NRC is able to ensure consideration only for comments received on or before January 30, 2009. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

III. Request To Extend the Comment Period

Basis for the Request

The NRC received the following extension request:

In a letter, the Nuclear Energy Institute requested that the public review and comment period on DG–1186 and DG–4013 be extended to January 30, 2009. This will allow the public an opportunity to formulate comments because there is an NRC public meeting on the two draft guides scheduled for January 15, 2009.

Response to Request

The request for an extension to the comment period is approved until January 30, 2009.

Requests for technical information about DG–1186 and DG–4013 may be directed to the NRC contact, Steve Garry at (301) 415–2766 or e-mail to *Steve.Garry@nrc.gov*.

Electronic copies of DG–1186 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML080660617.

Electronic copies of DG–4013 are also available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML080660608.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

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Dated at Rockville, Maryland, this 17th day of December, 2008.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–30476 Filed 12–22–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant, Unit 1; Notice of Issuance of Renewed Facility Operating License No. NPF–63 for an Additional 20-Year Period; Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC) has issued Renewed Facility Operating License No. NPF–63 to the Carolina Power & Light Company (the licensee), now doing business as Progress Energy Carolinas, Inc., the operator of the Shearon Harris Nuclear Power Plant (HNP), Unit 1. Renewed Facility Operating License No. NPF–63 authorizes operation of HNP by the licensee at reactor core power levels not in excess of 2900 megawatts thermal (900 megawatts electric), in accordance with the provisions of the HNP renewed license and its Technical Specifications.

This notice also serves as the record of decision for the renewal of Facility Operating License No. NPF–63 for HNP, consistent with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.103. As discussed in the Final Supplemental Environmental Impact Statement (FSEIS) for HNP, dated August 2008, the Commission considered a range of reasonable alternatives that included generation from coal, natural gas, oil, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, other biomass-derived fuels, delayed retirement, utility-sponsored conservation, a combination of alternatives, and a no-action alternative. The factors considered in the record of decision can be found in the supplemental environmental impact statement for License Renewal, Supplement 33 regarding HNP, Unit 1.

HNP is a pressurized-water reactor designed by the Westinghouse Electric Corporation that is located in Wake County, North Carolina, approximately twenty miles southwest of Raleigh, North Carolina. The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the license.

Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed

issuance of the renewed license was published in the **Federal Register** on March 20, 2007 (72 FR 13139). For further details with respect to this action, see (1) The Carolina Power & Light Company, license renewal application for HNP, dated November 14, 2006, as supplemented by letters dated through July 21, 2008; (2) the Commission's Safety Evaluation Report (NUREG–1916 Volumes 1 and 2), published in December 2008; (3) the licensee's updated safety analysis report; and (4) the Commission's FSEIS (NUREG–1437, Supplement 33), published in August 2008. These documents are available at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.

Copies of the Renewed Facility Operating License No. NPF–63 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the HNP, Unit 1, Safety Evaluation Report (NUREG–1916 Volumes 1 and 2) and the FSEIS (NUREG–1437, Supplement 33) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 703–605–6000, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954, (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requester's Government Printing Office deposit account number or a VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 17th day of December 2008.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8–30477 Filed 12–22–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

By letter dated October 31, 2008, the Nuclear Regulatory Commission issued Amendment No. 186, to Callaway Plant, Unit 1, Facility Operating License No. NPF–30. The amendment allowed a one-time extension of the allowed outage time (completion time) for each of the two essential service water (ESW) trains (ESW Train A and Train B) from 72 hours to 14 days. The extended completion time was requested to support planned replacement of the underground carbon steel piping with new high density polyethylene (HDPE) piping for ESW Train A and ESW Train B during plant operation. The amendment was issued with a requirement to complete the replacement of carbon steel piping with HDPE for both ESW trains by December 31, 2008. By its application dated December 1, 2008, the licensee informed NRC that it had experienced significant delays in completing the replacement of underground piping/conduit of ESW Train A, due, in part, to underground obstructions during excavation, a longer refueling outage (Refuel 16) than anticipated, a forced outage at the beginning of Cycle 17, switchyard maintenance, and other equipment and personnel issues. Therefore, the licensee proposed a change in plant modification dates for replacement of ESW Train B carbon steel piping. The present plan calls for completing the modification of ESW Train A by December 31, 2008, as approved by Amendment No. 186. Consequently, the proposed amendment would extend the implementation date for completion of replacement of carbon steel piping for ESW Train B from December 31, 2008, to April 30, 2009.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed to the protection systems. The same reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. The use of polyethylene (PE) piping in the ESW system will result in improved system performance and enhanced system reliability, and will provide an acceptable level of quality and safety. There will be no changes to the essential service water (ESW) system or ultimate heat sink (UHS) surveillance and operating limits.

The proposed changes will not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes do not affect the way in which safety-related systems perform their functions.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR. The applicable radiological dose acceptance criteria will continue to be met.

Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed changes in the method by which any safety-related plant SSC performs its safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met.

The proposed changes do not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. None of the acceptance criteria for any accident analysis will be changed.

The proposed changes will have no impact on the radiological consequences of a design basis accident.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at

least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated December 1, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of December 2008.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–30474 Filed 12–22–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of December 22, 29, 2008; January 5, 12, 19, 26, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 22, 2008—Tentative

There are no meetings scheduled for the week of December 22, 2008.

Week of December 29, 2008—Tentative

There are no meetings scheduled for the week of December 29, 2008.

Week of January 5, 2009—Tentative

There are no meetings scheduled for the week of January 5, 2009.

Week of January 12, 2009—Tentative

There are no meetings scheduled for the week of January 12, 2009.

Week of January 19, 2009—Tentative

There are no meetings scheduled for the week of January 19, 2009.

Week of January 26, 2009—Tentative

There are no meetings scheduled for the week of January 26, 2009.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 4–0 on December 16, 2008, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that ''Discussion of Management Issues—Closed—Ex.2)'' be held December 17, 2008, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at (301) 492–2279, TDD: (301) 415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: December 18, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–30641 Filed 12–19–08; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar Containing Products of Chile, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua; Correction

AGENCY: USTR.

ACTION: Notice; correction.

SUMMARY: The Office of the United States Trade Representative published a document in the **Federal Register** of December 5, 2008 concerning the determination of the trade surplus in certain sugar and syrup goods and sugar containing products of Chile, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua. The document contained incorrect data.

Correction to Previous Notice

In the **Federal Register** of December 5, 2008, Volume 73, Page 74210, the Office of the United States Trade Representative published a notice entitled ''Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar Containing Products of Chile, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua.'' A correction is being made to the information with regard to the Dominican Republic at the top of the first column on page 74212. The calendar year to which the trade surplus determination applies is incorrect for the Dominican Republic. The correct figure is CY2009, rather than CY2008. All other information remains unchanged and will not be repeated in this correction.

FOR FURTHER INFORMATION CONTACT: Leslie O'Connor, Office of Agricultural Affairs, telephone: 202–395–6127 or facsimile: 202–395–4579.

Leslie C. O'Connor,

Director, Agricultural Affairs.

[FR Doc. E8–30507 Filed 12–22–08; 8:45 am]

BILLING CODE 3190–W9–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 8989/ Securities Exchange Act of 1934 Release No. 59113]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2009

December 17, 2008.

The Sarbanes-Oxley Act of 2002 (the ''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act. Under Section 109(f), the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which

may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Securities and Exchange Commission (the ''Commission'').

On July 18, 2006, the Commission amended its Rules of Practice related to its Informal and Other Procedures to add a rule to facilitate the Commission's review and approval of PCAOB budgets and accounting support fees.[1] This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2008 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2009 budget year. In response, the Commission staff provided to the PCAOB staff economic assumptions and budgetary guidance for the 2009 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Offices of the Chief Accountant and Executive Director dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2008 actual spending; and attended several meetings with management and staff of the PCAOB to develop an understanding of the PCAOB's budget and operations. During the course of the Commission's review, the Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this comprehensive review, the Commission issued a ''pass back'' letter to the PCAOB. The PCAOB approved its 2009 budget on November 25, 2008 and submitted that budget for Commission approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2009 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2009 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2009. The Commission looks forward to the PCAOB's annual updating of its strategic plan and the opportunity for the Commission to review and provide views to the PCAOB on a draft of the updated plan.

As part of its review of the 2009 PCAOB budget, the Commission notes that there are certain budget-related matters that should be addressed or more closely monitored during 2009. These matters relate to the PCAOB's inspections program, its information technology programs, and recommendations of the Department of the Treasury's Advisory Committee on the Auditing Profession that relate to the PCAOB. Because of the importance of each of these matters, the Commission deems it necessary to set forth the following specific measures.

Accordingly, with respect to the PCAOB's 2010 budget cycle, the PCAOB will:

(1) Include in its quarterly reports to the Commission information on the PCAOB's fulfillment of its 2009 budgeted inspection plan. Such information will include updated statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2009, including by location and by year the inspections are required to be conducted in accordance with the Act and PCAOB rules. This information also will include updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries;

(2) Continue to include detailed information about the state of the PCAOB's information technology in its quarterly reports to the Commission, including planned, estimated, and actual costs for information technology projects such as the proposed annual and special reporting system and the proposed inspections information system; and

(3) Consult with the Commission about the PCAOB's plans for implementing the recommendations of the Department of Treasury's Advisory Committee on the Auditing Profession, including estimated and actual costs for each item proposed to be implemented. The consultation will include the PCAOB submitting a project plan and justification to the Commission and the opportunity for the Commission to provide views to the PCAOB regarding such plan.

The Commission has determined that the PCAOB's 2009 budget and annual accounting support fee are consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2009 are approved.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30431 Filed 12–22–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 202.11 See Release No. 33–8724 (July 18, 2006) [71 FR 41998 (July 24, 2006)].

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59104; File No. SR–CBOE–2008–117]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Amend Exchange Rule 4.21 Relating to Third Party Deposits

December 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2008, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend CBOE Rule 4.21—*Third Party Deposits Prohibited*, to add an interpretation that includes certain permissive deposits. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/Legal*), at the Exchange's Office of the Secretary, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendment to Exchange Rule 4.21 would expand the permissive deposits to checks or funds transfers for deposit to a broker-dealer's account (i) that constitute an award or settlement paid as the result of the resolution of litigation or arbitration which arose in connection with the broker-dealer's securities or futures business; (ii) that are drawn on an account of the government of the United States; or (iii) are drawn on the account of another broker-dealer for satisfaction of the resolution of transaction disputes. This rule filing has been undertaken as a result of recommendations by the Exchange's Member Firm community.

The rule was intended to prohibit member organizations that are engaged in the business of clearing and carrying the accounts of options market-makers (''Clearing Firm'') from accepting for deposit into an account cleared or carried by the Clearing Firm a check or funds transfer drawn on the account of a third party. Pursuant to Exchange Rule 4.21, Clearing Firms are prohibited (with certain exceptions) from accepting a check or funds transfer if the name on the account from which the funds are drawn is different (*i.e.*, ''third party'') from the name on the account cleared or carried by the Clearing Firm. In addition to checks or funds transfers from third parties, the rule also prohibits (with certain exceptions) Clearing Firms from accepting deposits or transfers of securities in the name of third parties.

The Exchange believes that the proposed exceptions do not present any concerns or business risks to the clearing firm that the original rule was intended to address. While Clearing Firms make a reasonable effort to confirm that funds deposited via a third party's check are the property of the market-maker or market-making entity, and the transaction exhibits no obvious improprieties, repercussions can arise later. However, the exceptions set forth in the proposed Interpretation and Policy .03, are such that demonstrate a legal entitlement to a broker-dealer to receive the check or fund transfer. For example, a floor broker that is registered as a broker-dealer may be required to reimburse another broker-dealer as a result of a trading error. This proposed rule amendment would enable a broker-dealer to deposit these funds directly into the broker-dealer's account at the clearing firm.

Finally, while each Clearing Firm could make a business decision to refuse to accept third party checks, funds transfers and securities, the Exchange continues to believe that this rule establishes a uniform, safe practice.

2. Statutory Basis

Exchange Rule 4.21 is intended to promote a greater level of financial safety and soundness across Clearing Firms. The proposed amendment will allow clearing firms some flexibility in complying with these requirements to facilitate routine business transactions. The Exchange believes that the proposed rule changes will strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its surveillance and enforcement functions. The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it would promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–117 and should be submitted on or January 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30408 Filed 12–22–08; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2008–0052]

Establishment of the Occupational Information Development Advisory Panel

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the establishment of the Occupational Information Development Advisory Panel.

SUMMARY: We are establishing the Occupational Information Development Advisory Panel (Panel) under the provisions of the Federal Advisory Committee Act (FACA). The creation of the Panel, while discretionary, is necessary and in the public interest. It will help us to perform our statutory duties. We have consulted with the Committee Management Secretariat, General Services Administration.

ADDRESSES: Members of the public may suggest to the Panel cities and States in the contiguous United States in which to hold Panel meetings. To the extent possible, we intend to hold Panel meetings in a variety of locations throughout the Nation to ensure access to as many interested parties as possible.

FOR FURTHER INFORMATION CONTACT: Debra Tidwell-Peters, Designated Federal Official, Occupational Information Development Advisory Panel, SSA, by:

- *Mail addressed to:* SSA, Occupational Information Development. Advisory Panel, 3–E–26 Operations Building, Baltimore, MD 21235.
- *Telephone at:* 410–965–9617.
- *Fax at:* 410–597–0825.
- E-mail to *debra.tidwell-peters @ssa.gov.*

SUPPLEMENTARY INFORMATION: Panel members will analyze the occupational information used by SSA in our disability programs and provide expert guidance as we develop an occupational information system (OIS) tailored for these programs. We plan to design the OIS to improve our disability policies and processes and to ensure up-to-date vocational evidence in our disability programs. We will select Panel members based primarily on their occupational expertise. This Panel will provide guidance on our plans and actions to replace the Dictionary of Occupational Titles and its companion volume, The Selected Characteristics of Occupations. We expect to tailor the OIS specifically for our disability programs.

The Panel will be composed of not more than 12 members, including: (a) Members of academia recognized as experts in relevant subject areas, such as occupational analysis, vocational assessment, and physical and occupational rehabilitation; (b) professional experts in relevant subject areas, such as vocational rehabilitation, forensic vocational assessment, and disability insurance programs; (c) medical professionals with experience in relevant subject areas such as occupational or physical rehabilitation medicine, psychiatry or psychology, and physical or occupational therapy; (d) professional experts who represent or advocate on behalf of the disabled claimants; and (e) an agency employee who has expertise in our disability program policies, processes, and systems. The Panel is continuing in nature. In accordance with the FACA, we will publish a notice of the first Panel meeting in the **Federal Register** .

Dated: December 9, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–30589 Filed 12–22–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6467]

Determination on U.S. Position on Proposed European Bank for Reconstruction and Development (EBRD) Facility in Serbia

Pursuant to section 658 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) (SFOAA), and Department of State Delegation of Authority Number 312, I hereby determine that the allocation of the EBRD's Sustainable Energy Credit Line for the Western Balkans, including Bosnia and Herzegovina, FYR Macedonia, Montenegro, and Serbia will lead to sustainable development and economic integration in the region and contribute to a stronger economy in the Western Balkans, including Serbia, directly supporting implementation of the Dayton Accords. I therefore waive the application of Section 658 of the SFOAA to the extent that provision would otherwise prevent the U.S. Executive Directors of the EBRD from voting in favor of these projects.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: November 21, 2008.

Marcie Ries,

Acting Assistant Secretary of State for European and Eurasian Affairs, Department of State.

[FR Doc. E8–30579 Filed 12–22–08; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 6466]

Determination on U.S. Position on Proposed International Monetary Fund (IMF) Project: Precautionary Stand-By Arrangement

Pursuant to section 658 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) (SFOAA), and Department of State Delegation of Authority Number 312, I hereby determine that the IMF's proposed Precautionary Stand-By Arrangement for strengthening Serbia's fiscal discipline and furthering its structural reform agenda will help facilitate a smooth balance of payments adjustment and promote good macroeconomic policies during the global financial crisis, leading to sustainable development and economic integration in the region and contribute to a stronger economy in Serbia, directly supporting implementation of the Dayton Accords. I therefore waive the application of Section 658 of the SFOAA to the extent that provision would otherwise prevent the U.S. Executive Directors of the IMF from voting in favor of these projects.

This Determination shall be reported to the Congress and published in the **Federal Register**.

[5] 17 CFR 200.30–3(a)(12).

Dated: December 2, 2008.

Judith Garber,

Assistant Secretary of State, Acting for European and Eurasian Affairs, Department of State.

[FR Doc. E8–30574 Filed 12–22–08; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 6464]

Meeting of the Expert Panel on Prevention of Mother-to-Child Transmission of HIV

The U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Expert Panel on Prevention of Mother-to-Child Transmission of HIV will meet on January 9, 2009 at 9 a.m. in the Shriver B and C Conference Rooms at Peace Corps Headquarters located at 1111 20th Street NW., Washington, DC 20526. The meeting will last until approximately 5 p.m. and is open to the public.

The meeting will be hosted by the Office of the United States Global AIDS Coordinator, Ambassador Mark Dybul, who leads implementation of the President's Emergency Plan for AIDS Relief (PEPFAR).

The Expert Panel serves the U.S. Government by providing an objective review of activities to prevent mother-to-child transmission of HIV. It will provide a report with recommendations to the U.S. Global AIDS Coordinator and the appropriate congressional committees for scale-up of prevention of mother-to-child transmission services. Topics for the January 9th meeting are the Global Status of PMTCT Program Implementation, Update on the Science of PMTCT, PEPFAR PMTCT Programs, Overcoming Barriers, and Collaboration with International and Multilateral Groups.

The public may attend this meeting as seating capacity allows. Admittance to the Peace Corps building will be by means of a pre-arranged clearance list. In order to be placed on the list, please provide your name, title, company, or other affiliation if appropriate, to the Office of the U.S. Global AIDS Coordinator email (*BallardEL@state.gov*), or telephone (202) 663–2708 by January 7.

For further information about the meeting, please contact Rebecca Hooper, Director of Management and Budget, Office of the Global AIDS Coordinator at (202) 663–2339 or *HooperRM@state.gov*.

Dated: November 21, 2008.

Mark Dybul,

Coordinator, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. E8–30568 Filed 12–22–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice Number 6461]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 15, 2009, at 9:30 a.m. in Conference Room 1482, George C. Marshall Conference Center, Department of State, Harry S Truman Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a review of projects selected for the 2007 and 2008 Educational Assistance Programs, which are under development, and selection of projects for the 2009 Educational Assistance Program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, by January 5, 2009. Each visitor will be asked to provide his/her date of birth and driver's license or U.S. passport number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the 21st Street entrance to the building.

Dated: December 17, 2008.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. E8–30559 Filed 12–22–08; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Part 60 Flight Simulation Device Initial and Continuing Qualification and Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The collection of this information is necessary to ensure safety of flight by ensuring complete and adequate training, testing, checking, and experience is obtained and maintained by those who conduct flight simulation training.

DATES: Please submit comments by February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Part 60—Flight Simulation Device Initial and Continuing Qualification and Use.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0680.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total 80 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 132 hours per response.

Estimated Annual Burden Hours: An estimated 72,072 hours annually.

Abstract: The collection of this information is necessary to ensure safety of flight by ensuring complete and adequate training, testing, checking, and experience is obtained and maintained by those who conduct flight simulation training.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 16, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–30412 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Suspected Unapproved Parts Notification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The information collected on the FAA Form 8120–11 is used by those who wish to report suspected unapproved parts to the FAA for review.

DATES: Please submit comments by February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Suspected Unapproved Parts Notification.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0552.

Forms(s): 8120–11.

Affected Public: A total of 300 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately a half hour per response.

Estimated Annual Burden Hours: An estimated 150 hours annually.

Abstract: The information collected on the FAA Form 8120–11 is used by those who wish to report suspected unapproved parts to the FAA for review. The information is used to determine if an unapproved part investigation is warranted.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 16, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–30411 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Washington, DC Metropolitan Area Special Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Certain organizations may apply to perform certification functions on behalf of the FAA. This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area. The final rule published on December 16, 2008 (73 FR 76195). A notice for comments was published in error in advance of the publication of the final rule on December 3, 2008 (73 FR 73688), followed by a withdrawal of this notice published on December 8, 2008 (73 FR 74559). FAA will consider any comments received in response to the first notice.

DATES: Please submit comments by February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Washington, DC Metropolitan Area Special Flight Rules.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0706.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 17,097 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 2.9 hours per response.

Estimated Annual Burden Hours: An estimated 49,223 hours annually.

Abstract: This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information

on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 16, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–30407 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed I–405, SR 169 to I–90, Renton to Bellevue Project (the Project) located in Renton, Newcastle, Bellevue and King County in the State of Washington. These actions grant licenses, permits, and approvals for the Project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before June 22, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Peter A. Jilek, Urban Area Engineer, Federal Highway Administration, 711 S. Capitol Way #501, Olympia, Washington, 98501; telephone: (360) 753–9480; and e-mail: *pete.jilek@dot.gov.* The FHWA Washington Division's Urban Area Engineer's regular office hours are between 7 a.m. and 4 p.m. (Pacific Time). You may also contact William Jordan, I–405 Environmental Manager, Washington State Department of Transportation, 600–108th Avenue NE., Suite 405, Bellevue, Washington 98004; telephone: (425) 456–8547; and e-mail: *william.jordan@i405.wsdot.wa.gov.* The I–405 Corridor Program's regular office hours are between 8 a.m. and 5 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Washington: I–405, SR 169 to I–90, Renton to Bellevue Project. The Project extends approximately eight miles along I–405 (milepost 3.8 to milepost 11.9) from SR 169 north to the northern on- and off-ramps of the I–90 interchange. The Project includes two new southbound general-purpose (GP) lanes on I–405 throughout the project length; two new northbound GP lanes from SR 169 to 112th Avenue SE, with one new GP lane continuing north to I–90; a new auxiliary lane from 112th Avenue SE to Coal Creek Parkway; realignment of eight interchanges; a new in-line bus rapid transit station near 112th Avenue SE; a new high-occupancy vehicle direct-access ramp at N 8th Street; changes to several local roadways; and stormwater management facilities.

These actions by the Federal agencies, and the laws under which such actions were taken, are described in the March 2006 Environmental Assessment (EA) and in the November 20, 2008 Finding of No Significant Impact (FONSI) and Programmatic Section 4(f) Evaluation, and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record are available by contacting FHWA or WSDOT at the addresses provided above. The EA can be viewed and downloaded from the project Web site at: *http://www.wsdot.wa.gov/projects/i405/rentontobellevue* or viewed at public libraries in the project area. Since Federal funding is not currently available for this project, an FHWA project number has not been established.

This notice applies to all Federal agency decisions on the project 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 Highway 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]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

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.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act 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 [16 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 [33 U.S.C. 401–406]; TEA–21 Wetlands 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. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 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 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(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: December 17, 2008.

Peter A. Jilek,

Urban Area Engineer, Olympia, Washington.

[FR Doc. E8–30479 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0058; Notice 2]

Decision That Certain Nonconforming 1994 and 1995 Land Rover Defender 90 Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by the National Highway Traffic Safety Administration (NHTSA) that certain nonconforming 1994 and 1995 Land Rover Defender 90 multipurpose passenger vehicles are eligible for importation.

SUMMARY: This document announces a decision by NHTSA that a certain limited range of 1994 and 1995 Land Rover Defender 90 multipurpose passenger vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1994 and 1995 Land Rover Defender 90 MPVs), and (2) they are capable of being readily altered to conform to the standards.

DATES: This decision is effective December 16, 2008.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Export Auto Sales, Inc., of Chicopee, Massachusetts (Export Auto) (Registered Importer 01–284) petitioned NHTSA to decide whether all nonconforming 1994 and 1995 Land Rover Defender 90 MPVs are eligible for importation into the United States. In its petition, Export Auto compared these nonconforming vehicles to substantially similar U.S.-certified 1994 and 1995 Land Rover Defender 90 MPVs. NHTSA published notice of the petition on March 31, 2008 (73 FR 16961) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. Comments were received in response to the notice of the petition from Skytop Rover Co. (Skytop) of Philadelphia, Pennsylvania (Registered Importer 06–343) and Ford Motor Company (Ford) of Dearborn, Michigan as agent for Land Rover.

Skytop's and Ford's comments

Skytop expressed concern that Export Auto's petition does not address several key modifications that Skytop considered necessary for the vehicles to meet various safety standards. Skytop first contends that there were two distinct versions of a cage assembly mounted on both the interior and the exterior of the U.S.-certified models sold in the United States. One version was for the pickup (open back) model and a different version was for the station wagon hardtop (closed-in back) model. Skytop asserted that the U.S.-model cages are necessary for the vehicles to conform to FMVSS No. 216 *Roof Crush Resistance.*

Skytop's second contention is that the petition does not adequately address all modifications necessary to bring the vehicles into compliance with FMVSS No. 301 *Fuel System Integrity.* Specifically, Skytop states that structural modifications to the chassis as well as the addition of a rear step assembly and associated support brackets are required for the vehicles to conform to FMVSS No. 301.

Skytop's third contention is that the rear step assembly is also required for the vehicles to conform to the bumper crash requirements of 49 CFR Part 581 *Bumper Standard.*

Skytop's fourth contention is that the seat belt assembly anchorages do not conform to FMVSS No. 210 *Seat Belt Assembly Anchorages* because the part numbers for those components, as found on the nonconforming vehicles, differ from those on the U.S.-certified model.

Skytop's fifth contention is that the nonconforming vehicles do not meet the requirements of FMVSS No. 114 *Theft Protection* because no seat belt audible warning system is present.

Ford's comments detailed the differences between the U.S.-model vehicles and the nonconforming vehicles that effect compliance with the FMVSS. Ford's comments are summarized below under the heading of each standard the company addressed:

FMVSS No. 101 *Controls and Displays:* The instrument cluster-mounted telltails and speedometer unit of measure in the nonconforming vehicles may not comply with FMVSS No. 101.

FMVSS No. 106 *Brake Hoses:* The brake hoses on Nonconforming vehicles do not have DOT markings.

FMVSS No. 108 *Lamps, Reflective Devices, and Associated Equipment:* Nonconforming vehicles' front lamps and side marker lamps do not conform to FMVSS No. 108. All lamps mounted on the rear of the vehicles may not conform to FMVSS No. 108.

FMVSS No. 110 *Tire Selection and Rims:* Nonconforming vehicles do not have a tire information placard.

FMVSS No. 111 *Rearview Mirrors:* None of the mirrors on nonconforming vehicles conform to FMVSS No. 111. Also, the sun visors on the nonconforming vehicles are not compatible with the U.S.-model interior rearview mirror.

FMVSS No. 114 *Theft Protection:* Nonconforming vehicles do not have the required key warning system. Nonconforming vehicles with automatic transmissions also do not have the required rollaway prevention device.

FMVSS No. 116 *Motor Vehicle Brake Fluids:* Nonconforming vehicles do not have labeling that conforms to FMVSS No. 116.

FMVSS No. 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars:* Tires on nonconforming vehicles may not conform to the requirements of FMVSS no. 119.

FMVSS No. 124 *Accelerator Control Systems:* The U.S.-model vehicles have a unique throttle design. The throttle installed on nonconforming vehicles has not been evaluated for conformance with FMVSS No. 124 by Land Rover.

FMVSS No. 203 *Impact Protection for the Driver from the Steering Control System:* U.S.-model vehicles were equipped with a padded hub steering wheel and a compatible spline steering column. Nonconforming vehicles are not equipped with these features.

FMVSS No. 205 *Glazing Materials:* Nonconforming vehicles may not be equipped with glazing that conforms to FMVSS No. 205.

FMVSS No. 208 *Occupant Crash Protection:* Seat belts installed in nonconforming vehicles do not conform to the requirements of FMVSS no. 209. Nonconforming vehicles do not have audible or visual seat belt warning systems.

FMVSS No. 209 *Seat Belt Assemblies:* Seat belts installed in nonconforming vehicles do not conform to the requirements of FMVSS no. 209.

FMVSS No. 212 *Windshield Mounting:* U.S.-model vehicles have a safari cage installed with an additional front hoop to protect the windshield and comply with FMVSS No. 212. Some nonconforming vehicles may not have the full external front hoop installed.

FMVSS No. 216 *Roof Crush Resistance:* Vehicles built prior to September 1, 1994 are not required to meet this standard. Non-U.S. certified vehicles built after September 1, 1994 may have a GVWR below the 6,000 lb. applicability cutoff, making it necessary for those vehicles to comply with the standard. U.S.-model vehicles were not certified to the standard because their GVWR exceeded the applicability cutoff. Nonconforming vehicles were not evaluated against these requirements by Land Rover and Ford cannot draw any conclusions about the necessary modifications required to comply with the regulation.

FMVSS No. 219 *Windshield Zone Intrusion:* U.S.-model vehicles have a safari cage installed with an additional front hoop to protect the windshield and comply with FMNSS No. 219. Some nonconforming vehicles may not have the full external front hoop installed.

FMVSS No. 301 *Fuel System Integrity:* The fuel tank and fuel lines were unique to the U.S.-model vehicles. Nonconforming vehicles, at a minimum, require installation of the rear step bar, rollover valve and inertia switch. Land Rover did not evaluate nonconforming vehicles to these requirements and Ford cannot draw any conclusions about the necessary modifications required to comply with FMVSS No. 301.

49 CFR Part 565 *Vehicle Identification number—Content Requirements:* Non-U.S. certified vehicles do not have a check digit and the VIN plate is not visible.

49 CFR Part 567 *Certification:* Non-U.S. certified vehicles do not have a certification label affixed to the B-pillar.

49 CFR Part 575.105 *Consumer Information Regulations:* A sticker (i.e., a rollover label) is required on the driver's sun visor and is not installed on non-U.S. vehicles.

NHTSA's Response

After NHTSA's initial review of the petition and the comments from Skytop and Ford, the agency found that the petitioner had failed to address many differences between the U.S.-model vehicles and the nonconforming vehicles that affect compliance with certain FMVSS. The petitioner also failed to fully provide sufficient details about which nonconforming vehicle body types could be considered to be substantially similar to the U.S.-model vehicle body types. Based on information provided by Ford, NHTSA has determined that only certain 2-door pickup body style and certain 2-door station wagon hardtop configurations of the nonconforming vehicles can be considered to be substantially similar to the U.S.-model vehicles. Ford identified the substantially similar nonconforming vehicles as 1994 2-door pickup style, and 1994 and 1995 2-door station wagon hardtop style vehicles that have the characters ''A'' in the seventh position and ''M'' in the eight position of their vehicle identification number (VIN).

With regard Skytop's comments NHTSA offers the following observations:

(1) As previously discussed, there are two distinct body styles for the U.S.-conforming model, a 2-door pickup model and a 2-door station wagon hardtop model. Each model has a unique safari cage. After reviewing the comments received from both Skytop and Ford, NHTSA has determined that the presence of those unique U.S.-model safari cages is necessary for the vehicles to meet the requirements of several FMVSS as detailed below.

(2) NHTSA agrees with Skytop that the fuel system in the nonconforming vehicles must be modified in order to conform to all applicable requirements of FMVSS No. 301. NHTSA did not receive any evidence indicating that any specific structural modifications would be required to conform the limited subset of vehicles identified as substantially similar to the U.S.-conforming vehicles to the applicable requirements of FMVSS No. 301. However, the presence of a complete U.S.-model fuel system is warranted, as described below.

(3) The Bumper standard that is referred to by Skytop (49 CFR Part 581 *Bumper Standard*) does not apply to MPVs and is not a FMVSS. Therefore, a vehicle's conformity status with regard to 49 CFR Part 581 cannot be a factor in deciding whether the vehicle is eligible for importation.

(4) NHTSA agrees with Skytop that all seat belt anchorages should be inspected and U.S.-model components must be installed on vehicles not already so equipped to conform to FMVSS No. 210 as described below.

(5) NHTSA agrees with Skytop that an audible key warning system must be installed in the nonconforming vehicles to conform to FMVSS No. 114 as described below.

NHTSA agrees with Ford's descriptions of the differences between the nonconforming vehicles and the U.S.-conforming model vehicles.

Based on Ford's and Skytop's comments concerning FMVSS Nos. 114, 210 & 301, NHTSA has determined that in addition to the modifications described in Export Auto's petition, the following modifications must be performed to bring the nonconforming vehicles into compliance with all applicable FMVSS:

FMVSS No. 101 *Controls and Displays:* Installation of U.S.-model speedometer and instrument cluster mounted telltale lamps or modification of existing components to achieve compliance with the standard.

FMVSS No. 106 *Brake Hoses:* Inspection of the vehicles and replacement of any nonconforming brake hoses with U.S.-model components.

FMVSS No. 105 *Hydraulic and Electric Brake Systems:* Inspection of all vehicles and installation of U.S.-model brake system components as needed to meet the labeling requirements of the standard on vehicles that are not already so equipped.

FMVSS No. 108 *Lamps, Reflective Devices, and Associated Equipment:* Installation of U.S.-model front and rear side marker lamps. Inspection of all vehicles and replacement of any nonconforming front parking lamps, rear lamps, and reflex reflectors with U.S.-model components on vehicles that are not already so equipped.

FMVSS No. 110 *Tire Selection and Rims:* Installation of a conforming tire and rim information placard.

FMVSS No. 111 *Rearview Mirrors:* Installation of a U.S.-model interior rearview mirror and compatible sun visors if the existing sun visors interfere with the compliance of the U.S.-model interior mirror, and installation of U.S.-model driver's and passenger's side exterior mounted rearview mirrors.

FMVSS No. 114 *Theft Protection:* Installation of a U.S.-model key warning system and installation of a U.S.-model park-interlock on vehicles with automatic transmissions.

FMVSS No. 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars:* Inspection of all vehicles and replacement of any tires that do not conform to the requirements of the standard.

FMVSS No. 124 *Accelerator Control Systems:* Installation of a U.S.-model throttle, or production of test data showing that the existing throttle components conform to FMVSS No. 124.

FMVSS No. 203 *Impact Protection for the Driver from the Steering Control System:* Installation of a U.S.-model padded steering wheel hub and a compatible U.S.-model spline column.

FMVSS No. 208 *Occupant Crash Protection:* Installation of supplemental audible and visual seat belt warning systems and compatible U.S.-model seat belt components.

FMVSS No. 209 *Seat Belt Assemblies:* Installation of U.S.-model seat belts.

FMVSS No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model anchorages.

FMVSS No. 212 *Windshield Mounting:* Installation of the complete body style-specific U.S.-model safari cage including the full external front hoop on vehicles not already so equipped.

FMVSS No. 216 *Roof Crush Resistance:* The substantially similar U.S.-model vehicles were not certified to FMVSS No. 216, either because they were manufactured before September 1, 1994, the date the standard became applicable to MPVs, or because their gross vehicle weight rating (GVWR) was 6,000 lbs. or greater. Therefore, nonconforming vehicles manufactured on or after September 1, 1994 will only be eligible under this decision if they were manufactured with a GVWR greater than 2722 kg (6,000 lb).

FMVSS No. 219 *Windshield Zone Intrusion:* Installation of the complete body style-specific U.S.-model safari cage including the full external front hoop.

FMVSS No. 301 *Fuel System Integrity:* Installation of a U.S.-model rear step bar, rollover valve, and inertia switch. Inspection of all vehicles and replacement of any non-U.S.-model fuel system components with U.S.-model components.

49 CFR Part 565 *Vehicle Identification number—Content Requirements:* Nonconforming vehicles imported and certified by RIs are not required to have vehicle identification numbers (VINs) that conform to the style and content requirements of 49 CFR Part 565. However, as required by 49 CFR Part 565.5(b), the VIN that was assigned to an imported vehicle by its original manufacturer must be displayed on the certification label applied by the RI and must also be on a plate or label located inside the vehicle and visible.

49 CFR Part 567 *Certification:* Installation of an RI's certification label as required by 49 CFR Part 567.2(b).

49 CFR Part 575.105 *Consumer Information Regulations:* In addition to ensuring that converted vehicles conform to all applicable FMVSS, an RI who converts one of the subject vehicles must also install a rollover warning label on the driver's sun visor to meet the requirements of 49 CFR Part 757.105.

While the modifications detailed above are extensive, NHTSA has decided that a specific subgroup of nonconforming 1994 and 1995 Land Rover Defender 90 MPVs are capable of being readily modified to conform to applicable FMVSS.

Accordingly, the agency has decided to grant the petition subject to the limitations discussed below.

Applicability

The applicability of this decision is limited to nonconforming 1994 and 1995 Land Rover Defender 90 MPVs with the following characteristics:

(1) 1994 Land Rover Defender 90 MPVs—2-door pickup only,

(2) 1995 Land Rover Defender 90 MPVs—2-door pickup and 2-door station wagon hardtop only,

(3) 1994 & 1995 Land Rover Defender 90 MPVs—The seventh position of the VIN must be the character ''A,''

(4) 1994 & 1995 Land Rover Defender 90 MPVs—The eighth position must be the character ''M,''

(5) 1994 & 1995 Land Rover Defender 90 MPVs manufactured on or after September 1, 1994—The GVWR assigned by the original manufacturer must be greater than 2722 kg.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–512 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that the previously described subset of 1994 and 1995 Land Rover Defender 90 MPVs that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 1994 and 1995 Land Rover Defender 90 MPVs originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 16, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–30335 Filed 12–22–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 210X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Fulton County, GA

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption [1] under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.30-mile line of railroad between milepost DF 633.10 and milepost DF 637.40, in Atlanta, Fulton County, GA. The line traverses United States Postal Service Zip Codes 30303, 30306, 30307, 30308, 30309, 30312, 30324, 30337, 30340, and 30354.[2]

NSR has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) overhead traffic on the line, if any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 22, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an

[1] NSR concurrently filed a petition seeking an exemption from the offer of financial assistance (OFA) and the public use provisions at 49 U.S.C. 10904 and 49 U.S.C. 10905, respectively. The merits of the petition will be addressed in a separate decision.

[2] NSR states that the property underlying the line proposed for abandonment between milepost DF 633.10 and the crossing at grade of DeKalb Avenue/Decatur Street at approximately milepost DF 636.56 was conveyed to a local developer in 2004, and that the developer subsequently conveyed the property to NE Corridor Partners, LLC, which intends to develop the property as part of the Atlanta BeltLine project. NSR also states that it has retained an operating easement and complete operating authority over this property pending receipt of abandonment authority or exemption from the Board.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 2, 2009.[5] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 12, 2009 with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 24, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 23, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 12, 2008.

[4] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

[5] NSR states that it does not have fee title to the right-of-way underlying the line proposed for abandonment and, therefore, that it will not have a corridor available for public use.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E8–30146 Filed 12–22–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35163]

Kansas City Southern, The Kansas City Southern Railway Company, and The Texas Mexican Railway Company—Exemption for Transactions Within a Corporate Family

Kansas City Southern (KCS), The Kansas City Southern Railway Company (KCSR), and The Texas Mexican Railway Company (Tex Mex), have filed a verified notice of exemption for a transaction within a corporate family. The transaction involves: (1) KCSR's acquisition by lease and operation of Tex Mex's right-of-way and rail line extending between milepost 2.5 (near Rosenberg, TX) and milepost 87.0 (near Victoria, TX); and (2) the assignment to KCSR of Tex Mex's overhead trackage rights over certain rail lines of Union Pacific Railroad Company (UP) (a) between mileposts 0.0 and 2.5 (near Rosenberg), and (b) between mileposts 87.0 and 90.8 (near Victoria), along with Tex Mex's rights to interchange with BNSF Railway Company at Rosenberg.[1]

KCS is a privately held noncarrier holding company, with both rail and non-rail assets. KCS currently controls 3 rail common carriers: (1) KCSR, a Class I carrier that owns and operates approximately 3,226 miles of rail line in ten states; (2) Gateway Eastern Railway Company, a Class III carrier that owns and operates approximately 17 miles of rail line between East Alton and East St. Louis, IL; and (3) Tex Mex, a Class II carrier that owns approximately 157 miles of rail line between Laredo and Corpus Christi, TX, and approximately 84.5 miles of rail line between Rosenberg and Victoria (including overhead trackage rights over UP's line between mileposts 0.0 and 2.5 and between mileposts 87.0 and 90.8), and that possesses overhead trackage rights over UP's rail lines between Beaumont, Houston, and Corpus Christi, TX.

The transaction is expected to be consummated on January 7, 2009 (30 days after the exemption was filed).

[1] The rail line segment between mileposts 2.5 and 87.0 is owned by Tex Mex, and the segments between mileposts 0.0 and 2.5 and mileposts 87.0 and 90.8 are owned by UP.

As a result of this transaction, KCSR will possess sufficient rights to operate and provide service over a contiguous rail line bounded by Kansas City, MO, at the north end and Laredo, TX, at the south end. According to applicants, the transaction will reduce operating costs, improve efficiency, and enable KCSR to provide seamless service over the various parts of its rail system.

This is a transaction within a corporate family of the type exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the KCS corporate family.

As a condition to the use of this exemption, any employees adversely affected by the lease and operation will be protected by the conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980), as clarified in *Wilmington Term. RR, Inc.—Pur. and Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799, 814–26 (1990). Any employees adversely affected by the assignment of trackage rights will be protected by the conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the 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 transaction. Petitions for stay will be due no later than December 31, 2008 (at least 7 days before the effective date of the exemption).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35163, 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 applicants' representatives, William A. Mullins, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037, and W. James Wochner, P.O. Box 219335, Kansas City, MO 64121.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 16, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E8–30381 Filed 12–22–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 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, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 22, 2009 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0057.

Type of Review: Extension.

Title: Annual Letters—Certificate of Authority (A) and Admitted Reinsurer (B).

Description: The information is collected so that Treasury can make the appropriate determinations as to the renewal of the Certificates of Authority of currently certified companies and the renewal of companies currently recognized by Treasury as Admitted Reinsurers. Included in the package is the Annual Letter to Executive Officers of Surety Companies Reporting to the Treasury (A) and the Annual Letter to Executive Officers of Companies Recognized by the Treasury as Admitted Reinsurers (B). The Secretary of the Treasury has been given authority pursuant to 31 U.S.C. 9304–9308 to certify insurance companies wishing to write or reinsure federal surety bonds. The authority has been further codified at 31 CFR Part 223.9 which specifies guidelines applicable to companies seeking certification while Part 223.12 specifies requirements applicable to companies seeking recognition as an Admitted Reinsurer.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 13,674 hours.

Clearance Officer: Wesley Powe, (202) 874–7662, Financial Management Service, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert B. Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–30522 Filed 12–22–08; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Agency Information Collection (Architect—Engineer Fee Proposal) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before *January 22, 2009.*

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0208'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0208.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Architect—Engineer Fee Proposal, VA Form 10–6298.

b. Daily Log (Contract Progress Report—Formal Contract), VA Form 10–6131. Supplement Contract Progress Report, VA Form 10–61001a.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. An Architect-engineering firm selected for negotiation of a contract with VA is required to submit a fee proposal based on the scope and complexity of the project. VA Form 10–6298 is used to obtain such proposal and supporting cost or pricing data from the contractor and subcontractor.

b. VA Forms 10–6131 and 10–6001a are used to record data necessary to assure the contractor provides sufficient labor and materials to accomplish the contract work. VA Form 10–6131 is used for national contracts and VA Form 10–6001a is used for smaller VA Medical Center station level projects and as an option on major projects before the interim schedule is submitted.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 2008 at pages 61194–61195.

Affected Public: Business or other for-profit.

Estimated Annual Burden:

a. VA Form 10–6298—1,000.

b. VA Form 10–6131—3,591.

c. VA Form 10–6001a—750.

Estimated Average Burden per Respondent

a. VA Form 10–6298—4 hours.

b. VA Form 10–6131—12 minutes.

c. VA Form 10–6001a—12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. VA Form 10–6298—250.

b. VA Form 10–6131—17,955.

c. VA Form 10–6001a—3,750.

Dated: December 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–30593 Filed 12–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0670]

Agency Information Collection (Fiduciary Statement in Support of Appointment) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0670'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0670.''

SUPPLEMENTARY INFORMATION:

Title: Fiduciary Statement in Support of Appointment, VA Form 21–0792.

OMB Control Number: 2900–0670.

Type of Review: Extension of a currently approved collection.

Abstract: Individual's seeking appointment as a fiduciary of VA beneficiaries complete VA Form 21–0792. VA uses the data collected to determine the individual's qualification as a fiduciary and to inquire about his or her credit and criminal background.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 2008, at page 61195.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,500.

Dated: December 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–30594 Filed 12–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Agency Information Collection (Application for Annual Clothing Allowance) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0198'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0198.''

SUPPLEMENTARY INFORMATION:

Title: Application for Annual Clothing Allowance (Under 38 U.S.C. 1162), VA Form 10–8678.

OMB Control Number: 2900–0198.

Abstract: VA Form 10–8678 is used to gather the necessary information to determine if a veteran is eligible for clothing allowance benefits due to a service connected disability. Clothing allowance is payable if the veteran uses a prosthetic or orthopedic device (including a wheelchair) that tends to wear out or tear clothing or is prescribed medication for a skin condition that causes irreparable damage to outer garments.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 2008 at pages 61193–61194.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,120 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: December 16, 2008.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–30595 Filed 12–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (Appraiser-Realtor Surveys)]

Proposed Information Collection (VBA Loan Guaranty Service Appraiser and Realtor Satisfaction Surveys); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on

information needed to determine realtor and appraiser satisfaction with the VBA Loan Guaranty Service (LGY).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before *February 23, 2009.*

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900-New (Appraiser-Realtor Surveys) in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Loan Guaranty Service Appraiser and Realtor Surveys.

OMB Control Number: 2900-New (Appraiser-Realtor Surveys).

Type of Review: New collection.

Abstract: The mission of LGY is to help veterans and active duty personnel purchase and retain homes in recognition of their service to our nation. The program offers many advantages to veterans, including no down payment, and no mortgage insurance premiums. Since the program's inception in 1944, it has helped millions of veterans to become homeowners.

As part of the VA's continuing commitment to improve the services provided to veterans, LGY will conduct FY09 VA Loan Guaranty Service Appraiser and Realtor Surveys. The survey will target real estate professionals geographically located in ''veteran rich'' areas. The appraisers surveyed will be those currently serving on the VA Fee Panel.

Affected Public: Business or other for profits.

Estimated Annual Burden: 2,750 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 11,000.

Dated: December 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–30596 Filed 12–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Agency Information Collection (Application for United States Flag for Burial Purposes) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 22, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0013'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0013.''

SUPPLEMENTARY INFORMATION:

Title: Application for United States Flag for Burial Purposes, VA Form 21–2008.

OMB Control Number: 2900–0013.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2008 is used to determine a family member or friend of a deceased veteran eligibility for issuance of a burial flag.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 15, 2008, at page 61194.

Affected Public: Individuals or households, Federal Government and State, Local or Tribal Government.

Estimated Annual Burden: 162,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

Dated: December 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–30597 Filed 12–22–08; 8:45 am]

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Federal Register

Tuesday,
December 23, 2008

Part II

Department of Veterans Affairs

38 CFR Part 21
Post-9/11 GI Bill; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AN10

Post-9/11 GI Bill

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to establish regulations regarding a new educational assistance program for individuals who serve on active duty after September 10, 2001. The new program, known as the Post-9/11 GI Bill, was authorized by title V of the Supplemental Appropriations Act, 2008 (Post-9/11 Veterans Educational Assistance Act of 2008). These proposed regulations are designed to implement the provisions of the Post-9/11 Veterans Educational Assistance Act of 2008 that govern the Post-9/11 GI Bill.

DATES: Comments must be received on or before January 22, 2009.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN10—Post-9/11 GI Bill.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online at *www.Regulations.gov* through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Brandye R. Terrell, Regulation Development Team Leader (225C), Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Telephone: (202) 461–9822. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Post-9/11 GI Bill

This document proposes to amend VA's Vocational Rehabilitation and Education regulations in 38 CFR part 21 by adding a new subpart P and updating subparts B, C, D, G, K, and L to implement the provisions of the ''Post-9/11 Veterans Educational Assistance Act of 2008,'' Public Law 110–252, title V, which established a new educational assistance program. Many of the provisions of the new program, known as the ''Post-9/11 GI Bill,'' are codified in chapter 33 of title 38, U.S.C. Chapter 33 provides guidance on the administration of the Post-9/11 GI Bill educational assistance program. The new program becomes effective on August 1, 2009. VA intends to use these proposed regulations to govern and administer educational assistance allowances payable under the Post-9/11 GI Bill. The following paragraphs provide a brief explanation of how each section of new chapter 33 affects the provisions of educational assistance under the Post-9/11 GI Bill, with references to the respective proposed rules concerned.

Section 3301. Definitions

Section 3301 defines certain terms relevant to the Post-9/11 GI Bill. VA proposes to define active duty, advance payment, educational assistance, enrollment period, entry level or skill training, established charges, institution of higher learning, interval, lump sum payment, program of education, pursuit, and transferor based on statute or existing regulations for sections authorized under 38 U.S.C. 3323 to govern the administration of the program.

The term ''academic year'' is used in section 3313 to set a period of time for which VA may pay the maximum book stipend of up to $1,000, and in section 3317 to set a period of time for which colleges and universities (who voluntarily agree to enter into an agreement with VA) must provide specific information. VA proposes to define academic year to mean a span of time of not more than 12 months during which the institution of higher learning offers periods of instruction and includes all divisions of the school year as defined in § 21.4200(b)(2) through (b)(5). If an institution of higher learning has an academic year lasting longer than 12 months, VA will consider the academic year for that institution to be August 1st of each calendar year through July 31st of the subsequent calendar year.

''Program of education'' as defined in 38 U.S.C. 3301 and 3452(b) includes any unit course or combination of courses or subjects pursued by an individual. In several sections of existing regulations governing the administration of other educational assistance programs, the terms ''course'' and ''program of education'' have often been used synonymously. Using the terms interchangeably for purposes of 38 U.S.C. chapter 33 could be confusing to the reader. Section 3313 of title 38, U.S.C., provides a formula for determining entitlement charge. The formula includes the term ''course.'' The term, as used in this section is not interchangeable with program of education. The term ''course'' is also used in 38 U.S.C. 3314 governing payment of tutorial assistance. In this instance, the term ''course'' is specifically required to be part of an approved program of education. The use of the term ''course'' in these instances requires that VA clearly distinguish between course and program of education. VA proposes to define the term ''course'' to mean a unit of instruction required for an approved program of education that provides the individual with the knowledge and skills necessary to meet the requirements of the selected educational objective.

Section 3313 specifically excludes payment of the monthly housing allowance to individuals pursuing a program of education offered through distance learning. VA proposes to define the term ''distance learning'' to mean the pursuit of a program of education via distance education as codified in Department of Education statute 20 U.S.C. 1003(6).

Section 3313(f)(4) provides VA with a formula for calculating entitlement charge for eligible individuals pursuing training at half-time or less. The formula requires that VA divide the number of course hours pursued by an individual by the number of course hours required to be full-time at the institution of higher learning. The result of the formula is a percentage that will be used to determine entitlement charge. As this formula is unique to the new program, VA proposes to use the term ''rate of pursuit'' to identify the result of the calculation.

Terms specific to the Post-9/11 GI Bill are included in proposed § 21.9505.

Section 3311. Educational Assistance for Service in the Armed Forces Commencing on or After September 11, 2001: Entitlement

Section 3311 specifies service requirements for establishing eligibility for educational assistance under chapter 33, the qualifying categories of discharges and releases, and the types of service that will not be considered active duty for purposes of establishing eligibility. Rules regarding these statutory provisions are included in proposed §§ 21.9505 and 21.9520.

Section 3312. Educational Assistance: Duration

Section 3312 provides a maximum of 36 months (or its equivalent for part-time training) of educational assistance to individuals meeting the eligibility requirements contained in section 3311, to be used during the individual's period of eligibility. This section incorporates a 48-month limitation in 38 U.S.C. 3695 on the total period in which an individual can receive educational assistance by combining two or more educational assistance programs administered by VA. In addition, section 3312 provides that there will be no charge against an eligible individual's entitlement to educational assistance under chapter 33 if the individual discontinued training because he or she was ordered to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, was ordered to a new duty location, or was required to perform an increased amount of work in his or her unit, and failed to receive credit toward the completion of his or her educational, professional, or vocational objective. The period for which receipt of educational assistance allowance is not charged against an individual's entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or lost training time. Rules regarding these statutory provisions are included in proposed §§ 21.9550 and 21.9560(d).

Section 3313. Educational Assistance: Amount; Payment

Section 3313 provides that eligible individuals may receive educational assistance for pursuit of any program of education approved for purposes of 38 U.S.C. chapter 30 and offered by an institution of higher learning. The maximum amount of educational assistance payable for an individual's pursuit of an approved program of education will depend, in part, upon the individual's length of creditable active duty service as shown in the following chart:

Service requirements (aggregate service on active duty after 9/10/01)	Maximum percentage of amounts payable
At least 36 months [1]	100
At least 30 continuous days (Must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months [1]	90
At least 24 months, but less than 30 months [1]	[3] 80
At least 18 months, but less than 24 months [2]	[3] 70
At least 12 months, but less than 18 months [2]	60
At least 6 months, but less than 12 months [2]	50
At least 90 days, but less than 6 months [2]	40

[1] Includes entry level and skill training.
[2] Excludes entry level and skill training.
[3] If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable.

Section 3313 directs VA to charge an individual's entitlement to educational benefits under chapter 33 for payments of educational assistance (established charges; monthly housing allowance; lump sum for books, supplies, equipment, and other educational costs). An eligible individual, other than an individual on active duty, is entitled to receive educational assistance equal to the amount of the school's established charges, up to the maximum amount of established charges regularly charged to full-time, undergraduate, in-State students by the public institution of higher learning having the highest rate of regularly-charged established charges in the State in which the individual is enrolled, as well as a prorated amount for books, supplies, equipment, and other educational costs (not to exceed $1,000 for an entire academic year), which are paid in a lump sum for the quarter, semester, or term. In addition, an individual, other than an individual on active duty, whose rate of pursuit for a program of education (distance learning programs are specifically excluded by 38 U.S.C. 3313(c)(1)(B)) is greater than half-time is entitled to a monthly housing allowance equal to the amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5, using the ZIP code area wherein all, or a majority, of the institution of higher learning in which the individual is enrolled is located. The actual amounts payable to, or on behalf of, an eligible individual must be multiplied by the maximum percentage correlating to the individual's creditable length of service (as shown in the chart above). Additionally, the actual lump sum amount payable for books, supplies, equipment, and other educational costs must be multiplied by the percentage correlating to the individual's rate of pursuit if the individual's rate of pursuit is 50 percent or less.

An individual on active duty is eligible to receive educational assistance equal to the amount of the school's established charges or the portion of established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b), whichever is less.

In the event that an individual is pursuing an approved program of education at more than one institution of higher learning, VA proposes to use the primary institution of higher learning (institution from which degree will be granted) to determine the in-State maximum for established charges and the monthly housing allowance. If the individual is only pursuing distance education courses at the primary school, VA proposes to determine the monthly housing allowance payable using the ZIP code of the institution of higher learning where resident courses are being pursued.

While the statute provides that eligible individuals may receive educational assistance for pursuit of any program of education that is approved for the purposes of 38 U.S.C. chapter 30 and offered by an institution of higher learning as defined in 38 U.S.C. 3452(f), it does not address the maximum amounts payable for individuals pursuing training in a foreign country. The statutory definition of institution of higher learning includes educational institutions that are not located in States but offer courses leading to a standard degree (or its equivalent) that is recognized by the Secretary of the Department of Education (or comparable official) of the country or other jurisdiction in which the institution is located. VA proposes to pay individuals in pursuit of an approved program of education located at a foreign branch of a State-side institution in the same manner as in-State students using the maximum amounts payable for the State in which that institution's main campus is located. VA also proposes to set the maximum amount of established charges payable for individuals in pursuit of an approved program of education at a foreign institution at the average amount of established charges regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States during the preceding academic year. Further, VA proposes to set the maximum monthly housing allowance payable for individuals in pursuit of an approved program of education at a foreign institution at the average monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with

dependents in pay grade E–5 residing in the continental United States.

Section 3313(d)(3) requires VA to establish regulations for determining the number of months of entitlement of an individual to chapter 33 educational assistance that are chargeable based on payments made to the individual for pursuit of an approved program of education. Except for lump sum stipends for books, supplies, equipment, and other educational costs that an individual receives for a certified period of enrollment, VA proposes to charge entitlement based on rate of pursuit and enrollment dates similar to the method used to calculate entitlement charge under 38 U.S.C. chapter 30. VA will compute the individual's rate of pursuit from the beginning date of the educational assistance award to the ending date. If the individual's rate of pursuit is half-time or less, VA is required to calculate the amount of entitlement to charge as a percentage of a month equal to the number of course hours the individual is pursuing divided by the number of course hours required for full-time pursuit at the institution of higher learning. For the purpose of consistency in determining the amount of entitlement to charge, VA proposes to use the same formula to calculate every individual's rate of pursuit, up to and including for full-time training.

The amount payable to an individual for a lump sum for books, supplies, equipment, and other educational costs (also referred to as the book stipend) is limited to up to $1,000 each academic year. The book stipend must be paid proportionally based on the fraction of the academic year that term, quarter, or semester the individual is attending represents. If the individual is only eligible to receive a lump sum payment for the book stipend for the certified period of enrollment, VA proposes to limit the entitlement charge to one day for each $33 received by the individual, with any remaining amount rounded to the nearest amount evenly divisible by $33. Individuals who receive payment of established charges or the monthly housing allowance will not receive an additional entitlement charge for the book stipend. The formula used to determine entitlement charge for the book stipend will only be used if the individual does not receive any other payment under 38 U.S.C. 3313. Using this formula would be most advantageous to the individual because it would allow the individual to receive educational assistance for books, supplies, equipment, and other educational costs while maximizing entitlement use.

A servicemember pursuing an approved program of education would be entitled to receive the lesser of: (1) the amount of the school's established charges which similarly circumstanced nonveterans are required to pay; or (2) the portion of the established charges not covered by military tuition assistance.

VA would pay the appropriate amount of established charges as a lump sum sent directly to the institution of higher learning on the individual's behalf. VA would make all other payments directly to the individual. Rules regarding these provisions are included in proposed §§ 21.9560, 21.9640, and 21.9680.

Section 3314. Tutorial Assistance

Section 3314 permits an eligible individual in pursuit of an approved program of education to receive tutorial assistance, subject to the conditions applicable to veterans under 38 U.S.C. 3492, if the instructor of the course certifies that assistance is essential to correct a deficiency, and the course is required for satisfactory pursuit of the program of education. Section 3492 requires that the individual must be in pursuit of a program of education on at least a half-time basis. Chapter 33 does not recognize the training times used in the administration of other educational assistance programs. Therefore, VA proposes to permit an individual with a rate of pursuit of at least 50 percent to qualify for tutorial assistance as that percent represents a course load that is equivalent with half-time training in other educational assistance programs. An individual who receives tutorial assistance would not be charged entitlement for chapter 33 educational assistance. An individual's receipt of tutorial assistance would be limited to $100 per month for up to 12 months or up to a maximum of $1,200. Rules regarding these provisions are included in proposed §§ 21.9560(d) and 21.9685.

Section 3315. Licensure and Certification Tests

Section 3315 permits an eligible individual to receive reimbursement for the actual cost of taking one licensing or certification test on or after August 1, 2009, up to a maximum of $2,000, and no charge would be made against the individual's entitlement to chapter 33 educational assistance. Rules regarding this provision are consistent with statute and existing regulations for sections authorized under 38 U.S.C. 3323 to govern the administration of the program and are included in proposed §§ 21.9560, 21.9625, 21.9665, and 21.9680.

Section 3316. Supplemental Educational Assistance: Members With Critical Skills or Specialty; Members Serving Additional Service

Section 3316 provides that the Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable to an individual who is entitled to receive: (1) an increase (''kicker'') based on a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel; or (2) a supplemental educational assistance increase based on additional years of service as authorized by subchapter III of 38 U.S.C. chapter 30. These increases are at the sole discretion of the Secretary of the military department concerned.

Section 3316 provides that the amount of the increased or supplemental educational assistance payable will be equal to the monthly amount of the increase authorized under 38 U.S.C. 3015(d) or 3022, respectively. Those sections require that the monthly amount of the additional assistance be reduced for individuals not pursuing full-time training. Section 3316 does not provide a method for adjusting the amount of the individual's additional educational assistance; therefore, VA proposes to proportionally reduce the monthly amount of the increase (''kicker'') or supplemental educational assistance payable under the Post-9/11 GI Bill by the percentage corresponding to the individual's rate of pursuit as determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit. Any amount payable under this section will be paid as an increase to the monthly housing allowance, but can only be paid if the individual is eligible for the housing allowance for that term, quarter, or semester. Rules regarding these provisions are included in proposed §§ 21.9525, 21.9555, 21.9650, and 21.9655.

Section 3317. Public-Private Contributions for Additional Educational Assistance

Section 3317 establishes the ''Yellow Ribbon G.I. Education Enhancement Program'' (referred to as the ''Yellow Ribbon Program''), which permits an institution of higher learning, at the school's option, to enter into an agreement with VA allowing the two parties to provide matching funds to cover a portion of the outstanding

amount of established charges not covered under any other provision of 38 U.S.C. chapter 33. VA would match each dollar funded by the school, but the combined amounts may not exceed the remainder of the full cost of the school's established charges. This program would only be available to individuals entitled to the 100 percent benefit rate (based on service requirements) who are pursuing training at an institution of higher learning located in the United States or at a branch of such institution that is located outside the United States.

VA proposes to enter into an agreement with any institution of higher learning located in the United States seeking to participate in the Yellow Ribbon Program. For the sake of equality, VA proposes to require institutions to agree to—

- Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), in any given academic year;
- Make contributions toward the program on behalf of the individual in the form of a waiver;
- State the maximum number of individuals for whom contributions will be made in any given academic year; and
- Waive the same percentage of unmet established charges for all eligible individuals in any given academic year.

Additionally, VA proposes to require each participating institution of higher learning to commit to provide contributions for eligible individuals for the entire academic year specified in the agreement.

The most current list of colleges and universities participating in the Yellow Ribbon Program would be made available at VA's GI Bill Web site at *http://www.gibill.va.gov.* The list would include specific information regarding each school's agreement with VA. Proposed rules regarding the Yellow Ribbon Program provision are provided in § 21.9700.

Section 3318. Additional Assistance: Relocation or Travel Assistance for Individual Relocating or Traveling Significant Distance for Pursuit of a Program of Education

Section 3318 permits an individual eligible for educational assistance under this chapter to receive a one-time-only payment of $500 if the individual resides in a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile (as determined by the most recent decennial Census) and, in order to pursue a program of education under the Post-9/11 GI Bill, either: (1) Relocates at least 500 miles; or (2) travels by air to physically attend school if no other method of transportation is available due to an absence of roads or other infrastructure. If the individual requests payment for the rural relocation benefit, VA proposes to confirm that the individual physically relocated at least 500 miles by using a commonly available internet search engine for mapping, using the individual's resident address as the beginning point and the address of the institution of higher learning as the ending point. If the individual indicates that he or she was required to travel by air to reach the institution of higher learning for which he or she is enrolled, VA proposes to verify that the individual actually traveled by air by requesting that the individual provide an airline receipt for travel with a departure and destination airport within reasonable commuting distance from the individual's home of residence and the institution of higher learning, respectively.

Section 3318 also authorizes VA to accept an individual's DD Form 214 (Certification of Release or Discharge), the individual's most recent Federal income tax return, or other evidence as prescribed by regulation as proof of residence. VA proposes to accept the following additional documents as proof of residence: The most recent State income tax return, a rental/lease agreement, a mortgage document, or a current real property assessment. VA further proposes to accept the above-mentioned documents (excluding the DD Form 214) in the name of the transferor or, in the case of a child, a parent in the event that a dependent eligible for assistance under this program as a result of being granted transferred entitlement cannot personally produce adequate proof of residence because he or she lives with the transferor or, in the case of a child, a parent.

In view of the nature of this one-time-only payment, VA proposes to make no charge against the individual's entitlement to chapter 33 educational assistance. Rules regarding this provision are included in proposed §§ 21.9660 and 21.9680(c).

Section 3319. Authority to Transfer Unused Education Benefits to Family Members

Section 3319 provides that the Secretary of Defense may authorize the Secretary of each military department, at such Secretary's sole discretion, to permit individuals who meet certain service requirements and are eligible for educational assistance under the Post-9/11 GI Bill to transfer up to 36 months of their entitlement to educational assistance to a designated dependent or dependents. The Secretary of the Defense may limit the number of months of entitlement that may be transferred, but in no case may the Secretary limit the number of months to less than 18 months.

The statute further provides the—

- Eligibility criteria for both the individual transferring the entitlement and the dependent;
- Administrative provisions (including designations, revocations, and modifications of transferred entitlement);
- Special provisions in the event of an overpayment of educational assistance allowance; and
- Limitations on using transferred entitlement as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

Subject to the transferor's (individual who transfers the entitlement) 15-year period of eligibility, a spouse is entitled to use transferred entitlement in the same manner as the transferor and receive the same amounts that would be payable to the transferor. A child is entitled to use transferred entitlement in the same manner as the transferor and receive the same amounts that would be payable to the transferor as if the transferor was not on active duty. The child is not subject to the transferor's 15-year period of eligibility nor may the child use any transferred entitlement after reaching the age of 26 years. A spouse may use the transferred entitlement for pursuit of the requirements of a secondary school diploma or equivalency certificate; a child can only do so if he or she has reached 18 years of age.

For consistency among all educational assistance programs administered by VA, VA proposes to adopt the provisions of existing regulations governing transfer of entitlement in the event that section 3319 does not address such provisions. Rules regarding the transfer of entitlement provisions are included in proposed §§ 21.9530, 21.9570, 21.9625, 21.9635, and 21.9570.

Section 3321. Time Limitation for Use of and Eligibility for Entitlement

Section 3321 provides that an individual's period of eligibility for educational assistance will generally terminate 15 years from the last date of

discharge or release from active duty of at least 90 continuous days. However, if the individual is eligible for educational assistance under this program due to a discharge or release from active duty of at least 30 days for a service-connected disability, the individual's period of eligibility will terminate effective 15 years from his or her date of discharge or release from active duty.

Section 3321 does not address the period of eligibility for individuals who established eligibility based on a minimum of 90 aggregate days of active duty service who do not have a period of service consisting of 90 continuous days. VA proposes to establish a 15-year period of eligibility for these individuals beginning on the date of discharge or release from active duty for the last period of service used to meet the minimum service requirements under chapter 33.

If an individual's eligibility is established as a result of a corrective action to an individual's military records by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the corrective action. This section also provides that VA, under certain conditions, will extend an individual's period of eligibility in the event the individual was captured and forcibly detained by a foreign government or power, or was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct.

Rules regarding these provisions are included in proposed §§ 21.9530 and 21.9535.

Section 3322. Bar to Duplication of Educational Assistance Benefits

Section 3322 prohibits concurrent receipt of educational assistance under the Post-9/11 GI Bill and any other educational assistance programs administered by VA (excluding the receipt of supplemental educational assistance, or an increase (''kicker'') payable as a result of eligibility under the Montgomery GI Bill—Active Duty program, or the Montgomery GI Bill—Selected Reserve program). If an individual is eligible for more than one program administered by VA, the individual must elect under which program he or she wishes to receive educational assistance. VA proposes to amend §§ 21.3022, 21.4022, 21.5022, 21.7143, and 21.7642 to include a reference to chapter 33 of title 38, U.S.C., and add a provision prohibiting duplication of educational assistance in § 21.9690 of the proposed subpart P. Updating each of the aforementioned sections and adding § 21.9690 will make it clear to the reader that an individual may not concurrently receive payment for training under the Post-9/11 GI Bill and any other educational assistance program administered by VA.

Section 3322 also prohibits a period of service counted for purposes of repayment of an education loan under chapter 109 of title 10, U.S.C., from being counted as a qualifying period of service for eligibility under the Post-9/11 GI Bill. In addition, it prohibits an individual who serves in the Selected Reserve from receiving credit for that service under more than one of the following educational assistance programs: the Post-9/11 GI Bill, the Montgomery GI Bill—Active Duty program, the Montgomery GI Bill—Selected Reserve program, or the Reserve Educational Assistance Program. These restrictions are included under the definition of active duty in proposed § 21.9505.

Section 3323. Administration

Section 3323 requires VA to adhere to the provisions of section 3034(a)(1), which includes the provisions of 3470, 3471, 3474, 3476, 3482(a), 3483, and 3485 of title 38, U.S.C., and subchapters I and II (with the exception of secs. 3680(c) 3680(f), and 3687) of chapter 36 of the same title in administering the Post-9/11 GI Bill in the instance that 38 U.S.C. chapter 33 does not address the subject matters covered under those sections.

Some of the sections listed in the preceding paragraph generally apply to all educational assistance programs administered by VA and, therefore, exist in current VA regulations. VA proposes to revise 38 CFR 21.1029, 21.1031, and 21.1032 to include a reference to the proposed subpart P and update authority citations as necessary. Furthermore, VA proposes to revise multiple sections in 38 CFR part 21, subpart D to do one or more of the following:

- Update the authority citations to include chapter 33 authority;
- Amend the referenced sections to include chapter 33; and
- Remove references to chapter 34 because that educational assistance program expired on December 31, 1989.

In addition, 38 U.S.C. 501, 503, 511, 512, 513, 5101, 5103, 5103A, and 5113 (applicable generally with respect to benefits administered by VA) are applicable to the administration of the Post-9/11 GI Bill. Sections 501, 503, 511, 512, and 513 include provisions related to VA's authority to prescribe rules and regulations to carry out the laws administered by the Department, determinations on administrative errors or equitable relief, finality of decisions by the Secretary, the Secretary's delegation of authority, and the Secretary's authority to enter into certain contracts or agreements. Sections 5101, 5103, and 5103A include provisions relating to the filing of claims for benefits, VA's duty to notify claimants of required information and evidence, and VA's duty to assist claimants in obtaining benefits, which are applicable to any individual applying for any benefit administered by the Secretary. Section 5113(a) sets forth effective date provisions that are applicable, specifically, to education benefits under chapters 30, 31, 32, 34, and 35 of title 38, U.S.C. We note that section 5113 was not amended to include chapter 33 in this list. However, we believe Congress intended that the effective date provisions applicable to other VA educational assistance programs should be applied as well to educational assistance under the Post-9/11 GI Bill, chapter 33. We believe there is sufficient authority provided to the Secretary under section 3323(c)(1) of title 38, U.S.C., which states that ''the Secretary shall prescribe regulations for the administration of this chapter,'' to enable VA to prescribe regulations consistent with other educational assistance program regulations that are based on the authority provided in section 5113. Accordingly, section 5113 is listed as an authority in several places (along with section 3323(c)) that relate to effective dates.

Section 3485 contains provisions for the administration of the work-study allowance. That section requires that individuals be pursuing training in an approved program of education at a rate of at least three-quarters of that required of a full-time student. Chapter 33 does not recognize the training times used in the administration of other educational assistance programs. Therefore, VA proposes to permit individuals with a rate of pursuit of at least 75 percent to qualify for work-study allowance as that percent represents a course load that is equivalent with three-quarter time training in other educational assistance programs. Rules regarding this provision are included in § 21.9670.

Sections 3685 and 3690 of title 38, U.S.C., include provisions on overpayments to individuals in receipt of educational assistance and overcharges by educational institutions, discontinuance of allowances, examination of records, and misleading statements. Although these provisions are applicable to chapter 33 benefits, VA

proposes to clarify when the individual and when the institution of higher learning will be liable for any overpayments. Further, VA proposes to determine the amount of an overpayment for an individual in receipt of chapter 33 benefits as follows—(1) An individual who does not complete all courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such enrollment, will be charged an overpayment equal to the amount of all educational assistance paid for that certified period of enrollment.

(2) An individual who does not complete all courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such courses, will be charged an overpayment equal to the prorated amount of educational assistance to which he or she is entitled.

(i) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due will be established as an overpayment.

(ii) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(iii) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs (''book stipend'').

Rules regarding these provisions are included in § 21.9695.

Section 3324. Allocation of Administration and Costs

Section 3324 provides that the Secretary of Veterans Affairs shall administer the Post-9/11 GI Bill and directs that educational assistance payments under this program be made from funds appropriated to, or otherwise made available to, VA for the payment of readjustment benefits. VA is not proposing regulations for the provisions included in this section.

II. Applicability of the Post-9/11 GI Bill to Individuals Under the Montgomery GI Bill Program

Certain individuals who, as of August 1, 2009, are currently making contributions for or are already entitled to benefits under the provisions of 38 U.S.C. chapter 30, or would have been entitled to chapter 30 benefits if they had not declined participation upon entry into active duty service; or who are entitled to benefits under chapter 107, 1606, or 1607 of title 10, U.S.C.; and who, as of the date of election, meet the eligibility requirements under 38 U.S.C. chapter 33, would be eligible to elect participation in the chapter 33 program. The individual would have to make an irrevocable election of chapter 33 by relinquishing entitlement to benefits under either chapter 30 of title 38, U.S.C., or chapter 107, 1606, or 1607 of title 10, U.S.C. If the individual was making contributions under chapter 30 at the time of the election, the contributions would cease as of the month following.

An individual who relinquishes entitlement under the provisions of chapter 30 and, as of August 1, 2009, had used entitlement but retains unused entitlement under that chapter would have a number of months of entitlement available to him or her under chapter 33 that equals the number of unused months remaining to him or her under chapter 30, including any months of transferred chapter 30 entitlement revoked by the individual in an irrevocable election. An individual who exhausted all chapter 30 entitlement prior to August 1, 2009, may not elect chapter 33 by relinquishing entitlement under chapter 30 (as that individual is no longer entitled under chapter 30). Individuals who are entitled to but have not used chapter 30 benefits, individuals who would have been eligible under chapter 30 had they not declined participation, and individuals who are making contributions towards chapter 30 and who have not used any entitlement under chapter 30 would be eligible to receive 36 months of entitlement under chapter 33.

If an eligible individual requests educational assistance for a program of education that is not available to the individual under the provisions of 38 U.S.C. chapter 33 (*e.g.* , on-the-job training, flight training, reimbursement of national test fees), but is available under the chapter the individual relinquished, VA would provide educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of education that meets the approval criteria under—

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter; or

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

If an individual receives educational assistance for a program of education under the provisions of a relinquished chapter, the entitlement charge would be made against the individual's entitlement under chapter 33.

An individual eligible for educational assistance under chapter 33 by reason of relinquishing eligibility under another educational assistance program and, at the time of the chapter 33 election, the individual was also eligible for supplemental educational assistance under subchapter III of chapter 30 of title 38, U.S.C., a Montgomery GI Bill—Active Duty kicker provided under 38 U.S.C. 3015(d), or a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), will remain entitled to such increased amount(s) under 38 U.S.C. chapter 33. The increased amount(s) would be paid to the individual as a lump sum in an amount equal to the quarter, semester, or term, as applicable, equivalent of the monthly amount to which the individual was entitled at the time of the election of chapter 33.

We propose regulations providing that an eligible individual who makes an irrevocable election to receive educational assistance under chapter 33 by relinquishing entitlement under section 3011 or 3012 of chapter 30 may be entitled to receive a refund of the amount of his or her individual contributions to chapter 30 up to $1,200. The refund of contributions may only be paid to the individual who made the contributions and as an increase to the monthly housing allowance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts.

Rules regarding these statutory provisions are included in proposed §§ 21.9550, 21.9560, 21.9590, 21.9645, 21.9650(b), and 21.9655.

III. Nonsubstantive Changes

Public Law 98–525 (Department of Defense Authorization Act, 1985) terminated eligibility for persons receiving educational assistance under

chapter 34, effective December 31, 1989. For historical purposes, VA did not immediately update existing regulations to remove references to chapter 34 upon its expiration. However, VA proposes to remove references to chapter 34 in any section that is being updated for the Post-9/11 GI Bill and currently references chapter 34.

Paperwork Reduction Act of 1995

This proposed rule contains no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (''Act''). The existing collections of information under the Paperwork Reduction Act referenced in this proposed rule are approved under one of the following Office of Management and Budget (OMB) control numbers:

- 2900–0154—Application for VA Education Benefits.
- 2900–0073—VA Enrollment Certification.
- 2900–0074—Request for Change of Program or Place of Training.
- 2900–0156—Notice of Change in Student Status.
- 2900–0465—Student Verification of Enrollment.

In 38 CFR 21.9680(c), there are provisions requiring individuals to submit a request for the rural relocation benefit in writing. However, those provisions do not constitute a collection of information under the Act because VA anticipates that information will be collected from fewer than 10 persons annually. The rural relocation benefit is only available to individuals relocating more than 500 miles or by air from a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile.

Unfunded Mandates

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

Executive Order 12866 and Congressional Review Act

This is an economically significant regulatory action under Executive Order 12866 and constitutes a major rule under the Congressional Review Act.

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

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of $100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This proposed rule is also a major rule under the Congressional Review Act because it is likely to result in an annual effect on the economy of $100 million or more.

VA has attempted to follow OMB circular A–4 to the extent feasible in this analysis. The circular first calls for a discussion of the need for the regulation. The Post-9/11 GI Bill was established to provide educational assistance to members of the Armed Forces who serve on active duty after September 10, 2001. The preamble above discusses the need for the regulation in more detail.

The impact of this regulation is primarily to the federal budget. Eligible individuals may receive an educational assistance allowance for established charges not to exceed the highest amount charged full-time in-State undergraduate students by the most expensive public institution in the State where the student is enrolled (or the national average of the most expensive in-State public institutions for individuals training at a foreign institution not associated with an institution located inside the United States), a monthly housing allowance up to the monthly amount payable under section 403 of title 37, United States Code, for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which the institution is located, and a book stipend of up to $1,000 each academic year. Individuals may also qualify for a work-study allowance, tutorial assistance, reimbursement of a licensing or certification test, and a rural relocation benefit. Individuals eligible for 100 percent of the benefit may also receive additional funds under the Yellow Ribbon Program to cover established charges not otherwise covered under chapter 33.

The effective date of the chapter 33 program is August 1, 2009; therefore, full year benefit costs begin in FY 2010. VA estimates the benefit cost of the program will be $1.2 billion in FY 2009, approximately $28.1 billion for five years, and $78.1 billion through 2018.

Due to the short length of time to implement this new benefit program and the lack of an existing payment system that will support the types of payments authorized under the new program, VA plans to utilize manual processing of claims in a preexisting system with limited functionality until an in-house Information Technology Systems (IT) solution can be developed. As a result, VA estimates discretionary costs of $78.8 million in FY 2009 and $452.6 million over ten years for IT and minor construction needs, supplies, equipment (including computers); increased rent; and salaries to support additional personnel. FY 2009 costs are offset by additional funding in the amount of $100 million dollars made available to VA in chapter 3 of title I of the Supplemental Appropriations Act, 2008.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this proposed rule would affect some small entities that are testing organizations or educational institutions, any economic impact on them would be minor because these functions are currently being carried out for other educational assistance programs. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule would be exempt from the initial and final regulatory flexibility

analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this proposed rule are 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; and 64.125, Vocational and Educational Counseling for Servicemembers and Veterans. The proposed rule would also affect the Montgomery GI Bill—Selected Reserve program and the Reserve Educational Assistance Program (REAP), for which there are no Catalog of Federal Domestic Assistance numbers.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 26, 2008.

James B. Peake,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 21 (subparts B, C, D, G, K, and L, and add subpart P) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

1. The authority citation for part 21, subpart B continues to read as follows:

Authority: 38 U.S.C. 501(a), ch.51, and as noted in specific sections.

2. Amend § 21.1029 by:

a. In the introductory text, removing ''and L,'' and adding, in its place, ''L, and P,'';

b. Revising the authority citation at the end of paragraph (e).

The revision reads as follows:

§ 21.1029 Definitions.

* * * * *

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

* * * * *

3. Amend § 21.1030 by revising the authority citation at the end of paragraphs (a), (b) and (c) to read as follows:

§ 21.1030 Claims.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

* * * * *

§ 21.1031 [Amended]

4. Amend § 21.1031(b)(1) introductory text by removing ''or L'' and adding, in its place, ''L, or P''.

§ 21.1032 [Amended]

5. Amend § 21.1032(a)(1) introductory text by removing ''or L'' and adding, in its place, ''L, or P''.

6. Revise § 21.1033(c) to read as follows:

§ 21.1033 Time limits.

* * * * *

(c) *Time limit for filing a claim for an extended period of eligibility under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35.* VA must receive a claim for an extended period of eligibility provided by § 21.3047, § 21.5042, § 21.7051, § 21.7551, or § 21.9535 by the later of the following dates:

(1) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3321, 3512)

* * * * *

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

7. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

8. Amend § 21.3022 by:

a. Revising paragraphs (a) through (i).

b. Adding paragraph (j).

c. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

§ 21.3022 Nonduplication—programs administered by VA.

* * * * *

(a) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(c) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(e) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(f) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(g) 10 U.S.C. chapter 107 (Educational Assistance Test Program);

(h) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note.);

(i) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note.); and

(j) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

Subpart D—Administration of Educational Assistance Programs

9. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

10. Amend § 21.4005 by:

a. Removing ''chapter 30, 32, 34, 35, or 36'' each place it appears and adding, in each place, ''chapter 30, 32, 33, 35, or 36''; removing ''chapters 30, 32, 34, 35, or 36'' each place it appears and adding, in each place, ''chapters 30, 32, 33, 35, or 36''; removing ''chapter 30, 32, or 35'' and adding, in each place, ''chapter 30, 32, 33, or 35''.

b. Revising paragraph (a)(1)(ii) and (a)(2)(ii).

c. Revising the authority citation at the end of paragraphs (a) and (b).

d. Revising paragraph (e) heading.

The revisions read as follows:

§ 21.4005 Conflicting interests.

* * * * *

(a) * * *

(1) * * *

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C.

chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

(2) * * *

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

* * * * *

(e) *Notice to veterans, reservists, and eligible individuals.*

* * * * *

11. Amend § 21.4006 by revising the authority citation at the end of paragraphs (a), (a)(2), and (b) to read as follows:

§ 21.4006 False or misleading statements.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

* * * * *

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

* * * * *

12. Amend § 21.4008 by revising the authority citation at the end of paragraphs (a) and (b) to read as follows:

§ 21.4008 Prevention of overpayments.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

13. Amend § 21.4009 by revising the authority citation at the end of paragraphs (b) through (j) to read as follows:

§ 21.4009 Waiver or recovery of overpayments.

* * * * *

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(j) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

* * * * *

14. Amend § 21.4020 by:

a. Revising paragraph (a)(4) and (5); and

b. Revising the authority citation at the end of paragraphs (a) and (b).

The revisions read as follows:

§ 21.4020 Two or more programs.

(a) * * *

(4) 38 U.S.C. chapters 30, 32, 33, 34, 35, and 36;

(5) 10 U.S.C. chapters 107, 1606, and 1607;

* * * * *

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(a))

(b) * * *

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(b))

* * * * *

15. Revise § 21.4022 to read as follows:

§ 21.4022 Nonduplication—programs administered by VA.

A veteran, reservist, or eligible individual who is eligible for educational assistance allowance or subsistence allowance under more than one of the provisions of law listed in this paragraph, whether based on his or her own service or the service of another person, cannot receive such benefits concurrently. The individual must elect under which program he or she will receive benefits for the particular period or periods during which education or training is to be pursued.

(a) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(c) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. 33 (Post-9/11 GI Bill)

(e) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(f) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(g) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(h) 10 U.S.C. 107 (Educational Assistance Test Program);

(i) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(j) The Hostage Relief Act of 1980 (Pub. L. 96–449), 5 U.S.C. 5661 note);

(k) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

16. Amend § 21.4145 by:

a. In paragraph (a)(1), removing ''chapter 30 or 32'' and adding, in its place, ''chapter 30, 32 or 33''; and

b. Revising the authority citation at the end of paragraphs (a), (c), (d), (e), (f), and (h).

c. Adding an authority citation at the end of paragraph (b).

d. Adding an authority citation at the end of paragraph (g).

The revisions and additions read as follows:

§ 21.4145 Work study allowance.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537, 5101(a))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

* * * * *

§ 21.4146 [Amended]

17. Amend § 21.4146, paragraph (a), by removing ''chapters 30, 32, 35, or 36'' and adding, in its place, ''chapters 30, 32, 33, 35, or 36''.

18. Amend § 21.4153 by revising paragraph (c)(4)(i) and the authority citation following paragraph (c)(4)(i) to read as follows:

§ 21.4153 Reimbursement of expenses.

* * * * *

(c) * * *

(4) * * *

(i) The work has a direct relationship to the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; and

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3674)

* * * * *

§ 21.4200 [Amended]

19. Amend § 21.4200 by:

a. In the introductory text, removing ''subparts C, F, G, H, K, and L'' and adding, in its place, ''subparts C, G, H, K, L, and P''.

20. Amend § 21.4201 by:

a. In paragraph (a), removing ''the Department of Veterans Affairs pursuant to Title 38 U.S.C.'' and adding, in its place, ''VA under title 38, U.S.C., or under title10, U.S.C.''.

b. In paragraph (c)(4), removing ''chapters 30, 31, 32, 34, 35 and 36, title 38, United States Code, and chapter 1606, title 10, United States Code'' and adding, in its place, ''38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606''.

c. In paragraph (e)(2) introductory text, removing ''United States Code or under chapter 1606, title 10, United States Code'' and adding, in its place, ''U.S.C., or under title 10, U.S.C.''.

d. In paragraph (f)(1)(ii), removing ''chapters 30, 31, 32, 34, 35, or 36, title 38, U.S.C., or chapter 1606, title 10 U.S.C.'' and by adding, in its place, ''38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606''.

e. In paragraph (g)(2) introductory text, removing ''either under Chapter 1606, Title 10, U.S.C., or under Chapters 30, 32, 34, or 36, Title 38 U.S.C.'' and adding, in its place, ''under 10 U.S.C. chapter 1606 or under 38 U.S.C. chapter 30, 32, 33, or 36''.

f. Revising the authority citation at the end of paragraphs (a), (c)(4) introductory text, (c)(4)(ii), (d), (e)(2)(i), (e)(2)(iv), (e)(3), (f)(1) introductory text, (f)(1)(ii), (f)(2), (g)(2), (g)(2)(ii), (g)(5), and (h).

The revisions read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(c) * * *

(4) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(e) * * *

(2) * * *

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(iv) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(f) * * *

(1) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(g) * * *

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(5) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

21. Amend § 21.4206 by:

a. In the introductory text and in paragraph (a), removing ''chapter 30, 32, 34, 35 or 36'' and adding, in its place, ''chapter 30, 32, 33, 35 or 36''.

b. In paragraph (e)(1), removing ''chapters 30, 32, 34, 35 and 36 of title 38 U.S.C.'' and adding, in its place, ''chapters 30, 32, 33, 35 and 36 of title 38, U.S.C.''.

c. Revising the authority citation at the end of paragraphs (a) through (d).

d. Removing the authority citation at the end of paragraph (e)(1) and by revising the authority citation at the end of the paragraph (e).

e. Adding an information collection approval parenthetical at the end of the section.

The revisions and addition read as follows:

§ 21.4206 Reporting fee.

* * * * *

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0073)

* * * * *

22. Amend § 21.4209 by:

a. In paragraph (a)(1), removing ''chapter 30, 32, 34, 35, or 36'' and adding, in its place, ''chapter 30, 32, 33, 35, or 36''.

b. In paragraph (c), removing ''veterans under 38 U.S.C. chapter 30 or 32,'' and adding, in its place, ''veterans under 38 U.S.C. chapter 30, 32, or 33,''.

c. Revising the authority citation at the end of paragraphs (a) through (c), and (f).

The revisions read as follows:

§ 21.4209 Examination of records.

(a) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(b) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(c) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3690)

* * * * *

(f) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

* * * * *

23. Amend § 21.4210 by:

a. Revising paragraph (a)(1).

b. In paragraph (b)(1)(i), removing ''chapter 30, 32, 34, 35, or, 36'' and adding, in its place, ''chapter 30, 32, 33, 35, or 36''.

c. In paragraph (d)(2)(ii), removing ''chapters 30, 32, 34, 35, and 36'' and adding, in its place, ''chapters 30, 32, 33, 35, and 36''.

d. Revising paragraph (d)(4)(ii).

e. Revising the authority citation at the end of paragraphs (a), (b)(1)(ii), (c), (d), (e)(2), and (f) through (i).

The revisions read as follows:

§ 21.4210 Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview; explanation of terms used in §§ 21.4210 through 21.4216.* (1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran or eligible person for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36 or if the individual is entitled to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. VA may pay educational assistance under 38 U.S.C. chapter 33 to an eligible individual or, as appropriate, to the individual's institution of higher learning on his or her behalf, for the individual's pursuit of a course or program of education if the course or program of education is offered by an institution of higher learning and approved under 38 U.S.C. chapter 30 in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36, or if an individual is entitled to be paid educational assistance to meet all or a portion of the institution of higher learning's established charges that the military department concerned has not covered by tuition assistance under 10 U.S.C. 2007(a) or (c). Except for tuition assistance top-up, where courses do not need to be approved, a State approving agency designated by VA, or in some instances VA, approves the course or test for payment purposes. Notwithstanding such approval, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of a course or training approved under 38 U.S.C. chapter 36, and for taking a licensing or certification test approved under 38 U.S.C. chapter 36.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3452, 3471, 3690)

(b) * * *

(1) * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(d) * * *

(4) * * *

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other established charges that substantially denies to veterans, servicemembers, reservists, or other eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §§ 21.4138(a), 21.7140(a), 21.7640(d), or 21.9680; or

* * * * *

(Authority: 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) * * *

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

* * * * *

(f) * * *

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3683(b))

24. Amend § 21.4211 by:

a. Removing ''chapter 30, 32, 34, 35, or 36'' each place it appears and adding, in each place, ''chapter 30, 32, 33, 35, or 36''.

b. Revising the authority citation at the end of paragraphs (a) through (e).

The revisions read as follows:

§ 21.4211 Composition, jurisdiction, and duties of the Committee on Educational Allowances.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

25. Amend § 21.4212 by revising the authority citation at the end of the section to read as follows:

§ 21.4212 Referral to Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

26. Amend § 21.4213 by revising the authority citation at the end of the section to read as follows:

§ 21.4213 Notices of hearing by Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

27. Amend § 21.4214 by revising the authority citation for paragraphs (a) through (p) to read as follows:

§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(j) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(k) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(l) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(m) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(n) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(o) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(p) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

28. Amend § 21.4215 by revising the authority citation for paragraphs (a) through (e) to read as follows:

§ 21.4215 Decision of Director of VA Regional Processing Office of Jurisdiction.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

29. Amend § 21.4216 by revising the authority citation for paragraphs (a) and (c) to read as follows:

§ 21.4216 Review of decision of director of VA Regional Processing Office of jurisdiction.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), (e), 3690; Pub. L. 122 Stat. 2375)

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 3034(a), 3241(a), 3323(a), 3689(d), 3690)

30. Amend § 21.4233 by revising the authority citation at the end of paragraph (e) to read as follows:

§ 21.4233 Combination.

* * * * *

(e) * * *

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3241(b), 3323(a), 3452(c), 3501(a)(6), 3675, 3676)

31. Amend § 21.4234 by:

a. Removing ''veteran or eligible person'' each time it appears, and adding, in its place, ''veteran, reservist, or eligible person''.

b. Revising paragraph (c).

c. In paragraph (d)(1)(i), removing ''veteran or eligible spouse or surviving spouse'' and adding, in its place, ''veteran or eligible person other than a child receiving educational assistance under 38 U.S.C. chapter 35''.

d. In paragraph (d)(1)(iii) and (d)(2)(iii), removing ''child'', and adding, in each place, ''child receiving educational assistance under 38 U.S.C. chapter 35''.

e. Revising the authority citation at the end of paragraphs (a)(2)(iv), (a)(2)(v), (b), (c), (d)(3), (d)(4), and (e).

The revisions read as follows:

§ 21.4234 Change of program.

(a) * * *

(2) * * *

(iv) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(v) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(c) Optional change of program. A spouse or surviving spouse eligible to receive educational assistance under 38 U.S.C. chapter 35 may make one optional change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect, or lack of application.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(d) * * *

(3) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(4) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(e) * * *

(Authority: 10 U.S.C. 510(h), 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

* * * * *

32. Amend § 21.4236 by revising the authority citation at the end of paragraphs (b), (c), and (d) to read as follows:

§ 21.4236 Tutorial assistance.

* * * * *

(b) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3314, 3492, 3533(b))

(c) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

(d) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

33. Amend § 21.4250 by:

a. In paragraph (c)(2)(ii), removing ''Chapter 1606 or 38 U.S.C. Chapters 30, 32, 35, or 36'' and adding, in its place, ''chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36''.

b. In paragraph (c)(2)(iii), removing ''chapters 30, 32, or 35'' and adding, in its place, ''chapter 30, 32, 33, or 35''.

c. Revising the authority citation at the end of paragraphs (a) and (c).

The revisions read as follows:

§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.

(a) * * *

(Authority: 38 U.S.C. 3014(b), 3313(e), 3315, 3670, 3672(a))

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3314, 3323(a), 3476, 3523, 3672, 3673, 3689)

* * * * *

34. Amend § 21.4252 by revising the authority citation at the end of paragraph (c) to read as follows:

§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16131(f); 38 U.S.C. 3034, 3241(b), 3323(a), 3523(b), 3680A(b))

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

35. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

36. Amend § 21.5022 by revising paragraphs (a) and (b)(1)(i) through (b)(1)(ix) and the authority citation at the end of the section to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* (1) An individual cannot receive educational assistance under 38 U.S.C. chapter 32 concurrently with benefits under—

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 107 (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 38 U.S.C. 3322(a), 3681(b), 3695)

(2) *Election.* If an individual is eligible for benefits under 38 U.S.C. chapter 32 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must elect in writing under which program he or she is claiming benefits. The eligible person may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 38 U.S.C. 3033(a), 3322(a))

(b) * * *

(1) * * *

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(iv) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(v) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vi) 10 U.S.C. chapter 107 (Educational Assistance Test Program);

(vii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(viii) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(ix) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

* * * * *

(Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

37. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

38. Amend § 21.7143 by revising paragraphs (a) and (b) to read as follows:

§ 21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* (1) Except for receipt of a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), a veteran is barred from concurrently receiving educational assistance under 38 U.S.C. chapter 30 and—

(i) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(ii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 107 (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(b) *Election.* If an individual is eligible for benefits under 38 U.S.C. chapter 30 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must elect in writing under which program he or she is claiming benefits. The eligible person may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3681(b))

Subpart L—Educational Assistance for Members of the Selected Reserve

39. The authority citation for part 21, subpart L is amended to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

40. Amend § 21.7642 by revising paragraph (a) to read as follows:

§ 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. chapter 1606 and any of the following provisions of law—

(1) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(2) 38 U.S.C. 31 (Vocational Rehabilitation and Employment);

(3) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(4) 38 U.S.C. 33 (Post-9/11 GI Bill);

(5) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(6) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(7) 10 U.S.C. 107 (Educational Assistance Test Program);

(8) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(9) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(10) The Omnibus Diplomatic Security Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3241(a), 3322(a), 3681)

* * * * *

41. Add new subpart P to read as follows:

Subpart P—Post-9/11 GI Bill

Sec.

Authority: 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

Subpart P—Post-9/11 GI Bill

§ 21.9500 Introduction.

An educational assistance program is established for individuals who served on active duty after September 10, 2001. This educational assistance program is effective August 1, 2009.

(Authority: Pub. L. 110–252, 122 Stat. 2357, 2378)

Definitions

§ 21.9505 Definitions.

For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33) the following definitions apply. (See also additional definitions in §§ 21.1029 and 21.4200.)

Academic year means a span of time of not more than 12 months during which the institution of higher learning offers periods of instruction and includes all divisions of the school year as defined in § 21.4200(b)(2) through (b)(5). If an institution of higher learning has an academic year lasting longer than 12 months, VA will consider the academic year for that institution to be August 1st of each calendar year through July 31st of the subsequent calendar year.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

Active duty means full-time duty in the regular components of the Armed Forces or under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304. Active duty does not include—

(1) Full-time duty as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(2) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration;

(3) Full-time National Guard Duty performed under 32 U.S.C. orders;

(4) Any period during which the individual—

(i) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians;

(ii) Served as a cadet or midshipmen at one of the service academies; or

(iii) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(5) A period of service—

(i) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b);

(ii) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348;

(iii) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(iv) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109; or

(6) A period of Selected Reserve service used to establish eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b) and (c))

Advance payment means an amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

Course means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational objective.

(Authority: 38 U.S.C. 3323(c))

Distance learning means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(6).

(Authority: 20 U.S.C. 1003(6); 38 U.S.C. 3323(c))

Educational assistance means the monetary benefit payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3313)

Enrollment period means a term, quarter, or semester during which the institution of higher learning offers instruction.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Entry level and skill training means—

(1) Basic Combat Training and Advanced Individual Training for members of the Army;

(2) Recruit Training (Boot Camp) and Skill Training (''A'' School) for members of the Navy;

(3) Basic Military Training and Technical Training for members of the Air Force;

(4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and

(5) Basic Training for members of the Coast Guard.

(Authority: 38 U.S.C. 3301(2))

Established charges means the actual charge for tuition and fees that similarly circumstanced nonveterans enrolled in the program of education are required to pay.

(Authority: 38 U.S.C. 3313(h))

Fees means any mandatory charges (other than tuition) that are universally applied by the institution of higher learning to each and every student enrolled in an undergraduate program for that quarter, semester, or term.

(Authority: 38 U.S.C. 501(a), 3323(c))

Institution of higher learning (IHL) means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

Interval means a period of time between regularly scheduled individual terms, semesters, or quarters.

(Authority: 38 U.S.C. 3034(a)(1), 3323(a), 3680)

Lump sum payment means an amount of educational assistance paid for the entire term, quarter, or semester.

(Authority: 38 U.S.C. 3323(c))

Program of education means a curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field.

(Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

Pursuit means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of title 38, U.S.C.; and must be necessary to reach the program's objective.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Rate of pursuit means the measurement obtained by dividing the number of course (credit or clock) hours an individual is enrolled in by the number of course (credit or clock) hours considered to be full-time training at the institution of higher learning. The resulting percentage will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than half-time training.

(Authority: 38 U.S.C. 3323, 3680)

Transferor means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents.

(Authority: 38 U.S.C. 3319)

Claims and Applications

§ 21.9510 Claims, VA's duty to assist, and time limits.

The provisions of subpart B of this part apply to claims filed for educational assistance under 38 U.S.C. chapter 33 with respect to VA's responsibilities upon receipt of claim, VA's duty to assist claimants in obtaining evidence, and time limits.

(Authority: 38 U.S.C. 3323(c), 5101, 5102, 5103, 5103A)

Eligibility

§ 21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33 based on active duty service after September 10, 2001, if he or she—

(a) Serves a minimum of 90 aggregate days (excluding entry level and skill training) and, after completion of such service—

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5) Is discharged or released from service for—

(i) A medical condition that preexisted such service and is not determined to be service-connected;

(ii) Hardship, as determined by the Secretary of the military concerned; or

(iii) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves a minimum of 30 continuous days and, after completion of such service, is discharged due to a service-connected disability; or

(c) Makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 instead of receiving benefits under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607 after meeting the service requirements in paragraph (a) or (b) of this section.

(Authority: 38 U.S.C. 3311; Pub. L. 110–252, Stat. 2375–2376)

§ 21.9525 Eligibility for increased and supplemental educational assistance.

(a) *Increased assistance for members with critical skills or specialty.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel.

(b) *Supplemental assistance for members serving additional service.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may supplement the amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who meets the following service requirements.

(1) *Individuals with active duty service only.* Supplemental educational assistance may be offered to an individual who serves 5 or more

consecutive years on active duty in the Armed Forces in addition to the years counted to qualify for educational assistance, without a break in such service, and—

(i) Continues on active duty without a break;

(ii) Is discharged from service with an honorable discharge;

(iii) Is placed on the retired list;

(iv) Is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(v) Is placed on the temporary disability retired list; or

(vi) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(2) *Individuals with Selected Reserve service.* (i) Supplemental educational assistance may be offered to an individual who—

(A) Serves 2 or more consecutive years on active duty in the Armed Forces in addition to the years on active duty counted to qualify for educational assistance;

(B) Serves 4 or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for educational assistance; and

(C) After completion of such service—

(*1*) Is discharged from service with an honorable discharge;

(*2*) Is placed on the retired list;

(*3*) Is transferred to the Fleet Reserve or Fleet Marine Corps Reserve;

(*4*) Is placed on the temporary disability retired list;

(*5*) Continues on active duty; or

(*6*) Continues in the Selected Reserve.

(ii) The Secretary concerned may, pursuant to regulations prescribed by the Secretary of Defense, determine the maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though the individual—

(A) Is unable to locate a unit of the Selected Reserve for which he or she is eligible;

(B) Is unable to locate a unit of the Selected Reserve that has a vacancy; or

(C) For any other reason other than those stated in paragraph (b)(2)(ii)(A) and (B) above.

(iii) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Secretary of Defense will be binding upon VA.

(Authority: 38 U.S.C. 3021, 3022, 3023, 3316)

§ 21.9530 Eligibility time limit.

(a) Except as provided in paragraphs (b) through (e) of this section, an individual's period of eligibility for educational assistance will terminate effective 15 years from the date of the last discharge or release from active duty of at least—

(1) 90 continuous days; or

(2) 30 continuous days if the individual is released for a service-connected disability.

(b) In the case of an individual who establishes eligibility and does not meet one of the service requirements specified in paragraph (a) of this section, the individual's period of eligibility for educational assistance will terminate effective 15 years from the date of discharge for the last period of service used to meet the minimum service requirements for eligibility as stated in § 21.9520.

(c) *Amendment of military records.* If an individual's eligibility for educational assistance is established as a result of a correction of military records under 10 U.S.C. 1552, a change, correction, or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the change, correction, modification, or other corrective action.

(Authority: 38 U.S.C. 3311(c), 3321)

(d) *Time limit for spouse using transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the spouse's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The transferor's ending date as determined under this section;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(2) If the transferor dies while on active duty, the ending date of the spouse's period of eligibility is the earliest of the following—

(i) The date 15 years from the transferor's date of death;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(Authority: 38 U.S.C. 3319)

(e) *Time limit for child using transferred entitlement.* (1) The ending date of the child's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective;

(ii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f); or

(iii) The day the child turns 26.

(2) [Reserved]

(Authority: 38 U.S.C. 3319)

§ 21.9535 Extended period of eligibility.

VA will extend an individual's period of eligibility in accordance with the following provisions.

(a) *Disability extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530 provided—

(i) The individual applies for the extension within the time specified in § 21.1033(c); and

(ii) The medical evidence clearly establishes that the individual was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. VA will not consider an individual's disability for a period of 30 days or less as having prevented the individual from initiating or completing a chosen program, unless the evidence establishes that the individual was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance due to the short-term disability.

(2) *Length of extension.* An individual's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This will be determined as follows—

(i) If the individual is pursuing a program of education organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The beginning date of the ordinary term, quarter, or semester following the day the individual's training became medically feasible;

(B) The last date of the individual's original period of eligibility as determined in § 21.9530; or

(C) The date the individual resumed training.

(ii) If the individual is pursuing a program of education that is not organized on a term, quarter, or semester basis, his or her extended period of eligibility will contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The date the individual's training became medically feasible; or

(B) The last date of the individual's original period of eligibility as determined in § 21.9530.

(b) *Forcibly detained extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530, equal to the period of time the individual—

(i) Was captured and forcibly detained by a foreign government or power, and

(ii) Was hospitalized at a military, civilian, or medical facility immediately following release from the foreign government or power.

(2) [Reserved]

(Authority: 38 U.S.C. 3321)

Entitlement

§ 21.9550 Entitlement.

(a) Subject to the provisions of § 21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b)(1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but who retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, he or she will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual, who as of August 1, 2009, was eligible under 38 U.S.C. chapter 30 but had not used any entitlement under that program, was making contributions towards chapter 30, or was a servicemember who would have been eligible for chapter 30 if he or she had not declined participation, will receive 36 months of entitlement under chapter 33.

(3) An individual who, as of August 1, 2009, has exhausted all entitlement, to which he or she was eligible under chapter 30, will not receive entitlement under chapter 33 based on his or her previous chapter 30 eligibility.

(c) Except as provided in §§ 21.9560(e), 21.9570(m), and 21.9635(o), no individual is entitled to more than 36 months of full-time educational assistance.

(Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110–252, 122 Stat. 2377)

§ 21.9555 Entitlement to supplemental educational assistance.

In determining the entitlement of an individual who is eligible for supplemental educational assistance, VA will—

(a) Calculate the individual's entitlement to 38 U.S.C. chapter 33 educational assistance on the day he or she establishes eligibility for supplemental educational assistance; and

(b) Credit the individual with the same number of months and days of entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023, 3316)

§ 21.9560 Entitlement charges.

(a) *Overview.* Except as provided in paragraphs (c) through (f) of this section, VA will base entitlement charges on the principle that an eligible individual who is paid educational assistance for one day of full-time pursuit should be charged one day of entitlement.

(b) *Determining entitlement charge.* (1) VA will make a charge against entitlement as follows:

(i) *Full-time pursuit.* If the individual is pursuing a program of education on a full-time basis, the entitlement charge will be one of the following—

(A) During any period in which VA pays established charges to the institution of higher learning on the individual's behalf, the entitlement charge will be one day for each day of the certified enrollment period;

(B) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the entitlement charge will be one day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance; or

(C) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $33 paid, with any remaining amount rounded to the nearest amount evenly divisible by $33.

(ii) *Less than full-time pursuit.* If the individual is pursuing a program of education on a less than a full-time basis, the entitlement charge will be one of the following—

(A) During any period in which VA pays established charges to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day for each day of the certified enrollment period determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth);

(B) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the individual will be charged a percentage of a day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth); or

(C) During any period in which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $33 paid, with any remaining amount rounded to the nearest amount evenly divisible by $33.

(Authority: 38 U.S.C. 3313)

(2) If the individual changes his or her rate of pursuit after the beginning date of the award, VA will—

(i) Divide the certified enrollment period into separate periods of time so that the individual's rate of pursuit is constant within each period; and

(ii) Compute the rate of pursuit separately for each time period.

(c) *Individuals eligible for, or in receipt of, educational assistance other than that authorized under chapter 33.* If an individual elected 38 U.S.C. chapter 33 by relinquishing educational assistance under another program but receives educational assistance for a

program of education that is approved under the relinquished chapter but not approved under 38 U.S.C. chapter 33, VA will make a charge against entitlement equivalent to the entitlement charge—

(1) That would be made under the provisions of § 21.7076, if the individual relinquished eligibility under 38 U.S.C. chapter 30;

(2) That would be made under the provisions of § 21.7576 if the individual relinquished eligibility under 10 U.S.C. chapter 1606; or

(3) That would be made under 10 U.S.C. chapter 1607 if the individual relinquished eligibility under 10 U.S.C. chapter 1607.

(d) *No entitlement charge.* VA will not make a charge against an individual's entitlement—

(1) For an approved licensing or certification test as provided under § 21.9665; or

(Authority: 38 U.S.C. 3315)

(2) For tutorial assistance as provided under § 21.9685; or

(Authority: 38 U.S.C. 3314)

(3) For the rural relocation benefit as provided under § 21.9660; or

(Authority: 38 U.S.C. 3318)

(4) For pursuit of a course or courses when the individual—

(i) Had to discontinue the course or courses as a result of being ordered to—

(A) Active duty service under 10 U.S.C. 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 3312(c))

(e) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The individual interrupts his or her enrollment at the end of any term, quarter, or semester within a certified period of enrollment and does not negotiate a check for educational assistance for the succeeding term, quarter, or semester; or

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual negotiated a check for educational assistance for any part of the certified enrollment period.

(Authority: 38 U.S.C. 3323(c))

(f) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees;

(ii) Subtracting the remaining amount of the overpayment balances as determined in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees);

(iii) Dividing the result obtained in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (f)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

Transfer of Entitlement to Basic Educational Assistance to Dependents

§ 21.9570 Transfer of entitlement.

An individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own active duty service, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9505—Definitions;

(Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA's duty to assist, and time limits.

(Authority: 38 U.S.C. 3319)

(3) *Eligibility.*

(i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and

(ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke or modify transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3319)

(4) *Entitlement.*

(i) Section 21.9550—Entitlement;

(ii) Section 21.9560—Entitlement charges.

(Authority: 38 U.S.C. 3319)

(5) *Counseling.*

(i) Section 21.9580—Counseling;

(ii) Section 21.9585—Travel expenses.

(Authority: 38 U.S.C. 3319)

(6) Approved *programs of education and courses.*

(i) Section 21.9590—Approved programs of education and courses;
(ii) Section 21.9600—Overcharges.

(Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance.*
(i) Section 21.9620—Educational assistance;
(ii) Section 21.9625—Beginning dates, except for paragraphs (e) and (h);
(iii) Section 21.9630—Suspension or discontinuance of payments;
(iv) Section 21.9635—Discontinuance dates, except for paragraphs (n) and (o);
(v) Section 21.9640—Rates of payment of educational assistance;
(vi) Section 21.9650—Increase in educational assistance;
(vii) Section 21.9655—Rates of supplemental educational assistance;
(viii) Section 21.9660—Rural relocation benefit;
(ix) Section 21.9665—Reimbursement for licensing or certification tests;
(x) Section 21.9670—Work-study allowance;
(xi) Section 21.9675—Conditions that result in reduced rates or no payment;
(xii) Section 21.9680—Certifications and release of payments;
(xiii) Section 21.9685—Tutorial assistance;
(xiv) Section 21.9690—Nonduplication of educational assistance; and
(xv) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent.

(Authority: 38 U.S.C. 3319)

(xvi) Section 21.9700—Yellow Ribbon Program

(Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses.*
(i) Section 21.9710—Pursuit;
(ii) Section 21.9715—Advance payment certification;
(iii) Section 21.9720—Certification of enrollment;
(iv) Section 21.9725—Progress and conduct;
(v) Section 21.9730—Pursuit and verifications;
(vi) Section 21.9735—Other required reports;
(vii) Section 21.9740—False, late, or missing reports; and
(viii) Section 21.9745—Reporting fee.

(Authority: 38 U.S.C. 3319)

(9) *Course assessment.*
(i) Section 21.9750—Course; and
(ii) Section 21.9755—Measurement of concurrent enrollments.

(Authority: 38 U.S.C. 3319)

(10) *Administrative.* § 21.9770—Administrative

(Authority: 38 U.S.C. 3319)

(b) Eligible dependents.
(1) An individual transferring entitlement under this section may transfer entitlement to:
(i) The individual's spouse;
(ii) One or more of the individual's children; or
(iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.
(2) A spouse must meet the definition of spouse in § 3.50(a).
(3) A child must meet the definition of child in § 3.57.
(4) A stepchild, who meets VA's definition of child in § 3.57 and is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her military department to transfer entitlement may do so at any time while serving as a member of the Armed Forces, subject to the transferor's 15-year period of eligibility as provided in § 21.9530.

(Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer.*
(1) An individual transferring entitlement under this section must:
(i) Designate the dependent or dependents to whom such entitlement is being transferred;
(ii) Designate the number of months of entitlement to be transferred to each dependent; and
(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.
(2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(Authority: 38 U.S.C. 3020)

(e) *Maximum months of entitlement transferable.*
(1) The maximum amount of entitlement a transferor may transfer is the lesser of:
(i) Thirty-six months of his or her entitlement; or
(ii) The maximum amount authorized by the Secretary of the service department concerned; or
(iii) The amount of entitlement he or she has available at the time of transfer.
(2) The transferor may transfer up to the maximum amount of transferable entitlement:
(i) To one dependent; or
(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3319)

(f) *Revocation of transferred entitlement.*
(1) A transferor may revoke any unused portion of transferred entitlement at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.
(2) The revocation will be effective the later of—
(i) The date VA receives the notice of revocation; or
(ii) The date the military department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3319)

(g) *Modifying a transfer of entitlement.*
(1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time. Any modification made will apply only with respect to unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.
(2) The modification will be effective the later of—
(i) The date VA receives the notice of modification; or
(ii) The date the military department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property.* Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of

entitlement for each month of transferred entitlement used by a dependent or dependents.

(Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate).* Children who have reached age 18 and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.9640 (and § 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

(1) Exclude the transferor's kicker if the transferor is eligible for such an increase (§ 21.9650) due to his or her own eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606; and

(2) Disregard the fact that either the transferor or the dependent is (or both are) on active duty, and pay the veteran rate to a dependent child.

(Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless the transferor did not complete the service due to:

(i) His or her death;

(ii) A service-connected disability;

(iii) A medical condition that preexisted such service on active duty and that the Secretary of the military department concerned determines is not service-connected;

(iv) A hardship, as determined by the Secretary of the military concerned; or

(v) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of duty, as determined by the Secretary of the military department concerned.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (l)(1)(i) through (iv) of this section.

(Authority: 38 U.S.C. 3034(a), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service:

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course; and

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33 as long as the only educational assistance paid is under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

Counseling

§ 21.9580 Counseling.

An individual may receive counseling from VA before beginning training and during training. VA will apply the provisions of § 21.7100 to beneficiaries under 38 U.S.C. chapter 33 in the same manner as they are applied to individuals under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3697A)

§ 21.9585 Travel expenses.

VA will not pay for any costs of travel to and from the place of counseling regardless of whether the individual requests educational and vocational counseling or whether the counseling is required.

(Authority: 38 U.S.C. 111, 3323(c))

Approved Programs of Education and Courses

§ 21.9590 Approved programs of education and courses.

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must-

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher or deficiency courses;

(3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of established charges not covered by military tuition assistance.

(Authority: 38 U.S.C. 3313, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

(1) The program meets the definition of a program of education in § 21.9505;

(2) Except for a program consisting of a licensing or certification test, the program has an educational objective as described in § 21.7020(b)(13);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, the individual is not already qualified for the objective of the program.

(Authority: 38 U.S.C.3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of § 21.4234.

(d) *Programs not authorized under 38 U.S.C. chapter 33.* If an individual elected to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under 38 U.S.C. chapter 30; or 10 U.S.C. chapter 1606 or 1607, and the eligible individual requests educational assistance for a program of education that is not authorized to be available to the individual under the provisions of 38 U.S.C. chapter 33, but is available under the chapter the individual relinquished, VA will provide educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of

education that meets the approval criteria under—

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter;

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

(Authority: Pub. L. 110–252, 122 Stat. 2377)

§ 21.9600 Overcharges.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an institution of higher learning for further enrollments if the institution of higher learning charges or receives from an individual tuition and fees that exceed the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges or receives from an individual fees that exceed the established fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

Payments—Educational Assistance

§ 21.9620 Educational assistance.

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in § 21.9640. The maximum amounts of educational assistance payable under 38 U.S.C. chapter 33 will be published in the ''Notices'' section of the **Federal Register** by the first of August of each calendar year. The maximum amounts payable may also be obtained by visiting the GI Bill Web site at *http://www.gibill.va.gov* or by calling VA's customer service department toll-free at 1–888–442–4551.

(Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

§ 21.9625 Beginning dates.

VA will determine the beginning date of an award or increased award of educational assistance under this section, but in no case will the beginning date be earlier than August 1, 2009. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

(Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

(a) *Entrance or reentrance including change of program or institution of higher learning.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or institution of higher learning), the beginning date of his or her award of educational assistance will be determined as follows:

(1) *For other than a licensing or certification test.* (i) If the award is the first award of educational assistance for the program of education the eligible individual is pursuing, the beginning date will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by § 21.1029(b);

(C) The effective date of the approval of the program of education; or

(D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is the second or subsequent award of educational assistance for the program of education the eligible individual is pursuing, the effective date of the award will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) The effective date of the approval of the program of education; or

(C) One year before the date VA receives the approval notice for the program of education.

(Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3034(a), 3315, 3323(a), 3452(b), 3689)

(b) *Certification for program of education that leads to a standard college degree.* (1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the institution of higher learning.

(2) When the individual enrolls in a resident course, the beginning date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that—

(i) The published standards of the school require the eligible individual to register before reporting; and

(ii) The published standards of the school require the eligible individual to report no more than 14 days before the first scheduled date of classes for the term, quarter, or semester for which the eligible individual has registered.

(5) When the eligible individual enrolls in a resident course and the first day of classes is more than 14 days after the date of registration, the beginning date of the award or increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education that does not lead to a standard college degree.* (1) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered in residence but that does not lead to a standard college degree, the beginning date of the award of educational assistance will be as stated in paragraph (b) of this section.

(Authority: 38 U.S.C. 3313(b), 3323)

(2) When an eligible individual enrolls at an institution of higher

learning for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance (as defined in § 21.7020(b)(36)).

(Authority: 38 U.S.C. 3313, 3316, 3323)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in § 21.9530, the eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases, the beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C.3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving, or is receiving a reduced rate, of educational assistance under § 21.9675 (based on incarceration in a Federal, State, or local penal institution due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

(1) The date the tuition and fees are no longer being paid under another Federal, State, or local program; or

(2) The date the individual is released from the penal institution.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase* (''kicker'') based on critical skills or specialty. If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance, the effective date of that increase ('kicker'') will be the later of—

(1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first date on which the eligible individual is entitled to the increase (''kicker'') as determined by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of—

(1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable.

(Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the military department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in § 3.50(a) of this chapter.

(Authority: 38 U.S.C. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in § 3.57 of this chapter; or

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3319)

§ 21.9630 Suspension or discontinuance of payments.

VA may suspend or discontinue payment of educational assistance in accordance with §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

§ 21.9635 Discontinuance dates.

The effective date of a reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment under § 21.9640(b)(1)(iii), (b)(2)(iii), (c)(1)(ii), or (c)(2)(ii) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the institution of higher learning receives a lump sum payment for established charges on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The institution of higher learning will be required to return to VA any portion of the established charges paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the institution of higher learning.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9680(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) *First instance of withdrawal of course.* In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider any mitigating circumstances for the withdrawal with respect to a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will

not consider a course or courses dropped during an institution of higher learning's drop-add period in accordance with § 21.4200(l). If mitigating circumstances are applicable, VA will terminate or reduce educational assistance effective the end of the month during which the withdrawal occurred.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) *Withdrawal or unsatisfactory completion of all courses.* (1) If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades and, in either case, there are no mitigating circumstances, VA will terminate educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(2) If the eligible individual withdraws from all courses with mitigating circumstances or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training effective the last date of attendance; and

(ii) Independent study or distance learning effective on the official date of change in status under the practices of the institution of higher learning.

(3) When an eligible individual withdraws from an approved correspondence course offered by an institution of higher learning, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective the end of the month during which the reduction occurred when the circumstances in either paragraph (d)(1)(i) or (d)(1)(ii) of this section apply—

(i) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances.

(ii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, and

(B) The withdrawal occurs without mitigating circumstances.

(3) An eligible individual enrolled in several courses within a program of education, who reduces his or her rate of pursuit by completing one or more of the courses while continuing training in others, may receive an interval payment based on the total number of enrolled courses he or she completed if the requirements of § 21.9680(b)(6) are met. If those requirements are not met, VA will reduce the eligible individual's educational assistance effective the end of the month during which the individual completed each course (or courses).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in § 21.4210(d) and (g), the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month in which the decision to discontinue, made by VA under § 21.9640 or § 21.4210(d) and (g), is effective, if the Director of the Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210 if disapproval was preceded by such a suspension; or

(2) The end of the month in which the disapproval is effective or VA receives notice of the disapproval, whichever is later, provided the Director of the Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of educational assistance will be—

(1) The date the Director of the Regional Processing Office of jurisdiction first suspended payments, as provided in § 21.4210, if such suspension preceded the disapproval; or

(2) The end of the month in which the disapproval occurred, provided that the Director of the Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(a), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the institution of higher learning discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the institution of higher learning's regularly

established standards of progress, conduct, or attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(k) *False or misleading statements.* Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of § 21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C 3034(a), 3323(a), 3690)

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an institution of higher learning, or an officer or employee of a State approving agency and an institution of higher learning, as provided in § 21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(Authority: 38 U.S.C.3034(a), 3323(a), 3683)

(m) *Incarceration in prison or other penal institution due to conviction of a felony.*

(1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.9675(c) (based on incarceration in a Federal, State, or local penal institution due to a felony conviction).

(2) The reduced rate or discontinuance will be effective the latest of the following—

(i) The first day of the enrollment period for which all or part of the eligible individual's tuition and fees were paid by a Federal, State, or local program;

(ii) The first day of the enrollment period in which the eligible individual is incarcerated in prison or other penal institution; or

(iii) The beginning date of the award as determined by § 21.9625.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(n) *Reduction or termination due to active duty status.* (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is—

(i) For established charges, the last date of the certified enrollment period,

(ii) For the monthly housing allowance, the end of the month during which the reduction or withdrawal occurred, and

(iii) For the ''book stipend'', the last date of the period covered by the book stipend payment.

(2) This reduction does not apply to brief periods of active duty for training if the institution of higher learning permits absence for active duty for training without considering the individual's pursuit of a program of education to be interrupted.

(Authority: 38 U.S.C. 3313(e))

(o) *Exhaustion of entitlement.* (1) If an individual enrolled in an institution of higher learning that regularly operates on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33, the effective discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 after the individual has completed more than half of the course, the ending date will be the earlier of the following—

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(Authority: 38 U.S.C. 3031(f), 3312, 3321)

(p) *End of period of eligibility.* If an eligible individual is enrolled in an institution of higher learning on the date of expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(Authority: 38 U.S.C. 3321)

(q) *Required verifications not received after certification of enrollment.* (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an institution of higher learning in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(r) *Administrative or payee error.* (1) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3323(c), 5112, 6103)

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted.

(Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase (''kicker'') for Selected Reserve service.* If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase (''kicker'').

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Election to receive educational assistance allowance under another educational assistance program.* If an individual is eligible under more than one educational assistance program, VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first date for which the eligible individual elects to receive educational assistance under 10 U.S.C. chapter 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3322(a))

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under § 21.9570.

(Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9570.

(Authority: 38 U.S.C. 3319)

(bb) *Spouse with transferred entitlement and transferor divorce.* If a spouse with transferred entitlement and the transferor divorce, the date of discontinuance for the spouse's entitlement is the later of the ending date of the enrollment period or the date of the divorce.

(Authority: 38 U.S.C. 101(31), 103, 3319)

(cc) *Child with transferred entitlement marries.* If a child with transferred entitlement marries, the date of discontinuance for the child's entitlement is the later of the ending date of the enrollment period or the date the child marries.

(Authority: 38 U.S.C. 101(4), 3319)

(dd) *Stepchild with transferred entitlement no longer member of transferor's household.* If a stepchild with transferred entitlement ceases to be a member of the transferor's household, the date of discontinuance for the stepchild's discontinuance is the later of the end of the enrollment period or the date the stepchild was no longer a member of the transferor's household. See § 21.9570, Transfer of entitlement.

(Authority: 38 U.S.C. 101(4), 3319)

(ee) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (dd) of this section, VA will determine the ending date of educational assistance based on the facts found.

(Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

§ 21.9640 Rates of payment of educational assistance.

VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* Except as provided in paragraph (d), VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

Aggregate length of creditable active duty service after 09/10/01	Percentage of maximum amounts payable
At least 36 months [1]	100
At least 30 continuous days (Must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months [1]	90
At least 24 months, but less than 30 months [1]	[3] 80
At least 18 months, but less than 24 months [2]	[3] 70
At least 12 months, but less than 18 months [2]	60
At least 6 months, but less than 12 months [2]	50
At least 90 days, but less than 6 months [2]	40

[1] Includes entry level and skill training.
[2] Excludes entry level and skill training.
[3] If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable.

(Authority: 38 U.S.C. 3311, 3313)

(b) *Maximum amounts payable for training at more than half-time.* An individual, other than one on active duty, who is pursuing a program of education at more than half-time (at a rate of pursuit of more than 50 percent) and who—

(1) Is enrolled at an institution of higher learning located in the United States or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges for the program of education;

(B) The maximum amount of established charges regularly charged full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged established charges in the State of the primary institution of higher learning in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located; or

(C) The lesser amount of paragraph (A) or (B) of this section, divided by the number of days in the individual's

quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550;

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance if the individual's rate of pursuit is greater than 50 percent (see § 21.9750 on measurement of rate of pursuit). The monthly housing allowance will be equal to the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 using the ZIP code area in which all, or a majority, of the primary institution of higher learning in which the individual is enrolled is located or, if the individual is only pursuing distance learning courses at the primary institution of higher learning, the ZIP code area in which all, or a majority of the institution of higher learning in which the individual is enrolled in one or more resident courses is located, multiplied by the percentage payable to the individual based on length of service; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for each quarter, semester, or term. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) $1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such quarter, semester, or term constitutes.

(2) Is enrolled at an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges for the program of education in United States dollars as determined by using the conversion rate effective the first day of the enrollment period;

(B) The average amount of established charges regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States during the preceding academic year; or

(C) The lesser amount of paragraph (A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550;

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance if the individual's rate of pursuit is greater than 50 percent (see § 21.9750 on measurement of rate of pursuit). The monthly housing allowance will be equal to the average monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 residing in the continental United States; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for the certified enrollment period. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) $1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such certified enrollment period constitutes.

(c) *Maximum amounts payable for training at half-time or less.* An individual, other than one on active duty, who is pursuing a program of education at half-time or less (at a rate of pursuit of 50 percent or less) and who—

(1) Is enrolled at an institution of higher learning located in the United States or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for the established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges that similarly circumstanced nonveterans enrolled in the program of education would be required to pay; or

(B) The maximum amount of established charges regularly charged full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged established charges in the State of the primary institution of higher learning in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located; or

(C) The lesser amount of paragraph (A) or (B) of this section , divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550; and

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for the certified enrollment period. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) $1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such certified enrollment period constitutes, multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit.

(2) Is enrolled in an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(A) The established charges for the program of education in United States dollars as determined by using the conversion rate effective the first day of the enrollment period;

(B) The average amount of established charges regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States during the preceding academic year; or

(C) The lesser amount of paragraph (A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550; and

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for the certified enrollment period. The amount payable to an eligible individual with remaining entitlement is equal to—

(A) $1,000, multiplied by

(B) The fraction that is the portion of a complete academic year under the program of education that such certified enrollment period constitutes, multiplied by

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of course hours the individual is pursuing

by the number of course hours required for full-time pursuit.

(d) *Amounts payable for individuals on active duty.* Individuals on active duty who are pursuing a program of education may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(1) The established charges that similarly circumstanced nonveterans enrolled in the program of education would be required to pay;

(2) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment; or

(3) The lesser amount of paragraph (1) or (2) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate, multiplied by the individual's remaining months and days of entitlement to educational assistance as provided under § 21.9550.

(e) *Publication of educational assistance rates.* VA will publish the maximum amounts payable in the ''Notices'' section of the **Federal Register** and on the GI Bill Web site at *http://www.gibill.va.gov* by the first of August of each calendar year.

(Authority: 38 U.S.C. 3313, 3323(c))

§ 21.9645 Refund of basic contribution to chapter 30.

(a)(1) An individual who makes an irrevocable election to receive educational assistance under this chapter by relinquishing eligibility under chapter 30 will be entitled to receive a refund of the amount of contributions he or she paid towards chapter 30, up to $1,200, if the individual, as of the date of the individual's election, meets the requirements for entitlement to educational assistance under this chapter and meets one of the following requirements as of August 1, 2009—

(i) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 and has remaining entitlement under that chapter;

(ii) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 but has not used any entitlement under that chapter; or

(iii) He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because the individual has met the requirements of § 21.7042(a) or (b) and is making contributions as provided in § 21.7042(g).

(2) [Reserved]

(b) *Amount of refund.* The amount of any payment made under this section to the individual who made the contributions will be equal to the total amount of contributions toward basic educational assistance made by the individual as provided in § 21.7042(g), multiplied by the fraction of either—

(1) The number of months of entitlement under 38 U.S.C. chapter 30 remaining to the individual at the time of the election and the number of months, if any, of transferred entitlement under 38 U.S.C. chapter 30 that the individual revoked; or

(2) 36 months for the individual under § 21.9645(a)(iii) who is still making contributions; divided by

(3) 36 months.

(c) *Timing of Payment.* The amount payable under this section will only be paid to the individual who made the contributions as an increase to the monthly housing allowance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts.

(Authority: Pub. L. 110–252, Stat. 2377–2378)

§ 21.9650 Increase in educational assistance.

The Secretary of the military department concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty retaining personnel, as determined by the Secretary of the military department concerned.

(a) *Chapter 33 increase (''kicker'') amount.* (1) The amount of the increase is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (a)(i) of this section based on the individual's rate of pursuit of training.

(2) The increase (''kicker'') amount payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9650(b)(2) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3316(a))

(b) *Chapter 30 increase (''kicker'') amount.* (1) An individual eligible under 38 U.S.C. chapter 33 by reason of an irrevocable election under § 21.9520(c) who, on the date of election, was entitled to an increase (''kicker'') of the amount of educational assistance under 38 U.S.C. 3015(d) remains entitled to such increase under 38 U.S.C. chapter 33.

(2) The increase (''kicker'') amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (b)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase (''kicker'') amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3015(d); Pub. L. 110–252, Stat. 2378)

(c) *Chapter 1606 increase (''kicker'') amount.* (1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under § 21.9520(c) and, on the date of election, was entitled to an increase (''kicker'') of the amount of educational assistance under 10 U.S.C. 16131(i) remains entitled to such increase under 38 U.S.C. chapter 33.

(2) The increase (''kicker'') amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $350.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (c)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase (''kicker'') amount payable under paragraph (c) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 10 U.S.C. 16131(i); Pub. L. 110–252, Stat. 2378)

§ 21.9655 Rates of supplemental educational assistance.

In addition to basic educational assistance, an individual who is eligible for supplemental educational assistance and entitled to it will be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.9675.

(a) *Individuals eligible for supplemental educational assistance*

under chapter 33. (1) The monthly amount of supplemental educational assistance payable to an individual whose initial eligibility for educational assistance is acquired under 38 U.S.C. chapter 33 is set by the Secretary of the military department concerned, but may not exceed $300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(2) The increase payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9650(b)(2) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3316)

(b) *Individuals who were eligible for supplemental educational assistance under 38 U.S.C. chapter 30.* (1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under § 21.9520(c) and was entitled to supplemental educational assistance under subchapter III of 38 U.S.C. chapter 30 remains entitled to such additional amount under chapter 33.

(2) The amount of the increase is set by the Secretary of the military department concerned, but may not exceed $300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(3) The supplemental increase amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3021; Pub. L. 110–252, 122 Stat. 2378)

§ 21.9660 Rural relocation benefit.

An individual eligible for educational assistance under this chapter is entitled to receive a one-time payment of $500 if the individual—

(1) Resides in a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile (as determined by the most recent decennial Census); and

(2) Either—

(i) Physically relocates at least 500 miles in order to pursue a program of education for which the individual receives educational assistance under this chapter; or

(ii) Travels by air to physically attend an institution of higher learning for pursuit of an approved program of education under this chapter if no other land-based method of transportation is available due to an absence of roads or other infrastructure; and

(iii) Has provided documentation required in § 21.9680(c).

(Authority: 38 U.S.C. 3318)

§ 21.9665 Reimbursement for licensing or certification tests.

An eligible individual is entitled to receive reimbursement for taking one licensing or certification test. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test taken on or after August 1, 2009, is the lesser of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test; or

(b) $2,000.

(Authority: 38 U.S.C. 3315)

§ 21.9670 Work-study allowance.

An eligible individual pursuing a program of education under 38 U.S.C. chapter 33 at a rate of pursuit of at least 75 percent may receive a work-study allowance in accordance with the provisions of § 21.4145.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3485)

§ 21.9675 Conditions that result in reduced rates or no payment.

The payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active duty service; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No educational assistance for some incarcerated individuals.* VA will not pay educational assistance to an eligible individual who is incarcerated in a Federal, State, or local penal institution due to a felony conviction and has incurred no expenses for books, supplies, or equipment if—

(1) The individual is enrolled in a course for which there is no tuition and fees;

(2) The individual is enrolled in a course and the tuition and fees for the course are being paid in full by a Federal (other than one administered by VA), State, or local program.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) VA will reduce the amount of educational assistance paid to an eligible individual who is incarcerated in a Federal, State, or local penal institution due to a felony conviction if—

(i) The individual is enrolled in a course for which the tuition and fees are paid entirely by a Federal (other than one administered by VA), State, or local program, but the individual is required to purchase books, supplies, or equipment for the course; or

(ii) The individual is enrolled in a course for which the tuition and fees are paid partially by a Federal (other than one administered by VA), State, or local program, whether or not the individual is required to purchase books, supplies, or equipment for the course.

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be the lesser of the following—

(i) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program plus an amount

equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment; or

(ii) The amount of tuition and fees otherwise payable to the individual based on the individual's length of creditable service as determined in § 21.9640(a) and the individual's rate of pursuit, plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (See § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course at an institution of higher learning for which the individual is an official of such institution authorized to sign certificates of enrollment;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

§ 21.9680 Certifications and release of payments.

(a) *Payee.* (1) VA will make payment of the appropriate amount of established charges (including top-up payments), as determined under § 21.9640, directly to the institution of higher learning as a lump-sum payment for the entire quarter, semester, or term, as applicable;

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) Eligible individuals are subject to the verification of enrollment provisions of § 21.9730 before VA will make a continuing payment to the eligible individual.

(4) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) *Payments.*

(1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance top-up, one seeking reimbursement for taking an approved licensing or certification test, or one who qualifies for an advance payment of the monthly housing allowance) only after the educational institution has certified the individual's enrollment as provided in § 21.9720 and the eligible individual has complied with any requirement for verification of enrollment as set forth in § 21.9730.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0073.)

(2) *Advance payments.* VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The institution of higher learning at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's institution of higher learning;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment either—

(*1*) Is preceded by an interval of nonpayment of 30 days or more; or

(*2*) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and

(G) The institution of higher learning or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the institution of higher learning for delivery to the eligible individual. The institution of higher learning will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an institution of higher learning if:

(A) The institution of higher learning demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The institution of higher learning fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the institution of higher learning has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 3034, 3323, 3680)

(3) *Lump sum payments.* VA will make a lump-sum payment for the entire quarter, semester, or term:

(i) To an institution of higher learning, on behalf of an eligible individual, for the appropriate amount of established charges;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the $500 rural relocation benefit.

(Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the eligible individual wants tuition assistance top-up. If the form(s) submitted do not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization, or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG–4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0698)

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0695)

(6) *Payment for intervals and temporary school closings.* VA may authorize payment for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (6)(i) through (6)(v) of this section concerning intervals and in paragraph (6)(vi) of this section concerning temporary school closings. For the purposes of this paragraph, interval means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in § 21.4200(b).)

(i) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (b)(6)(ii) of this section. If none of the provisions apply, VA will review the provisions of paragraph (b)(6)(iii), (iv), and (v) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(ii) Restrictions on payment for intervals. VA will make no payment for an interval if—

(A) The individual's rate of pursuit is half-time or less on the last day of the certified enrollment period preceding the interval;

(B) The individual is on active duty;

(C) The individual requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;

(D) The individual's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the individual not to receive payment;

(E) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis; or

(F) The individual withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in an institution of higher learning not organized on a term, quarter, or semester basis.

(iii) *Payment for intervals between periods of enrollment at different schools.* If the individual transfers from one approved school for the purpose of enrolling in and pursuing a similar course at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar course at the second school, VA may not make payments for the interval.

(iv) Payment for intervals that occur at the same school. (A) If the individual remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(*1*) Semesters or quarters,

(*2*) A semester or quarter and a term that is at least as long as the interval,

(*3*) A semester or quarter and a summer term that is at least as long as the interval,

(*4*) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(*5*) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(B) If the individual remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(v) Payment for intervals that occur between overlapping enrollments. (A) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and which dates the interval and enrollment periods will be considered to begin and end, as follows:

(*1*) By treating the ending date of each enrollment period as though it were the individual's last date of training before the interval,

(*2*) By treating the beginning date of each enrollment period as though it were the individual's first date of training after the interval,

(*3*) By examining the interval payment that would be made to the individual on the basis of the various combinations of beginning and ending dates, and

(*4*) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(B) VA will not reduce the interval rate of payment as a result of training the individual may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(vi) Payment for temporary school closings. VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraph (b)(6)(ii) through (v) of this section to determine if payment may be continued during the interval.

(A) If payment would not be inconsistent with the provisions of paragraph (b)(6)(ii) through (v) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if it appears that either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(*1*) The Director of the VA Regional Processing Office of jurisdiction if:

(*i*) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(*ii*) If the reason for the closing is a strike, and the strike lasts, or is anticipated to last, 30 days or less.

(*2*) The Director of Education Service if:

(*i*) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(*ii*) The reason for the closing is a strike, and the strike lasts, or is anticipated to last, more than 30 days.

(B) A school that disagrees with a decision made under paragraph (b)(6)(vi) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

(*1*) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments; or

(*2*) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3034(a), 3323(a), 3680(a))

(c) *Rural relocation benefit.*

VA will make the $500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in § 21.9680;

(2) The individual has provided—

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.* (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name:

(*1*) DD Form 214, Certification of Release or Discharge from Active Duty; or

(*2*) The most recent Federal income tax return; or

(*3*) The most recent State income tax return; or

(*4*) Rental/lease agreement; or

(*5*) Mortgage document; or

(*6*) Current real property assessment.

(B) An individual using entitlement granted under § 21.9570 who, because he or she resides with the transferor or, in the case of a child, a parent, cannot provide any of the documents in paragraph (c)(2)(i) of this section, may submit any document in paragraph (c)(2)(i)(A)(*2*) through (*6*) of this section bearing the name of the transferor or, in the case of a child, a parent as proof of residence; and

(iii) *Proof of relocation.* An individual traveling by air must provide an airline receipt for travel with a departure and destination airport within reasonable distance from the home of residence and the institution of higher learning, respectively; and

(3) VA has determined that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation, and either:

(i) If traveling by land, physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2) as the beginning point and the address of the institution of higher learning as the ending point; or

(ii) If traveling by air, was unable to travel to the institution of higher learning by land due to the absence of road or other infrastructure.

(Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

§ 21.9685 Tutorial assistance.

(a) An individual who is eligible to receive benefits under 38 U.S.C. chapter 33 may receive additional monetary assistance for tutorial services. VA will pay the individual this assistance if the tutorial assistance is necessary for the eligible individual to complete his or her program of education successfully, and the individual—

(1) Is enrolled in and pursuing a postsecondary program of education at a rate of pursuit of at least 50 percent at an institution of higher learning; and

(2) The professor or other person teaching, leading, or giving the course certifies that—

(i) Tutorial assistance is essential to correct a deficiency of the individual in such course; and

(ii) The course is required as part of, or is prerequisite or indispensable to the satisfactory pursuit of, an approved program of education.

(b) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed $100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed $1,200.

(Authority: 38 U.S.C. 3034(a), 3314, 3323(a), 3492)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0171)

§ 21.9690 Nonduplication of educational assistance.

(a) Except for receipt of a Montgomery GI Bill—Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

(1) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(2) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(3) 10 U.S.C. 107 (Section 901, Educational Assistance Test Program);

(4) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(5) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(6) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(7) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance); or

(8) Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96–342)

(b) *Election of benefits.* An individual who is eligible for educational assistance under more than one program listed in paragraph (a) of this section must elect in writing which benefit he or she wishes to receive. The eligible individual may make a new election at any time, but may not elect more than once in a calendar month.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

§ 21.9695 Overpayments.

(a) *Prevention of overpayments.* In administering educational assistance payable under 38 U.S.C. chapter 33, VA will apply the provisions of §§ 21.4008 and 21.4009 to eligible individuals and, when appropriate, to institutions of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(b))

(b) *Liability for overpayments.* (1) An overpayment of educational assistance paid to an eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of that individual unless—

(i) The overpayment was waived as provided in §§ 1.957 and 1.962 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.9635(r).

(2) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of the institution of higher learning if VA determines that the overpayment is the result of willful or negligent—

(i) False certification by the institution of higher learning; or

(ii) Failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3685)

(ii) In determining whether an overpayment should be recovered from an institution of higher learning, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

(3) VA will determine the amount of an overpayment as follows—

(i) For an individual who does not complete all courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such enrollment, VA will establish an overpayment equal to the amount of all educational assistance paid for that certified period of enrollment.

(ii) For an individual who does not complete all courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such courses, VA will prorate the amount of educational assistance to which he or she is entitled.

(A) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due will be established as an overpayment.

(B) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(C) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs (''book stipend'').

(Authority: 38 U.S.C. 3034(a), 3323, 3685, 5302)

§ 21.9700 Yellow Ribbon Program.

(a) *Establishment.* Pursuant to 38 U.S.C. 3317, there is established the ''Yellow Ribbon G.I. Education Enhancement Program'', known as the ''Yellow Ribbon Program,'' that permits an institution of higher learning (IHL), at the IHL's option, to enter into an agreement with VA to allow the two parties to provide matching funds to cover a portion of the outstanding amount of established charges not covered under any other provision of 38 U.S.C. chapter 33.

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100 percent educational assistance rate (based on service requirements) as shown in the chart in § 21.9640(a) or to their designated dependents using entitlement transferred under § 21.9570, who are pursuing training at an IHL located in the United States or at a branch of such IHL that is located outside the United States.

(c) *Agreements.* VA will enter into an agreement with an IHL located in the United States seeking to participate in the Yellow Ribbon Program based on a general agreement format developed by VA in which the IHL must agree to the following—

(1) Provide contributions for the entire academic year specified in the agreement to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), in any given academic year;

(2) Make contributions toward the program on behalf of the individual in the form of a waiver;

(3) State the maximum number of individuals for whom contributions will be made in any given academic year; and

(4) Waive the same percentage of unmet established charges for all eligible individuals in any given academic year.

(d) *Matching Contributions.* VA will match each dollar waived by the school; however, the combined amount of contributions under the Yellow Ribbon Program may not exceed the remaining amount of established charges not covered under any other provision of 38 U.S.C. chapter 33.

(e) *Outreach.* The most current list of colleges and universities participating in the Yellow Ribbon Program will be available at VA's GI Bill Web site at *http://www.gibill.va.gov.* The list will include specific information on each school's agreement with VA.

(Authority: 38 U.S.C. 3317)

Pursuit of Courses

§ 21.9710 Pursuit.

Except for an eligible individual seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, an individual's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(Authority: 38 U.S.C. 3323(c))

§ 21.9715 Advance payment certification.

All certifications required by this section shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary. An advance payment under this chapter is only permissible to an individual whose rate of pursuit is greater than half-time, and who is entitled to the monthly housing allowance as provided in § 21.9640(b)(1)(ii) or (b)(2)(ii).

(a) *Certification needed before an advance payment can be made.* In order for an individual to receive an advance payment of the monthly housing allowance, an application or other

document must be signed by the individual or the enrollment certification must be signed by an authorized official of the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary.

(1) For each eligible individual receiving an advance payment, an institution of higher learning must—

(i) Verify enrollment for the individual; and

(ii) Verify the delivery of the advance payment check to the individual.

(2) Once the institution of higher learning has initially verified the enrollment of the individual, the individual, not the institution of higher learning, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.9730.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

§ 21.9720 Certification of enrollment.

Except as stated in § 21.9680, an institution of higher learning must certify an eligible individual's enrollment before he or she may receive educational assistance.

(a) *Institutions of higher learning must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require institutions of higher learning to certify the enrollments of eligible individuals who either are seeking tuition assistance top-up or, in the cases described in § 21.9715, are seeking an advance payment. VA does not require organizations or entities offering a licensing or certification test to certify that the eligible individual took the test. In all other cases, the institution of higher learning must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification.* (1) Institutions of higher learning organized on a term, quarter, or semester basis generally will report enrollment for the term, quarter, semester, ordinary school year, or ordinary school year plus summer term. If the certification covers two or more terms, the institution of higher learning will report each term, quarter, or semester separately.

(2) Institutions of higher learning organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the institution of higher learning closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include—

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the institution of higher learning has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(Approved by the Office of Management and Budget under control number 2900–0073)

§ 21.9725 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive payments of educational assistance under 38 U.S.C. chapter 33 for pursuit of a program of education, an individual must maintain satisfactory progress. VA will discontinue payments of educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the institution of higher education he or she is attending.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the institution of higher learning in which he or she is enrolled. If the individual will no longer be retained as a student or will not be readmitted as a student by the institution of higher learning in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the institution of higher learning's action is wrongfully retaliatory in nature.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the institution of higher learning in which he or she is enrolled.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(d) *Reentrance after discontinuance.* (1) An eligible individual may be reentered following discontinuance because of unsatisfactory attendance, conduct, or progress when either:

(i) The individual resumes enrollment at the same institution of higher learning in the same program of education and the institution of higher learning has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that—

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program that the individual now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.

(2) Reentrance may be for the same program, a revised program, or an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

§ 21.9730 Pursuit and verifications.

Except as provided in this section under paragraph (a), an individual receiving a monthly housing allowance must submit verification to VA each month of his or her enrollment during the period for which the individual is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* An individual does not have to submit a monthly verification as described in the introductory text of this section when the individual—

(1) Is enrolled in a correspondence course;

(2) Is not eligible for the monthly housing allowance for the enrollment period; or

(3) Has received an advance payment for the training completed during a month.

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all eligible individuals will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The individual's unsatisfactory conduct, progress, or attendance;

(iii) The date of interruption or termination of training;

(iv) Changes in the number of credit hours or in the number of clock hours of attendance other than those described in § 21.9735(a);

(v) Nonpunitive grades; and

(vi) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must—

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the eligible individual on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone or through VA's Web site in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0465.)

§ 21.9735 Other required reports.

VA will apply the provisions of § 21.7156 to individuals and institutions of higher learning under 38 U.S.C. chapter 33 as those provisions are applied to veterans and educational institutions under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a))

§ 21.9740 False, late, or missing reports.

(a) *Eligible individual.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 to any individual who submits false or misleading claims, statements, or reports in connection with benefits payable under 38 U.S.C. chapter 33 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680, 3690, 6103)

(b) *Institution of higher learning.* (1) VA may hold an institution of higher learning liable for overpayments that result from the institution of higher learning's willful or negligent failure to report excessive absences from a course, discontinuance of a course, or interruption of a course by an individual or from willful or negligent false certification by the institution of higher learning. See § 21.9695(b).

(2) If an institution of higher learning willfully and knowingly submits a false report or certification, VA may disapprove that institution of higher learning's courses for further enrollments and may discontinue educational assistance to eligible individuals already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

§ 21.9745 Reporting fee.

In determining the amount of the reporting fee payable to institutions of higher learning for furnishing required reports, VA will apply the provisions of § 21.4206 in the same manner as they are applied in the administration of 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

Course Assessment

§ 21.9750 Course measurement.

VA will calculate an individual's rate of pursuit of an approved program of education during the individual's period of enrollment as follows.

(a) *Measurement of courses leading to an undergraduate college degree.* (1) If the courses are measured in credit hours, then the number of credit hours the individual is taking in a term, quarter, or semester will be divided by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester at the institution of higher learning as provided in paragraph (a)(2) of this section. The resulting percentage will be the individual's rate of pursuit. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than half-time training.

(2) Fourteen credit hours are full-time unless the institution of higher learning certifies that all undergraduate students enrolled for 13 credit hours, or for 12 credit hours, are charged full-time tuition or are considered full-time for other administrative purposes.

(b) *Measurement of courses not leading to a standard college degree.* Courses not leading to a standard college degree may be measured on either a clock-hour basis, or a credit-hour basis, or a combination of both. VA must determine the proper basis for measurement by considering whether the courses are accredited, whether the course could be credited toward a standard college degree, and whether the course is offered on a standard quarter or semester-hour basis. If credit-hour measurement is appropriate, VA should determine the individual's rate of pursuit in the same manner as a course leading to a standard undergraduate degree as described in paragraph (a) of this section. If it is not appropriate to measure an individual's enrollment on a credit-hour basis, VA will measure the enrollment on a clock-hour basis as described in paragraph (b)(1) of this section. If the individual's enrollment includes a combination of credit-hour and clock-hour courses at the same institution of higher learning, the institution of higher learning should indicate the basis for full-time training. VA will use the rate of pursuit more favorable to the individual after measuring all of the individual's courses by applying the formulas in § 21.9755 to convert clock-hours to credit-hours and credit-hours to clock-hours, and comparing the results.

(1) *Clock-hour measurement.* If VA concludes that the courses in which an eligible individual is enrolled do not qualify for credit-hour measurement, VA will measure those courses as follows:

(i) If shop practice is an integral part of the course at the institution of higher learning, full-time training will be 22 clock hours (or more) of attendance per week, with not more than 2½ hours rest period allowance; or

(ii) If the majority of the course consists of theory and class instruction, full-time training is 18 clock hours (or more) of net instruction per week.

(2) To determine the rate of pursuit, divide the number of clock hours per week the individual will be in attendance by the number of clock hours per week for full-time pursuit. The resulting percentage will be the individual's rate of pursuit. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than half-time training.

(c) In administering benefits payable for approved programs under 38 U.S.C. chapter 33, VA will also apply the following sections. References in these sections to § 21.4270 should be deemed to refer to § 21.9750:

(1) Section 21.4272 (except paragraph (d))—Collegiate course measurement;

(2) Section 21.4273 (except those portions of paragraphs (a)(2) and (b) specifying training times should be deemed to specify a rate of pursuit)—Collegiate graduate;

(3) Section 21.4274—Law courses; and

(4) Section 21.4275—Practical training courses; measurement.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(d) *High school courses.* If an individual using transferred entitlement is eligible for pursuit of the

requirements of a secondary school diploma or equivalency certificate, VA will determine the rate of pursuit as follows:

(1) If an individual is pursuing high school courses at a rate that would result in an accredited high school diploma in four ordinary school years, VA considers him or her to be enrolled full-time; or

(2) If an individual is pursuing a secondary school diploma or equivalency certificate other than as in paragraph (d)(1) of this section, VA will consider full-time enrollment to be 18 clock hours of net instruction per week, four units per year, or the equivalent. (For the purpose of this paragraph, a unit is not less than one hundred and twenty 60-minute hours or the equivalent of study in any subject in one academic year.) VA will consider an individual's enrollment in more than 9 clock hours per week, or more than two units per year or the equivalent, to be equal a rate of pursuit of more than 50 percent for the purpose of this chapter.

(Authority: 38 U.S.C. 3319(h))

§ 21.9755 Measurement of concurrent enrollments.

(a) *Conversion of units of measurement required.* Where an eligible individual enrolls concurrently in courses offered by two schools and the standards for the measurement of the courses pursued concurrently in the two schools are different, VA will measure the individual's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education that the eligible individual is pursuing at the primary institution. This conversion will be accomplished as follows:

(1) If VA measures the courses at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis), and VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(2) If VA measures the courses pursued at the primary institution on a clock-hour basis, and VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the eligible individual's rate of pursuit.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(3) If VA measures the courses pursued at the primary institution on a clock-hour basis, and

(i) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school that VA can measure on credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the eligible individual's rate of pursuit; or

(ii) VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the eligible individual's rate of pursuit.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require VA to convert clock hours to credit hours, it will do so by—

(1) Dividing the number of credit hours which VA considers to be full-time at the institution of higher learning whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the institution of higher learning whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require VA to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which VA considers to be full-time at the institution of higher learning whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the institution of higher learning whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (c)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

(d) *Both courses measured on a credit-hour basis or both courses measured on a clock-hour basis.* If VA measures the courses pursued at both institutions on a credit-hour basis or on a clock-hour basis, VA will measure the veteran's enrollment by adding together the units of measurement for the courses at the second school and the units of measurement for the courses at the primary institution. The standard for full-time will be the full-time standard for the courses at the primary institution.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3688)

Approval of Courses

§ 21.9765 Course approval.

VA may provide educational assistance for pursuit of a course or courses at an institution of higher learning that is approved under 38 U.S.C. chapter 30 in accordance with §§ 21.7220 and 21.7222.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a))

Administrative

§ 21.9770 Administrative.

In administering chapter 33, VA will apply the sections noted in paragraphs (a) through (f) of this section. For the purpose of application, the term ''veteran'' as used in these sections is deemed to mean ''an eligible individual under 38 U.S.C. chapter 33,'' and the term ''38 U.S.C chapter 30'' as used in these sections is deemed to mean ''38 U.S.C. chapter 33''.

(a) Section 21.7301—Delegations of authority;

(b) Section 21.7302—Finality of decisions;

(c) Section 21.7303—Revision of decisions;

(d) Section 21.7305—Conflicting interests;

(e) Section 21.7307—Examination of records; and

(f) Section 21.7310—Civil rights.

(Authority: 38 U.S.C. 511, 512(a), 3034(a), 3323(a), 3690, 3696)

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Part III

The President

Proclamation 8330—To Take Certain Actions Under the African Growth and Opportunity Act and the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 8330 of December 19, 2008

To Take Certain Actions Under the African Growth and Opportunity Act and the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a beneficiary sub-Saharan African country if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703) and the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an eligible sub-Saharan African country if the President determines that the country meets certain eligibility requirements.

3. Section 112(c) of the AGOA (19 U.S.C. 3721(c)), as added by section 6002(a) of the Africa Investment Incentive Act of 2006 (division D, title VI of Public Law 109–432), provides special rules for certain apparel articles imported from lesser developed beneficiary sub-Saharan African countries.

4. In Proclamation 8157 of June 28, 2007, I designated the Islamic Republic of Mauritania (Mauritania) as an eligible sub-Saharan African country and a beneficiary sub-Saharan African country pursuant to section 104 of the AGOA and section 506A(a)(1) of the 1974 Act and provided that it would be considered a lesser developed beneficiary sub-Saharan African country for purposes of section 112(c) of the AGOA.

5. Section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)) authorizes the President to terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act.

6. Pursuant to section 506A(a)(3) of the 1974 Act, I have determined that Mauritania is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act. Accordingly, I have decided to terminate the designation of Mauritania as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act, effective on January 1, 2009.

7. Pursuant to sections 501 and 502(a) of the 1974 Act (19 U.S.C. 2461, 2462(a)), the President is authorized to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP) program.

8. Pursuant to section 502(a)(1) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c) (19 U.S.C. 2462(c)), I have determined that the Republic of Kosovo (Kosovo) should be designated as a beneficiary developing country for purposes of the GSP program.

9. Pursuant to section 502 of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c), I have determined that the

Republic of Azerbaijan (Azerbaijan) should be designated as a beneficiary developing country for purposes of the GSP program.

10. Section 604 of the 1974 Act (19 U.S.C. 2483), as amended, authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 104 of the AGOA (19 U.S.C. 3703), and title V and section 604 of the 1974 Act (19 U.S.C. 2461–67, 2483), do proclaim that:

(1) The designation of Mauritania as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act is terminated, effective on January 1, 2009.

(2) In order to reflect in the HTS that beginning on January 1, 2009, Mauritania shall no longer be designated as a beneficiary sub-Saharan African country, general note 16(a) to the HTS is modified by deleting ''Islamic Republic of Mauritania'' from the list of beneficiary sub-Saharan African countries.

(3) Kosovo is designated as a beneficiary developing country for purposes of the GSP program.

(4) In order to reflect this designation in the HTS, general note 4(a) to the HTS is modified by adding in alphabetical order ''Kosovo,'' effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after February 1, 2009.

(5) Azerbaijan is designated as a beneficiary developing country for purposes of the GSP program.

(6) In order to reflect this designation in the HTS, general note 4(a) to the HTS is modified by adding in alphabetical order ''Azerbaijan,'' effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after February 1, 2009.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of December, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Changes to the Ambulatory Surgical

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 6859/P.L. 110–454

To designate the facility of the United States Postal Service located at 1501 South Slappey Boulevard in Albany, Georgia, as the "Dr. Walter Carl Gordon, Jr. Post Office Building". (Dec. 19, 2008; 122 Stat. 5035)

S.J. Res. 46/P.L. 110–455

Ensuring that the compensation and other emoluments attached to the office of Secretary of State are those which were in effect on January 1, 2007. (Dec. 19, 2008; 122 Stat. 5036)

Last List December 4, 2008

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