



# Federal Register

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3-5-09

Vol. 74 No. 42

Pages 9565-9752

Thursday

Mar. 5, 2009



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

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

**WHEN:** Tuesday, March 17, 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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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100, 104, and 110

[Notice 2009-07]

#### Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Election Commission is correcting a compliance date that appeared in the **Federal Register** of February 17, 2009 (74 FR 7285). The document issued the final rules regarding the disclosure of information about bundled contributions provided by certain lobbyists, registrants and political committees established or controlled by lobbyists and registrants.

**DATES:** This correction is effective March 19, 2009. The final rule published on February 17, 2009 remains effective on March 19, 2009, and the compliance date for paragraphs (b) and (e) of 11 CFR 104.22 remains May 18, 2009. However, political committees that are "lobbyist/registrant PACs" must amend their FEC Form 1 (Statement of Organization) by March 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Cheryl A.F. Hemsley, or Ms. Esther Heiden, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing this document to correct an error that appeared in FR Doc. E9-2838, on page 7285 in the **Federal Register** of Tuesday, February 17, 2009 (74 FR 7285). The correction is as follows:

**DATES:** [Corrected]

On page 7285, in the first column, in the **DATES** section, the deadline for lobbyist/registrant PACs to amend their

FEC Form 1 (Statement of Organization) is corrected to read as follows: "Political committees that are "lobbyist/registrant PACs" must amend their FEC Form 1 (Statement of Organization) by March 29, 2009."

On behalf of the Commission,

Dated: *February 27, 2009.*

**Steven T. Walther,**

*Chairman, Federal Election Commission.*

[FR Doc. E9-4653 Filed 3-4-09; 8:45 am]

BILLING CODE 6715-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0199; Directorate Identifier 2009-NM-017-AD; Amendment 39-15835; AD 2009-05-11]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 777-200 and -300 Series Airplanes Equipped With Rolls-Royce Model RB211-TRENT 800 Series Engines

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 777-200 and -300 series airplanes. The existing AD currently requires revising the airplane flight manual (AFM) to include in-flight procedures for pilots to follow in certain cold weather conditions and requires fuel circulation procedures on the ground when certain conditions exist. This new AD retains the fuel circulation procedures. This new AD also revises the AFM procedures required by the existing AD. This AD results from a report of a single-engine rollback as a result of ice blocking the fuel oil heat exchanger. We are issuing this AD to prevent ice from accumulating in the main tank fuel feed system, which, when released, could result in a restriction in the engine fuel system. Such a restriction could result in failure to achieve a commanded thrust, and consequent forced landing of the airplane.

**DATES:** This AD becomes effective March 20, 2009.

We must receive any comments on this AD by May 4, 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, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1, fax 206-766-5680; e-mail [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>.

#### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6500; fax (425) 917-6590.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

On September 5, 2008, we issued AD 2008-19-04, amendment 39-15671 (73 FR 52909, September 12, 2008). That AD applies to certain Boeing Model 777-200 and -300 series airplanes. That AD requires revising the airplane flight



manual (AFM) to include in-flight procedures for pilots to follow in certain cold weather conditions and requires fuel circulation procedures on the ground when certain conditions exist. That AD resulted from a report of uncommanded reduction in thrust on both engines because of reduced fuel flows. The actions specified in that AD are intended to prevent ice from accumulating in the main tank fuel feed system, which, when released, could result in a restriction in the engine fuel system. Such a restriction could result in failure to achieve a commanded thrust, and consequent forced landing of the airplane.

#### Actions Since AD Was Issued

Since we issued AD 2008–19–04, we received a report of a single-engine rollback as a result of ice blocking the fuel oil heat exchanger (FOHE) on a Model 777 airplane equipped with Rolls-Royce Model RB211–TRENT 800 series engines. The data confirm that ice accumulates in the fuel feed system and releases after a high thrust command, creating blockage at the FOHE and resulting in the inability of the engine to achieve the commanded thrust. Examination of the data from the rollback shows that the second of two maximum thrust step climbs was performed approximately 40 minutes prior to the thrust rollback. Ice was released within the fuel system during the step climbs and formed a restriction at the FOHE of the affected engine, as evidenced by an increase in engine oil temperature. Further analysis of the data shows that ice accretes in the fuel system more rapidly and at warmer fuel temperatures than previously indicated, and ice may build up gradually on the FOHE before causing the engine to rollback. The data from this event, in combination with Boeing fuel lab testing, demonstrates that reducing the fuel flow to minimum idle levels will clear any ice accumulation at the FOHE within a few seconds.

All of the testing and research has been conducted on Boeing Model 777–200 and –300 series airplanes, equipped with Rolls-Royce Model RB211–TRENT 800 series engines. Initial review of other Model 777 airplane engine combinations has not revealed the same vulnerability to the identified unsafe condition.

#### FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 2008–19–04.

This new AD retains the fuel circulation procedures. This new AD also requires revising the AFM procedures required by AD 2008–19–04. This AD revises the AFM in-flight procedures by reducing the step climb from 3 to 2 hours prior to descent, and by requiring flightcrews to retard the throttles to minimum idle for 30 seconds at the top of descent ensuring any ice accumulation on the face of the FOHE melts while the airplane is at higher altitudes. Performing all step climbs using vertical navigation (VNAV) or maximum climb thrust continues in this AD for all flights.

Paragraph (g) of AD 2008–19–04 requires that the fuel circulation procedures be accomplished by a certified mechanic. We are retaining this requirement because of the complexity of the procedure. We recognize that persons other than mechanics who are properly trained might also be capable of accomplishing this procedure. Therefore, we would be receptive to requests for approval of alternative methods of compliance in accordance with paragraph (k) of this AD to allow others to accomplish the procedure if the request includes training and oversight provisions to ensure that the procedure is accomplished properly.

#### Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

#### FAA's Justification and Determination of the Effective Date

Hazardous amounts of ice might accumulate within the main tank fuel feed system under certain conditions, which, when released, could result in a restriction in the engine fuel system. Such a restriction could result in failure to achieve a commanded thrust, and consequent forced landing of the airplane. We have determined that the loss of engine thrust was likely due to ice accumulating in the main tank fuel feed system during exposure in cold fuel temperatures and low power fuel flows. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the proper functioning of the main tank fuel feed system and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment

hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–+++++; Directorate Identifier 2009–NM–017–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15671 (73 FR 52909, September 12, 2008) and adding the following new AD:

**2009–05–11 Boeing:** Docket No. FAA–2009–0199; Director Identifier 2009–NM–017–AD; Amendment 39–15835.

#### Effective Date

(a) This AD becomes effective March 20, 2009.

#### Affected ADs

(b) This AD supersedes AD 2008–19–04.

#### Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; equipped with Rolls-Royce Model RB211–TRENT 800 series engines.

#### Subject

(d) Air Transport Association (ATA) of America Code 73: Engine Fuel and Control.

#### Unsafe Condition

(e) This AD results from a report of a single-engine rollback as a result of ice blocking the fuel oil heat exchanger. The Federal Aviation Administration is issuing this AD to prevent ice from accumulating in the main tank fuel feed system, which, when released, could result in a restriction in the engine fuel system. Such a restriction could result in failure to achieve a commanded thrust, and consequent forced landing of the airplane.

#### Restatement of Requirements of AD 2008–19–04

##### Airplane Flight Manual (AFM) Revision

(f) Within 10 days after September 29, 2008 (the effective date of AD 2008–19–04), revise the Limitations section of the AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Doing the revision specified in paragraph (j) of this AD terminates the requirements of this paragraph.

“On ground, after refueling, check fuel temperature if fuel temperature indication is operative. If fuel temperature is colder than 0 degrees C or if fuel temperature indication is inoperative, verify that a record exists certifying that the approved fuel circulation procedure was performed.”

“Perform all step climbs using VNAV or maximum climb thrust.”

“In flight, within 3 hours of top of descent, but not less than 15 minutes before top of descent, check fuel temperature. If fuel temperature is colder than –10 degrees C, perform a step climb using maximum climb thrust. If a step climb using maximum climb thrust cannot be accomplished, verify cruise speed is set to 0.84 Mach or less, and manually advance thrust levers to maximum (autothrottles may be overridden). After reaching maximum climb thrust, hold for 10 seconds or until reaching 0.86 Mach, whichever occurs first. Check engines to ensure they have achieved maximum climb thrust and operate normally.”

##### Fuel Circulation Procedure

(g) As of 10 days after September 29, 2008: If the fuel temperature has not exceeded 0 degrees Celsius during the ground turn, before further flight, using the main tank fuel boost pumps, pump fuel through the fuel manifold using the high flow mode for a minimum of one minute. A certified mechanic must do the fuel circulation procedure required by this paragraph using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(h) Before further flight after accomplishing the action required by paragraph (g) of this AD, make a record in which the person accomplishing the procedure certifies that it was accomplished in accordance with the approved method, and provide the record to the flightcrew. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

##### Special Flight Permit

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

##### New Requirements of This AD

##### AFM Revision

(j) Within 10 days after the effective date of this AD, revise the Limitations section of the AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Doing the revision specified

in this paragraph terminates the requirements of paragraph (f) of this AD; after this revision has been done, the AFM limitation required by paragraph (f) of this AD must be removed from the AFM.

##### “STEP CLIMBS AND INITIAL DESCENT

Perform all step climbs using VNAV or maximum climb thrust. During initial descent, maintain idle thrust for a minimum of 30 seconds.

##### COLD FUEL OPERATIONS

On ground, after refueling, check fuel temperature if fuel temperature indication is operative. If fuel temperature is 0 degrees C or colder or if fuel temperature indication is inoperative, verify that a record exists certifying that the approved fuel circulation procedure was performed.

Do not do the following paragraph and balance the fuel at the same time. Balance the fuel before or after performing the following paragraph.

In flight, within 2 hours of top of descent, but not less than 15 minutes before top of descent, check fuel temperature. If fuel temperature is colder than –10 degrees C, perform a step climb using maximum climb thrust. If a step climb using maximum climb thrust cannot be accomplished, select or verify CLB thrust on the thrust limit page and verify cruise speed is set to 0.84 Mach or less. Manually advance thrust levers to maximum (autothrottles may be overridden). After reaching maximum climb thrust, hold for 10 seconds or until reaching 0.86 Mach, whichever occurs first. Check engines to ensure they have achieved maximum climb thrust and operate normally.”

**Note 1:** When a statement identical to that in paragraph (j) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

##### Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle 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: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

(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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) AMOCs approved previously in accordance with AD 2008–19–04, are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(4) Methods of compliance (MOCs) approved previously in accordance with AD 2008–19–04, are approved as MOCs for the

corresponding provisions of paragraph (g) of this AD.

#### Material Incorporated by Reference

(l) None.

Issued in Renton, Washington, on February 17, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E9-4650 Filed 3-4-09; 8:45 am]

BILLING CODE 4910-13-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

RIN 3038-AC 67

#### Electronic Filing of Disclosure Documents

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is amending its regulations applicable to the filing of Disclosure Documents by commodity pool operators (CPOs) and commodity trading advisors (CTAs) with the National Futures Association (NFA). In response to a petition from NFA, the CFTC is requiring that CPOs and CTAs be required to file their Disclosure Documents electronically with NFA (Amendments).

**DATES:** *Effective Date:* April 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Barbara S. Gold, Associate Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418-5450; facsimile number: (202) 418-5528; and electronic mail: [bgold@cftc.gov](mailto:bgold@cftc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. CPO and CTA Disclosure Documents

Part 4 of the Commission's regulations<sup>1</sup> governs the operations and activities of CPOs and CTAs. Regulations 4.21 and 4.31 respectively require each CPO and CTA registered or required to be registered with the Commission to deliver a Disclosure Document to prospective pool participants and clients. Regulations

4.24 and 4.25 specify the informational content of the CPO Disclosure Document, and Regulations 4.34 and 4.35 specify the informational content for the CTA Disclosure Document. Regulations 4.26 and 4.36 respectively pertain to the use, amendment and filing of CPO and CTA Disclosure Documents. Specifically, under Regulations 4.26(d) and 4.36(d), the CPO or CTA must file one copy of the Disclosure Document, and any supplements and amendments thereto, with NFA.<sup>2</sup>

###### B. The Proposing Release

On November 26, 2008, the Commission proposed to amend Regulations 4.26 and 4.36 in order to require that CPOs and CTAs file Disclosure Documents electronically through NFA's electronic Disclosure Document filing system (Proposing Release).<sup>3</sup> This action was in response to a petition filed by NFA with the Commission (Petition).<sup>4</sup>

In the Petition, under "Supporting Arguments," NFA explained that although it had developed a new Internet-based Disclosure Document electronic filing system "that will be significantly less resource intensive while also streamlining and enhancing the filing process for registrants,"<sup>5</sup> absent an electronic filing requirement these proposed benefits would not be realized. In the Proposing Release, the Commission noted also NFA's representations that the system is designed to be easy and secure; it can be accessed through any public internet site; and CPOs and CTAs will access the system "using the same designated login and password that they currently use for NFA's Online Registration System."<sup>6</sup> The Commission further explained that:

NFA's process for the electronic filing of Disclosure Documents will have two components. One of those components will require CPOs and CTAs to electronically

<sup>2</sup> NFA is a registered futures association pursuant to Section 17 of the Commodity Exchange Act (Act), 7 U.S.C. 21 (2000). The Act also may be accessed through the CFTC's Web site.

The Commission previously authorized NFA to conduct reviews of Disclosure Documents filed by CPOs and CTAs pursuant to Regulations 4.26(d) and 4.36(d). See 62 FR 52088 (Oct. 6, 1997).

<sup>3</sup> 73 FR 71968. The Proposing Release may be accessed through the CFTC's Web site, at <http://www.cftc.gov/stellent/groups/public/@lrfederalregister/documents/file/e8-28177a.pdf>.

<sup>4</sup> NFA filed the Petition with the Commission on July 21, 2008.

The Commission previously authorized NFA to accept notices of exemptions or exclusions claimed under Part 4 and required that these notices be filed electronically. See 62 FR 52088 and 72 FR 1658 (Jan. 16, 2007), respectively.

<sup>5</sup> 73 FR at 71968.

<sup>6</sup> *Id.*

submit their Disclosure Documents, as well as any amendments and supplements thereto. The other of these components will require CPOs and CTAs to enter from their Disclosure Documents certain key information on their operations and activities into a standardized form accessed through NFA's Web site.<sup>7</sup>

In light of the foregoing, the Commission proposed to amend Regulations 4.26(d) and 4.36(d) to require that any documents required to be filed thereunder be filed electronically with NFA, pursuant to NFA's electronic filing procedures. The Commission emphasized, however, that the proposed amendments, if adopted, would not impact the delivery of Disclosure Documents to prospective pool participants and clients, which CPOs and CTAs could continue to provide through hardcopy distribution via postal mail or electronically if the intended recipient consented thereto.<sup>8</sup>

## II. Final Action

### A. Responses to the Comments

The Commission received one comment letter, from a committee of a bar association whose members consist of attorneys who represent CPOs and CTAs (Committee). The Committee expressed concern that neither the Proposing Release nor the Petition contained detail on the information that would be required to be filed concurrent with the filing of the Disclosure Document or the uses to which that information would be put. In response, the Commission notes that the Petition states "the filing process includes a series of questions that will assist in identifying the type of filing as well as provide important background information to assist NFA staff with the analysis of the document itself"—which, the Commission believes, will be in furtherance of NFA's compliance and enforcement programs. Moreover, as the Commission previously stated in the Proposing Release, CPOs and CTAs will be entering information directly from their Disclosure Documents.<sup>9</sup> Further,

<sup>7</sup> The Commission noted that, among other things, this key information concerns identification of contact persons, relationships with futures commission merchants or introducing brokers, and the past performance history and related data for the offered pool or trading program. 73 FR at 71969 n. 6.

<sup>8</sup> 73 FR at 71969. See Regulations 4.21(b) for CPOs and 4.31(b) for CTAs.

<sup>9</sup> 73 FR 71969.

In anticipation of the Commission's action today, on January 22, 2009, NFA presented a web seminar on the electronic Disclosure Document filing system—which seminar is now available for "on demand" viewing on NFA's Web site, [www.nfa.futures.org](http://www.nfa.futures.org). Page 7 on the "on demand" document confirms the Commission's previous statement with the text that:

<sup>1</sup> 17 CFR Part 4 (2008). The Commission's regulations can be accessed through the CFTC's Web site, [www.cftc.gov](http://www.cftc.gov).

the Commission has been advised that NFA staff spoke with NFA's CPO/CTA Advisory Committee in advance of the filing of the Petition, and the Advisory Committee was supportive of the electronic filing system for CPO and CTA Disclosure Documents.

In light of the foregoing, the Commission has determined to adopt the amendments to Regulations 4.26(d) and 4.36(d) as proposed.

#### B. Other Action

Also in response to the Petition, and in the absence of any comments, the Commission has added the word "each" before the words "trading program" in paragraph (d)(1) of Regulation 4.36 to make that paragraph read parallel to the phrase "each trading program" in paragraph (d)(2) of Regulation 4.36.<sup>10</sup>

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>11</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>12</sup> With respect to CPOs, the Commission previously has determined that a registered CPO is not a small entity for the purpose of the RFA.<sup>13</sup> As for CTAs, the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the particular rule.<sup>14</sup> The Commission believes that the Amendments will not place any significant economic burdens, whether new or additional, on CPOs and CTAs who will be affected by them. This is because while the Amendments will require these CPOs and CTAs to have access to and a certain degree of technical knowledge to file Disclosure Documents electronically and to enter the required information, they will access the system using the same designated login and password that they currently use for registration purposes and they will be entering the

Before you start, you should have a copy of the disclosure document you plan to file available since the system will require you to enter certain information (e.g., performance data, business relationships) directly from the document you are filing.

<sup>10</sup> See 73 FR 71968 n. 3.

<sup>11</sup> 5 U.S.C. 601 *et seq.*

<sup>12</sup> See 47 FR 18618 (Apr. 30, 1982).

<sup>13</sup> *Id.* at 18619.

<sup>14</sup> *Id.* at 18620.

information directly from their Disclosure Documents. The Commission did not receive any comments relative to its analysis of the RFA in the Proposing Release.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)<sup>15</sup> imposes certain requirements on federal agencies (including the Commission) in conducting or sponsoring any collection of information as defined by the PRA. The Amendments change the manner in which CPOs and CTAs file Disclosure Documents with NFA; they do not affect the substance or frequency of those filings. The Amendments do, however, authorize the separate collection from CPOs and CTAs of certain information from the Disclosure Documents CPOs and CTAs must now file electronically. Accordingly, pursuant to the PRA, the Commission submitted a copy of the PRA section of the Proposing Release to the Office of Management and Budget (OMB) for its review.<sup>16</sup>

The Commission received one comment on its analysis of the PRA in the Proposing Release, from the Committee. For the reasons provided in the Proposing Release and above in this release, the Commission continues to believe that the Amendments change the manner, but not the substance or frequency, of the filing of Disclosure Documents by CPOs and CTAs.

#### C. Cost-Benefit Analysis

Section 15(a) of the Act<sup>17</sup> requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern, enumerated below. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to

<sup>15</sup> 44 U.S.C. 3501 *et seq.*

<sup>16</sup> See 73 FR 71969 for the PRA section of the Proposing Release.

<sup>17</sup> 5 U.S.C. 19(a).

accomplish any of the purposes of the Act.

The Commission did not receive any comments relative to its cost-benefit analysis in the Proposing Release.

#### List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

■ For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

**Authority:** 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. Revise paragraphs (d)(1) and (2) of § 4.26 to read as follows:

#### § 4.26 Use, amendment and filing of Disclosure Document.

\* \* \* \* \*

(d) \* \* \*

(1) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

■ 3. Revise paragraph (d) of § 4.36 to read as follows:

#### § 4.36 Use, amendment and filing of Disclosure Document.

\* \* \* \* \*

(d)(1) The commodity trading advisor must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the

National Futures Association, the Disclosure Document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; and

(2) The commodity trading advisor must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

Issued in Washington, DC on February 27, 2009 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9-4740 Filed 3-4-09; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9441]

RIN 1545-BI46

#### **Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD9441) that were published in the **Federal Register** on Monday, January 5, 2009 providing further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations.

**DATES:** This correction is effective March 5, 2009, and is applicable on January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kenneth P. Christman, (202) 435-5265 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final and temporary regulations that are the subject of this document are under sections 367 and 482 of the Internal Revenue Code.

### Need for Correction

As published, final and temporary regulations (TD 9441), published Monday, January 5, 2009 (74 FR 340), contains errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

#### **PART 1—[CORRECTED]**

Accordingly, the publication of the final and temporary regulations (TD 9441), which was the subject of FR Doc. E8-30715, is corrected as follows:

1. On page 346, column 2, in the preamble, under the paragraph heading “4. Acquisition Price and Market Capitalization Methods—Temp. Treas. Reg. § 1.482-7T(g)(5) and (6), third paragraph of the column, line 17, the language “PCT Payor’s, nonroutine contributions” is corrected to read “PCT Payee’s, nonroutine contributions”.

2. On page 347, column 1, in the preamble, the language of the paragraph heading “2. Contingent Payments—Temp. Treas. Reg. § 1.482-7T(h)(2)(iv) and (v)” is corrected to read “2. Contingent Payments—Temp. Treas. Reg. § 1.482-7T(h)(2)(iii) and (iv)”.

3. On page 348, column 2, in the preamble, under the paragraph heading “Special Analyses”, last paragraph of the column, line 13, the language “preamble to the cross-reference notice of” is corrected to read “preamble to the cross-referenced notice of”.

4. On page 348, column 3, in the preamble, under the paragraph heading “Drafting Information”, second paragraph of the column, line 2, the language “proposed regulations is Kenneth P.” is corrected to read “temporary regulations is Kenneth P.”.

**LaNita Van Dyke,**

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

[FR Doc. E9-4656 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9441]

RIN 1545-BI46

#### **Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD9441) that were published in the **Federal Register** on Monday, January 5, 2009 (74 FR 340) providing further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations.

**DATES:** This correction is effective March 5, 2009, and is applicable on January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kenneth P. Christman, (202) 435-5265 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final and temporary regulations that are the subject of this document are under sections 367 and 482 of the Internal Revenue Code.

### Need for Correction

As published, final and temporary regulations (TD 9441) contains errors that may prove to be misleading and are in need of clarification.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Correction of Publication

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

#### **PART 1—INCOME TAXES**

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

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

■ **Par. 2.** Section 1.482-0T is amended by revising the entries of § 1.482-2T(f)(2) and § 1.482-7T (e), (g)(2)(ix)(D)(2), (g)(4)(i)(D), and (h)(3)(vi)(B) as follows:

**§ 1.482-0T Outline of regulations under section 482 (temporary).**

\* \* \* \* \*

**§ 1.482-2T Determination of taxable income in specific situations (temporary).**

\* \* \* \* \*

(f) \* \* \*

(2) Election to apply paragraph (b) to earlier taxable years.

\* \* \* \* \*

**§ 1.482-7T Methods to determine taxable income in connection with a cost sharing arrangement (temporary).**

\* \* \* \* \*

(e) Reasonably anticipated benefits share.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ix) \* \* \*

(D) \* \* \*

(2) One variable input parameter.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(D) Only one controlled participant with nonroutine platform contributions.

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(vi) \* \* \*

(B) Circumstances in which Periodic Trigger deemed not to occur.

\* \* \* \* \*

■ **Par. 3.** Section 1.482-7A is amended by revising the applicable date as follows:

**§ 1.482-7A Sharing of costs.**

Regulations applicable on or before January 4, 2009.

\* \* \* \* \*

■ **Par. 4.** Section 1.482-7T is amended as follows:

■ 1. Paragraph (b)(5)(iii) *Example 4.* (i) is revised.

■ 2. The fifth sentence of paragraph (b)(5)(iii) *Example 4.* (iii) is revised.

■ 3. The first two sentences of paragraph (c)(3) are revised.

■ 4. The last sentence of paragraph (g)(4)(i)(E) is revised.

■ 5. The second sentence of paragraph (g)(4)(i)(F)(1) is revised.

■ 6. The first sentence of paragraph (g)(4)(vi) is revised.

■ 7. The first sentence of paragraph (g)(7)(v) *Example 1.* (i) is revised.

■ 8. The seventh sentence of paragraph (g)(7)(v) *Example 1.* (ii) is revised.

■ 9. The last sentence of paragraph (g)(7)(v) *Example 1.* (iii) is revised.

■ 10. The last sentence of paragraph (g)(7)(v) *Example 1.* (iv) is revised.

■ 11. The last sentence of paragraph (g)(7)(v) *Example 2.* (iii) is revised.

■ 12. The second, fourth and last sentences of paragraph (g)(7)(v) *Example 2.* (iv) are revised.

■ 13. The first sentence of paragraph (k)(1)(iv)(B) *Example 1.* is revised.

■ 14. The first sentence of paragraph (k)(1)(iv)(B) *Example 2.* is revised.

■ 15. Paragraph (k)(1)(iv)(B) *Example 2.* (i) is revised.

■ 16. The first sentence of paragraph (k)(3)(ii) is revised.

■ 17. Paragraph (k)(4)(i) is revised.

■ 18. Paragraph (m)(2)(viii) is revised.

**§ 1.482-7T Methods to determine taxable income in connection with a cost sharing arrangement (temporary).**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(iii) \* \* \*

*Example 4.* \* \* \*

(i) The facts are the same as in *Example 1* except that P does not own proprietary software and P and S use a method for determining the arm's length amount of the PCT Payment for the P-Cap patent rights different from the method used in *Example 1.*

\* \* \* \* \*

(iii) \* \* \* See § 1.482-4(c)(4). \* \* \*

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \* For purposes of § 1.482-1(b)(2)(ii) and paragraph (a)(2) of this section, a PCT must be identified by the controlled participants as a particular type of transaction (for example, a license for royalty payments). See paragraph (k)(2)(ii)(H) of this section.

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(i) \* \* \*

(E) \* \* \* For converting to another form of payment, see generally § 1.482-7T(h) (Form of payment rules).

(F) \* \* \*

(1) \* \* \* See, for example, § 1.482-7T(g)(2)(v)(B)(1) (Discount rate variation between realistic alternatives). \* \* \*

\* \* \* \* \*

(vi) \* \* \* For purposes of this paragraph (g)(4), any routine contributions that are platform or operating contributions, the valuation and PCT Payments for which are determined and made independently of the income method, are treated similarly to cost contributions and operating cost contributions, respectively. \* \* \*

\* \* \* \* \*

(7) \* \* \*

(v) \* \* \*

*Example 1.* \* \* \*

(i) USP, a U.S. electronic data storage company, has partially developed technology for a type of extremely small compact storage devices (nanodisks) which are expected to provide a significant increase in data storage capacity in various types of portable devices such as cell phones, MP3 players, laptop computers and digital cameras. \* \* \*

(ii) \* \* \* FS undertakes routine distribution activities in its markets that constitute routine contributions to the relevant business activity of exploiting nanodisk technologies. \* \* \*

(iii) \* \* \* Therefore, the present value of the nonroutine residual divisional profit is \$1.336 billion.

(iv) \* \* \* Therefore, FS's PCT payments should have an expected present value equal to \$802 million (.6 × \$1.336 billion).

*Example 2.* \* \* \*

(iii) \* \* \* Therefore, the present value of the nonroutine residual divisional profit in USP's territory is \$39,243X and in CFC's territory is \$19,622X (for simplicity of calculation in this example, all financial flows are assumed to occur at the beginning of each period).

(iv) \* \* \* Consequently, the present value of the arm's length amount of the PCT payments that USP should pay to FS for FS's platform contribution is \$10,007X (.255 × \$39,243X). \* \* \* Consequently, the present value of the arm's length amount of the PCT payments that FS should pay to USP for USP's platform contribution is \$12,362 (.63 × \$19,622X). Therefore, FS is required to make a net payment to USP with a present value of \$2,355X (\$12,362X - \$10,007X).

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(B) \* \* \*

*Example 1.* The contractual provisions recorded upon formation of an arrangement that purports to be a CSA provide that PCT payments with respect to a particular platform contribution will consist of payments contingent on sales. \* \* \*

*Example 2.* An arrangement that purports to be a CSA provides that PCT payments with respect to a particular platform contribution shall be contingent payments equal to 10% of sales of products that incorporate cost shared intangibles. \* \* \*

(i) The contingent payment terms with respect to the platform contribution do not have economic substance because the controlled participants did not act in accordance with their upfront risk allocation; or

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \* For purposes of this section, the controlled participants may not rely solely upon financial accounting to establish satisfaction of the accounting requirements of this paragraph (k)(3).

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \* Each controlled participant must file with the Internal Revenue Service, in the manner described in this paragraph (k)(4), a "Statement of Controlled Participant to § 1.482-7T Cost Sharing Arrangement" (CSA

Statement) that complies with the requirements of this paragraph (k)(4).

\* \* \* \* \*

(m) \* \* \*

(2) \* \* \*

(viii) Paragraph (k)(4)(iii)(A) of this section shall be construed as requiring a CSA Statement with respect to the revised written contractual agreement

described in paragraph (m)(2)(vi) of this section no later than September 2, 2009.

\* \* \* \* \*

**LaNita Van Dyke,**

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

[FR Doc. E9-4686 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

# Proposed Rules

Federal Register

Vol. 74, No. 42

Thursday, March 5, 2009

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

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

RIN 3133-AD60

#### Operating Fees

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** NCUA proposes to amend its rule on the assessment of the federal credit union (FCU) operating fee to exclude investments made under the Credit Union System Investment Program (CU SIP) and the Credit Union Homeowners Affordability Relief Program (CU HARP) from the calculation of total assets; total assets is the basis on which the operating fee is currently calculated. The Board believes this amendment will remove a disincentive for some FCUs from participating in the CU SIP or the CU HARP.

**DATES:** Comments must be received on or before May 4, 2009.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web Site:* [http://www.ncua.gov/news/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/news/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- *E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Notice of Proposed Rulemaking (Operating Fee)” in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

*Public inspection:* All public comments are available on the agency’s Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as

submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 1755 of the Federal Credit Union Act (the Act) requires FCUs to pay an annual operating fee to NCUA. 12 U.S.C. 1755(a). This section of the Act provides the NCUA Board (the Board) with broad discretion in deciding how the amount of the operating fee is determined. Specifically, this section states:

The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this Act and to the ability of Federal credit unions to pay the fee.

12 U.S.C. 1755(b).

Currently, § 701.6 sets out the basis on which NCUA assesses the operating fee. Briefly summarized, this section provides that FCUs must pay NCUA an annual operating fee based on the credit union’s total assets. 12 CFR 701.6(a). NCUA calculates an FCU’s operating fee by multiplying the dollar amount of the total assets by a percentage set by the Board after considering the expenses of NCUA and the ability of FCUs to pay the fee. The term “total assets” generally includes all assets created on an FCU’s books related to investments made by an FCU that are currently outstanding as of the close of the previous fiscal year. Based on this calculation, an increase in the dollar amount of investments will increase total assets and, thereby, may increase an FCU’s operating fee. The Board recognizes that an FCU making investments under the CU SIP or the CU HARP may be subject to a higher operating fee and this may act as a disincentive for FCU participation in the programs.

##### B. CU SIP and CU HARP

On December 9, 2008, after receiving concurrences from the Federal Reserve Board and the Secretary of the Treasury, the NCUA Board announced two, new initiatives for Central Liquidity Facility (CLF) extensions of credit to credit unions for system liquidity needs. The two initiatives were the CU SIP and the CU HARP.

Under the CU SIP, participating credit unions can borrow from the CLF and invest the proceeds in participating corporate credit unions. Specifically, the CLF will make a secured, one-year advance to the credit union, which it must, in turn, concurrently invest in a fixed-rate, matched term, guaranteed CU SIP Note issued by a participating corporate credit union. As of February 10, 2009, the CLF has dispersed over seven billion dollars under the CU SIP.

The CU HARP is a two-year, \$2 billion program intended to assist homeowners who are facing delinquency, default, or foreclosure on their mortgages, especially in the face of diminished home prices. Under the CU HARP, participating creditworthy credit unions can borrow from the CLF, and receive as much as an additional 100-basis point spread over the cost of borrowing if they modify at-risk mortgages, primarily by lowering interest rates and corresponding monthly payments. Under the CU HARP, the CLF makes a secured, one year advance to the credit union, which is renewable for a term of one year. The credit union must, in turn, concurrently invest the proceeds in a two-year, guaranteed CU HARP Note issued by a participating corporate credit union.

The Board recognizes the CU SIP and the CU HARP are valuable tools to infuse liquidity into the corporate credit union system and support the overall national economic interest. The Board, however, is concerned that requiring FCU’s to include CU SIP and CU HARP investments in their total assets, for purposes of calculating their operating fees, may deter participation in the programs. The Board, therefore, is proposing to amend § 701.6 to address the potential disincentive FCUs may face when deciding to participate in the CU SIP and CU HARP.

##### C. Proposed Amendment

The proposed rule would amend § 701.6 by excluding investments made



under the CU SIP and the CU HARP from an FCU's total assets for purposes of calculating its operating fee. Specifically, the Board is excluding, from the calculation of total assets, the asset that is created on the books of a natural person federal credit union when it makes a CU SIP or CU HARP related investment in a corporate credit union. Under this proposed rule, participating FCUs would continue to calculate their total assets in the same manner, except they would not include the dollar amount of any outstanding CU SIP or CU HARP investments in the calculation. This amendment would insure an increase in operating fees would not deter FCUs from participating in the programs. Because the operating fee is based on an FCU's total assets as of the close of the previous fiscal year and funding for the CU SIP and CU HARP took place after January 1, 2009, the amendments made in this rule will not affect the computation of the operating fee until 2010.

### Regulatory Procedures

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This proposed rule revises the calculation of total assets for purposes of the assessment of the FCU operating fee and would exclude investments made under the CU SIP and the CU HARP from the calculation. The operating fee is calculated as a percentage of total assets and, as such, the calculation already is geared to impose a lesser fee on smaller credit unions. In addition, the operating fee schedule has historically imposed no operating fee on FCUs with assets up to \$500,000 and a flat fee of \$100 for FCUs of up to \$750,000 in assets. The benefit of the proposed amendment would apply equally to small credit unions, to the extent they participate in the CU SIP or the CU HARP, and would not have a significant effect on their operating fees. The proposed rule, therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

#### *Paperwork Reduction Act*

NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

#### List of Subjects in 12 CFR Part 701

Credit unions, Low income, Nonmember deposits, Secondary capital, Shares.

By the National Credit Union Administration Board on February 26, 2009.

**Mary Rupp,**

*Secretary of the Board.*

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 701 as set forth below:

#### **PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. In § 701.6, add a new sentence to the end of paragraph (a) to read as follows:

#### **§ 701.6 Fees paid by Federal credit unions.**

(a) \* \* \* The term total assets does not include the assets created on the books of a natural person federal credit

union by investments made in a corporate credit union under the Credit Union System Investment Program or the Credit Union Homeowners Affordability Relief Program.

\* \* \* \* \*

[FR Doc. E9-4575 Filed 3-4-09; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

#### RIN 0648-AX34

### Changes to the Florida Keys National Marine Sanctuary Regulations; Technical Corrections and Minor Substantive Changes

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Correction; Extend public comment period.

**SUMMARY:** On December 19, 2008, NOAA published a proposed rule in the *Federal Register* that makes technical corrections and minor modifications to the Florida Keys National Marine Sanctuary (FKNMS) regulations. The preamble of that document contained an inaccurate reference to U.S. Coast Guard regulations, which was a basis for one of the proposed modifications. This document eliminates that reference and clarifies the rationale for making this regulation change. The ONMS is preparing an environmental assessment pursuant to the National Environmental Policy Act.

**DATES:** The public comment period on the proposed rule published at 73 FR 77557, December 19, 2008, is reopened. Comments will be accepted through March 26, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Submit electronic comments via the Federal e-Rulemaking Portal;
- *Mail:* David A. Score, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.
- *Instructions:* All comments received are a part of the public record and will be generally posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for

example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** David A. Score, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.

**SUPPLEMENTARY INFORMATION:**

**Need for Correction**

In the preamble of the proposed rule, NOAA incorrectly stated that the U.S. Coast Guard regulation Rule 27e specified a minimum distance of 100 yards between vessels and “divers down” flags. In fact, only the applicable Florida Statute specifies the 100-yard minimum distance requirement (Section 327.331 FS). In order to be consistent with the regulations issued by the State of Florida and consistent in both state and federal waters of the sanctuary, NOAA proposes to change our regulations from “100 feet” in 922.163 (a)(5)(iii)(C) to “100 yards.” Requiring a uniform minimum distance in both state and federal waters simplifies the sanctuary regulations, and therefore improves compliance for sanctuary users and enforcement of a single regulation. The regulation allows both diving and vessel operations to occur in relatively the same area without conflict. A consistent regulation also allows for better public education programs. NOAA is preparing an environmental assessment pursuant to the National Environmental Policy Act to analyze the impacts associated with this modification to the Florida Keys National Marine Sanctuary regulations.

**Request for Comments**

NOAA reopens the public comment period on the proposed rule to make technical corrections and amendments to the FKNMS regulations.

**Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries.*

[FR Doc. E9-4569 Filed 3-4-09; 8:45 am]

**BILLING CODE 3510-22-M**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-143686-07]

RIN 1545-BH35

**The Allocation of Consideration and Allocation and Recovery of Basis in Transactions Involving Corporate Stock or Securities; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking (REG-143686-07) that was published in the **Federal Register** on Wednesday, January 21, 2009 (74 FR 3509) providing guidance regarding the recovery of stock basis in distributions under section 301 and transactions that are treated as dividends to which section 301 applies, as well as guidance regarding the determination of gain and the basis of stock or securities received in exchange for, or with respect to, stock or securities in certain transactions. The proposed regulations affect shareholders and security holders of corporations. These proposed regulations are necessary to provide such shareholders and security holders with guidance regarding the allocation and recovery of basis on distributions of property.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations under sections 301, 302, and 304, Theresa Kolish, (202) 622-7530; concerning the proposed regulations under sections 351, 354, 355, 356, 358, 368, 1001, and 1016, Rebecca O. Burch, (202) 622-7550; concerning the proposed regulations under section 861, Jeffrey L. Parry, (202) 622-4476 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The correction notice that is the subject of this document is under sections 301, 302, 304, 351, 354, 355, 356, 358, 368, 861, 1001, 1016, and 1374 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking (REG-143686-07) contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking (REG-

143686-07), which was the subject of FR Doc. E9-1100, is corrected as follows:

1. On page 3509, column 2, in the preamble, under the caption **SUMMARY**, line 3, the language “301, 302, 304, 351, 354, 356, 358, 368,” is corrected to read “301, 302, 304, 351, 354, 355, 356, 358, 368,”.

2. On page 3509, column 3, in the preamble, under the caption **FOR FURTHER INFORMATION CONTACT**, line 5, the language “under sections 351, 354, 356, 358, 368,” is corrected to read “under sections 351, 354, 355, 356, 358, 368,”.

3. On page 3510, column 1, in the preamble, under the paragraph heading “Explanation of Provisions”, second paragraph, line 6, the language “lead to the possibility of variant” is corrected to read “led to the possibility of variant”.

4. On page 3510, column 1, in the preamble, under the paragraph heading “Explanation of Provisions”, second paragraph, line 5 from the bottom of the paragraph, the language “was needed reconsidered. See REG-” is corrected to read “needed reconsideration. See REG-”.

5. On page 3510, column 2, in the preamble, under the paragraph heading “Explanation of Provisions”, second paragraph of the column, line 2, the language “that a share of stock is the basic unit of” is corrected to read “that a share of stock is a basic unit of”.

6. On page 3511, column 2, in the preamble, under the paragraph heading “C. Dividend Equivalent Reorganization Exchanges”, first paragraph of the column, line 7 from the bottom of the paragraph, the language “of stock solely for nonqualifying” is corrected to read “of stock solely for qualifying”.

**§ 1.301-2 [Corrected]**

7. On page 3513, column 3, § 1.301-2(a) *Example*(i), last line of the column, the language “\$25 (Block 1) and 75 were acquired on Date” is corrected to read “\$25 (block 1) and 75 were acquired on Date”.

8. On page 3514, column 1, § 1.301-2(a) *Example*(i), first line of the column, the language “2 for \$175 (Block 2). On December 31, when” is corrected to read “2 for \$175 (block 2). On December 31, when”.

**§ 1.302-5 [Corrected]**

9. On page 3514, column 1, § 1.302-5(a)(3)(i), line 4 from the bottom of the column, the language “*treated as loss*. If all the shares of the” is corrected to read “*treated as a loss*. If all the shares of the”.

10. On page 3515, column 1, § 1.302-5(e) *Example 2*(ii), last line, the

language “5(a)(3)(ii).” is corrected to read “5(a)(4).”.

11. On page 3515, column 1, § 1.302–5(e) *Example 3*(ii), line 2 from the bottom of the column, the language “shares of common stock. Therefore, the only” is corrected to read “shares of preferred stock. Therefore, the only”.

12. On page 3515, column 2, § 1.302–5(e) *Example 4*(i), last line, the language “stock of Y.” is corrected to read “stock of Corporation Y.”.

13. On page 3515, column 2, § 1.302–5(e) *Example 4*(ii), line 4, the language “deferred loss on a disposition of the” is corrected to read “deferred loss on the disposition of the”.

#### § 1.304–2 [Corrected]

14. On page 3515, column 3, § 1.304–2(a), the language “*In general*” is corrected to read “*In general—*”.

15. On page 3515, column 3, § 1.304–2(a)(1), lines 1 through 3 from the bottom of the paragraph, the language “302(a) or 303 does not apply. For the amount constituting a dividend in such cases, see § 1.304–6.” is corrected to read “302(a) or 303 does not apply.”.

16. On page 3515, column 3, § 1.304–2(a)(3), line 2 from the bottom of the paragraph, the language “transferors basis in the stock of the” is corrected to read “transferor’s basis in the stock of the”.

17. On page 3516, column 1, § 1.304–2(c), line 2, the language “examples in this section, each of” is corrected to read “examples in this section, each”.

18. On page 3516, column 2, § 1.304–2(c) *Example 3*(i), line 4, the language “common) and then acquired all of the” is corrected to read “common stock) and then acquired all of the”.

19. On page 3516, column 3, § 1.304–2(c) *Example 3*(i), first line of the column, the language “common stock for \$100). Only corporation Y” is corrected to read “common stock for \$100). Only Corporation Y”.

20. On page 3516, column 3, § 1.304–2(c) *Example 3*(ii), lines 4 through 11 from the bottom of the paragraph, the language “other 2 blocks of corporation Y shares. After the redemption transaction, all of Corporation W’s shares in corporation Y, including the deemed shares that are redeemed, are treated as exchanged in a recapitalization described in section 368(a)(1)(E). As a result, corporation W will have 100 shares in corporation Y, 50 shares” is corrected to read “other 2 blocks of Corporation Y shares. After the redemption transaction, all of Corporation W’s shares in Corporation Y, including the deemed shares that are redeemed, are treated as exchanged in a

recapitalization described in section 368(a)(1)(E). As a result, Corporation W will have 100 shares in Corporation Y, 50 shares”.

#### § 1.351–2 [Corrected]

21. On page 3517, column 2, § 1.351–2(b) *Example.*, line 11, the language “to C. Gain, but not loss, is recognized by D.” is corrected to read “by C. Gain, but not loss, is recognized by D.”.

22. On page 3517, column 2, § 1.351–2(b) *Example.*, line 9 from the bottom of the paragraph, the language “of \$100 (B) \$30 cash and 30 shares of stock” is corrected to read “of \$100; (B) \$30 cash and 30 shares of stock”.

#### § 1.355–1 [Corrected]

23. On page 3518, column 2, § 1.355–1(e)(2), line 13, the language “section 356 or both sections 355 and 356” is corrected to read “section 356, or both sections 355 and 356”.

#### § 1.356–1 [Corrected]

24. On page 3518, column 3, § 1.356–1(d) *Example 3*(i), lines 3 through 7, the language “on Date 1 for \$3 each (Block 1) and 10 shares of stock of Corporation X on Date 2 for \$9 each (Block 2). On Date 3, Corporation Y acquires the assets of Corporation X in a reorganization under section 368(a)(1)(A).” is corrected to read “on Date 1 for \$3 each (block 1) and 10 shares of stock of Corporation X on Date 2 for \$9 each (block 2). On Date 3, Corporation Y acquires the assets of Corporation X in a reorganization described in section 368(a)(1)(A).”.

25. On page 3518, column 3, § 1.356–1(d) *Example 3*(ii), lines 14 through 18, the language “exchange of the Block 1 shares of Corporation X stock, \$50 of which is recognized under section 356 and paragraph (a) of this section, and J realizes a gain of \$10 on the exchange of the Block 2 shares of Corporation X stock,” is corrected to read “exchange of the block 1 shares of Corporation X stock, \$50 of which is recognized under section 356 and paragraph (a) of this section, and J realizes a gain of \$10 on the exchange of the block 2 shares of Corporation X stock,”.

26. On page 3518, column 3, § 1.356–1(d) *Example 4*(i), lines 5 through 7, the language “exchange for J’s Block 1 shares of stock of Corporation X and \$100 of cash in exchange for J’s Block 2 shares of stock of corporation X.” is corrected to read “exchange for J’s block 1 shares of stock of Corporation X and \$100 of cash in exchange for J’s block 2 shares of stock of Corporation X.”.

27. On page 3518, column 3, § 1.356–1(d) *Example 4*(ii), lines 4 through 12,

the language “Corporation Y in exchange for J’s Block 1 shares of stock of Corporation X and \$100 of cash in exchange for J’s Block 2 shares of stock of Corporation X and such terms are economically reasonable, such terms control. J realizes a gain of \$70 on the exchange of the Block 1 shares of stock, none of which is recognized under section 354. J realizes a gain of \$10 on the exchange of the Block 2” is corrected to read “Corporation Y in exchange for J’s block 1 shares of stock of Corporation X and \$100 of cash in exchange for J’s block 2 shares of stock of Corporation X and such terms are economically reasonable, such terms control. J realizes a gain of \$70 on the exchange of the block 1 shares of stock, none of which is recognized under section 354. J realizes a gain of \$10 on the exchange of the block 2”.

#### § 1.358–1 [Corrected]

28. On page 3519, column 2, § 1.358–1(d) *Example.*, line 11, the language “the distribution of a dividend. A’s ratable” is corrected to read “a distribution of a dividend. A’s ratable”.

#### § 1.358–2 [Corrected]

29. On page 3519, column 3, § 1.358–2(a)(1), line 4, the language “distribution to which section 354, 355” is corrected to read “distribution to which section 354, 355,”.

30. On page 3519, column 3, § 1.358–2(b), line 6, the language “section 354, 355 or 356, the following” is corrected to read “section 354, 355, or 356, the following”.

31. On page 3521, column 3, § 1.358–2(g)(2), line 4, the language “section 351 applies stock or stock and” is corrected to read “section 351 applies, stock or stock and”.

32. On page 3522, column 1, § 1.358–2(i) *Example 1*(i), line 6, the language “of Corporation X in a reorganization under” is corrected to read “of Corporation X in a reorganization described in”.

33. On page 3522, column 1, § 1.358–2(i) *Example 1*(ii), line 2 from the bottom of the paragraph, the language “of corporation Y stock have a basis of \$1.50” is corrected to read “of Corporation Y stock have a basis of \$1.50”.

34. On page 3522, column 1, § 1.358–2(i) *Example 2*(i), line 5 from the bottom of the column, the language “shares of corporation Y stock. Again, J is not” is corrected to read “shares of Corporation Y stock. Again, J is not”.

35. On page 3522, column 2, § 1.358–2(i) *Example 3*(i), line 10, the language “a reorganization under section 368(a)(1)(E).” is corrected to read “a

reorganization described in section 368(a)(1)(E).”

36. On page 3522, column 3, § 1.358-2(i) *Example 5*(ii), line 10, the language “is not dividend equivalent, such terms” is corrected to read “does not have the effect of a dividend, such terms”.

37. On page 3523, column 1, § 1.358-2(i) *Example 6*(i), line 8, the language “reorganization under section 368(a)(1)(A).” is corrected to read “reorganization described in section 368(a)(1)(A).”.

38. On page 3523, column 1, § 1.358-2(i) *Example 7*(i), line 6, the language “of Corporation X in a reorganization under” is corrected to read “of Corporation X in a reorganization described in”.

39. On page 3523, column 2, § 1.358-2(i) *Example 8*(ii), line 5, the language “liability of J, the rules of paragraph (g) this” is corrected to read “liability of J, the rules of paragraph (g) of this”.

40. On page 3523, column 2, § 1.358-2(i) *Example 9*(i), lines 9 through 11, the language “Corporation X in a reorganization under section 368(a)(1)(D). Pursuant to the terms of the plan of reorganization, J surrenders J’s” is corrected to read “Corporation X in a reorganization described in section 368(a)(1)(D). Pursuant to the terms of the plan of reorganization, J surrenders”.

41. On page 3523, column 2, § 1.358-2(i) *Example 9*(ii), line 5 from the bottom of the column, the language “recapitalized in a reorganization under” is corrected to read “recapitalized in a reorganization described in”.

42. On page 3523, column 3, § 1.358-2(i) *Example 10*(i), lines 12 thru 14, the language “Corporation X in a reorganization under section 368(a)(1)(D). Pursuant to the terms of the plan of reorganization, J surrenders J’s” is corrected to read “Corporation X in a reorganization described in section 368(a)(1)(D). Pursuant to the terms of the plan of reorganization, J surrenders”.

43. On page 3523, column 3, § 1.358-2(i) *Example 10*(ii), line 10 from the bottom of the column, the language “be recapitalized in a reorganization under” is corrected to read “be recapitalized in a reorganization described in”.

44. On page 3524, column 2, § 1.358-2(i) *Example 13*(i), line 9, the language “reorganization under section 368(a)(1)(A).” is corrected to read “reorganization described in section 368(a)(1)(A).”.

45. On page 3524, column 3, § 1.358-2(i) *Example 14*(i), line 9, the language “reorganization under section

368(a)(1)(A).” is corrected to read “reorganization described in section 368(a)(1)(A).”.

46. On page 3525, column 1, § 1.358-2(i) *Example 15*(ii), line 3 from the bottom of the paragraph, the language “each has a basis of \$6 and is treated as having” is corrected to read “each has a basis of \$5 and is treated as having”.

47. On page 3525, column 1, § 1.358-2(i) *Example 16*(i), line 4, the language “Shares of Corporation Y in an exchange to” is corrected to read “Shares of Corporation Y stock in an exchange to”.

48. On page 3525, column 1, § 1.358-2(i) *Example 17*(i), line 2, the language “*Facts*. The facts are the same as Example 1,” is corrected to read “*Facts*. The facts are the same as Example 16.”.

#### § 1.358-6 [Corrected]

49. On page 3525, column 2, § 1.358-6(f)(3), line 4 from the bottom of the paragraph, the language “1 revised April 1, 2008 for the year” is corrected to read “1 revised April 1 for the year”.

#### § 1.861-12 [Corrected]

50. On page 3525, column 3, § 1.861-12(c)(2)(vi), lines 1 through 3, the language “Adjustments in respect of redeemed stock for taxpayers using the tax book value method. Solely for” is corrected to read “*Adjustments in respect of redeemed stock for taxpayers using the tax book value method*. Solely for”.

51. On page 3525, column 3, § 1.861-12(c)(2)(vi), lines 13 through 15, the language “taken into account under § 1.302-5(a)(3) as of the close of the redeemed shareholder’s taxable year (unrecovered” is corrected to read “taken into account under § 1.302-5 as of the close of the redeemed shareholder’s taxable year (deferred”.

52. On page 3525, column 3, § 1.861-12(c)(2)(vi), line 4 from the bottom of the column, the language “unrecovered loss (and allocated among” is corrected to read “deferred loss (and allocated among”.

#### § 1.1001-6 [Corrected]

53. On page 3526, column 2, § 1.1001-6(c), line 10 from the top of the column, the language “still unliquidated. Solely for purposes of” is corrected to read “still unliquidated investment. Solely for purposes of”.

#### LaNita Van Dyke,

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

[FR Doc. E9-4657 Filed 3-4-09; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-144615-02]

RIN 1545-B147

#### Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG-144615-02) that was published in the **Federal Register** on Monday, January 5, 2009 providing further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. These temporary regulations potentially affect controlled taxpayers within the meaning of section 482 that enter into cost sharing arrangements as defined therein.

**FOR FURTHER INFORMATION CONTACT:** Kenneth P. Christman, (202) 435-5265 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The correction notice that is the subject of this document is under section 482 of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG-144615-02) published January 5, 2009 (74 FR 236), contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG-144615-02), which was the subject of FR Doc. E8-30712, is corrected as follows:

1. On page 236, in the document headings, under the caption **ACTION:**, the language “Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of

public hearing.” is corrected to read “Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.”.

2. On page 236, column 3, in the preamble, under the paragraph heading “Special Analyses”, last line of the column, the language “sharing agreements. Few small entities” is corrected to read “sharing arrangements. Few small entities”.

3. On page 237, column 1, in the preamble, under the paragraph heading “Special Analyses”, first paragraph of the column, line 2, the language “agreements, as defined by these” is corrected to read “arrangements, as defined by these”.

4. On page 237, column 1, in the preamble, under the paragraph heading “Comments and Public Hearing”, third paragraph, line 1, the language “The rules of 26 CFR 601.601(a)(93)” is corrected to read “The rules of 26 CFR 601.601(a)(3)”.

#### **§ 1.482–2 [Corrected]**

5. On page 237, column 3, § 1.482–2(f)(2), the language “Election to apply paragraph (b) of this section to earlier taxable years.” is corrected to read “Election to apply paragraph (b) to earlier taxable years.”.

#### **LaNita Van Dyke,**

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

[FR Doc. E9–4687 Filed 3–4–09; 8:45 am]

BILLING CODE 4830–01–P

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **45 CFR Part 46**

#### **Office for Human Research Protections; Institutional Review Boards**

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

**ACTION:** Advanced notice of proposed rulemaking; request for comments.

**SUMMARY:** The Office for Human Research Protections (OHRP), Office of Public Health and Science is seeking information and comments on whether OHRP should pursue a notice of proposed rulemaking (NPRM) to enable OHRP to hold institutional review boards (IRB) and the institutions or organizations operating the IRBs, hereafter referred to as the IRB organizations (IORG), directly accountable for meeting certain

regulatory requirements of the Department of Health and Human Services (HHS) regulations for the protection of human subjects. OHRP is contemplating this regulatory change to encourage institutions to rely on IRBs that are operated by another institution or organization, when appropriate. Historically, OHRP has only enforced compliance with 45 CFR part 46 through the institutions that were engaged in human subjects research. This has been the case even in circumstances when a regulatory violation was directly related to the responsibilities of an external IRB that was designated on the engaged institution’s assurance of compliance with OHRP. OHRP is considering whether to pursue a regulatory change that would enable the Department to hold IRBs and IORGs directly accountable for compliance with the provisions of 45 CFR part 46 that relate to an IRB’s or IORG’s responsibilities. OHRP believes that such a regulatory change in its enforcement authority may address one of the main disincentives institutions have cited as inhibiting them from exercising the regulatory flexibility that currently permits institutions to implement a variety of cooperative review arrangements and to rely on the review of an IRB operated by another institution or organization. If institutions become more willing to rely on cooperative review arrangements and on review of IRBs operated by other institutions or organizations, OHRP believes that this will reduce administrative burdens such as the time associated with IRB review for multi-site studies, the time devoted by IRB staff and investigators to duplicative IRB review, and the time and personnel costs associated with operating an IRB for those institutions that choose not to establish an internal IRB—without diminishing human subject protections. This request for information and comments stems from interest in this issue from the Secretary’s Advisory Committee on Human Research Protections (SACHRP) and others, as well as two meetings on alternative IRB models that OHRP co-sponsored in November 2005 and November 2006 along with the National Institutes of Health (NIH), the Association of American Medical Colleges (AAMC), and the American Society of Clinical Oncology (ASCO).

**DATES:** Submit written or electronic information and comments by June 3, 2009.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [IRBaccountability@hhs.gov](mailto:IRBaccountability@hhs.gov). Include “IRB Accountability RFI” in the subject line.

- *Fax:* 301–402–2071.

- *Mail/Hand Delivery/Courier [For paper, disk, or CD-ROM submissions]:* Julie Kaneshiro, OHRP, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received within the comment period, including any personal information provided, will be made available to the public upon request.

**FOR FURTHER INFORMATION CONTACT:** Julie Kaneshiro, OHRP, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; 240–453–6900; e-mail [julie.kaneshiro@hhs.gov](mailto:julie.kaneshiro@hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

HHS, through OHRP, regulates research involving human subjects conducted or supported by HHS in regulations codified at 45 CFR part 46. The HHS regulations at 45 CFR part 46 identify requirements that pertain to several different entities, including the IRB and the institution engaged in non-exempt human subjects research. The IRB is an administrative body that takes the form of a board, committee, or group, and is responsible for conducting initial and continuing review of research involving human subjects. The IRB must have authority to approve, require modification in (in order to secure approval), or disapprove all research activities covered by the HHS regulations (45 CFR 46.109(a)). An IRB’s primary purpose in reviewing research is to ensure the protection of the rights and welfare of human research subjects.

##### *Requirements for an Assurance of Compliance*

The HHS regulations for the protection of human subjects require that each institution engaged in non-exempt human subjects research conducted or supported by HHS provide a written assurance satisfactory to the Secretary of Health and Human Services that it will comply with the requirements of the HHS regulations (45 CFR 46.103(a)). OHRP reviews and approves such assurances on behalf of HHS. The Federalwide Assurance (FWA) is now the only type of assurance accepted and approved by OHRP. An FWA commits the entire institution (including institutional officials, IRBs designated in the assurance, research investigators, and all other employees or agents) to compliance with the HHS regulations whenever the institution is engaged in HHS-conducted or

-supported human subjects research. In addition, domestic institutions may voluntarily extend their FWA to cover all human subjects research at their institution regardless of the source of support for the particular research activity.

Among other things, an institution's assurance of compliance must designate all of the IRBs that the institution will rely upon for the review of any research covered by its assurance (45 CFR 46.103(b)(2)). For each designated IRB, a list of IRB members identified by name, earned degrees, representative capacity, experience, and any employment or other relationship with the institution must be submitted to OHRP (45 CFR 46.103(b)(3)). The HHS regulations at 45 CFR part 46 provide an institution with significant flexibility in designating the IRBs that will review research under the institution's FWA. Options available to the institution include:

- Designating on its FWA one or more IRBs that are operated by the institution (sometimes referred to as "local" or "internal" IRBs; hereafter referred to as "internal IRBs"); and
- Designating on its FWA one or more IRBs operated by other institutions or commercial or independent IRBs (hereafter referred to as "external IRBs").

As stated in the Terms of Assurance for the FWA (see <http://www.hhs.gov/ohrp/humansubjects/assurance/filasurt.htm>), for each external IRB designated on an institution's FWA, an IRB Authorization Agreement must be executed:

Any designation under this Assurance of another Institution's IRB or an independent IRB must be documented by a written agreement between the Institution and the IRB organization outlining their relationship and include a commitment that the designated IRB will adhere to the requirements of this Assurance. OHRP's sample IRB Authorization Agreement may be used for such purpose or the two organizations may develop their own agreement. This agreement should be kept on file at both organizations and made available to OHRP upon request.

OHRP provides an example of an IRB Authorization Agreement at <http://www.hhs.gov/ohrp/humansubjects/assurance/iprotsup.rtf>. The agreement may be written to cover one research project, or to cover multiple research projects on a case-by-case basis, or to cover a class of research projects. This agreement will sometimes include a description of which regulatory requirements each party will be responsible for; e.g., reporting unanticipated problems involving risks to subjects or others (45 CFR

46.103(b)(5)) or the maintenance of IRB records (45 CFR 46.115).

#### *Requirements for IRB Registration*

Before an IRB may be designated on an institution's FWA, the IRB must be registered with OHRP. For more information on IRB registration see <http://www.hhs.gov/ohrp/assurances/>.

OHRP has been operating a system of IRB registration since December 2000, which was initiated in response to a 1998 HHS Office of Inspector General recommendation that all IRBs register with the Federal government on a regular basis as part of an effort to develop a more streamlined, coordinated, and probing means of assessing IRB performance and to enhance the Federal government's ability to identify and respond to emerging problems.

The OHRP IRB registration system was designed to collect information required under the HHS human subjects protection regulations at 45 CFR 46.103, as well as additional information that is provided voluntarily by institutions or IRBs regarding the accreditation status of the institution or IRB organization, the total numbers of active research protocols reviewed by the IRB (including protocols supported by other Federal departments or agencies) and the nature of those protocols, and IRB staffing.

On July 6, 2004, OHRP published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) seeking public comment on changes to the current IRB registration system administered by OHRP (69 FR 40584). OHRP proposed to amend the HHS human subjects protection regulations at 45 CFR part 46 by adding an additional subpart, entitled "Registration of Institutional Review Boards." Under the proposed new subpart, for any IRB designated under an FWA that reviews human subjects research conducted or supported by HHS, most of the information, including the information that previously was provided on a voluntary basis, listed on the current OHRP IRB registration form would have to be submitted to OHRP. By requiring such information to be provided for all IRBs being registered, OHRP's IRB registration requirements would become substantially consistent with requirements for IRB registration that were simultaneously proposed by FDA (69 FR 40556).

After taking into consideration the comments received during the public comment period, OHRP and FDA issued separate final IRB registration rules on January 15, 2009, that will become effective on July 14, 2009 (74 FR 2399;

74 FR 2358). OHRP's and FDA's IRB registration rules are compatible and largely consistent with one another. Under these final rules there will be a single registration system, accessible on the OHRP Web site, in which all IRBs that review research conducted or supported by HHS or clinical investigations regulated by FDA will need to be registered.

#### *Enforcement Authority*

Section 289 of the Public Health Service Act authorizes OHRP to, on behalf of HHS, establish a compliance oversight process regarding violations of the rights of human subjects of research conducted or supported by HHS. Pursuant to this authority, OHRP may receive reports of such violations and take appropriate action.

OHRP also derives compliance oversight authority from the previously discussed provisions of the HHS regulations at 45 CFR 46.103(a) and its implementation of the FWA.

Unlike the FDA regulations pertaining to IRBs, which explicitly include compliance oversight provisions at subpart E of 21 CFR part 56, the HHS regulations at 45 CFR part 46 do not include provisions specifically addressing IRB or IORG compliance with the regulatory requirements.

## **II. History of OHRP Compliance Oversight and the Changing Research Environment**

Historically, OHRP (and its predecessor office, the Office for Protection from Research Risks) has only enforced compliance with 45 CFR part 46 through the institutions that were engaged in human subjects research. This has been the case even in circumstances when the regulatory violation was directly related to the responsibilities of an external IRB that was designated on the engaged institution's assurance of compliance with OHRP. Therefore, when OHRP received an allegation or indication of a regulatory violation on the part of an external IRB related to research to which the HHS regulations apply, OHRP has directed its compliance oversight evaluations and enforcement actions to the relevant FWA-holding institutions, not the external IRB or IORG at issue. When the HHS regulations related to IRB review last underwent a substantive revision on June 18, 1991 (56 FR 28003), few institutions were designating external IRBs to review research conducted under their assurances of compliance, in part because single site studies were more common than they are today, and it was more common for HHS-supported

research to be conducted by large academic medical centers that had their own internal IRBs. Therefore, there was no perceived need to hold IRBs or IORGs directly accountable for meeting any of the requirements of the HHS regulations at 45 CFR part 46. However, as HHS support for multi-site studies has increased, and previously non-traditional research settings, such as community hospitals and medical clinics, have become frequent research sites, the research community has looked for ways to make IRB review more effective and efficient.

### III. Current Regulatory Flexibilities for IRB Review Arrangements

The regulations offer institutions significant flexibility to implement a variety of cooperative review arrangements as permitted under 45 CFR 46.114. In addition, this flexibility is facilitated by the ability of institutions to designate external IRBs on their FWAs that will be responsible for the review of one or more research studies in which the institution will be engaged. These regulatory flexibilities are intended to reduce administrative burden without diminishing human subject protections. For example, two or more institutions engaged in the same multi-center research project can designate the same IRB (e.g., an IRB operated by one of the institutions engaged in the project) on their FWAs to review that research project. Similarly, institutions that do not have an internal IRB (for example, because they conduct little human subjects research) may designate an external IRB on their FWAs to review one or more research studies. Another IRB review model permitted under 45 CFR part 46 is for an institution to designate more than one IRB on its FWA to share authority and responsibility for the review of certain research studies. For example, the facilitated review model developed by the National Cancer Institute utilizes a central IRB, as well as review by another IRB—typically an internal IRB operated by the institution engaged in the research—that is responsible for considering issues related to the local context in which the research will be conducted. These regulatory flexibilities under 45 CFR part 46, that permit institutions to implement a variety of IRB review arrangements, are intended to reduce administrative burdens such as the time associated with IRB review for multi-site studies, the time devoted by IRB staff and investigators to duplicative IRB review, and the time and personnel costs associated with operating an IRB

for those institutions that choose not to establish an internal IRB.

Despite the regulatory flexibility to implement a wide range of IRB review arrangements, OHRP has become aware that some institutions remain reluctant to designate external IRBs on their FWAs and/or rely upon cooperative IRB review arrangements.

### IV. OHRP Co-Sponsored Meetings on Alternative IRB Models

OHRP's practice of holding an institution engaged in a human subjects research study accountable for noncompliance on the part of an external IRB that was designated on the institution's FWA and was responsible for reviewing the research was identified as one of the key factors influencing institutions' decisions about this issue by participants in two meetings on alternative IRB models that OHRP co-sponsored in November 2005 and November 2006. OHRP co-sponsored these meetings along with NIH, AAMC, and ASCO, in response to a suggestion made by SACHRP in the fall of 2004 that OHRP further explore issues associated with the use of alternatives to local IRBs. Reports summarizing the findings of these two meetings can be found at <http://www.dhhs.gov/ohrp/sachrp/documents/AltModIRB.pdf> and <http://www.aamc.org/research/irbreview/irbconf06rpt.pdf>. Participants in the 2005 and 2006 meetings included individuals from a variety of perspectives, including IRB chairs, academic investigators, community-based researchers, attorneys, patients, ethicists, industry officials and senior university and medical school research administrators. While other factors were also identified as contributing to institutions' reluctance to adopt alternatives to the internal IRB review model, it is OHRP's understanding from participants in this meeting, as well as others in the community, that concerns related to regulatory liability are a significant consideration. Namely, one of the main factors identified as contributing to institutions' reluctance to rely on an external IRB is OHRP's current practice of enforcing compliance with 45 CFR part 46 through the institutions that were engaged in human subjects research, even in circumstances when the regulatory violation is directly related to the responsibilities of an external IRB. Given this, OHRP believes that expanding its enforcement authority to include IRBs and IORGs directly may make institutions more likely to designate external IRBs on their FWAs and/or enter into cooperative IRB review arrangements.

### V. Possible Administrative Actions for Noncompliance by IRBs or IORGs

If HHS were to implement a regulation that would enable OHRP to hold IRBs and IORGs directly accountable for meeting certain regulatory requirements of 45 CFR part 46, OHRP envisions that it would generally only exercise this regulatory option when the IRB at issue was external to the institution engaged in the human subjects research, and was designated on the institution's FWA to review the research. In circumstances when the IRB at issue was internal to the institution engaged in the human subjects research, OHRP expects that it would continue to enforce compliance with 45 CFR part 46 through the engaged institution.

However, when the possible regulatory noncompliance at issue was the responsibility of an IRB external to the institution engaged in the human subjects research, and the external IRB was designated on the institution's FWA to review the research, OHRP generally would expect to enforce compliance with 45 CFR part 46 directly with the external IRB, and not the FWA-holding institution. OHRP contemplates a number of administrative actions that HHS could take in response to a finding of noncompliance with 45 CFR part 46 by an external IRB designated on an institution's FWA. Depending on the nature and scope of the IRB's or IORG's noncompliance, OHRP could, for example, require that the IRB or IORG implement certain corrective actions, restrict or impose conditions on the IRB's registration with OHRP, or suspend the IRB's registration with OHRP which would prohibit the IRB from being designated on any institution's FWA.

### VI. Identifying Responsibilities of the IRB/IOrg and FWA-Holding Institution

In considering how HHS would implement a regulation that would enable OHRP to hold IRBs and IORGs directly accountable for meeting certain regulatory requirements of 45 CFR part 46, OHRP has begun the process of identifying which entities might be responsible for fulfilling the various regulatory requirements. Some of the regulatory requirements seem to fall uniquely to either the IRB/IOrg or the FWA-holding institution, and others seem to be requirements that could be carried out by either the IRB/IOrg or the FWA-holding institution. OHRP envisions that some form of agreement between the IRB/IOrg and the FWA-holding institution would determine which entity would be responsible for



fulfilling the regulatory requirements that could be carried out by either the IRB/IORG or the FWA-holding institution. In an attempt to facilitate public comment on this request for information regarding IRB

accountability, OHRP has made a preliminary attempt to group the regulatory requirements into the following three categories: (1) Responsibilities that may be unique to IRBs and IORGs; (2) responsibilities that may be unique to institutions engaged in human subjects research; and (3) responsibilities that may be fulfilled by either IRBs/IORGs or institutions engaged in human subjects research.

OHRP considered whether there are any regulatory requirements that are inherently shared by both the IRB/IORG and the FWA-holding institution, but did not identify any requirements that seemed to fall into this category. Section VII of this notice includes a question that specifically seeks public comment on this issue.

The categorization below is in no way intended to be definitive or complete, but rather a basis for public comment.

#### *Responsibilities That May Be Unique to IRBs and IORGs*

- The provisions regarding IRB membership and qualifications necessary to promote complete and adequate review of the human subjects research conducted by the institution for which the IRB was designated on an institution's assurance of compliance with OHRP (§ 46.107).

- The provision that the IRB follow written procedures in the same detail as described in 45 CFR 46.103(b)(4) and to the extent required by 45 CFR 46.103(b)(5) (§ 108(a)).

- The provision that except when an expedited review procedure is used (see § 46.110), the IRB review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting (§ 46.108(b)).

- The provision that an IRB shall review and approve, require modifications in (to secure approval), or disapprove all research activities covered by 45 CFR part 46, for which the IRB was designated on an institution's assurance of compliance with OHRP (§ 46.109(a)).

- The provision that an IRB shall require that information given to subjects as part of informed consent is in accordance with § 46.116. The IRB

may require that information, in addition to that specifically mentioned in § 46.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects (§ 46.109(b)).

- The provision that an IRB shall require documentation of informed consent or may waive documentation in accordance with § 46.117 (§ 46.109(c)).

- The provision that an IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing (§ 46.109(d)).

- The provision that an IRB shall conduct continuing review of research covered by 45 CFR part 46, at intervals appropriate to the degree of risk, but not less than once per year (§ 46.109(e)).

- The provision related to expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research (§ 46.110).

- The provision that identifies the criteria for IRB approval of research (§ 46.111).

- The provisions that permit an IRB to approve a consent procedure which does not include, or which alters some or all of the elements of informed consent set forth in § 46.116, or waive the requirements to obtain informed consent provided the IRB finds and documents that specified criteria have been met (§ 46.116(c) and (d)).

- The provisions that require informed consent to be documented by use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative, unless the IRB finds that specified criteria permitting the waiver of documentation of informed consent have been met (§ 46.117).

#### *Responsibilities That May Be Unique to Institutions Engaged in Human Subjects Research*

- The provision that institutions engaged in HHS-supported human subjects research must submit an FWA to OHRP for approval and comply with the requirements imposed as part of the FWA, including among other things, the designation of one or more IRBs on the institution's FWA that have been registered with OHRP (§ 46.103).

- The requirement that before implementing a change to an IRB-

approved research study, an investigator must obtain IRB approval for the change, unless the change is designed to eliminate an apparent immediate hazard to subjects (§ 46.103(b)(4)).

- The requirement that an investigator must obtain continuing IRB review of ongoing non-exempt human subjects research prior to the expiration date of the current IRB approval (§ 46.103(b)(4)).

- The requirement for the prompt reporting to the IRB of any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with 45 CFR part 46 or the requirements or determinations of the IRB (§ 46.103(b)(5)).

- The requirement that an investigator must obtain IRB review and approval before beginning any non-exempt human subjects research (§ 46.109(a)).

- The provision that the IRB must have authority to approve, require modifications in (to secure approval), or disapprove all research activities for which the IRB was designated on an institution's assurance of compliance with OHRP (§ 46.109(a)).

- The provision that the IRB must have authority to observe or have a third party observe the consent process and the research for all research activities for which the IRB was designated on an institution's assurance of compliance with OHRP (§ 46.109(e)).

- The provision that research covered by 45 CFR part 46 that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, these officials may not approve the research if it has not been approved by an IRB (§ 46.112).

- The provision that the IRB must have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects for all research activities for which the IRB was designated on an institution's assurance of compliance with OHRP (§ 46.113).

- The requirement that except as provided elsewhere in 45 CFR part 46 no investigator may involve a human being as a subject in research covered by 45 CFR part 46 unless the investigator has obtained and documented the legally effective informed consent of the subject or the subject's legally authorized representative (§ 46.116 and § 46.117).

- The requirement that investigators give a copy of the informed consent document to each research subject or



the subject's legally authorized representative, and keep the signed original or a copy of it for their records, unless the IRB finds that specified criteria permitting the waiver of documentation of informed consent have been met (§ 46.117; § 46.115(b)).

*Responsibilities That May Be Fulfilled by Either IRBs/IORGs or Institutions Engaged in Human Subjects Research*

- Determining the applicability of the HHS regulations at 45 CFR part 46 (e.g., the exemptions at 46.101(b)).

- Developing written IRB procedures which the IRB will follow:

- (1) For conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution;

- (2) For determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and

- (3) For ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject (§ 46.103(b)(4)).

- Developing written IRB procedures for ensuring the prompt reporting to the IRB, appropriate institutional officials, and the Department or Agency head of:

- (1) Any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with 45 CFR part 46 or the requirements or determinations of the IRB; and

- (2) Any suspension or termination of IRB approval (§ 46.103(b)(5)).

- Promptly reporting to the appropriate institutional officials and the Department or Agency head:

- (1) Any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with 45 CFR part 46 or the requirements or determinations of the IRB; and

- (2) Any suspension or termination of IRB approval, including a statement of the reasons for the IRB's actions (§ 46.103(b)(5); § 46.113).

- Promptly reporting to the investigator any suspension or termination of approval by the IRB, including a statement of the reasons for the IRB's actions (§ 46.113).

- Fulfilling the documentation and recordkeeping requirements associated with IRB activities (§ 46.115).

## VII. Request for Information and Comments

OHRP is seeking information and comments from the public about whether OHRP should pursue an NPRM to enable OHRP to hold IRBs and IORGs directly accountable for meeting certain regulatory requirements of the HHS regulations for the protection of human subjects at 45 CFR part 46. OHRP specifically seeks information and comments on the following issues; comments should also include a reference to the specific numbered question being addressed:

1. Is there sufficient need for HHS to pursue a regulatory change to enable OHRP to hold IRBs and IORGs directly accountable for meeting certain requirements of the HHS regulations at 45 CFR part 46? Please explain your response.

2. Would the proposed regulatory change reduce concerns about regulatory liability as a barrier to the use of external IRBs and contribute to an increase in collaborative IRB review arrangements?

3. Are there other approaches and strategies that would decrease concern about regulatory liability and increase collaborative IRB review arrangements?

4. If HHS were to issue a regulation that would enable OHRP to hold IRBs and IORGs directly accountable for meeting certain requirements of the HHS regulations at 45 CFR part 46, would this have the unintended effect of making institutions or IORGs less willing to have their IRBs designated as external IRBs on other institutions' FWAs? If so, would there still be sufficient benefit for HHS to pursue a regulatory change to enable OHRP to hold IRBs and IORGs directly accountable for meeting certain requirements of the HHS regulations? Are there other possible unintended effects of the proposed regulatory change? Please explain your responses.

5. If HHS pursues a regulatory change to enable OHRP to hold IRBs and IORGs directly accountable for meeting certain requirements of the HHS regulations at 45 CFR part 46, what kinds of administrative actions would be appropriate for OHRP to take against IRBs that are found to be out of compliance with 45 CFR part 46? For a description of some of the corrective actions that OHRP has required when it has been determined that an institution was not in compliance with 45 CFR part 46, see OHRP's guidance document entitled, "OHRP's Compliance

Oversight Procedures for Evaluating Institutions" at <http://www.dhhs.gov/ohrp/compliance/ohrpcomp.pdf>.

6. As described in Section VI of this notice, in order to facilitate public comment, OHRP has made a preliminary attempt to group some of the regulatory requirements under 45 CFR part 46 into the following three categories: (1) Responsibilities that may be unique to IRBs and IORGs; (2) responsibilities that may be unique to institutions engaged in human subjects research; and (3) responsibilities that may be fulfilled by either IRBs/IORGs or institutions engaged in human subjects research.

6a. Are these categories appropriate? If not, what other categories should there be?

6b. Is there a fourth category of responsibilities that are inherently shared by both the IRB/IORG and the FWA-holding institution? If so, please provide examples of such shared responsibilities.

6c. Are the regulatory provisions identified under each of the categories appropriate? If not, which regulatory provisions should be re-categorized, removed, or added?

6d. For institutions that have relied upon joint IRB review arrangements in the past, how have the regulatory requirements been divided or shared by the IRB/IORG and the institution engaged in the human subjects research? We would welcome examples or descriptions of such agreements between IRBs/IORGs and institutions engaged in human subjects research that describe their respective responsibilities.

7. With regard to the responsibilities that may be fulfilled by either IRBs or institutions, the IRB Authorization Agreement between an external IRB and an FWA-holding institution is often used to clarify which entity will be responsible for carrying out these regulatory requirements.

7a. If a regulatory change to 45 CFR part 46 is pursued, should OHRP use the IRB Authorization Agreement or other forms of agreement, if they exist (e.g., contract or memorandum of understanding) to inform its compliance oversight evaluations about which entity should be held responsible for fulfilling regulatory requirements that could be met by either an external IRB or the FWA-holding institution?

7b. If a regulatory change to 45 CFR part 46 is pursued, should there be new provisions that require specific content for IRB Authorization Agreements or for other forms of agreements between external IRBs and FWA-holding

institutions? If so, what types of content should be required?

7c. If a regulatory change to 45 CFR part 46 is pursued, should the regulation describe which regulatory

requirements would need to be met by external IRBs and which regulatory requirements would need to be met by institutions engaged in the research?

Dated: February 27, 2009.

**Jerry Menikoff,**

*Director, Office for Human Research Protections.*

[FR Doc. E9-4628 Filed 3-4-09; 8:45 am]

**BILLING CODE 4150-36-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### Notice of Proposed Revision to the Privacy Act System of Records

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of proposed revision to the Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Agriculture (USDA), Office of Inspector General (OIG) is proposing a revision to its system of records, by creating the Office of Audit's Research Aggregated Data Analysis Repository ("RADAR"), USDA/OIG-8. RADAR will house USDA data collected by OIG in order to detect fraud, waste, and abuse by utilizing software to match, merge, and analyze the data. USDA invites public comment on this revision of its records system.

**DATES:** *Effective Date:* This notice will be adopted without further publication in the **Federal Register** on May 4, 2009 unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before April 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. David R. Gray, Counsel to the Inspector General, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 441-E, Washington, DC 20250-2308; (202) 720-9110, Facsimile: (202) 690-1528, e-mail: [drgray@oig.usda.gov](mailto:drgray@oig.usda.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with the Privacy Act, 5 U.S.C. 552a(e)(11), USDA OIG proposes to revise its system of records, by adding a new Privacy Act system of records, USDA/OIG-8. The full system of records was last published in the **Federal Register** on pages 61262-61266, 62 FR 61262, *et seq.*, November 17, 1997; and was last amended on pages 21389-21391, 70 FR 21389, *et seq.*,

April 26, 2005; and on pages 43398-43400, 73 FR 43398, *et seq.*, July 25, 2008.

OIG proposes to add a new system of records by adding USDA/OIG-8, Office of Audit's Research Aggregated Data Analysis Repository ("RADAR"). The RADAR system will contain information from other USDA systems of records, and OIG has limited its usage to OIG employees on a need-to-know basis.

All other aspects of OIG's system of records remain unchanged and are as published. A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget Circular A-130, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Governmental Reform, U.S. House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, OMB.

Dated: February 25, 2009.

**Thomas J. Vilsack,**  
*Secretary.*

#### USDA/OIG-8

##### SYSTEM NAME:

Office of Audit's Research Aggregated Data Analysis Repository ("RADAR") System, USDA/OIG.

Security Classification: None.

##### SYSTEM LOCATION:

In the headquarters offices of the U.S. Department of Agriculture (USDA), Office of Inspector General (OIG), Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW., Washington, DC 20250.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participate in programs funded, monitored, and administered by USDA. Other individuals who are connected with the individuals, organizations, or firms who participate in programs funded, monitored, and administered by USDA, including the names of the subjects of OIG audits and investigations; the counties, cities, and States in which the subjects were located or had an interest in a USDA program.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

RADAR will house USDA data in order to detect fraud, waste, and abuse

by utilizing software to match, merge, and analyze the data.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. app.; 5 U.S.C. 301

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records which indicates either by itself or in combination with other information, a violation or potential violation of a contract or of law, whether civil, criminal, or regulatory, or which otherwise reflects on the qualifications or fitness of a licensed (or seeking to be licensed) individual, may be disclosed to a Federal, State, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), or other public authority that investigates or prosecutes or assists in such investigation, prosecution, enforcement, implementation, or issuance of the statute, rule, regulation, order, or license.

(2) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency, other public authority, consumer reporting agency, or professional organization maintaining civil, criminal, or other relevant enforcement or other pertinent records, such as current licenses, in order to obtain information relevant to an OIG decision concerning employee retention or other personnel action, issuance of a security clearance, letting of a contract or other procurement action, issuance of a benefit, establishment of a claim, collection of a delinquent debt, or initiation of an administrative, civil, or criminal action.

(3) A record from the system of records may be disclosed to a Federal, State, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), or other public authority, to the extent the information is relevant and necessary to the requestor's hiring or retention of an individual or any other personnel action, issuance or revocation of a security clearance, license, grant, or other benefit, establishment of a claim, letting of a contract, reporting of an investigation of an individual, for purposes of a suspension or debarment

action, or the initiation of administrative, civil, or criminal action.

(4) A record from the system of records may be disclosed to any source—private or public—to the extent necessary to secure from such source information relevant to a legitimate OIG investigation, audit, or other inquiry.

(5) A record from the system of records may be disclosed to the Department of Justice in the course of litigation when the use of such records by the Department of Justice is deemed relevant and necessary to the litigation and may be disclosed in a proceeding before a court, adjudicative body, or administrative tribunal, or in the course of civil discovery, litigation, or settlement negotiations, when a party to a legal action or an entity or individual having an interest in the litigation includes any of the following:

(a) The OIG or any component thereof;

(b) Any employee of the OIG in his or her official capacity;

(c) Any employee of the OIG in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the OIG determines that litigation is likely to affect USDA or any of its components.

(6) A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. In such cases however, the Member's right to a record is no greater than that of the individual.

(7) A record from the system of records may be disclosed to the Department of Justice for the purpose of obtaining its advice on an OIG audit, investigation, or other inquiry, including Freedom of Information or Privacy Act matters.

(8) A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding OIG obligations under the Privacy Act or in connection with the review of private relief legislation.

(9) A record from the system of records may be disclosed to a private firm with which OIG contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

(10) A record from the system of records may be disclosed in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies if the OIG determines that: (a) The records are both relevant and necessary to the proceeding, and (b) such release is compatible with the purpose for which the records were collected.

(11) A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, provided that the grand jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such requests by the Attorney General, and that the U.S. Attorney actually signs the letter specifying both the information sought and the law enforcement purpose served. In the case of a State grand jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted.

(12) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

(13) Relevant information from a system of records may be disclosed to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of fugitives, to provide notification of arrests, or where necessary for protection from imminent threat of life or property.

(14) A record may be disclosed to any official charged with the responsibility to conduct qualitative assessment reviews or peer reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation.

(15) In the event that these records respond to an audit, investigation or review, which is conducted pursuant to an authorizing law, rule or regulation, and in particular those conducted at the

request of the President's Council on Integrity and Efficiency ("PCIE") pursuant to Executive Order 12993, the records may be disclosed to the PCIE and other Federal agencies, as necessary.

(16) To appropriate agencies, entities, and persons when (1) OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) USDA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by USDA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**STORAGE:**

The RADAR System consists of computerized and paper records.

**RETRIEVABILITY:**

The records are retrieved by names, addresses, social security numbers, and tax identification numbers of USDA program participants or by case numbers.

**SAFEGUARDS:**

Computerized records are maintained in a secure, password protected computer system. The computer server is maintained in a secure, access-controlled area within an access-controlled building.

Paper records are kept in limited access areas during duty hours and in locked offices during non-duty hours.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with USDA/OIG Records Control Schedules approved by the National Archives and Records Administration.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

**RECORD ACCESS PROCEDURES:**

To request access to information in this system, write to the Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of

Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

**CONTESTING RECORDS PROCEDURE:**

An individual may contest information in this system which pertains to him/her by submitting a written request to the Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250. This system may contain records originated by USDA agencies and contained in the USDA's other systems of records. Where appropriate, coordination will be effected with the appropriate USDA agency regarding an individual's contesting of records in the relevant system of records.

[FR Doc. E9-4655 Filed 3-4-09; 8:45 am]

**BILLING CODE 3410-23-P**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**Notice of Request for Extension of Currently Approved Information Collection**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension from the Office of Management and Budget (OMB) for a currently approved information collection in support of the Technical Assistance for Specialty Crops (TASC) program.

**DATES:** Comments on this notice must be received by May 4, 2009 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Director, Program Operations Division, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, (202) 720-4327, fax: (202) 720-9361, e-mail: [ppsadmin@fas.usda.gov](mailto:ppsadmin@fas.usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Technical Assistance for Specialty Crops.

*OMB Number:* 0551-0038.

*Expiration Date of Approval:* June 30, 2009.

*Type of Request:* Extension of a currently approved information collections.

*Abstract:* This information is needed to administer the CCC Technical

Assistance for Specialty Crops program. The information will be gathered from applicants desiring to receive grants under the program to determine the viability of requests for funds. Regulations governing the program appear at 7 CFR part 1487 and are available on the Foreign Agricultural Service's Web site.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 32 hours per respondent.

*Respondents:* U.S. government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Burden on Respondents:* 1,600 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690-1690.

*Request for Comments:* Send comments regarding the accuracy of the burden estimate and ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

Comments may be sent to Director, Program Operations Division, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024 and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Facsimile submissions may be sent to (202) 720-9361 and electronic mail submissions should be addressed to: [ppsadmin@fas.usda.gov](mailto:ppsadmin@fas.usda.gov).

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on January 27, 2009.

**Suzanne Hale,**

*Acting Administrator, Foreign Agricultural Service, and Acting Vice President, Commodity Credit Corporation.*

[FR Doc. E9-4698 Filed 3-4-09; 8:45 am]

**BILLING CODE 3410-10-P**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**Notice of Request for Revision of Currently Approved Information Collection**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request a revision from the Office of Management and Budget (OMB) for a currently approved information collection process in support of the Foreign Market Development Cooperator's (Cooperator) Program and the Market Access Program (MAP).

**DATES:** Comments on this notice must be received by May 4, 2009 to be assured of consideration.

*Additional Information or Comments:* Contact Director, Program Operations Division, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, (202) 720-4327, fax: (202) 720-9361, e-mail: [ppsadmin@fas.usda.gov](mailto:ppsadmin@fas.usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Foreign Market Development (Cooperator) Program and Market Access Program.

*OMB Number:* 0551-0026.

*Expiration Date of Approval:* June 30, 2009.

*Type of Request:* Revision of a currently approved information collection process.

*Abstract:* The primary objective of the Cooperator's Program and MAP is to encourage and aid in the creation, maintenance, and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible trade organizations. The programs are a cooperative effort between CCC and eligible trade organizations. Currently, there are approximately 70 organizations participating directly in the programs with activities in more than 100 countries.

Prior to initiating program activities, each Cooperator or MAP participant must submit a detailed application to the Foreign Agricultural Service (FAS) which includes an assessment of overseas market potential; market or country strategies, constraints, goals, and benchmarks; proposed market development activities; estimated budgets; and performance

measurements. Prior years' plans often dictate the content of current year plans because many activities are continuations of previous activities. Each Cooperator or MAP participant is also responsible for submitting: (1) Reimbursement claims for approved costs incurred in carrying out approved activities, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. Cooperators or MAP participants must maintain records on all information submitted to FAS. The information collected is used by FAS to manage, plan, evaluate, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 21 hours per response.

*Respondents:* Non-profit trade organizations, state groups, cooperatives, and commercial entities.

*Estimated Number of Respondents:* 71.

*Estimated Number of Responses per Respondent:* 62.

*Estimated Total Annual Burden on Respondents:* 92,442 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690-1690.

*Request for Comments:* Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments may be sent to Director, Program Operations Division, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024. Facsimile submissions may be sent to (202) 720-9361 and electronic mail submissions should be addressed to [ppsadmin@fas.usda.gov](mailto:ppsadmin@fas.usda.gov). Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotope, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on January 27, 2009.

**Suzanne Hale,**

*Acting Administrator, Foreign Agricultural Service, and Acting Vice President, Commodity Credit Corporation.*

[FR Doc. E9-4702 Filed 3-4-09; 8:45 am]

**BILLING CODE 3410-10-P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection. This information collection is required in petitions filed with FAS for emergency relief from duty-free imports of perishable products under section 204(d) of the Andean Trade Promotion and Drug Eradication Act.

**DATES:** Comments on this notice must be received by May 4, 2009 to be assured consideration.

**ADDRESSES:** Mail or deliver comments to Robert Miller, Office of Negotiations and Agreements, Foreign Agricultural Service, Stop 1040, 1400 Independence Avenue, SW., Washington, DC 20250-1040, or e-mail to [Robert.Miller@fas.usda.gov](mailto:Robert.Miller@fas.usda.gov), or fax to (202) 720-1139.

**FOR FURTHER INFORMATION CONTACT:** Robert Miller, Office of Negotiations and Agreements, Foreign Agricultural Service, Stop 1040, 1400 Independence Avenue, SW., Washington, DC 20250-1040, (202) 720-1047.

#### SUPPLEMENTARY INFORMATION:

*Title:* Emergency Relief from Duty-Free Imports of Perishable Products from Andean Countries.

*OMB Number:* 0551-0033.

*Expiration Date of Approval:* June 30, 2009.

*Type of Request:* Extension for a currently approved information collection.

*Abstract:* The Andean Trade Preference Act, 19 U.S.C. 3201 *et seq.*, was retitled the "Andean Trade Promotion and Drug Eradication Act" (the Act), under section 3101 of Public Law 107-210, the "Trade Act of 2002". The Act authorized the President to

proclaim duty-free treatment for imports from Bolivia, Colombia, Ecuador, and Peru except for specifically excluded products. Section 204(d) provides for emergency relief from duty-free imports of certain perishable agricultural products from the beneficiary Andean countries and, in part, that a petition for emergency import relief may be filed simultaneously with the Secretary of Agriculture and the U.S. International Trade Commission (ITC) pursuant to the provisions of section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251). Emergency import relief is limited to restoration of most favored nation tariffs during the period of the ITC's investigation. On October 16, 2008, section 208 of Public Law 110-436 amended the Act to extend the expiration date from December 31, 2008 to December 31, 2009. In the case of Ecuador and Bolivia, the President will review on or before June 30, 2009 to determine if both countries satisfy the requirements set forth in Section 203(c) for being designated as a beneficiary country in order to continue to receive benefits through December 31, 2009. Under 7 CFR part 1540, subpart C of this part, a procedure is provided for an entity to submit a petition for emergency relief to the Administrator of FAS. Section 1540.43 requests that the following information, to the extent possible, be included in a petition: A description of the imported perishable product concerned; country of origin of imports; data indicating increased imports are a substantial cause of serious injury (or threat of injury) to the domestic industry producing a like or directly competitive product; evidence of serious injury; and a statement indicating why emergency action would be warranted. The information collected provides essential data for the Secretary regarding specific market conditions with respect to the industry requesting emergency relief. Within 14 days of the filing of a petition, the Secretary shall advise the President if there is reason to believe that emergency action is warranted, or to publish a notice of a determination not to recommend emergency action and advise the petitioner.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated at \$533.00.

*Respondents:* Non-profit institutions, businesses, or farms.

*Estimated Number of Respondents:* 1.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 23 hours.

Copies of the information collection can be obtained from Tamoria

Thompson-Hall, Information Collection Coordinator, at (202) 690-1690.

*Requests for Comments:* The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act are most useful to the Office of Management and Budget (OMB) if received within 30 days of the publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

Signed at Washington, DC on February 19, 2009.

**Suzanne Hale,**

*Acting Administrator, Foreign Agricultural Service.*

[FR Doc. E9-4696 Filed 3-4-09; 8:45 am]

**BILLING CODE 3410-10-P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Lincoln County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday, March 11, 2009 at 6 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

**DATES:** March 11, 2009.

**ADDRESSES:** Forest Supervisor's Office, 31374 U.S. Hwy 2, Libby, Montana.

**FOR FURTHER INFORMATION CONTACT:** Willie Sykes, Committee Coordinator, Kootenai National Forest at (406) 283-7694, or e-mail [wesykes@fs.fed.us](mailto:wesykes@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda will include a consideration of 2009 project proposals from the Libby Ranger

District and the Three Rivers Ranger District and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: February 24, 2009.

**Paul Bradford,**

*Forest Supervisor.*

[FR Doc. E9-4719 Filed 3-4-09; 8:45 am]

**BILLING CODE 3410-11-M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108-447)

**AGENCY:** Plumas National Forest, USDA Forest Service.

**ACTION:** Notice of New Fee Site.

**SUMMARY:** The Plumas National Forest is proposing to charge a new fee for the overnight rental of Black Mountain Lookout. This Lookout has not been available for recreation use prior to this date. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment and public comment. The fee listed is only proposed and final determination will be made upon further analysis and public comment. Rentals of other lookouts on the adjacent National Forests have shown that people appreciate and enjoy the availability of historic rental lookouts. Funds from the rental will be used for the continued operation and maintenance of Black Mountain Lookout, and to develop improvements that benefit visitor's recreation experiences.

**DATES:** Black Mountain Lookout will become available for recreation rental September, 2009.

**ADDRESSES:** Alice B. Carlton, Forest Supervisor, Plumas National Forest, 159 Lawrence Street, Quincy, California 95971.

**FOR FURTHER INFORMATION CONTACT:** Mary Kliejunas, District Archaeologist, or Judy Schaber, Assistant Resource Officer, at 530-836-2575.

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

This proposed new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

This is the Plumas National Forests first lookout rental. Rentals on adjacent Forests are often fully booked throughout their rental season. A business analysis of Black Mountain Lookout rental has shown that people desire having this sort of recreation experience on the National Forest. A market analysis indicates that the \$50 to \$70 per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Black Mountain Lookout will need to do so through the National Recreation Reservation Service, at <http://www.reserveusa.com> or by calling 1-877-444-6777. The National Recreation Reservation Service charges a \$9 fee for reservations made through the Internet or \$10 for reservations made through the call center.

Date: February 9, 2009.

**Alice B. Carlton,**

*Plumas National Forest Supervisor.*

[FR Doc. E9-4735 Filed 3-4-09; 8:45 am]

**BILLING CODE 3410-11-P**

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## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—  
1/8/2009 THROUGH 2/28/2009

Firm	Address	Date accepted for filing	Products
Carman Ranch, LLC .....	67357 Promise Road, Wallowa, OR 97885	1/29/2009	Live beef cattle, both calves and adults, and grains such as barley. Services include some equipment rental and custom farming.
Lumax Industries, Inc. ....	Chestnut Avenue & 4th, Altoona, PA 16603.	2/10/2009	Manufactured commercial, industrial, security, vandal resistant, residential and specialty lighting products.
Tellenar, Inc .....	727 Tek Drive, Crystal Lake, IL 60014 .....	2/17/2009	Metal stamped electrical connectors, switchers and components for the automotive and appliances industries.
RCG Foods of Texas Inc. ....	109 Palm, El Paso, TX 79901 .....	2/12/2009	Fully cooked and packaged food for human consumption.
Xytronics Ltd. ....	8001 Mainland Dr., San Antonio, TX 78250.	1/8/2009	Parts and accessories for electronic products.
Pat-Cin Enterprises, Inc. ....	10884 Leroy Drive, Northglenn, CO 80233	2/12/2009	Printed circuit boards.
Dumore Corporation .....	1030 Veterans Street, Mauston, WI 53948	1/30/2009	Electronic motor and electric gear motor manufacturer.
Hoffco, Inc. ....	North State Highway 274, Wood Lake, MN 56297.	2/25/2009	Wood kitchen cabinets designed for permanent installation.
Mak Metals, Inc. ....	850 SE Monmouth Cutoff, Dallas, OR 97338.	2/12/2009	Aluminum, stainless steel, and steel enclosures for many industries including transportation, traffic, and electronics businesses.
Calumet Electronics Corporation	25830 Depot St., Calumet, MI 49913 .....	2/3/2009	Printed circuit boards.
Riverdale Mills Corporation .....	130 Riverdale Street, PO Northbridge, MA 01534.	2/4/2009	Welded wire mesh.
Mystic Valley Traders LLC .....	106 Cummings Park, Woburn, MA 01801	2/4/2009	High-end, bed linens and home furnishings.
Osborne Wood Products, Inc. ....	Toccoa, GA 30577 .....	2/18/2009	Table legs, kitchen island legs, balusters, bed posts, corbels and moldings.
File-Ez Folder Inc. ....	E 4111 Mission PO Box, Spokane, WA 99210.	2/18/2009	Paper-based products.
Col Pump Company, Inc. ....	131 East Railroad Street, Columbiana, OH 44408.	2/5/2009	Housings, bodies, bases and other gray iron castings.
Wilton Armetale .....	903 Square Street, Mount Joy, PA 17552	2/3/2009	Aluminum-based serve ware and cookware.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 27, 2009.

**William P. Kittredge,**

*Program Officer for TAA.*

[FR Doc. E9-4739 Filed 3-4-09; 8:45 am]

**BILLING CODE 3510-24-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

## DEPARTMENT OF THE INTERIOR

### Office of Insular Affairs; Allocation of Duty Exemptions for Calendar Year 2009 for Watch Producers Located in the United States Virgin Islands

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This action allocates calendar year 2009 duty exemptions for watch assembly producers ("program producers") located in the United States Virgin Islands ("USVI") pursuant to Public Law 97-446, as amended by Public Law 103-465, Public Law 106-36 and Public Law 108-429 ("the Act").

**FOR FURTHER INFORMATION CONTACT:** Gregory Campbell, Statutory Import

Programs; phone number: (202) 482-2239; fax number: (202) 501-7952; and e-mail address: [gregory\\_campbell@ita.doc.gov](mailto:gregory_campbell@ita.doc.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act, the Departments of the Interior and Commerce ("the Departments") share responsibility for the allocation of duty exemptions among program producers in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2009 is 1,866,000 units for the USVI. This amount was established in *Changes in Watch, Watch Movement and Jewelry Program for the U.S. Insular Possessions*, 65 FR 8048 (February 17, 2000). There are currently no program producers in Guam, American Samoa or the Northern Mariana Islands.

The criteria for the calculation of the calendar year 2009 duty-exemption allocations among program producers



within a particular territory are set forth in Section 303.14 of the regulations (15 CFR 303.14). The Departments have verified and, where appropriate, adjusted the data submitted in application form ITA-334P by USVI program producers and have inspected these producers' operations in accordance with Section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2008, USVI program producers shipped 183,104 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of corporate income taxes paid by USVI program producers during calendar year 2008, and the creditable wages and benefits paid by these producers during calendar year 2008 to residents of the territory, was a combined total of \$2,112,758.

The calendar year 2009 USVI annual duty exemption allocations, based on the data verified by the Departments, are as follows:

Program producer	Annual allocation
Belair Quartz, Inc. ....	500,000
Tropex, Inc. ....	50,000

The balance of the units allocated to the USVI is available for new entrants into the program or existing program producers who request a supplement to their allocation.

Dated: February 27, 2009.

**Ronald Lorentzen,**

*Acting Assistant Secretary for Import Administration, Department of Commerce.*

Dated: February 27, 2009.

**Nikolao Pula,**

*Acting Deputy Assistant Secretary for Insular Affairs, Department of the Interior.*

[FR Doc. E9-4744 Filed 3-4-09; 8:45 am]

BILLING CODE 3510-DS-P; 4310-93-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-583-816]

**Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** John Drury and Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-0195 and (202) 482-3019, respectively.

**Background**

On June 9, 2008, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings ("SSBWPFs") from Taiwan for the period of review ("POR") of June 1, 2007, through May 31, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 32557 (June 9, 2008). On June 27, 2008, Flowline Division of Markovitz Enterprises, Inc. ("Flowline Division"), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, "petitioners") requested an antidumping duty administrative review for sales of SSBWPFs from Taiwan produced by Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Liang Feng Stainless Steel Fitting Co., Ltd., Liang Feng Enterprise, Tru-Flow Industrial Co., Ltd., Censor International Corporation, and PFP Taiwan Co., Ltd. On June 30, 2008, Ta Chen also requested an administrative review of its sales to the United States during the POR. On July 30, 2008, the Department published the notice initiating this administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation In Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008). The preliminary results are currently due not later than March 2, 2009.

**Extension of Time Limits for Preliminary Results of Review**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.213(h)(2), the Department may extend the deadline for completion of the preliminary results of a review by 120 days if it determines that it is not practicable to complete the preliminary results within 245 days after the last day of the anniversary month of the date of publication of the order for which the administrative review was requested. Due to the complexity of the issues involved, including Ta Chen's reported costs of production, and the time required to obtain and analyze additional information from Ta Chen, the Department has determined that it is not practicable to complete this review within the original time period.

Accordingly, the Department is extending the time limit for the preliminary results by 120 days to not later than June 30, 2009, in accordance with section 751(a)(3)(A) of the Act.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 25, 2009.

**John M. Andersen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E9-4743 Filed 3-4-09; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-849]

**Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Notice of Extension of Time Limit for Final Results of New Shipper Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**DATES:** *Effective Date:* March 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Demetri Kalogeropoulos, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2623.

**Background**

On November 13, 2008, the Department of Commerce ("Department") published the preliminary results of the new shipper review of the antidumping duty order on certain cut-to-length carbon steel from the People's Republic of China, covering the period November 1, 2006, through October 31, 2007, for the following exporter: Hunan Valin Xiangtan Iron & Steel Co. Ltd. ("Valin Xiangtan"). See *Certain Cut-to-Length Carbon Steel From the People's Republic of China: Preliminary Results of New Shipper Review*, 73 FR 67124 (November 13, 2008) ("*Preliminary Results*"). On January 6, 2009, the Department extended the time limit for the completion of the final results by 30 days. See *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Notice of Extension of Time Limit for Final Results of New Shipper*

Review, 74 FR 430, (January 6, 2009). The final results are currently due on March 6, 2009.

#### Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”), and 19 CFR 351.214(i)(1) require the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the 90-day period for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

As a result of the complex issues raised in this new shipper review, including by-product offsets and separate rate eligibility, the Department determines that this new shipper review is extraordinarily complicated and it cannot complete this new shipper review within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by an additional 30 days until April 6, 2009,<sup>1</sup> in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with sections 751(2)(B) and 777(i)(1) of the Act.

Dated: February 26, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-4742 Filed 3-4-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-941]

#### Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** Effective Date: March 5, 2009.

**SUMMARY:** We preliminarily determine that certain kitchen appliance shelving

and racks from the People’s Republic of China (“PRC”) are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“Act”). The estimated margins of sales at LTFV are shown in the “Preliminary Determination” section of this notice. Interested parties are invited to comment on this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock or Katie Marksberry, 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 or (202) 482-7906, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Initiation

On July 31, 2008, Nashville Wire Products Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists & Aerospace Workers, District Lodge 6 (Clinton IA) (hereafter referred to as the “Petitioners”) filed an antidumping duty petition on PRC imports of kitchen appliance shelving and racks. See Petition for the Imposition of Antidumping Duties: Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China (in two volumes), dated July 31, 2008 (“Petition”). The Department of Commerce (“Department”) initiated this investigation on August 20, 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) (“Initiation Notice”).

On September 22, 2008, the United States International Trade Commission (“ITC”) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of certain kitchen appliance shelving and racks. The ITC’s determination was published in the **Federal Register** on September 24, 2008. See *Certain Kitchen Appliance Shelving and Racks From China*, 73 FR 55132 (September 24, 2008); see also *Certain Kitchen Appliance Shelving and Racks From China: Investigation No. 731-TA-458 and 731-TA-1154 (Preliminary)*, USITC Publication 4035 (September 2008).

#### Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). See also *Initiation Notice*, 73 FR at 50596. We received no comments from interested parties on issues related to the scope. However, on February 5, 2009, we placed a memorandum to the file on the record of this investigation stating that the companion countervailing duty investigation team at the Department spoke with the National Import Specialist at U.S. Customs and Border Protection (“CBP”) who indicated the Department should include the additional Harmonized Tariff Schedule of the United States (“USHTS”) number 8418.99.80.60 to the scope of the investigation. See Memorandum to the File from Katie Marksberry dated February 5, 2009. Therefore, we are adding the HTS number 8418.99.80.60 to the scope of this investigation for this preliminary determination. The Department did not receive any comments on the change to the scope of this investigation. See “Scope of Investigation” section below.

#### Period of Investigation

The period of investigation (“POI”) is January 1, 2008, through June 30, 2008. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (July 31, 2008). See 19 CFR 351.204(b)(1).

#### Respondent Selection

In the *Initiation Notice*, the Department stated that it intended to select respondents based on quantity and value (“Q&V”) questionnaires. See *Initiation Notice*, 73 FR at 50598-50599. On September 8, 2008, the Department requested Q&V information from the 12 companies that Petitioners identified as potential exporters or producers of certain kitchen appliance shelving and racks from the PRC. See Petition at Vol 1., Exhibit 3. Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at [www.trade.gov/ia](http://www.trade.gov/ia).

The Department received timely Q&V responses from six exporters that shipped merchandise under investigation to the United States during the POI, and from one company who stated it had no shipments of merchandise under investigation to the United States during the POI. On

<sup>1</sup> An extension of an additional 30 days would result in a new deadline of April 5, 2009. As April 5, 2009, falls on a Sunday, the final results will now be due no later than April 6, 2009, the next business day.

October 8, 2008, the Department selected Guandong Wireking Housewares & Hardware Co., Ltd. (“Wireking”) and Asber Enterprise Co., Ltd. (China) (“Asber”) as mandatory respondents in this investigation. See October 8, 2008, Memorandum to the File, from Julia Hancock, Senior International Trade Analyst, through Catherine Bertrand, Program Manager, and James C. Doyle, Director, to Stephen J. Claeys, Deputy Assistant Secretary, regarding Selection of Respondents for the Antidumping Investigation of Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China (“Respondent Selection Memo”). The Department sent its antidumping duty questionnaire to Asber and Wireking on October 8, 2008. On October 23, 2008, Asber filed a letter stating that it will not participate as a mandatory respondent in this investigation. See Letter to the Department from Asber dated October 23, 2008. On November 19, 2008, the Department selected New King Shan (Zhu Hai) Co., Ltd. (“New King Shan”) as an additional mandatory respondent because it was the next largest producer/exporter of those companies that submitted Q&V responses. See November 19, 2008, Memorandum to the File, from Julia Hancock, Senior International Trade Analyst and Blaine Wiltse, International Trade Analyst, through Catherine Bertrand, Program Manager, and James C. Doyle, Director, to Stephen J. Claeys, Deputy Assistant Secretary, regarding Selection of an Additional Mandatory Respondent. (“Additional Respondent Selection Memo”).

#### Separate Rates Applications

Between October 23, 2008, and October 29, 2008, we received timely filed separate-rate applications (“SRA”) from three companies: Jiangsu Weixi Group Co., Marmon Retail Services Asia, and Hangzhou Dunli Import & Export Co., Ltd.

#### Product Characteristics & Questionnaires

In the *Initiation Notice*, the Department asked all parties in this investigation for comments on the appropriate product characteristics for defining individual products. On September 29, 2008, we received comments from Petitioners regarding product characteristics. On October 8, 2008 the Department issued its antidumping duty questionnaire to Asber and Wireking, and on November 21, 2008, the Department issued its antidumping duty questionnaire to New King Shan. Wireking and New King

Shan submitted responses to the Department’s questionnaire. As stated above, Asber did not submit questionnaire responses.

#### Surrogate Country Comments

On September 29, 2008, the Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. See Letter to All Interested Parties, from Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, regarding “Antidumping Duty Investigation of Kitchen Appliance Shelving and Racks From the People’s Republic of China,” (“Surrogate Country Letter”), attaching September 29, 2008, Memorandum to Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Carole Showers, Acting Director, Office of Policy, regarding “Antidumping Duty Investigation of Kitchen Appliance Shelving and Racks from the People’s Republic of China (PRC): Request for List of Surrogate Countries.”

On September 29, 2008, the Department requested comments on surrogate country selection from the interested parties in this investigation. On January 26, 2009, Petitioners submitted surrogate country comments. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, see “Surrogate Country” section below.

#### Surrogate Value Comments

On December 4, 2008, December 17, 2008, and January 21, 2009, the Department extended the deadline for interested parties to submit surrogate information with which to value the factors of production in this proceeding. On January 26, 2009, Petitioners and Wireking submitted surrogate value comments. On February 2, 2009, Petitioners and Wireking submitted clarifying surrogate value comments.

#### Postponement of Preliminary Determination

Pursuant to section 733(c) of the Act and 19 CFR 351.205(f)(1), the Department extended the preliminary determination by 50 days. The Department published a postponement of the preliminary determination on December 23, 2008. See *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Postponement of Preliminary Determination of the Antidumping Duty Investigation*, 73 FR 78721 (December 23, 2008).

#### Scope of Investigation

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the merchandise under investigation”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- Subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under investigation is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The merchandise under investigation may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, and 8516.90.8000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Non-Market Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non-market economy (“NME”). See

*Initiation Notice*, 73 FR at 50598. The Department considers the PRC to be a NME country. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper From the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the People's Republic of China*, 72 FR 60632 (October 25, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

### Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("FOP") valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department's practice with respect to determining economic comparability is explained in *Policy Bulletin 04.1*,<sup>1</sup> which states that "OP (Office of Policy) determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank)." The Department considers the five countries identified in its Surrogate Country List as "equally comparable in terms of economic development." See *Policy Bulletin 04.1* at 2. Thus, we find that India, Indonesia, the Philippines, Colombia, and Thailand are all at an economic level of

development equally comparable to that of the PRC.

*Policy Bulletin 04.1* provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. As noted in the Policy Bulletin, comparable merchandise is not defined in the statute or the regulations, since it is best determined on a case-by-case basis. See *Policy Bulletin 04.1* at 2. As further noted in *Policy Bulletin 04.1*, in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise. *Id.*

The Department examined worldwide export data for comparable merchandise, using the six-digit level of the HTS numbers listed in the scope language for this investigation.<sup>2</sup> Specifically, we reviewed the POI export data from the World Trade Atlas ("WTA") for the HTS headings 7321.09, 8516.90, 8418.99. The Department found that, of the countries provided in the *Surrogate Country List*, all five countries were exporters of comparable merchandise. Thus, all countries on the *Surrogate Country List* are considered as appropriate surrogates because each exported comparable merchandise.

The *Policy Bulletin 04.1* also provides some guidance on identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. Further analysis was required to determine whether any of the countries which produce comparable merchandise are "significant" producers of that comparable merchandise. The data we obtained shows that, during the POI, worldwide exports for these HTS numbers were: 2,396,007 kilograms from Colombia; 1,758,325 kilograms from India; 6,615,309 kilograms from Indonesia; 450,110 kilograms from Philippines; and 8,833,547 kilograms from Thailand. Thus, all countries on the *Surrogate Country List* are considered as appropriate surrogates because each exported significant comparable merchandise. Finally, we have reliable data from India on the record that we can use to value the FOPs. Petitioners and Wireking submitted surrogate values using Indian sources, suggesting greater availability of appropriate surrogate value data in India.

As noted above, the Department only received surrogate country comments from Petitioners, which favored selection of India. The Department is

preliminarily selecting India as the surrogate country on the basis that: (1) It is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Thus, we have calculated NV using Indian prices when available and appropriate to the respondents' FOPs. See Memorandum to the File from Julia Hancock, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Surrogate Values for the Preliminary Determination, (February 26, 2009) ("Surrogate Value Memorandum"). In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.<sup>3</sup>

### Affiliations

*Section 771(33) of the Act, provides that:*

The following persons shall be considered to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

<sup>3</sup> In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>1</sup> See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process*, (March 1, 2004), ("Policy Bulletin 04.1") at Attachment II of the Department's *Surrogate Country Letter*, also available at <http://ia.ita.doc.gov/policy/bull04-1.html>

<sup>2</sup> Because the Department was unable to find production data, we relied on export data as a substitute for overall production data in this case.

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

#### Wireking

Based on the evidence on the record in this investigation and based on the evidence presented in Wireking's questionnaire responses, we preliminarily find that Wireking is affiliated with Company G,<sup>4</sup> which was involved in Wireking's sales process, and other companies, pursuant to sections 771(33)(E), (F) and (G) of the Act, based on ownership and common control. In addition to being affiliated, there is a significant potential for price manipulation based on the level of common ownership and control, shared management, shared offices, and an intertwining of business operations. See 19 CFR 351.401(f)(1) and (2).

Accordingly, we find that Wireking and Company G should be considered as a single entity for purposes of this investigation. See 19 CFR 351.401(f). For a detailed discussion of this issue, see Wireking Affiliation Memo.

#### New King Shan

Based on the evidence on the record in this investigation and based on the evidence presented in New King Shan's questionnaire responses, we preliminarily find that New King Shan is affiliated with Company A, Company B, Company C, and Company D,<sup>5</sup> pursuant to sections 771(33)(A), (E), (F), and (G) of the Act, based on ownership and common control. For a detailed discussion of this issue, see New King Shan Affiliation Memo.

<sup>4</sup> The identity of this company is business proprietary information; for further discussion of this company, see Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Julia Hancock, Senior Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliation Memorandum of Wireking, (February 26, 2009) ("Wireking Affiliation Memo").

<sup>5</sup> The identities of these companies are business proprietary; for further discussion of these companies, see Memorandum to the File from Katie Marksberry, Case Analyst: Preliminary Determination of Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Affiliation Memorandum of New King Shan (Zhuhai) Co., Ltd., (February 26, 2009) ("New King Shan Affiliation Memo").

#### Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (Sept. 24, 2008) (*PET Film LTFV Final*). It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994), and section 19 CFR 351.107(d) of the Department's regulations.

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. See *Initiation Notice*, 73 FR at 17321. The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005), ("Policy Bulletin 05.1") available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.<sup>6</sup>

Jiangsu Weixi Group Co., Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd. (hereinafter referred to as "Separate Rate

Companies"), and Wireking and New King Shan, the mandatory respondents, have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control or are wholly foreign owned, and therefore satisfy the standards for the assignment of a separate rate.

We have considered whether each PRC company that submitted a complete application or complete Section A Response as a mandatory respondent is eligible for a separate rate. The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the merchandise under investigation under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). In accordance with the separate rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business

<sup>6</sup> The *Policy Bulletin 05.1*, states: "{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation. See *Policy Bulletin 05.1* at 6.

and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

The evidence provided by the Separate Rate Companies, Wireking, and New King Shan supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. See, e.g., Jiangsu Weixi Group Co.'s October 23, 2008, SRA at 5–8; Jiangsu Weixi Group Co.'s December 19, 2008, SRA at 4; Hangzhou Dunli Import & Export Co., Ltd.'s October 29, 2009, SRA at 12–17; New King Shan's October 27, 2008, SRA at 12–16; and Wireking's November 12, 2008 Section A Response at 4–7.

## 2. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the Separate Rate Companies, Wireking, and New King Shan, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the

government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. See, e.g., Jiangsu Weixi Group Co.'s October 23, 2008, SRA at 9–15; Jiangsu Weixi Group Co.'s December 19, 2008, SRA at 5; Hangzhou Dunli Import & Export Co., Ltd.'s October 29, 2009, SRA at 21–25; New King Shan's October 27, 2008, SRA at 16–19; and Wireking's November 12, 2008 Section A Response at 7–11.

## 3. Wholly Foreign-Owned

In its separate-rate application, one separate rate company, Marmon Retail Services Asia, reported that it is wholly owned by individuals or companies located in a market economy country. Therefore, because it is wholly foreign-owned, and we have no evidence indicating that it is under the control of the PRC, a separate rate analysis is not necessary to determine whether this company is independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate). Accordingly, we have preliminarily granted a separate rate to this company.

The evidence placed on the record of this investigation by the Separate Rate Companies, Wireking, and New King Shan demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, we have granted the Separate Rate Companies a weighted-average margin based on the experience of mandatory respondents and excluding any *de minimis* or zero rates or rates based on total adverse facts available (“AFA”) for the purposes of this preliminary determination. In addition, for the reasons outlined above, we have preliminarily granted Wireking and New King Shan separate rate status.

## Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of certain kitchen appliance shelving and racks

from the PRC than those indicated in the response to our request for Q&V information during the POI. See *Respondent Selection Memorandum*. We issued our request for Q&V information to 12 potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's Web site. While information on the record of this investigation indicates that there are other producers/exporters of certain kitchen appliance shelving and racks in the PRC, we received only seven timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Furthermore, Asber, which did respond to the Department's Q&V questionnaire and reported shipments during the POI, did not respond to the Department's full anti-dumping duty questionnaire. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters, including Asber, as part of the PRC-wide entity because they did not qualify for a separate rate. See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), and unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our



questionnaire requesting Q&V information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available (“FA”) is appropriate to determine the PRC-wide rate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103–316, 870 (1994) (“SAA”); *see also Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department’s practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People’s Republic of China*, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at Comment 1. As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 96.45

percent, the average of all margins. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department’s reliance on the petition rates to determine an AFA rate is subject to the requirement to corroborate secondary information.

#### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. The SAA provides guidance as to what constitutes secondary information. One of the suggested sources of secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>7</sup> The SAA further suggests that to “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* Independent sources used to corroborate may include, for example, published price lists, official import statistics, and CBP data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>8</sup>

The AFA rate selected by the Department is from the petition.<sup>9</sup> Petitioners’ methodology for calculating the export price (“EP”) and NV in the petition is discussed in the *Initiation Notice* at 73 FR 50598 and 50599. To corroborate the AFA margin that we selected, we compared the U.S. prices and normal values of the two mandatory respondents to the U.S. prices and normal values of the margins contained

<sup>7</sup> See SAA at 870.

<sup>8</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part.*, 62 FR 11825 (March 13, 1997).

<sup>9</sup> See Petition, at Volume II, Exhibit 14.

in the petition. All of the U.S. prices and normal values in the margins calculated in the petition are within the range of the U.S. prices and normal values of the mandatory respondents. Therefore, we took the simple average of all seven of the petition margins, which results in a margin of 96.45 percent. We find that the margin of 96.45 percent has probative value because it is the average of all petition margins which were based on the corroborated U.S. price and normal values in the petition which were corroborated by comparison of the U.S. price and normal values of the two mandatory respondents. Accordingly, we find that the rate of 96.45 percent is corroborated within the meaning of section 776(c) of the Act. Accordingly, we determine that 96.45 percent is the single antidumping rate for the PRC-wide entity. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Wireking, New King Shan, and the Separate Rate Companies.

#### Margin for the Separate Rate Companies

The Department received timely and complete separate rate applications from the Separate Rate Companies, who are all exporters of certain kitchen appliance shelving and racks from the PRC, which were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate, *see* the “Separate Rates” section and in the Memorandum to the File, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Calculation of the Separate Rate Weighted-Average Margin, (February 26, 2009). Consistent with the Department’s practice, as the separate rate, we have established a average margin for the Separate Rate Companies based on the rates we calculated for Wireking and New King Shan, excluding any rates that are zero, *de minimis*, or based entirely on AFA.<sup>10</sup> Jiangsu Weixi Group Co., Marmon Retail Services Asia, and Hangzhou Dunli Import & Export Co., Ltd. are the companies receiving this

<sup>10</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China*, 71 FR 77373, 77377 (December 26, 2006) (“PSF”), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China*, 72 FR 19690 (April 19, 2007).

rate and are listed in the "Suspension of Liquidation" section of this notice.

#### Date of Sale

19 CFR 351.401(i) states that, "in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." In *Allied Tube*, the Court of International Trade ("CIT") noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'" *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d at 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) ("Allied Tube"). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d 1087, 1090-1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. See *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007) and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

New King Shan reported that the date of sale was determined by the invoice issued by the affiliated importer to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to New King Shan's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination.

Wireking reported its U.S. sales as constructed export price ("CEP") sales because the sales are not made until after importation to the United States. Wireking reported that while it issues a commercial invoice to the U.S. customer for the quantities of merchandise subject to the investigation that it shipped, the quantity of each sale is not fixed when it issues the commercial invoice to the

U.S. customer. See Wireking's Supplemental Section C, (February 18, 2009) at 20. According to Wireking, the U.S. customer does not agree to purchase the final quantity for each of Wireking's reported sales until the U.S. customer issues document X<sup>11</sup> to Wireking, upon which payment and the total value of each sale is based. See *id.*, at 17 and 20.

Wireking stated that it is not reporting the date of the commercial/shipment invoice issued to the U.S. customer as the date of sale because this is not when all the material terms of sale, *i.e.*, final quantity and total value/payment of each sale, are fixed. See *id.*, at 17. According to Wireking, the U.S. customer is not contractually obligated to purchase the quantity shipped by Wireking and thus Wireking's commercial/shipment invoice is a fair retail value of the merchandise but not a document establishing all material terms of sale. See *id.*, at 17. Instead, Wireking stated that it has reported the date of document X issued by the U.S. customer as the date of sale because all the material terms of sale, *i.e.*, final quantity, and total value and payment of the sale, were not finalized until this document was issued by the U.S. customer. Moreover, Wireking has reported that it does not record the commercial/shipment invoice issued to the U.S. customer in its accounting records. See *id.*, at 14. Wireking has reported that it records the date of document X in its accounting records, as well as the payment received pursuant to the sale.<sup>12</sup> Accordingly, based on the record evidence, the Department preliminarily determines that Wireking's date of sale is the date on which document X is issued because all the material terms of sale, *i.e.*, final quantity, value, and payment, are not fixed until the U.S. customer issues document X to Wireking. Therefore, the Department will calculate Wireking's price for its U.S. sales using the date of document X as the date of sale.

However, based on the documents currently on the record of this proceeding, Wireking has not shown that it will be able to reconcile its total quantity of shipments to the total final

quantity of merchandise purchased by the U.S. customer. See Wireking's February 18, 2009, Letter, at 4. While Wireking reported that it will be able to support its reported U.S. sales by reconciling the reported U.S. quantity and value to document X, Wireking has stated that it will be unable to tie its total shipments to its total reported U.S. sales database quantity because Wireking does not have access to the U.S. customer's records, including inventory records, that establish whether Wireking's reported U.S. sales database is complete. The Department preliminarily finds that there is a difference between Wireking's reported total shipments to the U.S. customer during the POI and its total reported U.S. sales during the POI. See *id.*, at 3; Wireking's Section C and D Response, (December 2, 2009), at Exhibit R1; Wireking Analysis Memo. Because Wireking has not shown that the reported total quantity and value of its U.S. sales is complete, *i.e.*, there are unreported U.S. sales, we must conclude that the application of facts otherwise available is warranted for Wireking's unreported sales, pursuant to section 776(a)(2)(D) of the Act because Wireking is unable to reconcile the reported total quantity of sales to a verifiable source document. Because Wireking has claimed that it has provided all the information it can regarding the unusual sales arrangement with the U.S. customer, where the U.S. customer dictates the final quantity and value of the sale, and the Department currently has no information on the record to the contrary, the Department preliminarily determines that the application of AFA is not warranted, pursuant to section 776(b) of the Act. Accordingly, as FA, the Department preliminarily determines that it will apply the weighted-average margin of Wireking's reported U.S. sales to the unreported quantity and value<sup>13</sup> of Wireking's unreported sales. Furthermore, after the preliminary determination, the Department intends to issue additional supplemental questionnaires to Wireking to determine whether Wireking's reported quantity and value can be verified. The Department notes that all information relied upon must be verifiable. See *Final*

<sup>11</sup> The description of this document is business proprietary; for further discussion of this document, see Wireking's Section C Supp, at 14 and Wireking Analysis Memo.

<sup>12</sup> Although Wireking's affiliate, Company G, receives payment for the sale from the U.S. customer and records the date of sale of document X in its accounting records, because Wireking and Company G have been found to be a single entity ("Wireking"), the Department preliminarily determines that the single entity, Wireking, records document X as the date of sale in its accounting records. See Wireking's Section C Supp,

<sup>13</sup> Because the Department has used the total shipments/purchases to Company G as Wireking's total shipments to the U.S. customer during the POI and Wireking has reported that there is a difference in the total value of these shipment/purchases to the total value of Wireking's shipments to the U.S. customer, the Department has increased the total value by this difference. See Wireking's Section C Supp, at 17, for further discussion of this difference, which is business proprietary information. See also Wireking's Analysis Memo



*Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049 (January 14, 2009) and accompanying Issues and Decision Memorandum at Comment 1. Therefore, based on these supplemental responses, the Department will make a determination as to whether Wireking's reported U.S. sales are verifiable.

#### Fair Value Comparison

To determine whether sales of certain kitchen appliance shelving and racks to the United States by Wireking and New King Shan were made at less than fair value, we compared CEP to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

#### U.S. Price

In accordance with section 772(b) of the Act, we based the U.S. price for New King Shan's sales on CEP because these sales were made by New King Shan's U.S. affiliate, which purchased the merchandise under investigation produced and sold by New King Shan through two other affiliates,<sup>14</sup> Company A and Company B.<sup>15</sup> In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States, foreign movement expenses, and U.S. movement expenses, including U.S. duties, U.S. warehousing, and

inventory carrying cost. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses and other direct selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for New King Shan, see New King Shan Analysis Memo.<sup>16</sup>

Additionally, in accordance with section 772(b) of the Act, we based the U.S. price for Wireking's sales on CEP because these sales were sold (or agreed to be sold) after the date of importation into the United States by Wireking. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States, foreign movement expenses, and U.S. movement expenses, including U.S. inland freight from port to warehouse, U.S. inland insurance, U.S. duties, and inventory carrying cost. Additionally, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses. We have based Wireking's imputed credit expenses on the difference between the date of shipment, which is when the merchandise was withdrawn from the U.S. warehouse, and the date that Wireking received payment. See *Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 31961 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 23. Moreover, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. For discussion of our valuation of Wireking's movement expenses, see the

section of this notice entitled "Use of AFA for Wireking's Movement Expenses." For a complete discussion of the calculation of the U.S. price for Wireking, see Wireking Analysis Memo.

#### Use of AFA for Wireking's Movement Expenses

In this investigation, Wireking reported that it incurred certain freight expenses for sales made under sales term X and sales term Y<sup>17</sup> that were purchased from a market economy carrier and paid for in market economy currency. See Wireking's Section C Supp, at 29–30 and Exhibit 17 at pages 26–33. However, for these freight expenses, after twice being requested by the Department to report these as market economy purchases, Wireking continued to report these freight expenses as non-market economy purchases because the market economy carrier has a PRC branch office that arranged these shipments. See *id.*, at 30. Because it is the Department's practice to treat expenses purchased from a market economy supplier and paid for in a market economy currency as market economy purchases, and there is record evidence showing that Wireking was charged and paid the market economy supplier of these expenses in market economy currency under sales term X, the Department preliminarily determines to value these expenses as market economy purchases under sales term X. See 19 CFR 351.408(c)(1); *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 35. However, for freight expenses incurred under sales term Y, the Department preliminarily determines to value these expenses as non-market economy purchases because there is record evidence showing that Wireking paid the market economy supplier of these expenses in non-market economy currency. See Wireking's Section C Supp, at Exhibit 17 at pages 19–25.

Because Wireking was twice requested by the Department to report the price of its market economy freight expenses but failed to provide such information after being requested, the Department preliminarily determines that the application of facts otherwise available to Wireking's market economy

<sup>14</sup> The identity of these companies is business proprietary; for further discussion of these companies, see New King Shan Analysis Memo.

<sup>15</sup> New King Shan reported these sales as CEP sales. The Department finds that these sales are CEP sales because New King Shan reported that its affiliate in the United States performed sales functions such as: sales negotiation, issuance of invoices and receipt of payment from the ultimate U.S. customer during the POI. Moreover, New King Shan reported expenses incurred in the United States that are normally deducted from the gross unit price. See New King Shan's Section C Questionnaire Response, (January 12, 2009); see also *Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission*, in Part, 72 FR 18457 (April 12, 2007) unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part, 72 FR 58809 (October 17, 2007) (where the Department stated that "we based U.S. price for certain sales on CEP in accordance with section 772(b) of the Act, because sales were made by Nantong Donchang's U.S. affiliate, Wavort, Inc. {"Wavort"} to unaffiliated purchasers."); *AK Steel Corp., et al v. United States*, 226 F.3d 1361, 1367 (Fed.Cir. 2000) (where the court stated that "the purpose of these additional deductions in the CEP methodology is to prevent foreign producers from competing unfairly in the U.S. market by inflating the U.S. price with amounts spent by the U.S. affiliate on marketing and selling the products in the United States").

<sup>16</sup> The identity of this company is business proprietary information; for further discussion of this company, see Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Katie Marksberry, Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Analysis Memorandum of New King Shan, (February 26, 2008) ("New King Shan Memo").

<sup>17</sup> The details of sales term X and sales term Y are business proprietary; for further discussion of sales term X and sales term Y, see Wire King Analysis Memo.

freight expenses incurred under sales term X is warranted, pursuant to sections 776(a)(2)(A) and (B) of the Act. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. After receipt of Wireking's response to Section C of the Department's initial questionnaire, which clearly directed Wireking to report the market economy price of any freight expense that it incurred using a market economy carrier and paid for in market economy currency, the Department issued Wireking a supplemental Section C questionnaire. This supplemental Section C questionnaire granted Wireking an additional opportunity to report the price of its market economy freight expenses. See the Department's Supplemental Section C Questionnaire to Wireking (January 28, 2009) at Questions 44, 46, 50, 51, and 56. However, Wireking refused to comply with the Department's request and instead argued that it was appropriate to treat this market economy carrier as an "NME service provider" and did not provide the requested information. See Wireking's Section C Supp. at 30. Accordingly, section 782(d) of the Act does not prevent application of partial AFA under these circumstances. See *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332–38 (CIT 2002).

For these reasons, the Department has preliminarily determined to apply partial AFA to Wireking's market economy freight expenses incurred under sales term X, as specified under sections 776(a)(2)(A) and (B) of the Act. As stated above, Wireking had multiple opportunities to report the price of these market economy freight expenses to the Department. Despite Wireking's categorization of these freight expenses as non-market economy purchases, the Department's request for this information was unambiguous. Therefore, for the reasons stated above, the Department finds that, pursuant to section 776(b) of the Act, Wireking has failed to cooperate to the best of its ability with regard to its unreported market economy freight expenses incurred under sales term X. Because Wireking failed to fully cooperate with the Department in this matter, we find it appropriate to use an inference that is adverse to the interests of Wireking in

selecting from among the facts otherwise available. See section 776(b) of the Act. By doing so, we ensure that Wireking will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this investigation. See SAA at 870, reprinted at 1994 U.S.C.C.A.N. at 4199. Consequently, as facts otherwise available, the Department will use the market economy price from one freight invoice submitted by Wireking as the basis for freight expenses for all shipments made under sales term X. Furthermore, because the freight invoice is Wireking's own information, the Department preliminarily determines that it is not secondary information and does not need to be corroborated, pursuant to section 776(c) of the Act. See Wireking Analysis Memo.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. See e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China*, 71 FR 19695 (April 17, 2006) ("CLPP") unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

As the basis for NV, both Wireking and New King Shan provided FOPs used in each stage for processing kitchen appliance shelving and racks, i.e., from the drawing of the steel wire rod to completion of the final product. Additionally, both Wireking and New King Shan reported that they are integrated producers because both respondents draw the steel wire from the steel wire rod and provided the FOP information used in this production stage.

Consistent with section 773(c)(1)(B) of the Act, it is the Department's practice to value the FOPs that a respondent uses to produce the merchandise under

consideration. See *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9(E). If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. See *id.* In this case, we are valuing those inputs reported by Wireking and New King Shan that were used to produce the main input to the processing stage (steel wire) when calculating NV, regardless of whether the FOPs were produced or purchased by the respondents.

A portion of Wireking's corrugated packing FOP was produced by Wireking's Affiliate E.<sup>18</sup> We are not, however, valuing these inputs as self-produced because Wireking and Affiliate E operate independently of each other, do not share business transactions, do not share facilities, do not share management/employees, and do not share production and pricing decisions. See Letter to Adams Lee, counsel for Wireking, from Catherine Bertrand, Program Manager, Office 9, Import Administration, (January 29, 2009); Wireking's Supplemental Section D, (February 5, 2009) at Exhibit 24; Wireking's 2nd Supplemental Section A Questionnaire Response, (January 23, 2009) at 20–23; *Sinopec Sichuan Vinylon Works v. United States*, Slip Op. 06–191 (December 28, 2007), at 5–7. Additionally, Wireking's Affiliate E is not a producer of similar or identical merchandise to that produced by Wireking, and could not produce this merchandise without substantial retooling. Moreover, Wireking's Affiliate E is not involved in the export or sale of merchandise under investigation and thus, we find that the initial regulatory criteria for treating affiliated producers as a single entity are not met, nor are circumstances similar to that under which the Department has treated affiliated exporters as a single entity present in this case. See *Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 8 ("*Thermal Paper from PRC Final*"). Accordingly, even though Wireking and its affiliated supplier of a portion of this packing factor are affiliated through indirect

<sup>18</sup>The identity of Wireking's Affiliate E is business proprietary. See Wireking's Section A Questionnaire Response, (November 12, 2008) at Exhibit 5; Wireking's January 21, 2009, letter, at 2.

common control of person F,<sup>19</sup> absent a significant potential for manipulation, we find it unnecessary to value upstream inputs that were not used by the actual producer of merchandise under investigation in NV calculations because such valuation would not reflect the producer's, *i.e.*, Wireking's, own production experience. See *Thermal Paper from the PRC Final*, at Comment 8; *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479 (March 24, 2008) and accompanying Issues and Decision Memorandum at Comment 5C.

### Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Wireking and New King Shan. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. See, *e.g.*, *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Wireking and New King Shan can be found in the Surrogate Value Memorandum (February 26, 2009).

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly

available Indian sources in order to calculate surrogate values for Wireking and New King Shan's FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. See Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund. See, *e.g.*, *PSF* 71 FR, at 77380 and *CLPP* 71 FR, at 19704.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7. Further, guided by the legislative history, it is the Department's practice not to

conduct a formal investigation to ensure that such prices are not subsidized. See Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; see also *Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. See *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. See *id.*

Additionally, during the POI, New King Shan reported that it purchased certain inputs from a market economy supplier and paid for the inputs in a market economy currency. The Department has a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no

<sup>19</sup> Person F's identity is business proprietary information. See Wireking's Section A Questionnaire Response, (November 12, 2008) at Exhibit 5.

reason to disregard the prices, the Department will weight-average the market economy purchase price with an appropriate surrogate value ("SV") according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006).

The Department has determined that although New King Shan reported purchasing certain inputs from market economy sellers during the POI and paying for the inputs in a market economy currency, New King Shan did not provide sufficient supporting documentation to demonstrate that these purchases were in fact market economy purchases, and therefore the Department is not valuing these inputs using New King Shan's reported market economy prices for each of these inputs for this preliminary determination. See New King Shan's Questionnaire Responses, (January 12, 2009), (February 9, 2009) and (February 13, 2009) and New King Shan's Analysis Memorandum. The Department used the Indian Import Statistics to value the raw material and packing material inputs that Wireking and New King Shan used to produce the merchandise under investigation during the POI, except where listed below.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, see *Corrected 2007 Calculation of Expected Non-Market Economy Wages*, 73 FR 27795 (May 14, 2008), and <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2005, ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill

levels and types of labor reported by the respondents.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using WPI.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India ("CEA") in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. Parties have suggested that the Department rely on June 2008 CEA data and International Energy Agency ("IEA") data, however, we preliminarily find that we cannot rely on them because we are unable to separate duty rates from the June 2008 CEA data, and the IEA data are less contemporaneous than the July 2006 CEA data. Additionally, petitioners have recommended that we not use CEA data because of a May 2007 TERI report that indicated that the rates include subsidies and are below production; however, the Department was unable to find sufficient evidence of subsidies to demonstrate that the electricity rates used in the CEA data were unreliable. Moreover, the Department was also unable to find sufficient evidence to demonstrate that the electricity rates used in the CEA data were below cost.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, and valued water with a surrogate value according to our practice. See *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 23, 2003) and accompanying Issues and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (<http://www.midindia.org>/[www.midindia.org](http://www.midindia.org)) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates

within the Maharashtra province from June 2003: 193 of the water rates were for the "inside industrial areas" usage category and 193 of the water rates were for the "outside industrial areas" usage category. Because the value was not contemporaneous with the POI, we used WPI data to inflate the rate to be contemporaneous to the POI.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India, and Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006); *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018,2021 (January 12, 2006) unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). Since the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI.

To value marine insurance, the Department used data from RGJ Consultants (<http://www.rgjconsultants.com/>). This source provides information regarding the per-value rates of marine insurance of imports and exports to/from various countries.

To value U.S. inland insurance, the Department used data from P.A.F. Cargo Insurance (<http://www.pafinsurance.com/>). This source provides information regarding the per-value rate of basic and all risk coverage

insurance rates of commodities transported within the United States.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the average of the audited financial statements of three Indian fastener companies, Nasco Steel 07/08, Sterling Tools Limited 07/08, and Lakshmi Precision Screw, Ltd. 06/07. While all three of these companies produce comparable rather than identical merchandise, each of these companies use an integrated wire-drawing production process with wire rod as one of its primary inputs, which closely mirrors that of the mandatory respondents. Although Petitioners argued that the production process of fastener products is not as complex and high value-added as the production process of certain kitchen appliance shelving and racks, we find that there is no evidence on the record demonstrating that the financial experience of these three fastener companies is not comparable to the experience of the mandatory respondents.

Additionally, while Petitioners have also provided an additional source for surrogate financial ratios using the financial statements of Usha Martin Ltd. ("Usha"), which is an Indian producer of steel wire and wire rope, we find that the financial statements of producers of wire and wire rope should not be used for purposes of calculating surrogate financial ratios because certain kitchen appliance shelving and racks are a downstream product of wire requiring additional manufacturing processes and wire and wire rope do not undergo comparable additional fabrication. Using wire producers to calculate the surrogate financial ratios would not capture all the costs beyond wire reported by the respondents in the production of kitchen appliance shelving and racks, such as painting, powder coating, degreasing, etc. Therefore, we find that a company which produces fasteners would better reflect the production experience of kitchen appliance shelving and racks because fasteners, like kitchen appliance shelving and racks, undergoes further processing. As such, we averaged financial ratios from the financial statements of Lakshmi, Nasco, and Sterling, all of which are integrated wire fastener producers, to calculate the surrogate financial ratios.

To value low carbon steel wire rod, we used price data from the Indian Joint Plant Committee ("JPC"), which is a joint industry/government board that monitors Indian steel prices. These data are fully contemporaneous with the POI, and are specific to the reported inputs

of the respondents. *See* Wireking's Section D Supp; New King Shan's Section D Supp. Further, these data are publicly available, represent a broad market average, and we are able to calculate them on a tax-exclusive basis. *See* 19 CFR 351.408(c)(1). For a detailed discussion of all surrogate values used for this preliminary determination, *see* Surrogate Value Memo.

Wireking stated that we should use the WTA data for valuing all inputs even though the WTA data available for wire rod represents a basket category consisting of wire rod 14mm or less in diameter. This data, however, is less specific to the reported inputs than the JPC price data. Wireking argued that the Department reject the use of the JPC price data because it includes information from steel companies that have received domestic subsidies as indicated on their financial statements which Wireking has placed on the record of this proceeding. Wireking asserts that the JPC data are affected by these subsidies and therefore we should not use the JPC data to value low carbon steel wire rod.

On the one hand, the advantage of the JPC data are that they are from an official government source and are far more specific to the input in question. However, we are mindful of the concerns of Wireking. Bearing those concerns in mind, in selecting between the two datasets we are selecting the dataset more specific to the input in question. We will consider this issue for the final determination, and we invite all parties to comment on the proper balancing of these considerations.

#### **Use of Facts Available for Wireking's Unit Weights**

Section 776(a)(1) of the Act mandates that the Department use facts available if necessary information is not available on the record of an antidumping proceeding. In this investigation, Wireking reported that does not maintain production records that reports per-unit consumption of each FOP to specific products. *See* Wireking Section D Supplemental Questionnaire Response, (February 5, 2009) at 2. Accordingly, Wireking reported that it has calculated its FOPs by dividing, at each production stage, the total POI volume of each FOP consumed by the total volume of all products, subject and non-subject, generated at that stage. Then, Wireking reported that it then multiplied the FOP ratio by the unit weight of the finished product. *See id.*, at 3 and Exhibit D-7.

In their February 17, 2009, submission, Petitioners submitted data gathered from Wireking's submitted

packing lists and Petitioners' own production experience of certain products that allegedly demonstrated that Wireking's reported unit weights were understated. After comparing Petitioners' production experience of certain products and the unit weight of products reported in Wireking's packing lists to Wireking's reported unit weights, we find that Wireking has understated the unit weights of its finished products. *See* Wireking's Analysis Memo, at Attachment 4, Petitioners' February 17, 2009, Submission on Underreported Steel Weights, at 6 and Attachment 3. Additionally, because Wireking reported that it multiplied its FOP ratios by the unit weight of the finished product to obtain the per-unit consumption ratio of finished product, we also find that Wireking has understated its FOP ratios. Therefore, pursuant to section 776(a)(2)(B) of the Act, Wireking has not provided accurate information relevant to the Department's analysis. Thus, consistent with section 782(d) of the Act, the Department has determined it is necessary to apply facts otherwise available to Wireking's unit weight of each finished product to calculate Wireking's NV based on its reported FOP data. To account for the correct per-unit consumption ratio of each of Wireking's finished product, the Department has preliminarily determined to increase Wireking's reported FOP data by the difference in Wireking's reported unit weight and the unit weight reported in Wireking's packing list. Additionally, where there was no packing list on the record of the unit weight for various finished products, the Department has preliminarily determined to increase Wireking's reported FOP data for these finished products by the weighted-average difference of the unit weights for the finished products that are on the record. Moreover, to account for the correct weight of finished product to convert certain surrogate values to Wireking's reported U.S. price per piece, the Department has also preliminarily determined to increase Wireking's reported unit weight of each finished product by the weight difference, as discussed above. *See* Wireking's Analysis Memo.

#### **Currency Conversion**

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Verification**

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

**Combination Rates**

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See*

*Initiation Notice*, 72 FR at 60806. This practice is described in *Policy Bulletin 05.1*, available at <http://ia.ita.doc.gov/>.

**Preliminary Determination**

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin
Guandong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.).	Guandong Wireking Housewares & Hardware Co., Ltd. ....	25.66
New King Shan (Zhu Hai) Co., Ltd. ....	New King Shan (Zhu Hai) Co., Ltd. ....	17.15
Separate Rates Entities	Producer .....	Margin
Marmon Retail Services Asia .....	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia).	21.41
Hangzhou Dunli Import & Export Co., Ltd. ....	Hangzhou Dunli Industry Co., Ltd. ....	21.41
Jiangsu Weixi Group Co. ....	Jiangsu Weixi Group Co. ....	21.41
PRC-wide Entity (including Asber Enterprise Co., Ltd. (China))	.....	96.45

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject certain kitchen appliance shelving and racks from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption from Wireking, New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co., and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

Additionally, as the Department has determined in its *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 74 FR 683 (January 7, 2009) ("*CVD Prelim*") that the product under investigation, exported and produced by Wireking, benefitted from an export subsidy we will we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to

constitute an export subsidy. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007). Therefore, for merchandise under consideration exported and produced by Wireking entered or withdrawn from warehouse, for consumption on or after publication date of this preliminary determination, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above adjusted for the export subsidy rate determined in the *CVD Prelim* (*i.e.*, Income Tax reduction for Export Oriented FIEs: countervailable subsidy of 0.94 percent; and Local Income Tax Reduction for "Productive" FIEs: countervailable subsidy of 0.23 percent). The adjusted cash deposit rate for Wireking is 24.49 percent.

Furthermore, in the *CVD Prelim*, Wireking's rate was assigned to the all-others rate as it was the only rate that was not zero, de minimis or based on total facts available. *See CVD Prelim*, 74 FR at 693. Accordingly, as the countervailing duty rate for New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co. is the all others rate, which includes the two countervailable export subsidies listed above, we will also instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above for these companies adjusted for the export subsidies determined in the *CVD Prelim*. The adjusted cash deposit rate

for New King Shan is 15.98 percent and the adjusted cash deposit rate for Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co. is 20.24 percent.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain kitchen appliance shelving and racks, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested

parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

#### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on February 23, 2009, Wireking requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. Wireking also requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: February 26, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-4612 Filed 3-4-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.  
**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 6, 2009.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: February 17, 2009.

**Angela C. Arrington,**

*Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

#### Office of Elementary and Secondary Education

*Type of Review:* Revision.  
*Title:* Local Flexibility Demonstration Program (Local-Flex) Application Package.

*Frequency:* Annually.  
*Affected Public:* Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 50.

Burden Hours: 4,000.

*Abstract:* The Local Flexibility Demonstration (Local-Flex) program provides participating local educational agencies (LEAs) with unprecedented flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose under the Elementary and Secondary Education Act (ESEA) in order to meet the State's definition of adequate yearly progress and attain specific measurable goals for improving student achievement and narrowing achievement gaps. The application package contains information applicants will need to prepare and submit their Local-Flex proposals.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3923. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-4741 Filed 3-4-09; 8:45 am]

BILLING CODE 4000-01-P

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Notice

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Notice of public hearing agenda.

**DATE AND TIME:** Tuesday, March 17, 2009, 1-3 p.m.

**PLACE:** U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).



**AGENDA:** The Commission will receive presentations on the following topic: Voter Registration Databases: Initial Discussion on Reviewing HAVA Mandated Guidance.

This hearing will be open to the public.

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener. Telephone: (202) 566-3100.

**Alice Miller,**

*Chief Operating Officer, U.S. Election Assistance Commission.*

[FR Doc. E9-4760 Filed 3-3-09; 11:15 am]

**BILLING CODE 6820-KF-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13345-000]

#### Shearwater Design Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

February 26, 2009.

On December 15, 2008, and supplemented on February 5, 2009, and February 24, 2009, Shearwater Design Inc. filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Homeowner Tidal Power Electric Generation Project located on the Kennebec River in Sagadahoc County, Maine. The project uses no dam or impoundment.

The proposed project would consist of: (1) 6 hydrokinetic turbine units that would be directly connected to individual homes, with a total installed capacity of 60-kilowatts, and (2) appurtenant facilities. The project is estimated to have an annual generation of 150,000-kilowatt-hours, which would be used by the homeowners and net metered back into the electricity power grid.

*Applicant Contact:* Ms. Dot Kelly, Shearwater Design Inc., 83 Captain Perry Drive, Phippsburg, Maine 04562, phone: (207) 443-4787.

*FERC Contact:* Kelly T. Houff (202) 502-6393.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13345-000) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-4716 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13347-000]

#### Wells Rural Electric Company; Notice of Application for Preliminary Permit Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 25, 2009.

On December 18, 2008, Wells Rural Electric Company filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), to study the proposed Bishop Creek Dam Water Power Project. The proposed project would be located on Bishop Creek or Bishop Creek Reservoir in Elko, Nevada. The existing Bishop Dam is federally owned and/or operated by the Bureau of Land Management.

The proposed project would consist of: (1) A new dam of 79-foot high and crest of 408.7-foot long; (2) a reservoir holding 17,167-acre-foot of water at normal pool elevation at 5,923 feet; (3) a new 4 mile-long, 25-kilovolt transmission line; (4) a powerhouse containing one generating unit with one megawatts (MW) capacity; and (5) appurtenant facilities. The proposed project would have the potential for annual generation of 8.766 gigawatt-hours (GWh).

*Applicant Contact:* Mr. Dan Dyer or Andrew Hammond, Dyer Engineering Consultants Inc., 5442 Longley Lane,

Suite A, Reno, NV 89511, (775) 852-1440.

*FERC Contact:* Jake Tung, (202) 502-8757.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13347) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-4705 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Attendance at NEPOOL Meetings

February 26, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following upcoming NEPOOL meetings:

- NEPOOL Participants Committee;
- March 6 (Manchester, VT);
- April 3 (Boston, MA);
- May 1 (Location TBD);
- June 5 (Location TBD);
- June 23 (Location TBD);
- NEPOOL Markets Committee Meeting;
- March 10-11 (Marlborough, MA);
- March 25-26 (Location TBD);
- April 6-7 (Westborough, MA);
- May 12-13 (Marlborough, MA);
- June 9-10 (Marlborough, MA).



For additional meeting information, see [http://www.iso-ne.com/committees/comm\\_wkgrps/index.html](http://www.iso-ne.com/committees/comm_wkgrps/index.html).

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. ER07–397, *ISO New England Inc. and the New England Power Pool Participants Committee*

Docket No. ER07–476, *ISO New England Inc. and the New England Power Pool Participants Committee*

Docket No. ER08–41, *ISO New England Inc. and the New England Power Pool Participants Committee*

Docket No. ER08–54, *ISO New England Inc.*

Docket No. ER08–633, *ISO New England Inc.*

Docket No. ER08–697, *ISO New England Inc. and the New England Power Pool Participants Committee*

Docket No. ER08–1209, *ISO New England Inc. and the New England Power Pool Participants Committee*

Docket No. ER08–1328, *New England Participating Transmission Owners Participants Committee*

Docket No. OA08–58, *ISO New England Inc., et al.*

Docket No. EL09–3, *Ashburnham Municipal Light Plant, et al. v. Berkshire Power Company, LLC, and ISO New England Inc.*

Docket No. EL09–8, *Lavand & Lodge, LLC v. ISO New England, Inc.*

Docket No. ER09–197, *ISO New England Inc.*

Docket No. ER09–291, *ISO New England Inc.*

Docket No. ER09–467, *ISO New England Inc.*

Docket No. ER09–584, *Bangor Hydro-Electric Company*

Docket No. ER09–640, *ISO New England Inc. and the New England Power Pool Participants Committee*

Docket No. ER09–716, *ISO New England Inc.*

For more information, contact Pat Rooney, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6205 or [patrick.rooney@ferc.gov](mailto:patrick.rooney@ferc.gov).

**Kimberly D. Bose,**

Secretary.

[FR Doc. E9–4714 Filed 3–4–09; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EG09–10–000, EG09–11–000, EG09–12–000, EG09–13–000, EG09–14–000, EG09–15–000, EG09–16–000, EG09–17–000]

#### Majestic Wind Power LLC, Enel Stillwater, LLC, NRG Texas Power LLC, FPL Energy Oliver Wind I, LLC, Bull Creek Wind LLC, Buffalo Ridge I LLC, Moraine Wind II LLC, Pebble Springs Wind LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

February 27, 2009.

Take notice that during the month of January 2009, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations 18 CFR 366.7(a).

**Kimberly D. Bose.**

Secretary.

[FR Doc. E9–4723 Filed 3–4–09; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP09–11–000]

#### Northern Lights 2009–2010 Zone EF Expansion Project; Notice of Availability of the Environmental Assessment for the Proposed Northern Lights 2009–2010 Zone EF Expansion Project

February 27, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northern Natural Gas Company (Northern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed pipeline facilities including:

- An approximately 6.37-mile-long extension of the 30-inch-diameter Faribault-Farmington D-Line in Rice and Dakota Counties, Minnesota;
- An approximately 6.06-mile-long extension of the 20-inch-diameter

Farmington-North Branch C-Line in Washington County, Minnesota;

- An approximately 6.04-mile-long extension of the 20-inch-diameter Elk River loop in Anoka County, Minnesota;

- The replacement of approximately 9.32 miles of the 3- and 2-inch-diameter Rockford Branch Line with 22.95 miles of 16-inch-diameter pipeline in Carver, Wright, and Hennepin Counties, Minnesota;

- An approximately 11.21 miles of the 16-inch-diameter greenfield Corcoran Branch Line in Hennepin County, Minnesota;

- A new 15,000 horsepower ISO-rated greenfield compressor station located near Albert Lea, Minnesota in Freeborn County, Minnesota; and

- A new meter station in Hennepin County, Minnesota.

Northern proposes to expand the capacity of its facilities in these areas to transport an additional 135,000 decatherms per day of natural gas for incremental firm winter service.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. 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 and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Sign-up."

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments 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 the Gas Branch 3, PJ11.3.

- Reference Docket No. CP09-11-000; and

- Mail your comments so that they will be received in Washington, DC on or before March 30, 2009.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).<sup>1</sup> Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

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](mailto: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>.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-4722 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2493-084-WA]

#### Puget Sound Energy, Inc.; Notice of Availability of Environmental Assessment

February 27, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for an amendment of license for the Snoqualmie Falls Hydroelectric Project, located on the Snoqualmie River in the City of Snoqualmie, King County, Washington, and has prepared an environmental assessment (EA) on the proposed amendment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA 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. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1-A, Washington, DC 20426. Please reference the project name and project number (Snoqualmie Falls Hydroelectric Project No. 2493-084) on all comments. 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 under the "eFiling" link. For further information, contact Linda Stewart at (202) 502-6680.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-4724 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER09-523-000]

#### Alliant Energy Industrial Services, Inc.; Notice of Filing

February 26, 2009.

Take notice that on January 5, 2009, Alliant Energy Industrial Services, Inc., pursuant to sections 35.13 and 131.53 of Commission Regulations, 18 CFR 35.15 and 131.53, filed a Notice of Cancellation of their Rate Schedule FERC No. 1, a market-based rate wholesale power sales tariff.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 9, 2009.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-4718 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

<sup>1</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ID-5969-000]

**Chasse, Gerard R.; Notice of Filing**

February 25, 2009.

Take notice that on February 5, 2009, Gerard R. Chasse submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2008), and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 (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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 12, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-4710 Filed 3-4-09; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ID-5968-000]

**Dawes, Peter E.; Notice of Filing**

February 25, 2009.

Take notice that on February 5, 2009, Peter E. Dawes submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) (2008), and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 (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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 12, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-4709 Filed 3-4-09; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP09-337-001]

**Eastern Shore Natural Gas Company; Notice of Compliance Filing**

February 27, 2009.

Take notice that on February 26, 2009, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets listed in Appendix A to the filing, to be effective March 1, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 10, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-4726 Filed 3-4-09; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. OA09–22–000]

**Florida Power & Light Company; Notice of Filing**

February 26, 2009.

Take notice that on February 17, 2009, Florida Power & Light Company submitted their methodology for distribution of revenues for operational penalties for unreserved use and operational penalties for late studies in compliance with Order Nos. 890 and 890–A. *Preventing Undue Discrimination and Preference in Transmission Service*, 118 FERC 61, 119 (Order No. 890), *Order on Rehearing*, 121 FERC 61, 297 (Order 890–A) (2007).

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on March 10, 2009.

Kimberly D. Bose,  
*Secretary.*

[FR Doc. E9–4715 Filed 3–4–09; 8:45 am]

BILLING CODE 6717–01–P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ID–5929–001]

**Hanf, Robert J.S.; Notice of Filing**

February 25, 2009.

Take notice that on February 5, 2009, Robert J.S. Hanf submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b)(2008), and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 (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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on March 12, 2009.

Kimberly D. Bose,  
*Secretary.*

[FR Doc. E9–4708 Filed 3–4–09; 8:45 am]

BILLING CODE 6717–01–P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ER09–734–000]

**Pittsfield Generating Company, LP; Notice of Filing**

February 26, 2009.

Take notice that on February 20, 2009, Pittsfield Generating Company, LP filed a request that the Commission waive application of the unreserved transmission use penalty provisions in Section 14.5 of the Northeast Utilities Companies Local Service Schedule under Section II of the ISO New England Inc.'s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3.

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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 13, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-4713 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PR09-14-000]

#### Atmos Energy Corporation; Notice of Informational Rate Filing

February 26, 2009.

Take notice that on February 19, 2009, Atmos Energy Corporation (Atmos), filed an informational rate filing pursuant to the Commission's June 9, 2003 Letter Order in Docket No. PR03-10-000. Atmos states that the purpose of the filing is to present information consistent with the Commission's authority under 15 U.S.C. 717i(a) in order to allow the Commission to monitor Atmos' jurisdictional rates under Section 5 of the Natural Gas Act. Atmos further states that it seeks no change in its existing rates and charges or the previously approved terms and conditions upon which it provides service.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 13, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-4712 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER09-732-000]

#### Windhorse Energy, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 25, 2009.

This is a supplemental notice in the above-referenced proceeding of Windhorse Energy, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

**Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 17, 2009.**

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the

FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-4707 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER09-666-000, ER09-667-000, ER09-668-000, ER09-669-000, ER09-670-000, ER09-671-000]

#### EDFD Handsome Lake; EDFD Perryman; EDFD Keystone; EDFD Conemaugh; EDFD C.P. Crane; EDFD West Valley; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 25, 2009.

This is a supplemental notice in the above-referenced proceeding of EDFD Handsome Lake's, EDFD Perryman's, EDFD Keystone's, EDFD Conemaugh's, EDFD C.P. Crane's and EDFD West Valley's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 17, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-4706 Filed 3-4-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD09-4-000, Docket No. ER04-691-091, Docket No. ER09-411-000, Docket No. ER09-506-000, Docket No. NJ09-1-000, Docket Nos. ER08-637-000, ER08-637-001, ER08-637-004, ER08-637-005, Docket Nos. ER08-1169-001, ER08-1169-002, Docket Nos. EL07-86-003, EL07-86-004, EL07-86-005, EL07-86-006, EL07-86-007, EL07-86-008, Docket Nos. EL07-88-003, EL07-88-004, EL07-88-005, EL07-88-006, EL07-88-007, EL08-88-008, Docket Nos. EL07-92-003, EL07-92-004, EL07-92-005, EL07-92-006, EL07-92-007, EL07-92-008]

**Integrating Renewable Resources Into the Wholesale Electric Grid: Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc., Bonneville Power Administration, Midwest Independent Transmission System Operator, Inc. and Transmission Owners of the Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc.; Ameren Services Company, Northern Indiana Public Service Company v. Midwest Independent Transmission System Operator, Inc., Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, Wisconsin Public Power Inc. v. Midwest Independent Transmission System Operator, Inc., Wabash Valley Power Association, Inc. v. Midwest Independent Transmission System Operator, Inc.; Supplemental Notice of Technical Conference**

February 27, 2009.

As announced in the Notice of Technical Conference issued on February 4, 2009 and the Second Notice of Technical Conference issued on February 20, 2009, a technical conference will be held on Monday, March 2, 2009, from 9 a.m. to 5 p.m. (est), in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Members of the Commission will attend and participate in the conference.

Additional docket numbers have been included in the caption above because issues in these proceedings may be related to issues arising during the course of discussions in the technical conference.

The Commission welcomes industry comments on this subject. The deadline for comments under this docket is April 30, 2009.

A free Webcast of the meeting/conference is available through [www.ferc.gov](http://www.ferc.gov). Anyone with Internet access who desires to listen to this event can do so by navigating to [www.ferc.gov](http://www.ferc.gov)'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the Webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit [www.CapitolConnection.org](http://www.CapitolConnection.org) or call 703-993-3100.

Transcripts of the conference will be available immediately for a fee from Ace Reporting Company (202-347-3700 or 1-800-336-6646). They will be available for free on the Commission's eLibrary system and on the Calendar of Events approximately one week after the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or (202) 208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

*For more information about this conference, please contact: Sarah McKinley at [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov), (202) 502-8368.*

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-4721 Filed 3-4-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL09-29-000; Docket No. EL09-30-000]

**NorthWestern Corporation; Mountain States Transmission Intertie, LLC; NorthWestern Corporation; Notice of Technical Conference**

February 25, 2009.

Take notice that the Commission Staff will convene a technical conference in the above-referenced proceedings on Thursday, March 12, 2009, at 1 p.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

At the conference, Commission Staff and interested persons will have the

opportunity to discuss issues associated with the above-mentioned filings, including, but not be limited to: rates and service on the projects proposed by the filings; distinctions between the two projects; open seasons; queue procedures; system configuration and siting issues; and requested waivers. The Petitioners<sup>1</sup> should be prepared to address all the concerns raised in the protests, and to provide, as necessary, additional support for the filings. A subsequent notice will be issued before the conference that will provide details of the issues that Staff wishes to discuss.

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](mailto: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 either Timothy Duggan at (202) 502-8326 or e-mail [Timothy.Duggan@ferc.gov](mailto:Timothy.Duggan@ferc.gov), or Katie Detweiler at (202) 502-6426 or e-mail [Katie.Detweiler@ferc.gov](mailto:Katie.Detweiler@ferc.gov).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-4711 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP08-436-000]

#### Stingray Pipeline Company, L.L.C.; Notice of Informal Settlement Conference

February 27, 2009.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Thursday, March 12, 2009 at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

<sup>1</sup> Petitioners include Northwestern Corporation and Mountain States Transmission Intertie, LLC.

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](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or (202) 208-8659 (TTY), or send a FAX to (202) 208-2106 with the required accommodations.

For additional information, please contact Marc Gary Denkinger (202) 502-8662 [marc.denkinger@ferc.gov](mailto:marc.denkinger@ferc.gov) or Lorna Hadlock (202) 502-8737 [lorna.hadlock@ferc.gov](mailto:lorna.hadlock@ferc.gov).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-4725 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PR09-13-000]

#### Bay Gas Storage Company, Ltd.; Notice of Petition for Rate Approval

February 26, 2009.

Take notice that on February 6, 2009, Bay Gas Storage Company, Ltd. (Bay Gas) submitted for filing its proposal to charge a lost-an-unaccounted-for (LAUF) reimbursement percentage of 0.22 percent.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-4717 Filed 3-4-09; 8:45 am]

**BILLING CODE 6717-01-P**

## FEDERAL ELECTION COMMISSION

[Notice 2009-6]

### Filing Dates for the New York Special Election in the 20th Congressional District

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special election.

**SUMMARY:** New York has scheduled a Special General Election on March 31, 2009 to fill the U.S. House of Representatives seat in the Twentieth Congressional District vacated by Senator Kirsten Gillibrand.

Political committees participating in the New York Special General Election on March 31, 2009 shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

#### SUPPLEMENTARY INFORMATION:

##### Principal Campaign Committees

All principal campaign committees of candidates who participate in the New York Special General Election shall file a 12-day Pre-General Report on March 19, 2009; and a 30-day Post-General Report on April 30, 2009. (See chart below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's quarterly filings in April and July.

**Unauthorized Committees (PACs and Party Committees)**

Political committees filing on a semiannual basis in 2009 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New York Special General Election by the close of books for the applicable

report(s). (See chart below for the closing date for each report.)

Political committees filing monthly that support candidates in the New York Special General Election should continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New York Special

Election may be found on the FEC Web site at [http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml).

**Calendar of Reporting Dates for New York Special Election**

Quarterly Filing Political Committees Involved in the Special General (03/31/09) Must File:

Report	Close of books <sup>1</sup>	Reg./cert. & overnight mailing deadline	Filing deadline
Pre-General .....	03/11/09	03/16/09	03/19/09
April Quarterly .....	03/31/09	04/15/09	04/15/09
Post-General .....	04/20/09	04/30/09	04/30/09
July Quarterly .....	06/30/09	07/15/09	07/15/09

**Semiannual Filing Political Committees Involved in the Special General (03/31/09) Must File:**

Report	Close of books <sup>1</sup>	Reg./cert. & overnight mailing deadline	Filing deadline
Pre-General .....	03/11/09	03/16/09	03/19/09
Post-General .....	04/20/09	04/30/09	04/30/09
Mid-Year .....	06/30/09	07/31/09	07/31/09

<sup>1</sup> The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

Dated: February 27, 2009.

On behalf of the Commission,

**Steven T. Walther,**

*Chairman, Federal Election Commission.*

[FR Doc. E9-4651 Filed 3-4-09; 8:45 am]

**BILLING CODE 6715-01-P**

**FEDERAL ELECTION COMMISSION**

**Sunshine Act Notices**

**AGENCY:** Federal Election Commission.

**CANCELLATIONS:** Executive Session scheduled for February 24, 2009. Open Meeting scheduled for February 26, 2009. Executive Session scheduled for March 3, 2009. Open Meeting scheduled for March 5, 2009.

**DATE AND TIME:** Wednesday, March 4, 2009, at 10 a.m. and Thursday, March 5, 2009, at 2 p.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** These meetings will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures

or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:**

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E9-4662 Filed 3-4-09; 8:45 am]

**BILLING CODE 6715-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Healthcare Research and Quality**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Coordinating Care across Primary Care and Specialty Care Practices." In accordance with the Paperwork

Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by May 4, 2009.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at [doris.lefkowitz@ahrq.hhs.gov](mailto:doris.lefkowitz@ahrq.hhs.gov).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by e-mail at [doris.lefkowitz@ahrq.hhs.gov](mailto:doris.lefkowitz@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*"Coordinating Care Across Primary Care and Specialty Care Practices"*

AHRQ proposes an evaluation of the redesign of the transitions of care between primary care and specialty care services. The purpose of the redesign is to remedy inefficiencies in the current referral processes that threaten care quality and safety, and system efficiency. This redesign is being implemented at the Boston Medical



Center (BMC), and two affiliated health centers. The evaluation will be conducted for AHRQ by its contractor, the Boston University School of Public Health (BUSPH).

Care coordination has been identified by the Institute of Medicine (IOM) as a key strategy with potential to improve the effectiveness, safety and efficiency of the health care system. At the same time, care coordination, particularly in transitions among sites of care, is often lacking. Research shows that problems in coordination of care and common failures in patients' transitioning between and among systems typically create serious quality concerns in many settings. Individuals moving across systems of care and between care providers are vulnerable to fragmented and disjointed care (Coleman et al., 2004). Uncoordinated and fragmented transitions can lead to a wide range of costly problems and threats to patient safety including greater use of hospital and emergency services (Coleman et al., 2004), ordering and completion of redundant tests (Coleman & Berenson, 2004), prescription and medication errors and use of poly-pharmacy by multiple providers (Coleman & Berenson, 2004). The end result is often confusion about conflicting care plans and lack of follow-up care. The aim of this evaluation is to address this confusion and fragmentation by expanding knowledge of how to improve the experience and outcomes for patients in transitions of care between primary care and specialty practices. The initial focus is on referrals between primary care and two specialties: gastroenterology (GI) and obstetrics (OB). The redesigned referral system will be tested by implementing it in three participating primary care sites and two specialty clinics. We expect that the lessons learned from this evaluation will provide a model and tools that can later easily be tested and applied to other sites and specialties in the BMC system and provide lessons learned to other systems seeking to

sustainably improve their referral systems.

This project is being conducted pursuant to AHRQ's statutory authority to conduct research and evaluations on health care and systems for the delivery of such care, including activities with respect to: the quality, effectiveness, efficiency, appropriateness and value of health care services; clinical practice, including primary care and practice-oriented research; and health care costs, productivity, organization, and market forces. See 42 U.S.C. 299a(a)(1), (4) and (6).

The overall aims of the evaluation are to provide a rigorous assessment of the success of the redesigned referral system in meeting its improvement goals and to gain an understanding of the implementation of the redesigned system.

**Method of Collection**

This evaluation will include the following data collections:

□ Medical record data will be used to analyze aspects of the referral process, such as percentage of items on referral forms filled in, proportion of specialty appointments made, time between referral and initial specialty appointment. Patients' personal health data will not be analyzed. The medical record data will be used to measure both the fidelity of the redesigned system within the practices and success in meeting redesign improvement goal (outcome) indicators. The medical record data will be extracted by project staff and will not impose a burden on the participating health care sites.

□ Patient satisfaction survey will be administered to selected patients twice during the project. The questionnaire will be designed to assess patient experience in the referral system. Only patients with referrals to obstetrics or gastroenterology specialists will receive the questionnaire. These two questionnaires are essentially identical and vary only by the type of specialist seen; for the purpose of this clearance request they are treated as identical.

Results from the first survey will provide baseline data; results from the second survey will provide the basis for assessing change over time and fidelity to the new system design.

□ Focus groups with providers, clinical staff and administrative staff will be conducted in each primary care site and in each specialty practice. The group sessions will pursue three topics: the extent to which the new system is being used as intended; the perceived effectiveness of the new system as implemented; and the organization and culture of the clinical setting. Themes from the focus groups will be used to assess fidelity of implementation, performance outcomes and factors affecting fidelity and outcomes.

□ Implementation logs and meeting notes kept by the project team throughout the redesign implementation will document the implementation process, including factors affecting the process, challenges encountered, and strategies for dealing with the challenges. This component of the evaluation will not impose a burden on the participating health care sites.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this two year evaluation. The patient satisfaction survey questionnaire will be completed by a total of 600 patients prior to the referral process redesign and 600 patients after the completion of the redesign (Exhibit 1 shows 300 per year). The questionnaire is estimated to take 6 minutes to complete. Focus groups will be conducted with about 21 clinical staff at each of the 3 primary care sites and 2 specialty care sites (Exhibit 1 shows 2.5 sites per year). Each focus group session will last about 45 minutes. The total annualized burden is estimated to be 99 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this project. The total annualized cost burden is estimated to be \$2,620.

**EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS**

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Patient satisfaction survey .....	300	2	6/60	60
Focus groups .....	2.5	21	45/60	39
Total .....	302.5	na	na	99

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Patient satisfaction survey .....	300	60	\$19.29	\$1,157
Focus groups .....	2.5	39	37.50	1,463
Total .....	302.5	99	na	2,620

\* The hourly wage for the patient surveys is based on the national average wage. The hourly wage for the focus groups is based upon the weighted mean of the average wages for physicians (\$58.76, n=45), clinical administrative staff (\$17.64, n=30) and other clinical staff (\$25.48, n=30). National Compensation Survey: Occupational Wages in the United States, U.S. Department of Labor, Bureau of Labor Statistics. June 2007, Summary 07-03, <http://www.bls.gov/ncs/ocs/sp/ncb10910.pdf>. Accessed December 10, 2008.

**Estimated Annual Costs to the Federal Government**

Exhibit 3 shows the estimated total and annualized cost for this two-year

evaluation. The total cost is \$155,110 and includes \$23,267 for project development, \$32,573 for data collection activities, \$31,022 for data

processing and analysis, \$15,511 for the publication of results, \$12,408 for project management and \$40,329 for overhead.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development .....	\$23,267	\$11,633
Data Collection Activities .....	32,573	16,287
Data Processing and Analysis .....	31,022	15,511
Publication of Results .....	15,511	7,756
Project Management .....	12,408	6,204
Overhead .....	40,329	20,164
Total .....	155,110	77,555

**Request for Comments**

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 24, 2009.

**Carol M. Clancy,**

*Director.*

[FR Doc. E9-4515 Filed 3-4-09; 8:45 am]

**BILLING CODE 4160-90-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[30Day-09-08AR]**

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-4766 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

CDC Cervical Cancer Study (CX3)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The National Breast and Cervical Cancer Early Detection Program (NBCCEDP) is the only organized national screening program in the United States that offers breast and cervical cancer screening to underserved women. Screening policies for cervical cancer in the program include an annual Pap test until a woman has had three consecutive normal Pap tests. However, human papillomavirus (HPV) DNA testing is not currently a reimbursable expense under NBCCEDP guidelines, therefore adopting HPV DNA testing along with Pap testing in women over 30 could help the program better utilize resources by extending the screening interval of women who are cytology negative and HPV test negative, which is estimated to be 80-90% of women.

CDC proposes to conduct a pilot study at 18 clinics in the state of Illinois in order to assess the feasibility, acceptability and barriers to use the HPV DNA test in conjunction with Pap

test screening. Clinics will be assigned to an intervention group or a control group, matched on clinic attributes such as geographical location (urban, rural), HPV policy, and hospital versus non-hospital status, provider specialty mix, patient volume, and racial/ethnic characteristics of the patient population. Clinics in the intervention group will receive HPV DNA tests to administer to eligible patients presenting for a routine Pap test, as well as a multi-component educational intervention involving both health care providers and patients.

Clinics in the control group will receive the HPV tests for eligible patients but will not receive the educational interventions involving health care providers and patients.

OMB approval is requested for the first three years of a planned five-year study period. Information will be collected primarily from clinical care providers, clinic coordinators, and a sample of women between the ages of 35 and 60 who visit one of the participating clinics for routine cervical cancer screening.

The results of this study will provide information about knowledge, attitudes, beliefs, and cervical cancer screening practices involving low-income, underserved women. The findings will help inform policy regarding the HPV DNA test on a national level for cervical cancer screening in the NBCCEDP.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,006.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondent	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Clinic Coordinators .....	Initial Clinic Survey .....	6	1	2
	Follow-up Clinic Survey .....	6	11	1
Health Care Providers .....	Baseline Provider Survey .....	23	1	30/60
	Follow-up Provider Survey .....	23	2	30/60
Patients .....	Patient Screening Script .....	3,333	1	5/60
	Patient Enrollment Form .....	2,667	1	5/60
	Baseline Patient Survey .....	867	1	20/60
	Follow-up Patient Survey .....	624	1	10/60

Dated: February 27, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-4720 Filed 3-4-09; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-09-08AV]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Cost and Follow-up Assessment of Administration on Aging (AoA)—Funded Fall Prevention Programs for Older Adults—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NCIPC seeks to examine cost of implementing each of the three AoA-funded fall prevention programs for older adults (Stepping On, Moving for Better Balance and Matter of Balance) and to assess the maintenance of fall prevention behaviors among participants six months after completing the Matter of Balance program. To assess the maintenance of fall prevention behaviors, CDC will conduct telephone interviews of 425 Matter of Balance program participants six months after they have completed the program. The interview will assess their knowledge and self-efficacy related to falls as taught in the course, their activity and exercise levels, and their reported falls both before and after the program. The results of the follow-up assessment will determine the extent to which preventive behaviors learned during the Matter of Balance program are maintained and can continue to

reduce fall risk. The cost assessment will calculate the lifecycle cost of the Stepping On, Moving for Better Balance, and Matter of Balance programs. It will also include calculating the investment costs required to implement each program, as well as the ongoing operational costs associated with each program. These costs will be allocated over a defined period of time depending on the average or standard amount of time these programs continue to operate (standard lifecycle analysis ranges from five to 10 years). As part of the lifecycle cost calculation, these data will allow us to compare program costs and to identify specific cost drivers, cost risks, and unique financial attributes of each program. Local program coordinators for the 200 sites in each of the AoA-funded states will collect the cost data using lifecycle cost spreadsheets that will be returned to CDC for analysis. The results of these studies will support the replication and dissemination of these fall prevention programs and enable them to reach more older adults. The Survey Screen takes 3 minutes, the survey instrument takes forty five minutes, and the cost tool takes two hours to complete. There are no costs to respondents other than their time.

The total annual burden is 744 hours.

## ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Type of form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Program participant .....	Follow-up Survey Screen for Matter of Balance-Introduction Script.	500	1	3/60
Program coordinator .....	Follow-up Survey for Matter of Balance .....	425	1	45/60
	Cost assessment of AoA-funded fall prevention programs.	200	1	2

Dated: February 26, 2009.

**Maryam Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-4728 Filed 3-4-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### National Center for Injury Prevention and Control Initial Review Group (NCIPC IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC announces the following meeting of the aforementioned review group:

*Times and Dates:*

6 p.m.–6:30 p.m., March 23, 2009 (Open).

6:30 p.m.–8 p.m., March 23, 2009 (Closed).

8 a.m.–5 p.m., March 24, 2009 (Closed).

8 a.m.–5 p.m., March 25, 2009 (Closed).

*Place:* The W Hotel, 3377 Peachtree Road, NE., Atlanta, Georgia 30326, Telephone: (678) 500-3181.

*Status:* Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92-463.

*Purpose:* This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

*Matters To Be Discussed:* The meeting will include the review, discussion, and

evaluation of applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: CE09-007, Research Grants for Preventing Violence and Violence Related Injury (R01).

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* J Felix Rogers, Phd, M.P.H., NCIPC, Extramural Research Program Office, CDC, 4770 Buford Highway, NE., M/S F62, Atlanta, Georgia 30341-3724, Telephone (770) 488-4334.

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: February 25, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9-4642 Filed 3-4-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention, announces the following meeting for the aforementioned subcommittee:

*Time and Date:*

9:30 a.m.–5 p.m., March 12, 2009.

*Place:* Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334-4611, Fax (859) 334-4619.

*Status:* Open to the public, but without a public oral comment period. To access by conference call dial the following information 1 (866) 659-0537, Participant Pass Code 9933701.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

*Purpose:* The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction

Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

*Matters To Be Discussed:* The agenda for the Subcommittee meeting includes: the selection of an 11th set of dose reconstructions for review; discussion of cases under review from the 6th, 7th, and 8th sets of individual dose reconstructions; preparation of a letter report on the first 100 dose reconstruction cases reviewed; and, discussion of selection criteria and review rate for 2009.

The agenda is subject to change as priorities dictate. Written comments may be submitted from the public. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

This meeting was previously scheduled to convene on January 29, 2009, but was cancelled due to inclement weather and airport facility inaccessibility. The meeting was scheduled to reconvene as soon as possible; therefore, this **Federal Register** notice is being published less than fifteen days prior to the meeting date.

*Contact Person for More Information:* Theodore Katz, Designated Federal Officer, CDC, NIOSH, 1600 Clifton Road, Mailstop E-20, Atlanta, GA 30333, Telephone (513) 533-6800, Toll Free 1 (800) CDC-INFO, E-mail [ocas@cdc.gov](mailto:ocas@cdc.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 both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 26, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9-4643 Filed 3-4-09; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-N-0553]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey To Evaluate the Effectiveness of Mississippi Delta Fish Advisories

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by April 6, 2009.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-NEW and title "Survey to Evaluate the Effectiveness of Mississippi Delta Fish Advisories." Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Survey to Evaluate the Effectiveness of Mississippi Delta Fish Advisories—(OMB Control Number 0910-NEW)

The proposed survey will gather information about fishing and fish consumption habits in the Mississippi Delta region, as well as the respondents' awareness and understanding of the Regional Delta Advisory (RDA) issued by the Mississippi Department of Environmental Quality. Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct

educational and public information programs relating to the safety of the nation's food supply. In June 2005, the Environmental Protection Agency's (EPA's) Office of Water and FDA's Center for Food Safety and Applied Nutrition finalized a Memorandum of Understanding (MOU) to enhance collaboration between FDA and EPA regarding environmental contaminants in fish and shellfish and the safety of fish and shellfish for U.S. consumers. The MOU is available at <http://www.epa.gov/waterscience/fish/files/moufdaepa.pdf>.

The proposed study is phase two of a two phase study designed to determine whether existing fish consumption recommendations issued by the State of Mississippi are adequately protecting sport and subsistence consumers of fish harvested from Delta waters. The final report of phase one, entitled "Recommended Study Design for a Survey to Evaluate the Effectiveness of Mississippi Delta Fish Advisories," is available at <http://www.epa.gov/waterscience/fish/technical/ms-delta.html>. Based on the report cited in this paragraph, FDA is conducting the proposed survey on behalf of EPA to evaluate the effectiveness of the Mississippi Delta Fish Advisories. The proposed survey will collect information on the extent to which Delta sport and subsistence fishermen and their families are aware of the RDA and its recommendations and the extent to which the respondents have changed their fish consumption behaviors as a result of the advisory. The survey will also document specific behavior changes resulting from the RDA, such as increases or decreases in the amount of locally harvested fish consumed, changes in methods of fish preparation, and consumption or avoidance of specific species of fish.

Results of the survey will provide EPA information about fishing and fish consumption habits in the Mississippi Delta region, as well as the respondents' awareness and understanding of the RDA.

The respondents will be selected from four counties in the Mississippi Delta region. Counties were selected to include a mix of rural and non-rural areas and areas with major water resources affected by the advisory. The selected counties are Coahoma, Holmes, Leflore, and Washington. Only the part of Holmes County that is within the advisory area will be included in the survey.

The total sample will include 400 on-the-banks interviews and 600 household interviews of sport and subsistence fishers who harvest noncommercial fish

from the Mississippi Delta advisory area, and individuals in the Mississippi Delta area who consume wild-caught fish from the advisory area. FDA estimates that the survey will take approximately 18 minutes to complete,

for a total burden of 300 hours (1,000 x 0.3 = 300).

FDA will conduct 6 cognitive interviews and 20 pretests prior to fielding the survey, for a total additional burden of 16 hours.

In the **Federal Register** of October 24, 2008 (73 FR 63487), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Cognitive Interviews	6	1	6	1	6
Pretest	20	1	20	.5	10
Survey	1,000	1	1,000	.30	300
Total					316

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on the agency's prior experience with surveys similar to the proposed survey.

Dated: February 24, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9-4644 Filed 3-4-09; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2009-N-0664]

#### Risk Communication Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Risk Communication Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on April 30, 2009, from 8 a.m. to 5 p.m. and May 1, 2009, from 8 a.m. to 2 p.m.

*Location:* Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

*Contact Person:* Lee L. Zwanziger, Office of the Commissioner, Office of Policy, Planning and Preparedness,

Office of Planning, Food and Drug Administration, 5600 Fishers Lane, rm 14-90, Rockville, MD 20857, telephone: 301-827-2895, FAX: 301-827-4050, e-mail: [RCAC@fda.hhs.gov](mailto:RCAC@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 8732112560. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* On both days the Committee will discuss the Agency's draft risk communication strategic plan and will be asked for comment and further advice, for example, on strategic priorities for research on effective risk communication.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2009 and scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written

submissions may be made to the contact person on or before April 23, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on April 30th and 10:30 to 11:30 a.m. on May 1st. Those desiring to make formal oral presentations should notify the contact person on or before April 23, 2009, and should submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 24, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lee L. Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/oc/advisory/default.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 25, 2009.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. E9-4645 Filed 3-4-09; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Intent To Request Renewal From OMB of One Current Public Collection of Information: Corporate Security Review

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** 60-day notice.

**SUMMARY:** TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

**DATES:** Send your comments by May 4, 2009.

**ADDRESSES:** Comments may be mailed or delivered to Ginger LeMay, PRA Officer, Office of Information Technology, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

**FOR FURTHER INFORMATION CONTACT:** Ginger LeMay, PRA Officer, Office of Information Technology, TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-3616; e-mail: [ginger.lemay@dhs.gov](mailto:ginger.lemay@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement 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;
- (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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Information Collection Requirement

*Title:* Corporate Security Review (CSR).

*Type of Request:* Renewal of one current public collection.

*OMB Control Number:* 1652-0036.

*Form(s):* Corporate Security Review Form.

*Affected Public:* Surface transportation system owners and operators.

*Abstract:* The Aviation and Transportation Security Act of 2001 (ATSA) (Pub. L. 107-71) requires TSA to oversee the security of the nation's surface transportation system. Specifically, ATSA grants TSA authority to execute its responsibilities for:

- Enhancing security in all modes of transportation;
- Assessing intelligence and other information in order to identify threats to transportation security; and
- Coordinating countermeasures with other Federal agencies to address such threats, including the authority to receive, assess, and distribute intelligence information related to transportation security (49 U.S.C. 114(d), (f)(1)-(5), (h)(1)-(4)).

To support these requirements, TSA assesses the current security practices in the surface transportation sector by way of site visits and interviews through its Corporate Security Review (CSR) program, one piece of a much larger domain awareness, prevention, and protection program in support of TSA's and Department of Homeland Security's missions. TSA is seeking to renew its OMB approval for this information collection so that TSA can continue to ascertain information security measures and identify gaps. These activities are critical to its mission of ensuring transportation security.

The CSR is an "instructive" review that provides TSA with an understanding of surface transportation owner/operators' security programs, if they have them. In carrying out CSRs, modal experts from TSA conduct site visits of highway and pipeline assets throughout the nation. The TSA team analyzes the owner's/operator's security plan, if the owner/operator has one, and determines if the mitigation measures included in the plan are being implemented. In addition to reviewing the security plan document, TSA

inspects one or two assets owned by the operator.

At the conclusion of these site visits, TSA completes the Corporate Security Review form, which asks questions concerning eleven topics: Threat assessments, vulnerability assessments, security planning, credentialing, secure areas, infrastructure protection, physical security countermeasures, cyber security, training, communications, and exercises. TSA conducts this collection through voluntary face-to-face visits at the company/agency headquarters of surface transportation owners/operators. Typically, TSA sends one to three employees to conduct a 4-8 hour discussion/interview with representatives from the company/agency owner/operator. TSA plans to collect information from businesses of all sizes.

The annual hour burden for this information collection is estimated to be 612 hours. While TSA estimates a total of 590 potential respondents, this estimate is based on TSA conducting 184 visits per year, each visit lasting 1 day (3-8 hour work day). The total annual cost burden to respondents is \$30,000.

*Number of Respondents:* 590.

*Estimated Annual Burden Hours:* An estimated 612 hours annually.

Issued in Arlington, Virginia, on February 27, 2009.

**Ginger LeMay,**

*Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. E9-4652 Filed 3-4-09; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Intent To Request Approval From OMB of One New Public Collection of Information: Canine Program Training Form

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves the on-line submission of names, Social Security

numbers, addresses, department names, and phone numbers by individuals requesting participation in the TSA National Explosives Detection Canine Team Program (NEDCTP) through the Canine Web Site. The information is used to set up travel, handle reimbursement, and schedule training, all of which are crucial to program participation and administration.

**DATES:** Send your comments by May 4, 2009.

**ADDRESSES:** Comments may be mailed or delivered to Ginger LeMay, PRA Officer, Office of Information Technology, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

**FOR FURTHER INFORMATION CONTACT:** Ginger LeMay, PRA Officer, Office of Information Technology, TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-3616; e-mail: [ginger.lemay@dhs.gov](mailto:ginger.lemay@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*Purpose and Description of Data Collection*

The National Explosives Detection Canine Team Program (NEDCTP) is a partnership between TSA, airports, and local law enforcement. The NEDCTP supports TSA's mission by preparing law enforcement canine-handlers, who are not Federal employees, and canines

to serve on the front lines of America's War on Terror. These canine teams (handler and canine) are trained to quickly locate and identify dangerous materials that may present a threat to transportation systems.

For this purpose, TSA collects the information pursuant to Public Law 104-264, Federal Aviation Reauthorization Act of 1996; Public Law 107-296, Homeland Security Act of 2002; and Public Law 107-71, Aviation and Transportation Security Act. TSA electronically collects and stores the Social Security number, credit card number, name, employment information (that is, airport ID and canine unit), and office phone and fax numbers of all canine handlers who apply to participate in the program. This information collection is crucial, as it is utilized to set up training, travel, and create a unique profile for each handler that allows them access into the Canine Web Site (CWS). The CWS is a Web-based application that serves as the collaboration tool for TSA and canine handlers across the Nation. The CWS serves as the main source of information for all NEDCTP records and operations. From the CWS, canine handlers, supervisors, and trainers can access helpful information pertinent to canine training, travel to training, reimbursement, message forums, user profiles (containing a limited amount of personal information, profiles of dogs, teams, and agencies), help desk messages, calendar data, equipment inventory, training aid inventory, training exercises, and daily utilization of canine teams. Without access to the CWS, canine handlers will not be able to perform their jobs or receive proper guidance and support from TSA.

*Use of Results*

TSA uses the information collected to arrange the handler's travel for training, and later on, to allow the handler access to the CWS. Once travel has been arranged, TSA uses the stored information to create a unique profile for each handler, which in turn allows for the issuing of a unique login credential into the CWS. The stored data is viewable only by the individual and their local law enforcement agency canine unit supervisor (a non-TSA employee) and authorized TSA personnel responsible for administering the program. The annual burden estimate is approximately 14 hours.

Issued in Arlington, Virginia, on February 27, 2009.

**Ginger LeMay,**

*Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. E9-4654 Filed 3-4-09; 8:45 am]

**BILLING CODE 9110-05-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5281-N-17]

**Notice of Proposed Information Collection: Comment Request; Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: May 4, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202-708-2374, (this is not a toll-free number) or e-mail Ms. Deitzer at [Lillian.L.Deitzer@HUD.gov](mailto:Lillian.L.Deitzer@HUD.gov) for a copy of the proposed form and other available information.

**FOR FURTHER INFORMATION CONTACT:**

Warren Friedman, Senior Advisor, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202-708-0667 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and 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:* Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans.

*OMB Control Number, if Applicable:* 2539-0015.

*Description of the Need for the Information and Proposed Use:* This information is required in conjunction with the issuance of Notices of Funding Availability for approximately \$180,000,000 for Healthy Homes and Lead Hazard Control Programs that are authorized under Title X of the Housing and Community Development Act of 1992, Public Law 102-550, Section 1011, the Housing and Urban Development Act of 1970, Sections 501 and 502, and other legislation.

After the award of grants, HUD's Office of Healthy Homes and Lead Hazard Control requires its Healthy Homes Demonstration, Healthy Homes Technical Studies grantees, and Lead Hazard Control contractors who conduct such research or evaluation activities, to submit a Quality Assurance Plan (QAP) to the Office for approval before they initiate data collection. This requirement also applies to Office of Healthy Homes and Lead Hazard Control contractors who conduct such research or evaluation activities. This requirement was established because quality assurance procedures ensure the accuracy and validity of data. The use of quality assurance plan templates helps to ensure that quality assurance activities are well planned and thorough, and standardizes the formatting of plans, which aides both the respondents in plan development and HUD staff in their review. The use of different templates for technical studies and demonstration projects was designed to reduce respondent burden by requiring more detailed information only for the technical studies (research) projects, consistent with their more rigorous quality assurance requirements.

*Agency Form Numbers, if Applicable:* HUD-96008, 96012, 96013, 96014, 96015, 96016, and standard grant forms.

*Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response:* Application Development: Number of respondents: 340; frequency of responses: 1; hours per response 80; burden hours: 27,200. Award of Grant: Number of respondents: 97; frequency of responses: 1; hours per response 16; burden hours: 1,552. Quality Assurance Plan: Number of respondents: 27; Frequency of response: 1; Hours per response: 24; Total Burden Hours: 648. Grant total of estimated burden hours: 29,400.

*Status of the Proposed Information Collection:* Revision of a currently approved collection.

*Members of Affected Public:* Potential applicants include State, Tribal, local governments, not-for-profit institutions and for-profit firms located in the U.S. State and units of general local government, and Federally recognized Native American Tribes.

*Additional Information:* The obligation to respond to this information collection is required to obtain or retain benefits.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 17, 2009.

**Jon L. Gant,**

*Director, Office of Healthy Homes and Lead Hazard Control.*

[FR Doc. E9-4691 Filed 3-4-09; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5281-N-19]

### Assistance Payment Contract—Notice of (1) Termination, (2) Suspension, or (3) Reinstatement

**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.

Lenders review and audit, each Section 235 mortgage serviced by lenders, where HUD financial assistance

to qualified low- and moderate-income families is terminated, suspended, and/or reinstated for each Section 235.

**DATES:** *Comments Due Date:* April 6, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0094) 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](mailto: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:* Assistance Payment Contract—Notice of (1) Termination, (2) Suspension, or (3) Reinstatement.

*OMB Approval Number:* 2502-0094.

*Form Numbers:* HUD-93114.

*Description of the Need for the Information and Its Proposed Use:* Lenders review and audit, each Section 235 mortgage serviced by lenders, where HUD financial assistance to qualified low- and moderate-income families is terminated, suspended, and/or reinstated for each Section 235.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	40	2		0.75		60

Total Estimated Burden Hours: 60.  
 Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 2009.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E9-4692 Filed 3-4-09; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5281-N-18]

**Mortgagee's Certification/Application/Monthly Summary of Assistance Payments Due**

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.

Mortgagee's application for assistance payments on behalf of lower income homeowners under Section 235.

DATES: Comments Due Date: April 6, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0081) 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: Mortgagee's Certification/Application/Monthly Summary of Assistance Payments Due.

OMB Approval Number: 2502-0081.

Form Numbers: HUD-300 and HUD-93102.

Description of the Need for the Information and its Proposed Use: Mortgagee's application for assistance payments on behalf of lower income homeowners under Section 235.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	40	24		0.62		600

Total Estimated Burden Hours: 600.  
 Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 2009.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E9-4694 Filed 3-4-09; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[NM-920-1310-09; NMNM 101579, NMNM 101580]

**Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NMNM 101579 and NMNM 101580**

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97-451, The Bureau of Land Management (BLM)

received a petition for reinstatement of oil and gas leases NMNM 101579 and NMNM 101580 from the lessee, Yates Petroleum Corp. et al. for lands in Chaves County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Margie Dupre, BLM, New Mexico State Office, at (505) 438-7520.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of \$10.00 per acre or fraction thereof, per year,

and 16⅔ percent, respectively. The lessee paid the required \$500.00 administrative fee for the reinstatement of the lease and \$166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate leases NMNM 101579 and NMNM 101580, effective the date of termination, December 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

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.

Dated: February 27, 2009.

**Margie Dupre,**

*Land Law Examiner, Fluids Adjudication Team.*

[FR Doc. E9-4737 Filed 3-4-09; 8:45 am]

BILLING CODE 4310-FB-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate a Cultural Item: Paul H. Karshner Memorial Museum, Puyallup, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Paul H. Karshner Memorial Museum, Puyallup, WA, that meets the definition of “unassociated funerary object” under 25 U.S.C. 3001.

This notice is published as part of the National Park Service’s administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

At an unknown time, one cultural item was removed from a grave near Vantage, Kittitas County, WA. In 1931,

the one unassociated funerary object was donated to the Paul H. Karshner Memorial Museum by the museum’s founder, Dr. Warner Karshner (Accession 1931.01). Museum records state the cultural item is an unassociated funerary object since it was found in a grave. The unassociated funerary object is a necklace that is 30 inches in length, and made of disc-shaped bone and red glass Cornaline d’Aleppo beads (Catalog Number 1–607).

Published ethnographic documentation indicates that the Vantage, WA, area is within the traditional territory of the Moses-Columbia or Sinkiuse, Wanapum, and Yakama peoples (Ray 1936, Spier 1936). Descendants of the Moses-Columbia, Sinkiuse, Wanapum, and Yakama are members of the Confederated Tribes of the Colville Reservation, Washington, and Confederated Tribes and Bands of the Yakama Nation, Washington, as well as the Wanapum Band, a non-Federally recognized Indian group. The Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; and the Wanapum Band, a non-Federally recognized Indian group, are jointly claiming this unassociated funerary object from the Vantage area.

Officials of the Paul H. Karshner Memorial Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Paul H. Karshner Memorial Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Dr. Jay Reifel, Assistant Superintendent, telephone (253) 840–8971, or Ms. Beth Bestrom, Museum Curator, telephone (253) 841–8748, Paul H. Karshner Memorial Museum, 309 4th St. NE, Puyallup, WA 98372, before April 6, 2009.

Repatriation of the unassociated funerary object to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; and the Wanapum Band, a non-Federally recognized Indian group, may proceed after that date if no additional claimants come forward.

The Paul H. Karshner Memorial Museum is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; and the Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: January 26, 2009.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E9-4682 Filed 3-5-09; 8:45 am]

BILLING CODE 4312-50-S

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate a Cultural Item: U.S. Department of Energy, Richland Operations Office, Richland, WA and Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the control of the U.S. Department of Energy, Richland Operations Office, Richland, WA, and in the physical custody of the Phoebe A. Hearst Museum of Anthropology (Hearst Museum), University of California, Berkeley, Berkeley, CA, that meets the definition of “unassociated funerary object” under 25 U.S.C. 3001.

This notice is published as part of the National Park Service’s administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

On an unknown date, one unassociated funerary object was removed from site 45BN157, Jaeger’s Island, located on the U.S. Department of Energy’s Hanford Site on the south bank of the Columbia River, Benton

County, WA, by Francis Riddell, and accessioned into the Hearst Museum in 1951. The one unassociated funerary object is a bead (catalog 2-40752).

Museum documentation indicates that the bead is from a talus burial, and that the museum does not hold human remains from this burial. This type of cultural item is consistent with other funerary objects found in the Columbia River area during occupation by the Yakama, Walla Walla, and Wanapum groups.

Ethnographic documentation indicates that the present-day location of the Hanford Site, Benton County, WA, is located within an overlapping aboriginal territory of the Yakama, Walla Walla, and Wanapum groups. The descendants of the Yakama, Walla Walla, and Wanapum are represented today by the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and the Wanapum Band, a non-Federally recognized Indian group. The Confederated Tribes of the Colville Reservation, Washington, and Nez Perce Tribe, Idaho are also known to have used the area routinely.

Officials of the Department of Energy and the Hearst Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Department of Energy and the Hearst Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Nez Perce Tribe, Idaho. Furthermore, officials of the Department of Energy and the Hearst Museum have determined that there is a cultural relationship between the unassociated funerary object and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Annabelle Rodriguez, U.S. Department of Energy, Cultural/Historic Resources Program,

Richland Operations Office, 825 Jadwin Avenue, MSIN A5-15, Richland, WA 99352, telephone (509) 372-0277, before April 6, 2009. Repatriation of the unassociated funerary object to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and Wanapum Band, a non-Federally recognized Indian group, may proceed after that date if no additional claimants come forward. The Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and Wanapum Band, a non-Federally recognized Indian group, are claiming jointly all cultural items from the Hanford area.

The Department of Energy, Richland Operations Office is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: January 26, 2009.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E9-4670 Filed 3-4-09; 8:45 am]

**BILLING CODE 4312-50-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items: Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of

the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the unassociated funerary objects was made by the Southwest Museum of the American Indian, Autry National Center professional staff in consultation with representatives of the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

In 1935, unassociated funerary objects were removed from site P-15-000116 (CA-KER-116) in Elk Hills Cemetery, Buena Vista Lake, Kern County, CA, by Edwin F. Walker, Southwest Museum Research Associate, and were donated to the museum that same year. The 5,508 unassociated funerary objects (207 inventory numbers) are 2 abalone shell containers; 2 abraders; 1 arrow straightener; 36 arrow points (3 arrow points, 5 chalcedony, 4 chalcedony and chert, 6 obsidian, 1 red carnelian, 5 stone, 12 obsidian and chalcedony); 2 asphaltum pieces; 3 balls (1 granite, 1 sandstone, and 1 wood); 9 basket fragments, 1 bag with tiny beads and fragments and 5,156 individual beads (15 clam shell beads, 10 pismo clam shell beads, 4 Amethystine beads, 2,010 trade beads, 1 serpentine bead, 51 steatite beads, 2 stone beads, 22 red and white beads, 307 Olivella beads, 365 Red Beads, 2,065 blue beads, 42 black beads, 113 Green Beads, 111 white, 1 yellow, 19 Amber beads, 3 pink beads, 3 miscellaneous beads, 1 unknown bead, 3 soapstone beads, 1 crystal beads, 2 shell beads, and 5 tubular beads); 2 boiling stones; 1 glass bottle neck; 3 bowls (1 sandstone, 1 stone, and 1 seatite); 20 bowl fragments (5 steatite, 7 sandstone, 1 wooden, and 7 soapstone); 1 brush; 1 bull roarer fragment; 10 buttons (8 brass and 2 metal); 2 charmstones; 1 chert chalcedony; 2 china pitchers; 1 china saucer; 5 bird claws; 1 comal; 2 cooking stones; 3 crosses (2 metal crosses and 1 silver cross); 1 crystal; 2 crystal and mica fragments; 5 quartz crystal fragments; 8 dice; 43 pieces of fabric with tiny fragments; 1 piece of fur; 11 gaming piece fragments; 6 gaming stick fragments; 5 glass fragments; 6 glass bottle fragments; 1 abalone gorget; 1 kilt fragment with tiny fragments; 7 knives (1 iron blade knife, 6 chalcedony); 7 leather fragments; 2 mica fragments; 1

possible mouth piece; 1 clam shell necklace with 10 large beads; 1 olla; 11 abalone ornaments; 72 shell ornaments (8 abalone, 42 Olivella, 16 clam, 5 steatite, and 1 trade); 1 possible palette; 8 pendants (4 abalone, 2 mica, and 2 bead pendants); 1 pestle; 1 pestle fragment; 7 pigment fragments; 1 obsidian point fragment; 6 post fragments; 1 piece of quartz; 1 vial of sand from the site; 1 pair of scissors; 8 scrapers; 1 sweat scraper; 1 container of a soil sample; 1 metal spoon; 1 wooden spoon; 2 stones; 2 beaver teeth; 1 seal tooth; 2 crushed water bottles; and 2 water bottle fragments.

Historically, a Yokuts village extended along the north shore, on a sand spit, at the outlet of Buena Vista Lake. The Elk Hills Cemetery is located approximately 1,000 feet due north of this sand spit and Yokut village. The funerary objects removed from site P-15-000116 (CA-KER-116) illustrate that this burial site was in use during the Historic Period, approximately between the years A.D. 1780 and 1818.

The burial contexts identify the human remains removed from sites in Kern County, CA, as being Native American. Linguistic evidence indicates that this region of California was inhabited by Native American Yokut speakers. Consultation with a tribal representative of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, confirmed that these burial sites were within an area, documented by Yokuts oral history, of continued habitation that include the Protohistoric and Historic Periods. Historical sources corroborate this oral history. Modern descendants of Yokut speakers are members of the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Officials of the Southwest Museum of the American Indian, Autry National Center have determined that pursuant to 25 U.S.C. 3001 (3)(B), the 5,508 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Southwest Museum of the American Indian, Autry National Center also have determined that pursuant to 25 U.S.C. 3001 (2), there is

a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Steven M. Karr Ph.D., Ahmanson Curator of History and Culture and Interim Executive Director, 234 Museum Drive, Los Angeles, CA 90065, telephone (323) 221-2164, extension 241, or LaLena Lewark, Senior NAGPRA Coordinator, Autry National Center, 4700 Western Heritage Way, Los Angeles, CA 90027, telephone (323) 667-2000, extension 220, before April 6, 2009. Repatriation of the unassociated funerary objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may proceed after that date if no additional claimants come forward.

The Southwest Museum of the American Indian, Autry National Center is responsible for notifying the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: February 13, 2009.

**Sangita Chari,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. E9-4673 Filed 3-4-09; 8:45 am]

**BILLING CODE 4312-50-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion: Arizona State University, School of Human Evolution & Social Change, Tempe, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Arizona

State University, School of Human Evolution & Social Change (formerly Department of Anthropology), Tempe, AZ. The human remains were removed from Maricopa County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Arizona State University, School of Human Evolution & Social Change professional staff in consultation with representatives of the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1980, human remains representing a minimum of one individual were removed from Site AZ T:08:0039 (ASU) in Maricopa County, AZ, during research by Museum of Northern Arizona staff that was being sponsored by the U.S. Army Corps of Engineers in preparation for the construction of the Adobe Dam and the Arizona State University Deer Valley Rock Art Center. The project collection is curated at Arizona State University, School of Human Evolution & Social Change through agreement of the U.S. Army Corps of Engineers. The U.S. Army Corps of Engineers is not responsible for this collection. No known individual was identified. No associated funerary objects are present.

Site AZ T:08:0039 (ASU) dates to the Sedentary Period (A.D. 900-1150). The human remains had been cremated. Based on the cremation burial practice and age of the site, the human remains are affiliated with the archeologically defined Hohokam culture. Descendants of the Hohokam culture are the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Arizona State University have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Arizona State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni

Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Arleyn W. Simon, School of Human Evolution & Social Change, Box 872402, Tempe, AZ 85287-2402, telephone (480) 965-9231, before April 6, 2009. Repatriation of the human remains to the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Arizona State University is responsible for notifying the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: February 20, 2009.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. E9-4680 Filed 3-4-09; 8:45 am]

**BILLING CODE 4312-50-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion: Arizona State University, School of Human Evolution & Social Change, Tempe, AZ**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Arizona State University, School of Human Evolution & Social Change (formerly the Department of Anthropology), Tempe, AZ. The human remains were removed from the vicinity of the New River Dam, Maricopa County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Arizona State University, School of Human Evolution & Social Change professional staff in consultation with representatives of the Hopi Tribe of Arizona; Tohono

O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1981, human remains representing a minimum of three individuals were removed from Site AZ T:08:0001 (ASU) (NA 16, 757), Maricopa County, AZ, by Museum of Northern Arizona staff during research for the New River Dam Site that was being sponsored by the U.S. Army Corps of Engineers. The cremated human remains were removed from the site during test excavations. No known individuals were identified. No associated funerary objects are present.

In 1981, human remains representing a minimum of two individuals were removed from Site AZ T:08:0023 (ASU) (NA 16, 759), Maricopa County, AZ, by Museum of Northern Arizona staff during research for the New River Dam Site that was being sponsored by the U.S. Army Corps of Engineers. The cremated remains were removed from contexts exposed on the surface during test excavations. No known individuals were identified. No associated funerary objects are present.

In 1981, human remains representing a minimum of six individuals were removed from site AZ T:08:0024 (ASU) (NA 16, 760), Maricopa County, AZ, by Museum of Northern Arizona staff during research for the New River Dam Site that was being sponsored by the U.S. Army Corps of Engineers. The human remains were removed from cremation contexts during test excavations. No known individuals were identified. No associated funerary objects are present.

The human remains from the three sites were recovered as part of archeological investigations at the New River Dam Site by the Museum of Northern Arizona staff under contract with the U.S. Army Corps of Engineers. The project collection is curated at the Arizona State University, School of Human Evolution & Social Change under agreement with the U.S. Army Corps of Engineers. The U.S. Army Corps of Engineers is not responsible for this collection.

Occupation of the three sites dates to the Late Colonial and Sedentary Periods (A.D. 800-1150). Based on the burial practice of cremation and the age of the sites, the human remains are affiliated with the archeologically defined Hohokam culture. Descendants of the Hohokam culture are the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Arizona State University have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above

represent the physical remains of 11 individuals of Native American ancestry. Officials of the Arizona State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Arleyn Simon, School of Human Evolution & Social Change, Arizona State University, Box 872402, Tempe, AZ 85287-2402, telephone (480) 965-9231, before April 6, 2009. Repatriation of the human remains to the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The School of Human Evolution & Social Change is responsible for notifying the Hopi Tribe of Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: February 20, 2009.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. E9-4681 Filed 3-5-09; 8:45 am]

**BILLING CODE 4312-50-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion: Raymond M. Alf Museum of Paleontology, Claremont, CA**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Raymond M. Alf Museum of Paleontology, Claremont, CA. The human remains were removed from San Juan County, WA, and British Columbia, Canada.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native

American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Raymond M. Alf Museum of Paleontology professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation, Washington.

In 1963, human remains representing a minimum of one individual were removed from San Juan Island, San Juan County, WA. A location card is associated with the human remains, but no additional information exists on the circumstances of removal. No known individual was identified. No associated funerary objects are present.

The San Juan Islands are located in the northwest corner of Washington State immediately adjacent to the Canadian border. The San Juan Islands are part of the traditional area of the Central Coast Salish. Four permanent villages and one seasonal village are located on the North end of San Juan Island and are believed to be the home of the Songhees and Lummi. The seasonal village shows continual occupation for at least 5,000 years. Based on geographical location, officials of the Raymond M. Alf Museum reasonably believe that there is a shared group relationship of the human remains removed from San Juan Island with members of the Lummi Tribe of the Lummi Reservation, Washington.

In 1936, human remains representing a minimum of four individuals were removed from "Wallace Island" in British Columbia, Canada. No information exists on the circumstance of removal, other than a location card. No known individuals were identified. No associated funerary objects are present.

Wallace Island is located across the Boundary Pass from San Juan Island in Washington State. Aboriginal use of the Wallace Island is believed to date back at least 5,000 years, and it was in use at the time of European contact. Coastal Salish traditional territory includes the island, and has been the seasonal home of many Coast Salish groups. The Coast Salish in that area spoke different dialects of the Northern Straits Salish or Lekwungaynung language.

The Northern Straits Salish language stock, includes a number of dialects: Saanich, Samish, Songish, Sooke, Semiahmoo, and Lummi, which are similar enough that a speaker of one could understand a speaker of another. The Lummi spoke the Songish or Songhee dialect (also known as the Lekwungen or Lekungen). The Lummi Tribe is a part of the Coast Salish ethnolinguistic group, and Lummi is a

dialect of the Northern Straits Salish. The Samish, Lummi, and Semiahmoo controlled the extreme northern coast of Washington and the southwestern corner of British Columbia, where "Wallace Island" is located. Based on language and geographical location, officials of the Raymond M. Alf Museum reasonably believe that there is a shared group relationship to the individuals removed from "Wallace Island" with members of the Lummi Tribe of the Lummi Reservation, Washington.

Officials of the Raymond M. Alf Museum of Paleontology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the Raymond M. Alf Museum of Paleontology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Lummi Tribe of the Lummi Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Don Lofgren, Director, Raymond M. Alf Museum of Paleontology, 1175 West Baseline Road, Claremont, CA 91711, telephone (909) 624-2798, before April 6, 2009. Repatriation of the human remains to the Lummi Tribe of the Lummi Reservation, Washington may proceed after that date if no additional claimants come forward.

Raymond M. Alf Museum of Paleontology is responsible for notifying the Lummi Tribe of the Lummi Reservation, Washington that this notice has been published.

Dated: January 14, 2009.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. E9-4672 Filed 3-4-09; 8:45 am]

**BILLING CODE 4312-50-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion: School District of Rhinelander, Rhinelander High School, Rhinelander, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act

(NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the School District of Rhinelander, Rhinelander High School, Rhinelander, WI. The human remains were removed from Oneida County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the School District of Rhinelander professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Indians, Minnesota; Fond du Lac Band of the Minnesota Chippewa Indians, Minnesota; Grand Portage Band of the Minnesota Chippewa Indians, Minnesota; Keeweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Indians, Minnesota; Mille Lacs Band of the Minnesota Chippewa Indians, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and White Earth Band of the Minnesota Chippewa Indians, Minnesota.

In approximately 1969, human remains representing a minimum of one individual were removed from the Lake Nokomis area, Oneida County, WI, by an unknown individual. No known individual was identified. No associated funerary objects are present.

According to school district records, at the time of removal, the Oneida County Sheriff's Department conducted an investigation. The human remains are between 2,500 and 3,000 years old. Based on the age of the human remains and their association to an area with a Native American presence, the human remains are determined to be Native American. Since the area has been occupied by many tribes, the Native American human remains are determined to have a broad cultural affiliation with tribes that inhabited the



area. The tribes that have inhabited this area are the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Indians, Minnesota; Fond du Lac Band of the Minnesota Chippewa Indians, Minnesota; Grand Portage Band of the Minnesota Chippewa Indians, Minnesota; Keeweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Indians, Minnesota; Mille Lacs Band of the Minnesota Chippewa Indians, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and White Earth Band of the Minnesota Chippewa Indians, Minnesota.

Officials of the School District of Rhinelander have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the School District of Rhinelander also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Indians, Minnesota; Fond du Lac Band of the Minnesota Chippewa Indians, Minnesota; Grand Portage Band of the Minnesota Chippewa Indians, Minnesota; Keeweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Indians, Minnesota; Mille Lacs Band of the Minnesota Chippewa Indians, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and White

Earth Band of the Minnesota Chippewa Indians, Minnesota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Terry Fondow, Principal, Rhinelander High School, 665 Coolidge Ave., Rhinelander, WI 54501, telephone (715) 365–9500, before April 6, 2009. Repatriation of the human remains has occurred to the Wisconsin Inter-tribal Repatriation Committee, which represents the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and Stockbridge Munsee Community, Wisconsin.

The School District of Rhinelander is responsible for notifying the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Indians, Minnesota; Fond du Lac Band of the Minnesota Chippewa Indians, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Indians, Minnesota; Ho-Chunk Nation of Wisconsin; Keeweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Indians, Minnesota; Menominee Indian Tribe of Wisconsin; Mille Lacs Band of the Minnesota Chippewa Indians, Minnesota; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and White Earth Band of the Minnesota Chippewa Indians, Minnesota that this notice has been published.

Dated: February 13, 2009.

**Sangita Chari,**

*Acting Manager, National NAGPRA Program.*  
[FR Doc. E9–4683 Filed 3–4–09; 8:45 am]

**BILLING CODE 4312–50–S**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion: Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA. The human remains and associated funerary objects were removed from Fresno, Kings and Tulare Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Southwest Museum of the American Indian, Autry National Center professional staff in consultation with representatives of the Big Sandy Rancheria of Mono Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California. The Cold Springs Rancheria of Mono Indians of California and Northfork Rancheria of Mono Indians of California were contacted, but did not participate in the consultations about the human remains and associated funerary objects described in this notice.

In an unknown year, human remains representing a minimum of four individuals were removed from an unknown site in Kingsburg, Fresno County, CA. The museum has no



additional information regarding the circumstances of the removal or the museum's acquisition of the human remains. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown site in Kettleman Hills, Kings County, CA. The museum has no additional information regarding the circumstances of the removal. On June 26, 1942, the human remains were donated to the museum by Mrs. Frank S. Johnson for the Frank S. Johnson Collection. No known individual was identified. No associated funerary objects are present.

In an unknown year, human remains representing a minimum of one individual were removed from an unknown site near Tulare Lake, 2 miles southwest of Burrell, Kings County, CA, during an excavation by a contractor's bulldozer that was clearing ground for an oil well for the General Petroleum Company. On November 6, 1944, the human remains were donated to the museum by Edwin F. Walker. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of seven individuals were removed from an unknown site near Tule Lake, approximately 5 miles from Corcoran, Kings County, CA. The human remains were found in a bulldozed area near an irrigation project. At an unknown time and by unknown means, Mr. Charles Dirks acquired the human remains. On May 17, 1954, the human remains were donated to the museum by Mr. Dirks. No known individuals were identified. The three associated funerary objects are two obsidian arrow points and one obsidian dart point fragment.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown site near the south end of Tule Lake Basin, Kings County, CA. At an unknown time and by unknown means, R.B. Luckey acquired the human remains. On January 10, 1955, the human remains were donated to the museum by R.B. Luckey. No known individual was identified. The one associated funerary object is a hard soil sample with embedded fresh-water shells.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown site near the eastern Sierra foothills, Lost and Long Canyons, Tulare County, CA, by Mr. Henry F. Fuller. The

site was on and/or nearby Mr. Fuller's ranch in the Long Canyon area. On January 4, 1949, the human remains and associated funerary items were donated to the museum by Mr. Fuller. No known individual was identified. The 28 associated funerary objects are 17 glass beads and 11 glass trade bead fragments. An additional three associated funerary objects (a biface mano, an obsidian biface blade fragment, and an obsidian uniface scrape) were documented with the burial, but have not been located in the collection.

The ages of the above detailed human remains are unknown. Based on an archeological analysis, the individuals have been identified as Native American. Consultation with a tribal representative of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, confirmed that the provenience of the human remains is consistent with that of other discoveries of indigenous human remains in the area. Geographical and historical evidence indicates that the sites are located within the traditional territory of the Central Valley Yokuts and Monache people. The Central Valley Yokuts' traditional territory extends from Tulare Lake to the Western Sierra Nevada Foothills. Descendants of the Central Valley Yokuts are members of the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California. The Monache's traditional territory is in the proximity of the Western slope of the Sierra Nevada Mountains. Descendants of the Monache are members of the Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; and Northfork Rancheria of Mono Indians of California.

Officials of the Southwest Museum of the American Indian, Autry National Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least 15 individuals of Native American ancestry. Officials of the Southwest Museum of the American Indian, Autry National Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 32 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly,

officials of the Southwest Museum of the American Indian, Autry National Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Steven M. Karr, Ph.D., Ahmanson Curator of History and Culture and Interim Executive Director, 234 Museum Drive, Los Angeles, CA 90065, telephone (323) 221-2164, extension 241, or LaLena Lewark, Senior NAGPRA Coordinator, Autry National Center, 4700 Western Heritage Way, Los Angeles, CA 90027, telephone (323) 667-2000, extension 220, before April 6, 2009. Repatriation of the human remains and associated funerary objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may proceed after that date if no additional claimants come forward.

The Southwest Museum of the American Indian, Autry National Center is responsible for notifying the Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: February 13, 2009.

**Sangita Chari,**

*Acting Manager, National NAGPRA Program.*  
[FR Doc. E9-4674 Filed 3-4-09; 8:45 am]

**BILLING CODE 4312-50-S**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Inventory Completion:  
Southwest Museum of the American  
Indian, Autry National Center, Los  
Angeles, CA****AGENCY:** National Park Service, Interior.**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA. The human remains and associated funerary objects were removed from Kern County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Southwest Museum of the American Indian, Autry National Center professional staff in consultation with representatives of the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

In an unknown year, human remains representing a minimum of one individual were removed from an unknown site in Buttonwillow, Kern County, CA (Cat. #17.c.11). The museum has no additional information regarding the circumstances of the removal or the museum's acquisition of the human remains. No known individual was identified. No associated funerary objects are present.

In 1935, human remains representing a minimum of 12 individuals were removed from burials at site

P-15-000116 (CA-KER-116) in Elk Hills Cemetery, Buena Vista Lake, Kern County, CA, by Edwin F. Walker, Southwest Museum Research Associate, and were donated to the museum that same year (Accn. #11.F). No known individuals were identified. The 955

associated funerary objects are 9 arrowpoints (8 chalcedony, 1 obsidian arrowpoint); 1 basket covered bowl fragment; 11 basket fragments; 1 fragmented wooden bowl; 1 wooden bowl; 1 small round metal container; 1 soapstone bowl fragment, 2 steatite bowl fragments; 1 cup; 1 cup fragment; 867 beads (435 blue beads, 37 red beads, 163 white beads, 1 amber bead, 2 green beads, 1 polychrome bead, 8 pismo clam beads, 100 seed beads, 1 black bead, 2 bone beads with tiny fragments, 67 olivella shell beads, 1 abalone bead, 1 clam shell bead, 23 light blue, 4 green and 21 trade beads); 5 strings of beads; 5 brass buttons; 1 clam shell disk; 1 steatite dish; 5 fabric fragments with small fragments as well; 2 abalone shell gorgets; 1 nut; 16 shell ornaments (5 Columbella ornaments; 10 Hinnites ornaments and 1 pismo clam shell); 12 pendants (8 freshwater clams and 4 seawater clam shell); 2 pigment fragments; 1 piece of leather rope; 1 fragmented limpet shell; 1 bag of well broken, powdered shell; 3 brass thimbles; 1 fiber water bottle; 1 clay whistle; and 1 whistle fragment.

Historically, a Yokuts village extended along the north shore, on a sand spit, at the outlet of Buena Vista Lake. The Elk Hills Cemetery is located approximately 1,000 feet due north of this sand spit and Yokut village. The associated funerary objects removed from site P-15-000116 (CA-KER-116) illustrate that this burial site was in use during the Historic Period, approximately between the years A.D. 1780 and 1818.

The burial contexts identify the human remains removed from sites in Kern County, CA, as being Native American. Linguistic evidence indicates that this region of California was inhabited by Native American Yokut speakers. Consultation with a tribal representative of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, confirmed that these burial sites were within an area, documented by Yokut oral history, of continued habitation that include the Protohistoric and Historic Periods. Historical sources corroborate this oral history. Modern descendants of Yokut speakers are members of the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Officials of the Southwest Museum of the American Indian, Autry National

Center have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 13 individuals of Native American ancestry. Officials of the Southwest Museum of the American Indian, Autry National Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 955 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Southwest Museum of the American Indian, Autry National Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Steven Karr, Ph.D., Ahmanson Curator of History and Culture and Interim Executive Director, 234 Museum Drive, Los Angeles, CA 90065, telephone (323) 221-2164, extension 241, or LaLena Lewark, Senior NAGPRA Coordinator, Autry National Center, 4700 Western Heritage Way, Los Angeles, CA 90027, telephone (323) 667-2000, extension 220, before April 6, 2009. Repatriation of the human remains and associated funerary objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may proceed after that date if no additional claimants come forward.

The Southwest Museum of the American Indian, Autry National Center is responsible for notifying the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation of California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: February 13, 2009.

**Sangita Chari,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. E9-4675 Filed 3-4-09; 8:45 am]

BILLING CODE 4312-50-S

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM. The human remains and associated funerary objects were removed from Catron and Grant Counties, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Gila National Forest professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1935 and 1936, human remains representing two individuals were removed from Starkweather Ruin, Catron County, NM, during legally authorized excavations by Paul H. Nesbitt of Beloit College, Beloit, WI. The human remains and associated funerary objects had been curated at the Logan Museum of Anthropology, Beloit College since their excavation; however, the human remains and funerary objects are presently being transferred to the Forest Supervisor's Office, Gila National Forest. No known individuals were identified. The two associated funerary objects are pottery sherds.

Based on material culture, architecture and site organization, Starkweather Ruin has been identified as an Upland Mogollon pithouse village

and pueblo occupied between A.D. 500–1000 and A.D. 1100–1300.

In 1986, human remains representing one individual were removed from the Comanche Springs Site (LA 105121) in Grant County, NM, during legally authorized excavations conducted by the University of Arizona. The human remains have been curated at the Forest Supervisor's Office, Gila National Forest since their removal from the site. No known individual was identified. No associated funerary objects are present.

Based on material culture and site organization, the Comanche Springs Site has been identified as a Mogollon village occupied between A.D. 1000 and 1200.

In 1986, human remains representing one individual were removed from the Eva Faust Site (LA 33704) in Catron County, NM, during legally authorized excavations conducted by Dr. James Neely, University of Texas-Austin. No known individual was identified. No associated funerary objects are present.

Based on material culture and site organization, the Eva Faust Site has been identified as an Upland Mogollon pithouse village with surface rooms that was occupied between A.D. 600 and 1100.

In 1987, human remains representing two individuals were removed from the Diamond Creek Site (AR-03-06-05-214) in Catron County, NM, during archeological excavations conducted by the U.S. Forest Service in conjunction with an investigation under the Archaeological Resources Protection Act (ARPA) of illegal activities at the site. The human remains have been curated at the Forest Supervisor's Office, Gila National Forest since their removal from the site. No known individuals were identified. No associated funerary objects are present.

Based on material culture and site organization, the Diamond Creek Site has been identified as a Mogollon village occupied between A.D. 1000 and 1150.

In July to August 1990, human remains representing one individual were removed from site LA 78983 (Elk Ridge Ruin) in Catron County, NM, during archeological excavations conducted by Human Systems Research (Alamogordo, NM) in conjunction with an investigation under ARPA of illegal activities at the site. The human remains have been curated at the Forest Supervisor's Office, Gila National Forest since their removal from the site. No known individual was identified. No associated funerary objects are present.

Based on material culture and site organization, LA 78983 has been

identified as a Mogollon village occupied between A.D. 1000 and 1200.

Continuities between ethnographic materials and technology indicate the affiliation of the above Mogollon sites that are located in west-central New Mexico with the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The oral traditions of the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico support the cultural affiliation of these three Indian tribes with Mogollon sites in west-central New Mexico.

In 1966–1967, human remains representing two individuals were removed from site LA 10014 in Catron County, NM, during legally authorized excavations conducted by the U.S. Forest Service. No known individuals were identified. No associated funerary objects are present.

Based on material culture and site organization, LA 10014 has been identified as a Mogollon pithouse village with surface rooms that was occupied between A.D. 600 and 1100.

In January to February 1990, human remains representing four individuals were removed from site LA 66315 in Grant County, NM, during archeological excavations conducted by the U.S. Forest Service in conjunction with an investigation under ARPA of illegal activities at the site. The human remains and associated funerary objects have been curated at the Forest Supervisor's Office, Gila National Forest since their removal from the site. No known individuals were identified. The 120 associated funerary objects are 109 bags of ceramic sherds, chipped stone and groundstone fragments; 9 metates; 1 box of adobe/daub; and 1 ceramic vessel.

Based on material culture and site organization, LA 66315 has been identified as a Mogollon village occupied between A.D. 900 and 1150.

Continuities between ethnographic materials and technology indicate the affiliation of the two above-mentioned Mogollon sites located in southwestern New Mexico with the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico. The oral traditions of the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico support the cultural affiliation of these three Indian tribes with Mogollon sites in southwestern New Mexico.

Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above

represent the physical remains of 13 individuals of Native American ancestry. Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 122 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd., SE, Albuquerque, NM 87102, telephone (505) 842-3238, before April 6, 2009. Repatriation of the human remains and associated funerary objects to the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Gila National Forest is responsible for notifying the Pueblo of Acoma, New Mexico; Hopi Tribe of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: February 20, 2009.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*  
[FR Doc. E9-4676 Filed 3-4-09; 8:45 am]

BILLING CODE 4312-50-S

## DEPARTMENT OF THE INTERIOR

### National Park Service

**Notice of Inventory Completion: U.S. Department of Energy, Richland Operations Office, Richland, WA and Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves

Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of Energy, Richland Operations Office, Richland, WA, and in the physical custody of the Phoebe A. Hearst Museum of Anthropology (Hearst Museum), University of California, Berkeley, Berkeley, CA. The human remains were removed from Benton County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Hearst Museum professional staff on behalf of the Department of Energy and in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and Wanapum Band, a non-Federally recognized Indian group.

In 1947, human remains representing a minimum of one individual were collected from site 45BN157, Jaeger's Island, located on the U.S. Department of Energy's Hanford Site near the south bank of the Columbia River approximately one mile west of Vernita Bridge, Benton County, WA, by Francis Riddell. The human remains consist of a patella and a shaft fragment representing a minimum of one individual adult, sex unknown (catalog 2-21580). No known individual was identified. No associated funerary objects are present.

The human remains were determined to be Native American based on the geographic location. Ethnographic documentation indicates that the present-day location of the Hanford Site, Benton County WA, is located within an overlapping aboriginal territory of the descendants of the Yakama, Walla Walla, and Wanapum groups, which are represented today by the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and the Wanapum Band, a non-Federally recognized Indian group. The Confederated Tribes of the Colville Reservation, Washington, and Nez Perce Tribe, Idaho are also known to have used the area routinely.

Officials of the Department of Energy and the Hearst Museum have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Department of Energy and the Hearst Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Nez Perce Tribe, Idaho. Furthermore, officials of the Department of Energy and the Hearst Museum have determined that there is a cultural relationship between the human remains and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Annabelle Rodriguez, U.S. Department of Energy, Cultural/Historic Resources Program, Richland Operations Office, 825 Jadwin Avenue, MSIN A5-15 Richland, WA 99352, telephone (509) 372-0277, before April 6, 2009. Repatriation of the human remains to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and Wanapum Band, a non-Federally recognized Indian group, may proceed after that date if no additional claimants come forward. The Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and Wanapum Band, a non-Federally recognized Indian group, are claiming jointly all cultural items from the Hanford area.

The Department of Energy, Richland Operations Office is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: January 26, 2009.  
**Sherry Hutt**,  
*Manager, National NAGPRA Program.*  
 [FR Doc. E9-4671 Filed 3-4-09; 8:45 am]  
**BILLING CODE 4312-50-S**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Reclamation**

**Agency Information Collection;  
 Proposed Revisions to a Currently  
 Approved Information Collection;  
 Comment Request**

**AGENCY:** Bureau of Reclamation, Interior.  
**ACTION:** Notice of renewal of a currently approved information collection (OMB No. 1006-0002).

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Reclamation (Reclamation, we) intends to submit a request for renewal (with revisions) of an existing approved information collection to the Office of Management and Budget (OMB): Recreation Use Data Report, OMB Control Number 1006-0002. As part of its continuing effort to reduce paperwork and respondent burdens, Reclamation invites State and local governmental entities that manage recreation sites at Reclamation projects; concessionaires, subconcessionaires, and not-for-profit organizations who operate concessions on Reclamation lands; and the general public, to comment on this information collection.

**DATES:** We must receive your written comments on or before May 4, 2009.

**ADDRESSES:** You may send written comments to the Bureau of Reclamation, Attention: 84-53000, P.O. Box 25007, Denver, CO 80225-0007. You may request copies of the proposed revised application form by writing to the above address or by contacting Darrell Welch at (303) 445-2711 or [dwelch@do.usbr.gov](mailto:dwelch@do.usbr.gov).

**FOR FURTHER INFORMATION CONTACT:** Darrell Welch at (303) 445-2711.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Reclamation collects Reclamation-wide recreation and concession information (1) in support of existing public laws including the Land and Water Conservation Fund Act (Pub. L. 88-578), the Federal Water Project Recreation Act (Pub. L. 89-72), and the Federal Lands Recreation Enhancement Act (Pub. L. 108-477); and (2) to fulfill reports to the President and the Congress. This collection of information allows Reclamation to (1) Meet the requirements of the Government Performance and Results Act (GPRA); (2) fulfill congressional and financial reporting requirements; and (3) support specific information required by Federal legislation and the Department of the Interior's GPRA-based strategic plan. Collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of implementing Reclamation's mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American people. Specifically, the collected information provides Reclamation with the ability to (1) Evaluate program and management effectiveness pertaining to existing recreation and concessionaire resources and facilities; (2) assist in prioritizing Reclamation funding; and (3) validate effective public use of managed recreation resources located on Reclamation project lands in the 17 Western States.

**II. Changes to the Recreation Use Data Report Forms Parts I and II**

Reclamation slightly modified Parts I and II forms by reformatting each by (1) Rearranging the questions in a more

logical sequence; (2) deleting non-relevant questions; and (3) adding questions that specifically address the recreation program needs of Reclamation. Note that some of the questions asked of the concessionaires in Part II, Form 7-2535 were deleted because some of the information originally being collected from the concessionaires was redundant to the information already being collected from Reclamation's non-Federal partners in Part I, Form 7-2534. In addition, the title to Part I, Form 7-2535 was changed from Managing Partners to Non-Federal Managing Partners to more accurately reflect that Reclamation is only collecting information from our non-Federal partners and not our existing Federal partners.

**III. Data**

- OMB Control Number:* 1006-0002.
- Title:* Recreation Use Data Report (Form No. 7-2534—Part I, Non-Federal Managing Partners and Form No. 7-2535—Part II, Concessionaires).
- Form Numbers:* 7-2534 and 7-2535.
- Frequency:* Annually.
- Respondents:* Non-Federal government entities who manage the recreation resource on Reclamation land and waterbodies.
- Estimated Annual Total Number of Respondents:* 282.
- Estimated Number of Responses per Respondent:* 1.
- Estimated Total Number of Annual Responses:* 282.
- Estimated Total Annual Burden on Respondents:* 142 hours.
- Estimated Completion Time per Respondent:* 30 minutes.

The table below provides the necessary detail on how the total number of annual burden hours was arrived at for both forms. The total annual hour burden has been rounded up.

Form No.	Burden estimate per form (in minutes)	Total number of respondents	Total annual hour burden
7-2534 (Part 1, Non-Federal Managing Partners) .....	30	167	84
7-2535 (Part 2, Concessionaires) .....	30	115	58
<b>Total Burden Hours</b>	.....	.....	<b>142</b>

**IV. Request for Comments**

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including

whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the information collection on respondents, including the use of

automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 18, 2009.

**Roseann Gonzales,**

*Policy and Program Services, Denver Office.*  
[FR Doc. E9-4730 Filed 3-4-09; 8:45 am]

BILLING CODE 4310-MN-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection for 1029-0035

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and its expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 6, 2009, in order to be assured of consideration.

**ADDRESSES:** Please send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at [OIRA\\_Docket@omb.eop.gov](mailto:OIRA_Docket@omb.eop.gov), or by facsimile to (202) 395-6566. Also, please send a copy of your comments to the Information Collection Clearance

Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202-SIB, Washington, DC 20240, or electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov). Please reference 1029-0035 in your correspondence.

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John A. Trelease at (202) 208-2783. You may also contact Mr. Trelease at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew and consolidate its approval for the collections of information found at 30 CFR Part 779 and 30 CFR Part 783, Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. Once approved by OMB, OSM will discontinue the collection number 1029-0038, currently assigned to 30 CFR Part 783. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029-0035.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on December 15, 2008 (73 FR 76056). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

*Title:* 30 CFR Parts 779 and 783—Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

*OMB Control Number:* 1029-0035.

*Summary:* Applicants for surface and underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

*Bureau Form Number:* None.

*Frequency of Collection:* Once, at time of application submission.

*Description of Respondents:* 314 surface and underground coal mining applicants and 24 State regulatory authorities.

*Total Annual Responses:* 314 coal mining applications and 309 State responses.

*Total Annual Burden Hours:* 240,444 hours.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES**. Please refer to 1029-0035 in all correspondence.

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.

Dated: February 25, 2009.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*  
[FR Doc. E9-4499 Filed 3-4-09; 8:45 am]

BILLING CODE 4310-05-M

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-541]

### In the Matter of Certain Power Supply Controllers and Products Containing Same; Limited Exclusion Order

On June 13, 2005, the Commission instituted this investigation, based on a complaint filed by Power Integrations, Inc. ("PI") of San Jose, California. 70 FR. 34149 (June 13, 2005). The complaint, as amended and supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain power supply controllers and products containing the same. The Commission determined that System General Corporation ("SG") of Taipei, Taiwan, violated section 337 by reason of infringement of claims 1, 3, 5, and 6 of United States Patent No. 6,351,398 ("the '398 patent") and claims 26 and 27

of United States Patent No. 6,538,908 (“the ‘908 patent”).

On October 27, 2008, SG filed a petition for modification of the limited exclusion order in light of *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340 (Fed. Cir. 2008), requesting that the Commission modify the existing exclusion order so it does not exclude downstream products of non-respondents. On November 7, 2008, complainant PI filed an opposition to SG’s petition for modification. On the same day, the Commission IA filed a response supporting SG’s petition. Finally, on November 26, 2008, SG moved for leave to file a reply in support of its petition and also filed the reply.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the petition for modification. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of power supply controllers that infringe one or more of claims 1, 3, 5, and 6 of the ‘398 patent or claims 26 and 27 of the ‘908 patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of, SG, its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns. The Commission has also determined to prohibit the unlicensed entry of liquid crystal display (“LCD”) computer monitors, AC printer adapters, and sample/demonstration boards containing such infringing power supply controllers that are manufactured abroad by or on behalf of, or imported by or on behalf of, SG, its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. 1337(d)(1) do not preclude issuance of the limited exclusion order.

Accordingly, the Commission hereby orders that:

1. Power supply controllers that infringe one or more of claims 1, 3, 5, and 6 of United States Patent No. 6,351,398 and that are manufactured abroad by or on behalf of, or imported by or on behalf of, SG, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, and LCD computer monitors, AC printer adapters, and sample/demonstration boards that contain such infringing power supply controllers and that are

manufactured abroad by or on behalf of, or imported by or on behalf of, SG, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

2. Power supply controllers that infringe one or more of claims 26 and 27 of United States Patent No. 6,538,908 and that are manufactured abroad by or on behalf of, or imported by or on behalf of, SG, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, and LCD computer monitors, AC printer adapters, and sample/demonstration boards that contain such infringing power supply controllers and that are manufactured abroad by or on behalf of, or imported by or on behalf of, SG, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

3. In accordance with PI’s withdrawal of infringement allegations against certain of SG’s products, the provisions of this Order shall not apply to SG’s power supply controllers SG6105, SG68501, SG68502, SG38xx, SG5841, SG5848, SG6842J w/HV Start, SG6846, SG6846A, SG6848, SG6848x, SG6849, SG6850, and SG69xx.

4. When the United States Bureau of Customs and Border Protection (“Customs”) is unable to determine by inspection whether power supply controllers, LCD computer monitors, AC printer adapters, or sample/demonstration boards fall within the scope of this Order, it may, in its discretion, accept a certification, pursuant to procedures specified and deemed necessary by Customs, from persons seeking to import said products that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraphs 1 or 2 of this Order. At its discretion, Customs may require persons who have provided the certification described in this paragraph

to furnish such records or analyses as are necessary to substantiate the certification.

5. In accordance with 19 U.S.C. 1337(l), the provisions of this Order shall not apply to power supply controllers, LCD computer monitors, AC printer adapters, or sample/demonstration boards containing the same that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

6. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.76.

7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the Bureau of Customs and Border Protection.

8. Notice of this Order shall be published in the **Federal Register**.

By Order of the Commission.

Issued: February 27, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-4704 Filed 3-4-09; 8:45 am]

BILLING CODE 7020-02-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 February 25, 2009, a Consent Decree in *United States v. Valley-Proctor LLC*, Civil Action No. 09-cv-1331 AHM(AJW)x, was lodged with the United States District Court for the Central District of California.

The Consent Decree resolves claims brought by the United States, on behalf of the United States Environmental Protection Agency (“EPA”), and the California Department of Toxic Substances Control (“DTSC”) under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, *et seq.* related to the releases and threatened releases of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Area 4 Superfund Site (“Site”) in Los Angeles County, California.

The proposed Consent Decree requires Defendant to pay the United



States \$550,000 and DTSC \$5,000, in reimbursement of past response costs. Some or all of the settlement payments will be proceeds from the sale of the property owned by the defendant at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto: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 v. Valley-Proctor, LLC*, D.J. Ref. 90-11-2-09232.

The Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$10.25 (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.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9-4613 Filed 3-4-09; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**Submission for OMB Emergency Review: Comment Request**

February 27, 2009.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35) and 5 CFR

1320.13. OMB approval has been requested by March 10, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov). Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—EBSA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not toll-free numbers), E-mail: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Comments and questions about the ICR listed below should be received 5 days prior to the requested OMB approval date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Agency:* Employee Benefits Security Administration.

*Title of Collection:* Notice Requirements of the Health Care Continuation Coverage—American Recovery and Reinvestment Act of 2009 Revision.

*OMB Control Number:* 1210-0123.

*Frequency of Collection:* On occasion.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions.

*Total Estimated Number of Respondents:* 2.5 million.

*Total Estimated Annual Burden Hours:* 0.

*Total Net Estimated Annual Costs Burden (other than hourly costs):* \$16.1 million.

*Description:* Section 3001 of the American Recovery and Reinvestment Act of 2009 (ARRA) provides "Assistance Eligible Individuals" with the right to pay reduced COBRA premiums for up to 9 months. To be considered an "Assistance Eligible Individual" and receive premium reduction an individual must: (1) be eligible for, and elect, COBRA continuation coverage, (2) have experienced an involuntary termination of employment which led to the COBRA election opportunity, (3) have experienced the involuntary termination during the period beginning September 1, 2008, and ending December 31, 2009. Individuals who experienced an involuntary termination of employment at any time between September 1, 2008, and February 16, 2009, and were offered, but did not elect, COBRA coverage or who elected COBRA and subsequently dropped it may have the right to an additional 60-day election period.

ARRA section 3001(a)(7)(D) requires the Secretary of Labor to consult with the Secretaries of Treasury and Health and Human Services to develop model notices no later than 30 days after the date of enactment for use by group health plan and other entities, that, pursuant to ARRA, must provide notices to affected individuals regarding the availability of premium reductions and the additional election period for health care continuation coverage. The ICR relates to the issuance of the model notices.

*Why are we requesting Emergency Processing?* If the Department were to comply with standard PRA clearance procedures, it would not be able to publish the model notices within 30 days after the ARRA enactment date.

**Darrin A. King,**

*Departmental Clearance Officer.*

[FR Doc. E9-4733 Filed 3-4-09; 8:45 am]

**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Announcement Regarding States Triggering "On" to the Second-Tier of Emergency Unemployment Compensation 2008 (EUC08)**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.



**SUMMARY:** Announcement regarding states triggering “on” to the Second-Tier of Emergency Unemployment Compensation (EUC08).

Public Law 110–449 created a Second-Tier of benefits for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for the Second-Tier of EUC08 benefits and provides the beginning and ending dates of the Second-Tier period for each qualifying state. The trigger notice covering state eligibility for the Second-Tier of the EUC08 program can be found at: [http://ows.doleta.gov/unemploy/claims\\_arch.asp](http://ows.doleta.gov/unemploy/claims_arch.asp). A new trigger notice is posted at this location each week that the program is in effect.

Beginning February 15, 2009, the following states are in a high unemployment period, resulting in their triggering “on” to the Second-Tier of the EUC08 program: Montana and Vermont.

#### Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252 and 110–449, and the operating instructions issued to the states by the U.S. Department of Labor. The State Workforce Agency in states beginning a high unemployment period, will furnish a written notice of potential entitlement to each individual who is potentially eligible for Second-Tier EUC08 benefits.

Persons who believe they may be entitled to additional benefits under the EUC08 program or who wish to inquire about their rights under the program should contact their State Workforce Agency.

**FOR FURTHER INFORMATION CONTACT:** Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: [gibbons.scott@dol.gov](mailto:gibbons.scott@dol.gov).

Signed in Washington, DC, this 26th day of February 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9–4627 Filed 3–4–09; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of a Change in Status of an Extended Benefit (EB) Period for Nevada and Wisconsin

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces a change in benefit period eligibility under the EB program for Nevada and Wisconsin.

The following change has occurred since the publication of the last notice regarding the State’s EB status:

- The 13-week insured unemployment rate (IUR) for Nevada and Wisconsin for the week ending February 07, 2009, rose above 5.0 percent and exceeded 120 percent of the corresponding average rate in the two prior years. Therefore, beginning the week of February 22, 2009, eligible unemployed workers will be able to collect up to an additional 13 weeks of UI benefits.

#### Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB or who wish to inquire about their rights under the program should contact their State Workforce Agency.

**FOR FURTHER INFORMATION CONTACT:** Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: [gibbons.scott@dol.gov](mailto:gibbons.scott@dol.gov).

Signed in Washington, DC, this 26th day of February 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9–4625 Filed 3–4–09; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of a Change in Status of an Extended Benefit (EB) Period for Pennsylvania

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces a change in benefit period eligibility under the EB program for Pennsylvania.

The following change has occurred since the publication of the last notice regarding the State’s EB status:

- Pennsylvania’s 13-week insured unemployment rate (IUR) for the week ending January 31, 2009, rose to 5.04 percent and exceeds 120 percent of the corresponding average rate in the two prior years. Therefore, beginning the week of February 15, 2009, eligible unemployed workers will be able to collect up to an additional 13 weeks of UI benefits.

#### Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB or who wish to inquire about their rights under the program should contact their State Workforce Agency.

**FOR FURTHER INFORMATION CONTACT:** Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: [gibbons.scott@dol.gov](mailto:gibbons.scott@dol.gov).

Signed in Washington, DC, this 26th day of February 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9-4624 Filed 3-4-09; 8:45 am]

**BILLING CODE 4510-FW-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 09-016]

### Notice of Information Collection Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, 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 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Jasmeet Sehra, Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The information will be used by the Office of External Relations for export control oversight as well as by the NASA headquarters Office of Security and Program Protection (OSPP) to help fulfill its responsibilities for facilitating business visits and assignments that support U.S. national interests and NASA's international program interests and operational requirements.

##### II. Method of Collection

Respondents provide information for specific data fields. Data are provided via hard copy or electronic mail to a

NASA representative who transfers the information into a database. To insure data security, access to the electronic data entry form is limited to approved NASA civil servants or contract employees. Thus, direct data entry by respondents is impossible. Original copies of support documents are required and downloaded and attached to each visit request for archive purposes or auditing.

##### III. Data

*Title:* Foreign National Clearance Request to Visit NASA Facilities.

*OMB Number:* 2700-0122.

*Type of Review:* Extension of Currently Approved Collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 12,400.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Time per Response:* 0.5 hour.

*Estimated Total Annual Burden Hours:* 6,200 hours.

*Estimated Total Annual Cost:* \$0.00.

##### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Walter Kit,**

*NASA Clearance Officer.*

[FR Doc. E9-4637 Filed 3-4-09; 8:45 am]

**BILLING CODE 7510-13-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 09-015]

### Notice of Information Collection Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, 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 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Jasmeet Sehra, Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The information is used by NASA to effectively maintain an appropriate internal control system for grants and cooperative agreements with institutions of higher education and other non-profit organizations, and to comply with statutory requirements, e.g., Chief Financial Officer's Act, on the accountability of Federal funds.

##### II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance. In addition, NASA encourages the use of computer technology and is participating in Federal efforts to extend the use of information technology to more Government processes via the Internet.

##### III. Data

*Title:* Financial Monitoring and Control—Grants and Cooperative Agreements.

*OMB Number:* 2700-0049.

*Type of Review:* Extension of Currently Approved Collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 1,172.

*Estimated Number of Responses per Respondent:* 41.

*Estimated Time per Response:* 6 hours.

*Estimated Total Annual Burden*

*Hours:* 291,326 hours.

*Estimated Total Annual Cost:* \$0.00.

#### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Walter Kit,**

*NASA Clearance Officer.*

[FR Doc. E9-4638 Filed 3-4-09; 8:45 am]

BILLING CODE 7510-13-P

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 09-017]

##### Notice of Information Collection Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, 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 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Jasmeet Sehra, Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3512.

##### II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

##### III. Data

*Title:* NASA Contractor Financial Management Reports.

*OMB Number:* 2700-0003.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 850.

*Estimated Time per Response:* 9 hrs.

*Estimated Total Annual Burden*

*Hours:* 91,500.

*Estimated Total Annual Cost:* \$0.

##### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

**Walter Kit,**

*NASA Clearance Officer.*

[FR Doc. E9-4639 Filed 3-4-09; 8:45 am]

BILLING CODE 7510-13-P

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 09-019]

##### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, 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 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The LIST (Locator and Information Services Tracking System) system form is used primarily to support services at GSFC dependent upon accurate locator type information. This locator system also serves as a tool for performing short and long-term institutional planning.

##### II. Method of Collection

Approximately 50% of the data is collected electronically by means of the data entry screen that duplicates the Goddard Space Flight Center form GSFC 24-27 in the LIST system. The remaining data is keyed into the system from hardcopy version of form GSFC 24-27.

**III. Data**

*Title:* Locator and Information Services Tracking System (LISTS) Form.

*OMB Number:* 2700-0064.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Federal Government, individuals or households, and business or other for-profit.

*Responses per Respondent:* 1.

*Annual Responses:* 8,455.

*Hours per Request:* 0.08 hours/5 minutes.

*Annual Burden Hours:* 702.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Walter Kit,**

*NASA Clearance Officer.*

[FR Doc. E9-4640 Filed 3-4-09; 8:45 am]

**BILLING CODE 7510-13-P**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice: 09-018]

**Notice of Information Collection Under OMB Review**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Jasmeet Seehra, Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to help NASA to assess the services provided by its procurement offices. The NASA Procurement Customer Survey is used to determine whether NASA's Procurement Offices are providing an acceptable level of service to the business/educational community, and if not, which areas need improvement. Respondents will be business concerns and educational institutions that have been awarded a NASA procurement, or are interested in receiving such an award.

**II. Method of Collection**

NASA uses electronic methods to collect information from collection respondents.

**III. Data**

*Title:* NASA Procurement Customer Survey.

*OMB Number:* 2700-0101.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit; Not-for-profit institutions.

*Estimated Number of Respondents:* 1,000.

*Estimated Annual Responses:* 500.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 125.

*Estimated Total Annual Cost:* \$0.00.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden

(including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Walter Kit,**

*NASA Clearance Officer.*

[FR Doc. E9-4641 Filed 3-4-09; 8:45 am]

**BILLING CODE 7510-13-P**

**NATIONAL COUNCIL ON DISABILITY****Sunshine Act Meetings**

**TYPE:** Quarterly meeting.

**DATES AND TIMES:**

March 30, 2009, 8:30 a.m.-5 p.m.

March 31, 2009, 8:30 a.m.-5 p.m.

April 1, 2009, 8:30 a.m.-1 p.m.

**LOCATION:** Academy for Educational Development Conference Center, 1825 Connecticut Avenue, NW., Washington, DC.

**STATUS:**

March 30, 2009, 8:30 a.m.-9:30 a.m.—  
Closed Executive Session.

March 30, 2009, 9:30 a.m.-5:00 p.m.—  
Open.

March 31, 2009, 8:30 a.m.-5:00 p.m.—  
Open.

April 1, 2009, 8:30 a.m.-1:00 p.m.—  
Open.

**AGENDA:** Public Comment Sessions; Emergency Preparedness; Employment; Healthcare; Reports from the Chairperson, Council Members, and the Executive Director; Release of *National Disability Policy: A Progress Report and Federal Employment of People with Disabilities*; Unfinished Business; New Business; Announcements; Adjournment.

**SUNSHINE ACT MEETING CONTACT:** Mark S. Quigley, Director of External Affairs, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202-272-2004 (voice), 202-272-2074 (TTY), 202-272-2022 (fax).

**AGENCY MISSION:** NCD is an independent Federal agency and is composed of 15 members appointed by the President, by and with the advice and consent of the Senate. NCD provides advice to the President, Congress, and executive branch agencies promoting policies, programs, practices, and procedures that

guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

**ACCOMMODATIONS:** Those needing reasonable accommodations should notify NCD immediately.

Dated: February 26, 2009.

**Michael C. Collins,**

*Executive Director.*

[FR Doc. E9-4772 Filed 3-3-09; 4:15 pm]

BILLING CODE 6820-MA-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP): Import Statistics Relating to Competitive Need Limitations (CNLS); Invitation for Public Comment on CNL Waivers Subject to Potential Revocation Based on New Statutory Thresholds, Possible *de minimis* Waivers, and Product Redesignations for the 2008 Annual Review

**AGENCY:** Office of the United States Trade Representative (USTR).

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the availability of full 2008 calendar year import statistics relating to competitive need limitations (CNLS) under the Generalized System of Preferences (GSP) program. The Office of the United States Trade Representative (USTR) will accept public comments submitted by 5 p.m., Monday, March 23, 2009, via <http://www.regulations.gov> regarding three issues: (1) Potential revocation of CNL waivers that meet the statutory thresholds set forth by section 503(d)(4)(B)(ii) of the Trade Act of 1974 (19 U.S.C. 2463(d)(4)(B)(ii)), as amended by Public Law 109-432; (2) possible *de minimis* CNL waivers; and (3) possible redesignations of articles currently not eligible for GSP benefits because they previously exceeded the CNL thresholds.

**FOR FURTHER INFORMATION CONTACT:** Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room F-601, Washington, DC 20508. The telephone number is (202) 395-6971, the fax number is (202) 395-2961, and the e-mail address is [Tameka\\_Cooper@ustr.eop.gov](mailto:Tameka_Cooper@ustr.eop.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act sets out the two CNLS. When the President determines that a BDC exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year (\$135 million for 2008), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the "50 percent CNL"), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year.

*De minimis waivers.* Under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year (\$19 million for 2008).

*Redesignations.* Under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may, subject to the considerations in sections 501 and 502 of the 1974 Act, redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLS.

*CNL waiver revocation.* Under Section 503(d)(5) of the 1974 Act, a CNL waiver remains in effect until the President determines that it is no longer warranted due to changed circumstances. Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109-432, also provides that, "[n]ot later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for 5 years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—(I) having an appraised value in excess of 1.5 times the applicable amount set

forth in subsection (c)(2)(A)(ii) for that calendar year [\$202.5 million in 2008]; or (II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year."

### II. Implementation of Competitive Need Limitations, Waivers, and Redesignations

Exclusions from GSP duty-free treatment where CNLS have been exceeded will be effective July 1, 2009, unless granted a waiver by the President. Any CNL-based exclusions, CNL waiver revocations, and decisions with respect to *de minimis* waivers and redesignations will be based on full 2008 calendar year import data.

### III. 2008 Import Statistics

In order to provide notice of articles that have exceeded the CNLS for 2008 and to afford an opportunity for comment regarding (1) The potential revocation of waivers subject to the CNL waiver thresholds for 2008, (2) potential *de minimis* waivers, and (3) redesignations, the lists of the articles are available as supporting material within Docket USTR-2009-0008, or at: [http://www.ustr.gov/Trade\\_Development/Preference\\_Programs/GSP/GSP\\_2008\\_Annual\\_Review/Section\\_Index.html](http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2008_Annual_Review/Section_Index.html), under "2008 GSP Review, Full-Year 2008 Import Statistics Relating to Competitive Need Limitations (CNLS)." Full 2008 calendar year data for individual tariff subheadings may also be viewed on the Web site of the U.S. International Trade Commission at <http://dataweb.usitc.gov/>.

The lists available on the USTR Web site contain, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC country of origin, the value of imports of the article for the 2008 calendar year, and the percentage of total imports of that article from all countries. The annotations on the lists indicate, among other things, the status of GSP eligibility.

The computer-generated lists published on the USTR Web site are for informational purposes only. They may not include all articles to which the GSP CNLS may apply. All determinations and decisions regarding the CNLS of the GSP program will be based on full 2008 calendar year import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2008 import data with respect to the possible application of the GSP CNL provisions.

List I on the USTR Web site shows: (a) Articles from BDCs that became ineligible for GSP treatment on or before July 1, 2008; and (b) GSP-eligible articles from BDCs that exceeded a CNL by having been exported in excess of \$135 million, or by an amount greater than 50 percent of the total U.S. import value in 2008. Petitions to grant CNL waivers for those articles that received GSP benefits during 2008 but stand to lose GSP duty-free treatment on July 1, 2009, must have been previously submitted in the 2008 GSP Annual Review.

List II identifies GSP-eligible articles from BDCs that are above the 50 percent CNL, but that are eligible for a *de minimis* waiver of the 50 percent CNL. Articles eligible for *de minimis* waivers are automatically considered in the GSP annual review process, without petitions, and public comments are invited.

List III shows GSP-eligible articles from certain BDCs that are currently not receiving GSP duty-free treatment, but that may be considered for GSP redesignation based on 2008 trade data and consideration of certain statutory factors, as set forth above. Recommendations to the President on redesignations are normally made as part of the GSP annual review process, and public comments are invited.

List IV shows articles subject to the new CNL waiver thresholds of section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109-432. Recommendations to the President on revocation of these waivers will be made as part of the 2008 GSP annual review process, and public comments are invited.

#### IV. Public Comments

##### *Requirements for Submissions*

To ensure the most timely and expeditious receipt and consideration of comments, comments provided in response to this notice, with the exception of business confidential submissions, must be submitted on <http://www.regulations.gov> to docket number USTR-2009-0008. Submissions provided in response to this notice must be submitted in English by Monday, March 23, 2009. Hand-delivered and faxed submissions will not be accepted.

For additional information on using the <http://www.regulations.gov> Web site or for any technical assistance relating to a submission, please consult the resources provided on the Web site by clicking on "How to Use This Site" on

the left side of the home page. Each submitter will receive a submission tracking number upon completion of the submissions procedure at <http://www.regulations.gov>. The tracking number will be the submitter's confirmation that the submission was received into <http://www.regulations.gov>. The confirmation should be kept for the submitter's records. USTR is not responsible for any delays in a submission due to technical difficulties, nor is it able to provide any technical assistance for the Web site.

To make a submission using <http://www.regulations.gov>, enter docket number USTR-2009-0008 on the home page and click "go." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." The <http://www.regulations.gov> Web site offers the option of providing comments by filling in a "General Comments" field or by attaching a document. Given the detailed nature of the information sought by the GSP Subcommittee, it is expected that most submissions will be provided in an attached document.

All submissions must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. Furthermore, each party providing comments should indicate in the General Comments box in the Public Comment or Submission section of the Web site: (1) The type of action in which the party is interested (i.e., *de minimis* waiver, redesignation, or CNL waiver revocation); (2) the relevant 8-digit HTSUS subheading(s) and name of product; (3) the country of interest; (4) the name of the party or parties providing comments; (5) whether the party supports or opposes the action; and (6) if the document is the public version of a business confidential version of the submission.

Comments must not exceed 20 single-spaced standard letter-size pages, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

#### V. Business Confidential Comments

All business confidential documents must be submitted via email to [FR0807@ustr.eop.gov](mailto:FR0807@ustr.eop.gov). Business confidential submissions will not be

accepted at <http://www.regulations.gov>; however, public or non-confidential submissions that accompany business confidential submissions should be submitted at <http://www.regulations.gov>. For any document containing business confidential information submitted as an electronic attached file to an email transmission, the file name of the business confidential version should begin with the characters "BC-". The "BC-" should be followed by the relevant 8-digit HTSUS subheading(s), the country of interest, and the name of the party (government, company, union, association, etc.) that is submitting the comments.

Persons wishing to submit business confidential submissions must also follow each of these steps: (1) Provide a written explanation of why the information should be protected in accordance with 15 CFR 2007.7(b), which must be submitted along with the business confidential version of the submission; (2) clearly mark the business confidential submission "BUSINESS CONFIDENTIAL" at the top and bottom of each page of the submission; (3) indicate using brackets what information in the document is confidential; and (4) submit a non-confidential version of the submission, marked "Public" at the top and bottom of each page, that also indicates, using asterisks, where business confidential information was redacted or deleted from the applicable sentences to <http://www.regulations.gov>. Business confidential submissions that are submitted without the required markings or are not accompanied by a properly marked non-confidential version, as set forth above, might not be accepted or may be considered public documents. The non-confidential summary will be placed in the docket and open to public inspection.

Public versions of all documents relating to this review will be available for public viewing on <http://www.regulations.gov>, docket number USTR-2009-0008, upon completion of processing and no later than approximately two weeks after the due date.

#### Marideth J. Sandler,

*Executive Director, Generalized System of Preferences (GSP) Program, and Chair, GSP Subcommittee, Office of the U.S. Trade Representative.*

[FR Doc. E9-4646 Filed 3-4-09; 8:45 am]

BILLING CODE 3190-W9-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59477/February 27, 2009]

### Order Making Fiscal Year 2009 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

#### I. Background

Section 31 of the Securities Exchange Act of 1934 (“Exchange Act”) requires each national securities exchange and national securities association to pay transaction fees to the Commission.<sup>1</sup> Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.<sup>2</sup> Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.<sup>3</sup>

Sections 31(j)(1) and (3) require the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal year 2012 and beyond.<sup>4</sup> Section 31(j)(2) requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal years 2002 through 2011.<sup>5</sup> The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the “target offsetting collection amount” specified in Section 31(l)(1) for that fiscal year.<sup>6</sup> For fiscal year 2009, the target offsetting collection amount is \$1,023,000,000.<sup>7</sup>

#### II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2009

Under Section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under Sections 31(b) and (c) in fiscal year 2009 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate

\$113,703,210,464,919 is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal year 2009.<sup>8</sup> To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal year 2009.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section 31,<sup>9</sup> the actual aggregate dollar volume of sales during the first four months of fiscal year 2009 was \$24,218,758,303,585.<sup>10</sup> Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year 2009 (developed after consultation with the Congressional Budget Office and the OMB),<sup>11</sup> the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal year 2009 to be \$42,139,232,747,921. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal year 2009 will be \$66,357,991,051,506.

Because the baseline estimate of \$113,703,210,464,919 is more than 10% greater than the \$66,357,991,051,506 estimated actual aggregate dollar volume of sales for fiscal year 2009, Section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under Sections 31(b) and (c).

#### III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2009. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a “uniform adjusted rate that, when applied to the

revised estimate of the aggregate dollar amount of sales for the remainder of fiscal year 2009, is reasonably likely to produce aggregate fee collections under Section 31 (including fees collected during such 5-month period and assessments collected under Section 31(d)) that are equal to \$1,023,000,000.”<sup>12</sup> In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under Section 31(d) during all of fiscal year 2009 from \$1,023,000,000, which is the target offsetting collection amount for fiscal year 2009. That difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect \$190,542,394 in fees for the period prior to the effective date of the mid-year adjustment<sup>13</sup> and \$8,640 in assessments on round turn transactions in security futures products during all of fiscal year 2009. Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal year 2009 following the effective date of the new rate will be \$32,332,563,584,044. This amount reflects more recent information on the dollar amount of sales of securities than was available at the time of the setting of the initial fee rate for fiscal year 2009, and indicates a significant reduction in sales. Based on these estimates, and employing the mid-year adjustment mechanism established by statute, the uniform adjusted rate is \$25.70 per million of the aggregate dollar amount of sales of securities.<sup>14</sup> The aggregate

<sup>8</sup> The amount \$113,703,210,464,919 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2009 calculated by the Commission in its Order Making Fiscal 2009 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33–8916 (May 2, 2008), 73 FR 25795 (May 7, 2008).

<sup>9</sup> The Financial Industry Regulatory Authority, Inc. (“FINRA”) and each exchange is required to file a monthly report on Form R31 containing dollar volume data on sales of securities subject to Section 31. The report is due on the 10th business day following the month for which the exchange or association provides dollar volume data.

<sup>10</sup> Although Section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2009 “based on the actual aggregate dollar volume of sales during the first five months of such fiscal year,” data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, *i.e.*, March 1, 2009. Dollar volume data on sales of securities subject to Section 31 for February 2009 will not be available from the exchanges and FINRA for several weeks.

<sup>11</sup> See Appendix A.

<sup>12</sup> U.S.C. 78ee(j)(2). The term “fees collected” is not defined in Section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of Section 31 fees for fiscal 2009 until March 15, the Commission will not “collect” any fees in the first five months of fiscal 2009. See 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in Section 31(j)(2) that the “uniform adjusted rate \* \* \* is reasonably likely to produce aggregate fee collections under Section 31 \* \* \* that are equal to [\$1,023,000,000],” intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

<sup>13</sup> This calculation is based on the assumption that the mid-year adjustment will go into effect on April 1, 2009 pursuant to Section 31(j)(4)(B) of the Exchange Act. However, see the discussion below regarding the actual effective date of the mid-year adjustment.

<sup>14</sup> The calculation is as follows: (\$1,023,000,000 – \$190,542,394 – \$8,640) / \$32,332,563,584,044 = \$0.0000257467. Round this result to the seventh decimal point, yielding a rate of \$25.70 per million.

<sup>1</sup> 15 U.S.C. 78ee.

<sup>2</sup> 15 U.S.C. 78ee(b).

<sup>3</sup> 15 U.S.C. 78ee(c).

<sup>4</sup> 15 U.S.C. 78ee(j)(1) and (j)(3).

<sup>5</sup> 15 U.S.C. 78ee(j)(2).

<sup>6</sup> 15 U.S.C. 78ee(l)(1).

<sup>7</sup> *Id.*



dollar amount of sales of securities subject to Section 31 fees is illustrated in Appendix A.

#### IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. However, it is possible that the effective date will be delayed this fiscal year because of the lapse of appropriation provision in Section 31(k) of the Exchange Act. That section provides that, if on the first day of the fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted. Therefore, the exchanges and the national securities association that are subject to Section 31 fees must pay fees under Sections 31(b) and (c) at the uniform adjusted rate of \$25.70 per million for sales of securities transacted on the later of (i) April 1, 2009, or (ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2009 is enacted. This fee rate will remain in place until the fee rate for fiscal year 2010 takes effect.<sup>15</sup>

#### V. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,<sup>16</sup>

*It is hereby ordered* that each of the fee rates under Sections 31(b) and (c) of the Exchange Act shall be \$25.70 per \$1,000,000 of the aggregate dollar amount of sales of securities subject to these sections, effective on the later of (i) April 1, 2009, or (ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2009 is enacted.

<sup>15</sup> Section 31(j)(1) and Section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2009, adjusting the fee rates applicable under Sections 31(b) and (c) for fiscal 2010. These fee rates for fiscal 2010 will be effective on the later of October 1, 2009 or thirty days after the date of enactment of the Commission's regular appropriation for fiscal 2010.

<sup>16</sup> 15 U.S.C. 78ee.

By the Commission.  
**Elizabeth M. Murphy,**  
*Secretary.*

#### Appendix A

A. Baseline estimate of the aggregate dollar amount of sales.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 1999–January 2009). The data obtained from the exchanges and FINRA are presented in Table A. The monthly aggregate dollar amount of sales from all exchanges and FINRA is contained in column C.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.007 and the standard deviation 0.130. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 1.6 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January 2009 (\$233,508,979,959) to forecast ADS for February 2009 (\$237,184,035,788 = \$233,508,979,959 × 1.016).<sup>17</sup> Multiply by the number of trading days in February 2009 (19) to obtain a forecast of the total dollar volume for the month (\$4,506,496,679,977). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month  $t$ , calculate the change in ADS from the previous month as  $\Delta_t = \log(ADS_t/ADS_{t-1})$ , where  $\log(x)$  denotes the natural logarithm of  $x$ .

3. Calculate the mean and standard deviation of the series  $\{\Delta_1, \Delta_2, \dots, \Delta_{120}\}$ .

<sup>17</sup> The value 1.016 has been rounded. All computations are done with the unrounded value.

$\Delta_{120}\}$ . These are given by  $\mu = 0.007$  and  $\sigma = 0.130$ , respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that  $\Delta_s$  and  $\Delta_t$  are statistically independent for any two months  $s$  and  $t$ .

5. Under the assumption that  $\Delta_t$  is normally distributed, the expected value of  $ADS_t/ADS_{t-1}$  is given by  $\exp(\mu + \sigma^2/2)$ , or on average  $ADS_t = 1.016 \times ADS_{t-1}$ .

6. For February 2009, this gives a forecast ADS of  $1.016 \times \$233,508,979,959 = \$237,184,035,788$ . Multiply this figure by the 19 trading days in February 2009 to obtain a total dollar volume forecast of \$4,506,496,679,977.

7. For March 2009, multiply the February 2009 ADS forecast by 1.016 to obtain a forecast ADS of \$240,916,931,086. Multiply this figure by the 22 trading days in March 2009 to obtain a total dollar volume forecast of \$5,300,172,483,900.

8. Repeat this procedure for subsequent months.

B. Using the forecasts from A to calculate the new fee rate.

1. Determine the actual and projected aggregate dollar volume of sales between 10/1/08 and 3/31/09 to be \$34,025,427,467,462. Multiply this amount by the fee rate of \$5.60 per million dollars in sales during this period and get an estimate of \$190,542,394 in actual and projected fees collected during 10/1/08 and 3/31/09.

2. Estimate the amount of assessments on security futures products collected during 10/1/08 and 9/30/09 to be \$8,640 by summing the amounts collected through January of \$3,096 with projections of a 1.6% monthly increase in subsequent months.

3. Determine the projected aggregate dollar volume of sales between 4/1/09 and 9/30/09 to be \$32,332,563,584,044.

4. The rate necessary to collect the target \$1,023,000,000 in fee revenues is then calculated as:  
 $(\$1,023,000,000 - \$190,542,394 - \$8,640) \div \$32,332,563,584,044 = 0.0000257467$ .

5. Round the result to the seventh decimal point, yielding a rate of 0.0000257000 (or \$25.70 per million).

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**Table A. Estimation of baseline of the aggregate dollar amount of sales.****(Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.)****Fee rate calculation.**

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/08 to 3/31/09 (\$Millions)	34,025,427
b. Baseline estimate of the aggregate dollar amount of sales, 4/1/09 to 9/30/09 (\$Millions)	32,332,564
c. Estimated collections in assessments on security futures products in FY 2009 (\$Millions)	0.009
d. Implied fee rate (( $\$1,023,000,000 - 0.0000056 * a - c$ )/b)	\$25.70

**Data**

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Jan-99	19	1,884,555,055,910	99,187,108,206	-		
Feb-99	19	1,656,058,202,765	87,160,958,040	-0.129		
Mar-99	23	1,908,967,664,074	82,998,594,090	-0.049		
Apr-99	21	2,177,601,770,622	103,695,322,411	0.223		
May-99	20	1,784,400,906,987	89,220,045,349	-0.150		
Jun-99	22	1,697,339,227,503	77,151,783,068	-0.145		
Jul-99	21	1,767,035,098,986	84,144,528,523	0.087		
Aug-99	22	1,692,907,150,726	76,950,325,033	-0.089		
Sep-99	21	1,730,505,881,178	82,405,041,961	0.068		
Oct-99	21	2,017,474,765,542	96,070,226,931	0.153		
Nov-99	21	2,348,374,009,334	111,827,333,778	0.152		
Dec-99	22	2,686,788,531,991	122,126,751,454	0.088		
Jan-00	20	3,057,831,397,113	152,891,569,856	0.225		
Feb-00	20	2,973,119,888,063	148,655,994,403	-0.028		
Mar-00	23	4,135,152,366,234	179,789,233,315	0.190		
Apr-00	19	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	2,649,273,207,318	120,421,509,424	-0.328		
Jun-00	22	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		

Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,847,200,448	129,092,360,022	0.060		
Feb-05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar-05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr-05	21	2,906,386,944,434	138,399,378,306	0.005		
May-05	21	2,697,414,503,460	128,448,309,689	-0.075		
Jun-05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul-05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug-05	23	2,846,115,585,965	123,744,155,912	-0.051		
Sep-05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct-05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov-05	21	3,163,453,821,548	150,640,658,169	-0.036		
Dec-05	21	3,090,212,715,561	147,152,986,455	-0.023		
Jan-06	20	3,573,372,724,766	178,668,636,238	0.194		
Feb-06	19	3,314,259,849,456	174,434,728,919	-0.024		
Mar-06	23	3,807,974,821,564	165,564,122,677	-0.052		
Apr-06	19	3,257,478,138,851	171,446,217,834	0.035		
May-06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun-06	22	3,995,113,357,316	181,596,061,696	-0.052		
Jul-06	20	3,339,658,009,357	166,982,900,468	-0.084		
Aug-06	23	3,410,187,280,845	148,269,012,211	-0.119		
Sep-06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct-06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb-07	19	3,946,799,860,532	207,726,308,449	-0.026		
Mar-07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr-07	20	4,274,665,072,437	213,733,253,622	-0.109		
May-07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun-07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul-07	21	5,938,330,480,139	282,777,641,911	0.061		
Aug-07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep-07	19	4,805,676,596,099	252,930,347,163	-0.282		
Oct-07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov-07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec-07	20	5,512,903,594,564	275,645,179,728	-0.215		
Jan-08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb-08	20	6,139,080,448,887	306,954,022,444	-0.216		
Mar-08	20	6,767,852,332,381	338,392,616,619	0.098		
Apr-08	22	6,150,017,772,735	279,546,262,397	-0.191		

May-08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun-08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul-08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug-08	21	6,106,057,711,009	290,764,652,905	-0.237		
Sep-08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct-08	23	8,644,538,213,244	375,849,487,532	-0.033		
Nov-08	19	5,727,999,173,523	301,473,640,712	-0.221		
Dec-08	22	5,176,041,317,640	235,274,605,347	-0.248		
Jan-09	20	4,670,179,599,178	233,508,979,959	-0.008		
Feb-09	19				237,184,035,788	4,506,496,679,977
Mar-09	22				240,916,931,086	5,300,172,483,900
Apr-09	21				244,708,576,153	5,138,880,099,223
May-09	20				248,559,895,616	4,971,197,912,328
Jun-09	22				252,471,828,654	5,554,380,230,393
Jul-09	22				256,445,329,227	5,641,797,242,997
Aug-09	21				260,481,366,309	5,470,108,692,492
Sep-09	21				264,580,924,124	5,556,199,406,610

[FR Doc. E9-4738 Filed 3-4-09; 8:45 am]

BILLING CODE 8011-01-C

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59469; File No. SR-NYSE-2009-19]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 300.10T To Provide a Grace Period Under That Rule for NYSE Alternext U.S. LLC Member Organizations That Have Applied for a Trading License to Comply With Certain Exchange Rules

February 27, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 24, 2009, the New York Stock Exchange, LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. NYSE has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 300.10T to provide a grace period

under that rule for NYSE Alternext US LLC member organizations that have applied for a trading license to comply with certain Exchange rules.

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Rule 300.10T to provide for a six-month grace period for NYSE Alternext US LLC (“NYSE Alternext”) member organizations that have applied for, but not received a trading license, to comply with certain Exchange rules. The Exchange adopted Rule 300.10T to provide a grace period for certain NYSE Alternext member organizations seeking to trade equities at the Exchange to comply with the Exchange membership requirements. The proposed amendment seeks to clarify the rule to reflect the original purpose of the provision. The Exchange is submitting this proposed filing to conform NYSE Rule 300.10T to corresponding changes to Rule 300.10T—NYSE Alternext Equities, as proposed by NYSE Alternext.<sup>4</sup>

<sup>4</sup> See SR-NYSEALTR-2009-16 (formally submitted on February 24, 2009). Because NYSE

#### Background of Merger

As described more fully in a filing submitted by the American Stock Exchange LLC (“Amex”) (the “Merger filing”),<sup>5</sup> NYSE Euronext acquired The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the “Merger”). In connection with the Merger, Amex, a subsidiary of AMC, became a subsidiary of NYSE Euronext and was renamed NYSE Alternext U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the “Act”).<sup>6</sup> The effective date of the Merger was October 1, 2008.

As described more fully in the Merger filing, in connection with the Mergers, Amex demutualized by separating all trading rights from equity ownership in Amex. As part of the demutualization, all trading rights appurtenant to the Amex Regular Members’ memberships or Options Principal Members’ (“OPM”) memberships were cancelled. Immediately following the closing of the Mergers, those persons and entities that were authorized to trade on the Amex before the closing of the Mergers were deemed to have satisfied applicable qualification requirements necessary to trade in NYSE Alternext’s demutualized marketplace and were issued a permit at no cost to trade on NYSE Alternext (“86 Trinity Permit”). The 86 Trinity Permit authorizes owners, lessees or nominees of Amex Regular Members or OPMs, Amex limited trading permit holders, and Amex associate members who were

Alternext’s perspective of its member organizations differs from those of the NYSE, the rule text proposed by the NYSE is not identical to that proposed by NYSE Alternext, but is the same in substance.

<sup>5</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

<sup>6</sup> 15 U.S.C. 78f.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

authorized to trade on the Amex immediately before the Mergers to continue to trade at NYSE Alternext's systems and facilities at 86 Trinity Place, New York, New York (the "86 Trinity Trading Systems"). NYSE Alternext recognizes the former Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

In connection with the Merger, on December 1, 2008, NYSE Alternext relocated all equities trading conducted on its 86 Trinity Trading Systems to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Alternext Trading Systems") are operated by the NYSE on behalf of NYSE Alternext.<sup>7</sup>

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to NYSE Alternext, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems (the "Equities Rule filing").<sup>8</sup> The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and NYSE Alternext continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Similarly, NYSE Alternext will relocate all options trading conducted on the 86 Trinity Trading Systems to new facilities of NYSE Alternext to be located at 11 Wall Street, which facilities will utilize a trading system based on the options trading system used by NYSE Arca, Inc. ("NYSE Arca") ("Options Relocation," and, together with the Equities Relocation, the "Relocations"). After the Options

Relocation, no products will trade on 86 Trinity Trading Systems.

As set forth in more detail in the Merger filing, an 86 Trinity Permit holder is eligible to obtain a NYSE Alternext equities trading license or options trading permit ("ATP") pursuant to an expedited "waive in" process up to the Options Relocation date. After the Equities Relocation, an 86 Trinity Permit entitles holders only to trade products other than those that have relocated to NYSE Alternext Trading Systems. As a result of the Equities Relocation, as well as the discontinuation of Exchange Traded Fund ("ETF") and bond trading at 86 Trinity Place, 86 Trinity Permits currently only entitle holders to trade listed options on NYSE Alternext. After the Options Relocation, the 86 Trinity Permits will be cancelled.<sup>9</sup> Stated otherwise, an 86 Trinity Permit may not be used to trade equities on NYSE Alternext Trading Systems and a trading license under Rule 300—NYSE Alternext Equities must be obtained. Upon the Options Relocation, a former 86 Trinity Permit holder will need an ATP to trade options on NYSE Alternext Trading Systems and the 86 Trinity Permit will no longer entitle the holder to trade any products at NYSE Alternext.

#### *NYSE Trading License Requirements*

To trade at the Exchange, a broker dealer must be an NYSE member organization and obtain a trading license pursuant to NYSE Rule 300. Because the rules governing membership for NYSE Alternext Equities are identical to Exchange rules, pursuant to NYSE Rule 2.10, an NYSE Alternext member organization approved under Rule 2(b)—NYSE Alternext Equities is deemed approved as an Exchange member organization. If an 86 Trinity Permit holder seeks an equities trading license under Rule 300—NYSE Alternext Equities, such 86 Trinity Permit holder is deemed approved under Rule 2(b)—NYSE Alternext Equities, and thus under NYSE Rule 2.10, is deemed approved as an NYSE member organization. If an 86 Trinity Permit holder does not apply for an equities trading license under Rule 300—NYSE Alternext Equities, neither the NYSE or NYSE Alternext Equities member organization requirements are triggered.

Pursuant to Rule 300.10T—NYSE Alternext Equities, an NYSE Alternext

member organization that applies for an equities trading license under Rule 300—NYSE Alternext Equities has a six-month grace period within which to comply with NYSE Alternext Equities membership requirements. Similarly, NYSE Rule 300.10T provides a six-month grace period for those NYSE Alternext member organizations that are deemed approved as an NYSE member organization under NYSE Rule 2.10 and were a valid 86 Trinity Permit holder to comply with Exchange membership requirements.

As described in more detail in the rule filing adopting Rule 300.10T,<sup>10</sup> the six-month grace period provides time for NYSE Alternext member organizations to comply with NYSE Rules 2 (defining the terms members and member organizations), 300-308 (governing the admission of members and member organizations), 311 (the formation and approval of member organizations), 312 (changes within member organizations), and 313 (submission of partnership articles and corporate documents) (collectively, the "NYSE Member Organization Rules").

Among the differing requirements of the NYSE Member Organization Rules as compared to the Amex rules that governed membership at the Amex before the Merger, an Exchange member organization must be a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"). In addition, unlike the Amex rules, NYSE Rule 313.20 requires member organizations to submit to the Exchange an opinion of counsel that a member corporation's stock is validly issued and outstanding and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective.

The current six-month grace period under Rule 300.10T begins to run from the date that an NYSE Alternext member organization receives its equities trading license in exchange for the equities portion of a valid 86 Trinity Permit. However, a subset of NYSE Alternext member organizations that have applied for a trading license are not FINRA members. As a result, such NYSE Alternext member organizations were not issued a trading license. Because these NYSE Alternext member organizations have not been issued a trading license, the grace period within which to comply with the NYSE Member Organization Rules has not been triggered.

<sup>7</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>8</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106); Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10); and Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11).

<sup>9</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

<sup>10</sup> See Securities Exchange Act Release No. 58706 (Oct. 1, 2008), 73 FR 59019 (Oct. 8, 2008) (SR-NYSE-2008-70).

*Proposed Amendment to Rule 300.10T*

To reflect the intent of the original adoption of Rule 300.10T, *i.e.*, to provide a grace period for NYSE Alternext member organizations seeking to obtain a trading license to trade securities listed on the Exchange to comply with the NYSE Member Organization Rules, the Exchange proposes to amend Rule 300.10T to also provide for a six-month grace period for those NYSE Alternext member organizations that have applied for, but have not been issued a trading license.

As proposed, to be eligible for the grace period, an NYSE Alternext member organization must be a holder of a valid 86 Trinity Permit as of the date that it applied for an equities trading license. In other words, once the 86 Trinity Permits are cancelled, *i.e.*, the Options Relocation date, an NYSE Alternext member organization would not be eligible for a Rule 300.10T grace period. The current rule requires that the NYSE Alternext member organization has been approved as an Exchange member organization. Because the trigger for Exchange membership is obtaining an NYSE Alternext equities trading license, the Exchange proposes to add that an NYSE Alternext member organization that seeks to become an Exchange member organization by applying for a trading license would also be eligible, so long as such NYSE Alternext member organization held a valid 86 Trinity Permit at the time it applied for an equities trading license.

As proposed, if a member organization meets the amended eligibility threshold, it has six months from the earlier of either receiving the equity trading license (which is the current standard) or the cancellation of the 86 Trinity Permits (the Options Relocation date) within which to comply with the NYSE Membership Rules, including the FINRA requirement. By adding the cancellation of the 86 Trinity Permits as a trigger for the six-month grace period, the proposed rule provides those NYSE Alternext member organizations that applied for a trading license, but were not issued a trading license because they are not currently FINRA members, time to meet the NYSE Member Organization Rule requirements. This proposed amended rule conforms to the rule amendments proposed by NYSE Alternext in its companion filing.

As is currently part of the rule, if an NYSE Alternext member organization that has been issued a trading license, or which applied for a trading license, fails to meet the requirements of the NYSE Member Organization Rules by

the close of the grace period applicable to that member organization, the Exchange would either revoke the member organization's approval to trade, if a trading license has already been issued, or not issue a trading license.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>11</sup> which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>12</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market.

Specifically, the Exchange already permits an NYSE Alternext member organization to be automatically deemed approved as an NYSE member organization. Moreover, the Exchange permitted NYSE Alternext member organizations with a valid 86 Trinity Permit to exchange such permit for both an NYSE Alternext and NYSE equity trading license. This filing would simply provide those eligible NYSE Alternext member organizations with a valid 86 Trinity Permit additional time to exchange their 86 Trinity Permit for an NYSE equity trading license and to comply with Exchange membership requirements without first having to apply as a new member organization.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

*Because the foregoing proposed rule change does not:* (i) Significantly affect

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Options Relocation date is imminent and is currently scheduled for March 2, 2009, and the Exchange needs to immediately implement this rule change so that NYSE Alternext member organizations can meet the new rule requirements. For these reasons, the Commission believes that waiving the 30-day operative delay<sup>17</sup> is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSE-2009-19 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSE-2009-19 and should be submitted on or before March 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-4677 Filed 3-4-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59468; File No. SR-NYSEALTR-2009-16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Amending Rule 300.10T—NYSE Alternext Equities To Provide a Grace Period Under That Rule for Member Organizations That Have Applied for a Trading License To Comply With Certain Exchange Rules

February 27, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 24, 2009, NYSE Alternext US, LLC ("NYSE Alternext" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE Alternext has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 300.10T—NYSE Alternext Equities to provide a grace period under that rule for member organizations that have applied for a trading license to comply with certain Exchange rules.

#### 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 300.10T—NYSE Alternext Equities ("Rule 300.10T") to provide for a six-month grace period for member organizations that have applied for, but not received a trading license, to comply with certain Exchange rules. The Exchange intended Rule 300.10T to provide holders of a valid permit to trade on the NYSE Alternext systems and facilities located at 86 Trinity Place ("86 Trinity Permit") seeking to trade equities at the Exchange with a grace period to comply with the Exchange membership requirements under the NYSE Alternext Equities rules. The proposed amendment seeks to clarify the rule to reflect the original purpose of the provision.<sup>4</sup>

##### Background of Merger

As described more fully in a related rule filing (the "Merger filing"),<sup>5</sup> NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext and was renamed NYSE Alternext US LLC ("NYSE Alternext" or the "Exchange"), and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").<sup>6</sup> The effective date of the Merger was October 1, 2008.

As described more fully in the Merger filing, in connection with the Mergers, Amex demutualized by separating all trading rights from equity ownership in Amex. As part of the demutualization, all trading rights appurtenant to the Amex Regular Members' memberships or Options Principal Members' ("OPM") memberships were cancelled. Immediately following the closing of the Mergers, those persons and entities that

<sup>4</sup> The New York Stock Exchange LLC ("NYSE") is proposing conforming amendments to its Rule 300.10T. Because NYSE Alternext's perspective of its member organizations differs from those of the NYSE, the rule text proposed by the NYSE is not identical to that proposed by NYSE Alternext, but is the same in substance. See SR-NYSE-2009-19 (formally submitted on February 24, 2009).

<sup>5</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

<sup>6</sup> 15 U.S.C. 78f.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

were authorized to trade on the Amex before the closing of the Mergers were deemed to have satisfied applicable qualification requirements necessary to trade in NYSE Alternext's demutualized marketplace and were issued 86 Trinity Permits at no cost. The 86 Trinity Permit authorizes owners, lessees or nominees of Amex Regular Members or OPMs, Amex limited trading permit holders, and Amex associate members who were authorized to trade on the Amex immediately before the Mergers to continue to trade at NYSE Alternext's systems and facilities at 86 Trinity Place, New York, New York (the "86 Trinity Trading Systems"). NYSE Alternext recognizes the former Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

In connection with the Merger, on December 1, 2008, NYSE Alternext relocated all equities trading conducted on its 86 Trinity Trading Systems to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Alternext Trading Systems") are operated by the NYSE on behalf of NYSE Alternext.<sup>7</sup>

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems (the "Equities Rule filing").<sup>8</sup> The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Similarly, NYSE Alternext will relocate all options trading conducted

on the 86 Trinity Trading Systems to new facilities of NYSE Alternext to be located at 11 Wall Street, which facilities will utilize a trading system based on the options trading system used by NYSE Arca, Inc. ("NYSE Arca") ("Options Relocation," and, together with the Equities Relocation, the "Relocations").

#### NYSE Alternext Equities Trading License Requirements

To trade equities on NYSE Alternext Trading Systems, a member organization must meet NYSE Alternext membership qualifications and obtain a trading license pursuant to Rule 300—NYSE Alternext Equities. As set forth in more detail in the Merger filing, an 86 Trinity Permit holder is eligible to obtain an NYSE Alternext equities trading license or options trading permit ("ATP") pursuant to an expedited "waive in" process up to the Options Relocation date. After the Equities Relocation, an 86 Trinity Permit entitles holders only to trade products other than those that have relocated to NYSE Alternext Trading Systems. As a result of the Equities Relocation, as well as the discontinuation of Exchange Traded Fund ("ETF") and bond trading at 86 Trinity Place, 86 Trinity Permits currently only entitle holders to trade listed options on NYSE Alternext. After the Options Relocation, the 86 Trinity Permits will be cancelled.<sup>9</sup> Stated otherwise, an 86 Trinity Permit may not be used to trade equities on NYSE Alternext Trading Systems and a trading license under Rule 300—NYSE Alternext Equities must be obtained. Upon the Options Relocation, a former 86 Trinity Permit holder will need an ATP to trade options on NYSE Alternext Trading Systems and the 86 Trinity Permit will no longer entitle the holder to trade any products at NYSE Alternext.

In recognition of the fact that NYSE Alternext member organizations would be subject to different or additional requirements than were previously required under Amex rules, the Exchange adopted Rule 300.10T. As described in the Equities Rule filing, Rule 300.10T provides NYSE Alternext member organizations that exchanged the equities portion of a valid 86 Trinity Permit for an equities trading license under Rule 300—NYSE Alternext Equities with a six-month grace period within which to comply with NYSE Alternext Equities Rules 2 (defining the

terms members and member organizations), 300-308 (governing the admission of members and member organizations), 311 (the formation and approval of member organizations), 312 (changes within member organizations), and 313 (submission of partnership articles and corporate documents) (collectively, the "NYSE Alternext Equities Member Organization Rules").

Among the differing requirements of the NYSE Alternext Equities Member Organization Rules as compared to the Amex rules that governed trading at 86 Trinity Trading Systems, a member organization must be a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"). In addition, unlike the Amex rules, Rule 313.20—NYSE Alternext Equities requires member organizations to submit to the Exchange an opinion of counsel that a member corporation's stock is validly issued and outstanding and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective.

The current six-month grace period under Rule 300.10T begins to run from the date that the member organization receives its NYSE Alternext equities trading license in exchange for the equities portion of a valid 86 Trinity Permit. However, a subset of member organizations that have applied for a trading license are not FINRA members. As a result, the Exchange determined that it cannot issue an equities trading license to such member organizations at this time. Because these member organizations have not been issued a trading license in exchange for the equities portion of an 86 Trinity Permit, the grace period within which to comply with the NYSE Alternext Equities Member Organization Rules has not been triggered.

#### Proposed Amendment to Rule 300.10T

To reflect the intent of the original adoption of Rule 300.10T, *i.e.*, to provide member organizations with a grace period to comply with the NYSE Alternext Equities Member Organization Rules, the Exchange proposes to amend Rule 300.10T to provide for a six-month grace period for those member organizations that have applied for, but have not been issued a trading license.

As proposed, to be eligible for the grace period, a member organization must be a holder of a valid 86 Trinity Permit as of the date that it applied for an equities trading license. In other words, once the 86 Trinity Permits are cancelled, *i.e.*, the Options Relocation date, an Exchange member organization would not be eligible to apply for an

<sup>7</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>8</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106); Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10); and Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11).

<sup>9</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).



equities trading license and also benefit from the Rule 300.10T grace period. As proposed, if a member organization meets the amended eligibility threshold, it has six months from the earlier of either receiving the equity trading license (which is the current standard) or the cancellation of the 86 Trinity Permits (the Options Relocation date) within which to comply with the NYSE Alternext Equities Membership Rules, including the FINRA requirement. By adding the cancellation of the 86 Trinity Permits as a trigger for the six-month grace period, the proposed rule provides those member organizations that applied for a trading license, but were not issued a trading license because they are not currently FINRA members, time to meet the NYSE Alternext Equities Member Organization Rule requirements.

In addition, the Exchange proposes deleting subsection (i) of the rule, as that language is not applicable for NYSE Alternext. The intention of Rule 300.10T was to provide a grace period for 86 Trinity Permit holders. This rule was added at the same time that the NYSE added its version of Rule 300.10T, which needed the Rule 2.10 reference. Rule 2.10 provides that NYSE member organizations are deemed approved as NYSE Alternext member organizations. Because NYSE member organizations that were not previously Amex member organizations never received an 86 Trinity Permit, this prerequisite is inapplicable for the purpose of Rule 300.10T.

As is currently part of the rule, if an NYSE Alternext member organization fails to meet the requirements of the NYSE Alternext Equities Member Organization Rules by the close of the grace period applicable to that member organization, the Exchange would either revoke the member organization's approval to trade, if a trading license has already been issued, or not issue a trading license. The Exchange may also commence proceedings to revoke the membership of such member organization.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>10</sup> which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the

principles of Section 11A(a)(1)<sup>11</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market.

Specifically, the Exchange already permits a holder of a valid 86 Trinity Permit to apply for and receive an equities trading license under Rule 300—NYSE Alternext Equities. This filing would simply provide those eligible NYSE Alternext member organizations with a valid 86 Trinity Permit additional time to exchange their 86 Trinity Permit for an NYSE equity trading license and to comply with Exchange membership requirements without first having to apply as a new member organization.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

*Because the foregoing proposed rule change does not:* (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the

<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Alternext has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

public interest. NYSE Alternext requests that the Commission waive the 30-day operative delay. The Exchange requests the 30-day operative delay because the Options Relocation date is imminent and is currently scheduled for March 2, 2009, and the Exchange needs to immediately implement this rule change so that NYSE Alternext member organizations can meet the new rule requirements. For these reasons, the Commission believes that waiving the 30-day operative delay<sup>16</sup> is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEALTR-2009-16 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEALTR-2009-16. 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

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).



Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEALTR-2009-16 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-4678 Filed 3-4-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59442; File No. SR-OCC-2009-01]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amended Interpretative Guidance on the New Methodology for Adjusting Option Contracts for Cash Dividends and Distributions

February 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 6, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act<sup>2</sup> and Rule 19b-4(f)(1) thereunder<sup>3</sup> so that the proposal was effective upon filing with the Commission. 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 proposed rule change would amend previously adopted interpretative guidance regarding the administration and application of the new adjustment method for cash dividends and distributions ("New Methodology").

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### Background

In File No. SR-OCC-2008-10, OCC adopted interpretative guidance developed by the OCC's Securities Committee regarding the New Methodology.<sup>5</sup> In File No. SR-OCC-2008-16, OCC proposed a minor modification to the New Methodology, which was approved by the Commission on September 18, 2008.<sup>6</sup> The purpose of this rule change is to amend the interpretative guidance to address the approved modification to the New Methodology.

###### Amendment to Interpretative Guidance

Under the New Methodology, cash dividends paid by a company other than pursuant to a policy or practice of paying dividends on a quarterly or other regular basis would be deemed "special" and would ordinarily trigger a contract adjustment provided the value of the adjustment is at least \$12.50 per

option contract.<sup>7</sup> However, certain inconsistencies may result when the threshold of \$12.50 per option contract is applied to all options on the affected underlying security. For example, if a \$.10 special cash dividend is declared, the standard-size 100 share option would not be adjusted (because the value is less than \$12.50). However, a previously adjusted 150 share option (reflecting a 3 for 2 split) would be adjusted (because the value is \$15 per contract). Adjusting some but not all options of the same class in response to the same dividend event, especially if the 100 share option is not adjusted, could be confusing to investors. OCC's Securities Committee (consisting of representatives of each of the options exchanges and OCC) determined that this potential confusion should be avoided.

OCC's Securities Committee believed that greater consistency across contracts of varying sizes could be achieved by retaining the \$12.50 per contract threshold in all cases but subjects the threshold amount to a qualification providing that if a corresponding standard-size contract exists on the underlying security, previously adjusted contracts will be adjusted only if the corresponding standard-size contract is also adjusted. This qualification was the subject of File No. SR-OCC-2008-16. Implementation of the qualification will take effect at the same time the New Methodology is effective.

OCC's previously adopted interpretative guidance regarding the New Methodology has been amended to address the application of the qualified \$12.50 per contract threshold, including examples of how the threshold will work in practice. The amended interpretative guidance is attached to the proposed rule change as Exhibit 5, and will be posted on OCC's public Web site, made available in an information memorandum accessible to clearing members, or otherwise made available in hard copy form on request.<sup>8</sup>

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder applicable to OCC because it provides market participants with interpretative guidance on the application of the New Methodology which will be applied to adjustments for cash dividends and

<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>5</sup> Securities Exchange Act Release No. 55258 (February 8, 2007), 72 FR 7701 (February 16, 2007).

<sup>6</sup> Securities Exchange Act Release No. 58586 (September 18, 2008), 73 FR 55582 (September 25, 2008).

<sup>7</sup> The New Methodology took effect beginning with dividends announced on and after February 1, 2009, other than for certain grandfathered options.

<sup>8</sup> The proposed rule change, including Exhibit 5, can be found on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_01.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_09_01.pdf).

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

distributions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act<sup>10</sup> and Rule 19b-4(f)(1)<sup>11</sup> thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2009-01 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2009-01. 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. The text of the proposed rule change is available at OCC, the Commission's Public Reference Room, and [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_01.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_09_01.pdf). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2009-01 and should be submitted on or before March 26, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-4679 Filed 3-4-09; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Government/Industry Aeronautical Charting Forum Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight

procedures development policy and design criteria.

**DATES:** The ACIF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet April 28, 2009 from 8:30 a.m. to 5 p.m. The Charting Group will meet April 29 and 30, 2009 from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be hosted by the National Geospatial-Intelligence Agency (NGA) and held at the U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192.

**FOR FURTHER INFORMATION CONTACT:** For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS-420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954-5852; fax: (405) 954-2528.

For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Charting Office, Requirements and Technology Team, AJW-3521, 1305 East-West Highway, SSMC4-Station 5544, Silver Spring, MD 20910; telephone: (301) 713-2631, fax: (301) 713-1960.

**SUPPLEMENTARY INFORMATION:** Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from April 28 through April 30, from 8:30 a.m. to 5 p.m. at the National Geospatial-Intelligence Agency (NGA) and held at the U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by April 10, 2009, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by April 10, 2009. Public statements will only be considered if time permits.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

Issued in Washington, DC, on February 26, 2009.

**John A. Moore,**

*Co-Chair, Aeronautical Charting Forum.*

[FR Doc. E9-4501 Filed 3-4-09; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement; Manatee and Hillsborough Counties, FL

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Manatee and Hillsborough Counties, Florida.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Anderson, Environmental Specialist, Federal Highway Administration, 545 John Knox Road, Tallahassee, Florida 32301, Telephone: (850) 942-9650 extension 3053.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Florida Department of Transportation (FDOT), will prepare an EIS for a proposal to improve access between Port Manatee and Interstate 75 (I-75) in Manatee and Hillsborough Counties. The study area for the proposed project generally extends from south of I-275 to south of State Road 674 and from the Tampa Bay coast line to east of I-75, in northern Manatee County or southern Hillsborough County. The study corridor is approximately 7 miles long. An enhanced roadway connection from I-75 to Port Manatee would serve as a crucial freight route, improve the overall efficiency of the existing highway network and relieve congestion at the gateway to the port.

Alternatives under consideration include: (1) Taking no action; (2) upgrades to existing roadways; and (3) alternatives on a new east-west alignment. A potential new roadway alignment would provide access to Port Manatee at U.S. 41 and connect to a new or modified interchange with I-75.

Coordination with appropriate Federal, State, and local agencies, and with private organizations and citizens who have expressed interest in this proposal has been undertaken and will continue. A series of public meetings and a public hearing will be held in Manatee County between September 2008 and December 2010. Public notice

will be given of the time and place of the meetings and hearing. Prior to the public hearing, the Draft EIS will be made available for public and agency review and comment. There are no plans to hold a formal scoping meeting after this notice of intent to prepare an EIS. The information gained through agency meetings, the Florida Efficient Transportation Decision Making (ETDM) process, and public involvement will be used for scoping. As part of the scoping process, a series of meetings were held between September 23-30, 2008 to provide affected government agencies, interested groups, and the public with an opportunity to review and comment on the draft purpose and need statement developed for the project. A subsequent series of meetings is anticipated for summer 2009 to provide agencies and the public an opportunity for input into the alternatives analysis and development. The ETDM process is approved by FHWA as meeting the streamlining requirements of Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 26, 2009.

**Linda Anderson,**

*Environmental Protection Specialist.*

[FR Doc. E9-4736 Filed 3-4-09; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### American Recovery and Reinvestment Act of 2009 Public Transportation Apportionments, Allocations and Grant Program Information

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The "American Recovery and Reinvestment Act, 2009" (Pub. L. 111-5; "ARRA"), signed into law by

President Barack Obama on February 17, 2009, includes \$8.4 billion for transit capital improvements. This notice implements the transit formula program related provisions of the ARRA and provides program and grant application requirements for these funds, to be made available through Federal Transit Administration (FTA) assistance programs. Additional notices will be published in the near future for the transit discretionary program provisions in the ARRA.

**DATES:** Complete grant applications must be submitted in TEAM by July 1, 2009. FTA must reallocate certain unobligated funds by September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice contact Henrika Buchanan-Smith, Director, Office of Transit Programs, at (202) 366-2053. Please contact the appropriate FTA regional or metropolitan office (Appendix C) for any specific requests for information or technical assistance. An FTA headquarters contact for each major program area also is included in the discussion of that program in the text of the notice.

#### SUPPLEMENTARY INFORMATION:

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## I. Overview

The American Recovery and Reinvestment Act of 2009 (ARRA) provides new funding for, among many other categories, public transportation capital projects. This legislation includes three separate capital investment programs for public transportation. Because of the purposes of the legislation, it presents both opportunities and responsibilities for those who provide public transportation throughout the United States.

This **Federal Register** notice does several things. First, it provides a summary of ARRA as it relates to public transportation programs. Second, the notice discusses in detail the FTA programs funded by the ARRA, including specific dollar amounts made available under ARRA for each program and program requirements for eligible projects. Third, the notice includes policies and requirements that apply to the ARRA funds, including general reporting requirements and specific application requirements for the different formula programs. Fourth, the notice includes tables that apportion funds distributed by formula. It does not allocate funds to New/Small Starts projects under the Capital Investment Grants program or make discretionary allocations for the transit energy program or the tribal transit program. FTA will issue subsequent notices addressing these programs. Finally, we include three appendices covering application instructions, Questions and Answers, and contact information for our regional and metropolitan offices.

## II. The American Recovery and Reinvestment Act of 2009

### A. Overview of the ARRA

The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law by President Barack Obama on Tuesday, February 17, 2009. The ARRA includes appropriations and tax law changes totaling approximately \$787 billion to support multi-pronged efforts to stimulate the economy. Goals of the statute include the preservation or creation of jobs and promotion of an economic recovery, as well as the investment in transportation, environmental protection and other infrastructure providing long-term economic benefits.

Of the \$787 billion of spending and tax law changes in ARRA, over \$48

billion will be invested in transportation infrastructure, facilities, and equipment. The Secretary of Transportation has received an appropriation of \$1.5 billion for a competitive surface transportation grant program, including public transportation projects. The Federal Highway Administration (FHWA) has received \$27.5 billion for projects eligible under their Highways and Bridges program, including public transportation. FHWA funds can be used to support public transportation projects consistent with the Flexible Funding procedures under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). FTA has received \$8 billion for high speed and intercity rail grants. Finally, FTA has received \$8.4 billion for three categories of funding: Transit Capital Assistance, Fixed Guideway Modernization grants, and Capital Investment Grants (New Starts/Small Starts). More on the transit programs follows.

### B. Public Transportation Programs and the ARRA

#### 1. Introduction

The ARRA includes a total of \$8.4 billion in General Fund dollars for public transportation, appropriated for three different programs: 1. Transit Capital Assistance, 2. Fixed Guideway Infrastructure Investment, and 3. Capital Investment Grants (New/Small Starts). Tables 1 through 8 of this notice list the ARRA transit formula funds apportioned in this **Federal Register** notice. Additionally, for each FTA program included in this notice, we have provided relevant information on the ARRA funding available, program requirements, period of availability, and other related program information and highlights, as appropriate.

The ARRA specifies that funds are to be used only for capital expenditures. This means that only items defined as capital under FTA's current law (Title 49, U.S.C. Chapter 53) are eligible activities under this program. (The one exception to this is program administration funds provided to States under the nonurbanized area program.)

Potential grantees are encouraged to identify projects or expenditures that meet the broader goals of the statute, including preserving or creating jobs, contributing to cleaning our environment through green purchases, retrofitting existing facilities, making additional public transportation opportunities available to more people, and helping ease fiscal problems at the state and local level.

An important aspect of this legislative initiative is to get the money working in the economy as quickly as possible. To foster this imperative, ARRA contains limited time frames to obligate these funds. As discussed in the detailed description of each program, the inability to secure an approved and executed grant within the statutory time limits will result in fund availability being withdrawn. FTA will reapportion these funds to areas that have successfully executed grants within the statutory time frames.

#### 2. Capital Transit Assistance Program

The ARRA appropriates \$6.9 billion for four separate grant programs in this category of funding. This notice covers only the funds apportioned by formula in two categories of funding: the urbanized area formula program and the non-urban formula program. (The tribal transit program and the energy savings program will be addressed in a separate notice.)

Specifically, this document apportions funds made available to potential program recipients based on the statutory formulas in 49 U.S.C. sections 5307, 5311 for the following formula programs: Transit Capital Assistance (urbanized areas) and Transit Capital Assistance (nonurbanized areas) allocated to States.

This **Federal Register** notice does not contain application requirements for two discretionary programs authorized in this capital transit program of the ARRA: a \$17 million discretionary capital program for Indian Tribes and a \$100 million discretionary capital program for energy saving measures by transit agencies. FTA anticipates issuing notices of Funding Availability for these two programs within the next two weeks.

#### 3. Fixed Guideway Infrastructure Investment Program

The ARRA provides \$750 million for FTA's Fixed Guideway Infrastructure Investment program to modernize or improve existing fixed guideway systems, which could include the purchase or rehabilitation of rolling stock, track, equipment, or facilities. Maintaining the nation's rail transit system is a core responsibility of transit agencies across the country. The Department's biennial Conditions and Performance Report gauges asset conditions and the level of investment needed to eliminate the backlog of repairs or necessary replacements. Current published reports indicate that existing pending needs exceed \$25 billion.

4. Capital Investment Grants

The ARRA makes \$750 million available for FTA’s New and Small Starts programs. Additional financial support for these programs will generate over 20,000 jobs, will increase public transportation infrastructure, and will expedite the availability of additional transportation options. In addition, investing in these major capital investments offers communities significant opportunities to develop sound approaches for achieving their transportation, environmental, and community objectives. A separate **Federal Register** notice on the ARRA Capital Investment Grants program allocations will be published shortly.

5. Administration and Oversight of ARRA funds

ARRA authorizes FTA to use an amount from each of the program funding categories for administration and oversight of these programs. The ARRA provides oversight and administrative takedowns at the following levels: 0.75 percent of Transit Capital Assistance funds for Urbanized Area Formula funds and Growing States and High Density Allocations, 0.5 percent of Transit Capital Assistance funds for Nonurbanized Area Formula funds, one percent of Fixed-Guideway Infrastructure Investment funds, and one percent of Capital Investment Grants funds. These dollar amounts are identified in the funding tables contained in the description for each program.

**III. ARRA FTA PROGRAMS: Funding and Eligibility Information**

*A. Transit Capital Assistance Program in this Notice*

The Transit Capital Assistance Program authorizes \$6.9 billion in

funding for capital expenses as defined by 49 U.S.C. section 5302(a)(1). Transit Capital Assistance program funds are apportioned by formula to Urbanized Areas (UZAs) with populations at least 200,000 and to the State for Nonurbanized areas and UZAs with populations below 200,000. The Transit Capital Assistance Program funds are apportioned based on the following percentages that have been established in the ARRA: 80 percent of the funds are apportioned for grants under 49 U.S.C. section 5307 (Urbanized Area Formula program); 10 percent of the funds are apportioned in accord with 49 U.S.C. section 5340 for areas that are growing States or high density States (these funds are then added to the amounts made available under the Urbanized Area and Nonurbanized Area Formula Program); and the remaining 10 percent of the funds are apportioned for grants under 49 U.S.C. section 5311 (Nonurbanized Area Formula Program). Of the 10 percent apportioned to nonurbanized areas, 2.5 percent has been set-aside for discretionary allocation through FTA’s Tribal Transit Program. Additionally, \$100,000,000 of the Transit Capital Assistance program funds will be dedicated for discretionary energy-related investments. Neither the tribal transit nor energy savings discretionary programs are addressed in this **Federal Register** notice. The ARRA excludes from the formula apportionment the SAFETEA-LU computation for small transit intensive cities.

For more information about the Transit Capital Assistance Program (Urbanized Areas) contact Henrika Buchanan-Smith, Director, Office of Transit Programs, at (202) 366–2053. For information about the Transit Capital Assistance Program (Nonurbanized

areas) contact Lorna Wilson, at (202) 366–2053.

1. Funding Levels

The ARRA provides \$5,440,000,000 to the Transit Capital Assistance Program for UZAs. After the 0.75 percent deduction for administrative expenses and program management oversight and the addition of the urbanized area portion of the Section 5340 Growing States and High Density States funds, a total amount of \$5,967,852,039 is available to be allocated to UZAs under the Transit Capital Assistance Program.

The ARRA provides \$680,000,000 of the \$6.9 billion available under the Transit Capital Assistance Program, to nonurbanized areas based on 49 U.S.C. section 5311. After the 2.5 percent set-aside for tribal transit, the 0.5 percent deduction for program management oversight and administrative expenses, and the addition of the nonurbanized area portion of Section 5340 Growing States and High Density States funds, a total amount of \$765,847,961 is available to be apportioned in this notice to States to fund projects in nonurbanized areas under the Transit Capital Assistance Program.

The remainder of the \$6.9 billion appropriated to the Transit Capital Assistance program will be allocated through competitive discretionary processes which includes \$17,000,000 through the Tribal Transit program, and \$100,000,000 allocated to energy-related investments. A breakdown of formula funds appropriated under the Transit Capital Assistance Program is shown in the table below.

TRANSIT CAPITAL ASSISTANCE

Total Appropriation .....	\$6,900,000,000
Energy Investment .....	– 100,000,000
Total Appropriation Remaining .....	6,800,000,000
Appropriation—urbanized Areas .....	5,440,000,000
Admin/Oversight Deduction .....	– 40,800,000
Section 5340 Funds Added .....	1586,652,039
<b>Total Apportioned—urbanized .....</b>	<b>5,967,852,039</b>
<b>Appropriation-nonurbanized .....</b>	<b>680,000,000</b>
Oversight Deduction .....	– 3,400,000
Tribal Program .....	– 17,000,000
Section 5340 Funds Added .....	1106,247,961
<b>Total Apportioned-nonurbanized .....</b>	<b>765,847,961</b>

<sup>1</sup> Note: This is the amount allocated to the program after the 0.75 percent deduction for oversight from section 5340 fund, which totaled \$5,100,000.

2. Basis for Formula Apportionment

Of the \$6.9 billion available, \$5.44 billion is apportioned to UZAs based on 49 U.S.C. section 5336. Different formulas apply to UZAs with populations of 200,000 or more and to UZAs with populations less than 200,000. For UZAs with 50,000 to 199,999 in population, the formula is based solely on population and population density. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, fixed guideway revenue vehicle miles, and fixed guideway route miles, as well as population and population density. Table 2 displays the amounts apportioned under the Urbanized Area Formula Program, and detailed information about the urbanized area formula can be found in Table 3 and Table 4.

The nonurbanized area funds are apportioned based upon the nonurbanized population of each state relative to the national urbanized area and land area in nonurbanized areas. Table 5 displays the Transit Capital Assistance Program apportionments for nonurbanized areas.

3. Eligible Applicants

Eligible applicants for funds apportioned to UZAs are limited to designated recipients in accordance with 49 U.S.C. section 5307(a)(2) and other direct FTA grant recipients with the consent of the Designated Recipient. For nonurbanized area funds, the State is the only eligible applicant with the exception of the nonurbanized area funds that will be allocated to tribal recipients at a later date.

4. Program Requirements

Program guidance for the Urbanized Area Formula Program is found in FTA Circular 9030.1C, Urbanized Area Formula Program: Grant Application Instructions (October 1, 1998), supplemented by additional information or changes provided in this document. Additionally, program guidance on the Nonurbanized Area Formula program can be found in FTA Circular 9040.1F, Nonurbanized Area Formula Program Guidance and Application Instructions (April 4, 2007). Several important program requirements are highlighted below. Appendix B to this notice contains frequently asked questions and answers about the ARRA program.

a. Eligibility

Transit Capital Assistance funds may be used to fund eligible capital projects. In accordance with 49 U.S.C. section

5302(a)(1), eligible capital projects include: preventive maintenance; acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation (including engineering, designing, location surveying, mapping, and acquiring right-of-way); transit-related ITS; rehabilitating buses; remanufacturing a bus; overhauling rail rolling stock; leasing a facility or equipment for use in public transportation where more cost-effective than purchase or construction; public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to public transportation facilities, construction or renovation of intercity rail stations and terminals, renovation and improvements of historic transportation facilities, where the improvement enhances the effectiveness of a public transportation project and is physically or functionally related to that public transportation project, or creates a new or enhanced coordination between public transportation and other transportation and provides a fair share of revenue to be used in public transportation; ADA complementary paratransit in amounts not to exceed 10 percent of the recipient's formula apportionment; specified crime prevention and security expenses; establishing a debt service reserve; and mobility management.

b. Local Match

Under the ARRA, the Federal share of a Transit Capital Assistance grant is up to 100 percent of the net project cost of capital projects and state administrative expenses of the Transit Capital Assistance (nonurbanized) Formula program funds. Under the ARRA, operating funds are not eligible.

5. Period of Availability

The Transit Capital Assistance Program funds apportioned in this notice remain available to be obligated by FTA to recipients for a limited period of time. At least 50 percent of Transit Capital Assistance Formula funds apportioned in this notice must be obligated in a grant no later than September 1, 2009. On this date, FTA will withdraw any portion of the 50 percent that each State or urbanized area has not obligated and will subsequently redistribute to other States and UZAs that successfully obligated at least 50 percent of the funds apportioned to them and did not have any funds withdrawn. All remaining Transit Capital Assistance program funds must be obligated in a grant no

later than March 5, 2010. Transit Capital Assistance Funds that remain unobligated at the close of business on March 5, 2010 will revert to FTA for redistribution to areas that have not had any funds withdrawn and that can promptly use the funding. Any Transit Capital Assistance program funds that remain unobligated at the close of business on September 30, 2010, will revert to the U.S. Treasury. A complete list of dates and deadlines will be posted on FTA's Web site following publication of this **Federal Register** notice.

*B. Fixed Guideway Infrastructure Investment*

The Fixed Guideway Infrastructure Investment program provides capital assistance for the modernization of existing fixed guideway systems as authorized under 49 U.S.C. section 5309(b)(2). Funds are allocated by a statutory formula to UZAs with fixed guideway systems that have been in operation for at least seven years. A "fixed guideway" refers to any transit service that uses exclusive or controlled rights-of-way or rails, entirely or in part. The term includes heavy rail, commuter rail, light rail, monorail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, that portion of motor bus service operated on exclusive or controlled rights-of-way, and high-occupancy-vehicle (HOV) lanes. Eligible applicants are the public transit authorities in those UZAs to which the funds are allocated. For more information about Fixed Guideway Infrastructure Investment contact Henrika Buchanan-Smith, Director, Office of Transit Programs, at (202) 366-2053.

1. FY 2009 ARRA Funding

The ARRA provides \$750,000,000 for the Fixed Guideway Infrastructure Investment Program. The total amount apportioned for the Fixed Guideway Infrastructure Investment Program is \$742,500,000, after the one percent deduction for program administration and oversight, as shown in the table below.

**FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT PROGRAM**

Total Appropriation .....	\$750,000,000
Admin/Oversight Deduction .....	- 7,500,000
<b>Total Apportioned .....</b>	<b>742,500,000</b>

The FY 2009 ARRA Fixed Guideway Infrastructure Investment Program apportionments to eligible areas are

displayed in Table 6. Detailed information regarding the Fixed Guideway formula is detailed in Table 7.

## 2. Basis for Formula Apportionment

The formula for allocating the Fixed Guideway Modernization funds contains seven tiers. The apportionment of funding under the first four tiers is based on amounts specified in law and National Transit Database (NTD) data used to apportion funds in FY 1997. Funding under the last three tiers is apportioned based on the latest available data on route miles and revenue vehicle miles on segments at least seven years old, as reported to the NTD. Section 5337(f) of title 49, U.S.C. provides for the inclusion of Morgantown, West Virginia (population 55,997) as an eligible UZA for purposes of apportioning fixed guideway modernization funds. This notice allocates funds on a one time basis consistent with the 49 U.S.C. section 5337 formula for the Fixed Guideway Modernization program. For the ARRA funds, FTA was able to meet the apportionment formulas for the first three tiers of funding. Because there were not enough funds to fully fund the fourth tier of the formula, the table reflects a pro rata amount to eligible recipients within the Tier Four Category. Tiers Five through Seven were not used for the ARRA apportionments, since the amount available did not reach those tiers.

## 3. Program Requirements

Fixed Guideway Infrastructure Investment funds must be used for capital projects to maintain, modernize, or improve fixed guideway systems. Eligible UZAs (those with a population of 200,000 or more) with fixed guideway systems that are at least seven years old are entitled to receive Fixed Guideway Infrastructure Investment funds. A threshold level of more than one mile of fixed guideway is required in order to receive Fixed Guideway Infrastructure Investment funds. Therefore, UZAs reporting one mile or less of fixed guideway mileage under the NTD are not included. However, funds apportioned to an urbanized area may be used on any fixed guideway segment in the UZAs. The program will be implemented under the Fixed Guideway Modernization Program guidance. Program guidance for Fixed Guideway Modernization is presently found in FTA Circular C9300.1B, Capital Program: Grant Application Instructions (November 1, 2008).

## 4. Period of Availability

For the fixed Guideway Infrastructure Investment Program in ARRA, at least 50 percent of funds must be obligated in a grant on or before September 1, 2009. At that time, FTA will withdraw any portion of the 50 percent that has not been obligated in a grant agreement. These funds will be redistributed to eligible UZAs that have not had any Fixed Guideway Infrastructure funds withdrawn. Furthermore, on March 5, 2010 FTA will withdraw any remaining unobligated funds from each UZAs and again redistribute such funds to UZAs that have not had any funds withdrawn and can promptly spend the funds. Any Fixed Guideway Infrastructure program funds that remain unobligated after September 30, 2010, will revert back to the U.S. Treasury.

### C. Capital Investment Program—New Starts and Small Starts

The Capital Investment Grant program authorizes the Secretary of Transportation to make discretionary grants as authorized under 49 U.S.C. section 5309(d)–(e). The program will be implemented consistent with the requirements of the New Starts and Small Starts programs, which provide funds for construction of major capital investments in new fixed guideway systems, extensions to existing fixed guideway systems, or, in the case of Small Starts, corridor-based bus projects. This notice does not include an allocation of Capital Investment Program resources. FTA will issue a subsequent notice that announces project selections and additional guidance. For more information about New Starts project development contact Elizabeth Day, Office of Planning and Environment, at (202) 366–4033.

## IV. FTA Policy Guidance and Procedures for ARRA Grants

### A. Civil Rights

Existing regulations and guidance pertaining to the Americans With Disabilities Act (ADA), Equal Employment Opportunity (EEO), Title VI, and Disadvantaged Business Enterprise (DBE) programs apply to ARRA funds apportioned in this **Federal Register** notice.

Concerning DBE in particular, FTA does not expect grantees will need to amend FY 2009 overall goals. However, there are some key situations to consider. First, it may be that receipt of ARRA funds will bring a grantee above the \$250,000 threshold amount, which triggers the requirement to comply with the DBE program, including goal setting. In this case the grantee will need to

submit a DBE goal (in such a case, it may submit a single goal for the remainder of FY 2009 and entirety of FY 2010). Second, a grantee's receipt of additional ARRA funds could render the FY 2009 goal obsolete. This could occur if the additional funds create vastly different contracting opportunities, for example. In this case, the grantee may: (a) Submit a project goal to be approved by FTA's Administrator (project goals are appropriate only if there is a specific large, multi-year, and/or design-build project. Additional funding alone would not trigger the need for a project based goal); (b) amend the FY 2009 goal (with FTA approval per normal procedures under the DBE regulations); (c) submit a new goal for the remainder of FY 2009 and entirety of FY 2010 that accounts for contracting opportunities derived from ARRA financed projects; or (d) do not amend the 2009 goal, but include the ARRA project in your FY 2010 goal, if the ARRA-funded project will be primarily executed during FY 2010. Further Departmental guidance on the Disadvantaged Business Utilization program can be found at [http://osdbu.dot.gov/DBEProgram/dbeqna.cfm#economic\\_recovery](http://osdbu.dot.gov/DBEProgram/dbeqna.cfm#economic_recovery).

Grantees should consult closely with their Regional Civil Rights Officer to determine which approach best applies to their specific situations. In the interim, grantees must immediately begin considering DBE and non-DBE availability and capacity as they relate to anticipated or potential projects funded by the ARRA, and discuss strategies for DBE utilization with the relevant contracting industries and DBE communities.

### B. Automatic Pre-Award Authority To Incur Project Costs

#### 1. General Policy

FTA provides pre-award authority to incur expenses before grant award for certain program areas. ARRA program funds will have pre-award authority consistent with the FTA programs under which the ARRA funds are allocated or apportioned. ARRA program funds that are distributed by formula will have blanket pre-award authority beginning October 1, 2008; ARRA discretionary tribal transit and energy programs funds will have pre-award authority once program funds are allocated to the project in a **Federal Register** notice; Capital Investment Grants Program allocations are subject to the New and Small Starts pre-award policy, discussed in detail in section B5 below.



## 2. Caution to New Grantees

While FTA provides pre-award authority to incur expenses before grant award for many projects, first-time grant recipients are discouraged from using this automatic pre-award authority and encouraged to wait until the grant is actually awarded by FTA before incurring costs. As a new grantee, it is easy to misunderstand pre-award authority conditions and not be aware of all of the applicable FTA requirements that must be met in order to be reimbursed for project expenditures incurred in advance of grant award. FTA programs have specific statutory requirements that are often different from those for other Federal grant programs with which new grantees may be familiar. If funds are expended for an ineligible project or activity, FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

## 3. Policy Details

Pre-award authority allows grantees to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. For the ARRA program, this pre-award spending authority permits a grantee to incur costs on an eligible transit capital project without prejudice to possible future Federal participation in the cost of the project. All pre-award authority is subject to conditions and triggers stated below:

a. Grantees may be reimbursed for expenses incurred before grant award, so long as funds have been expended in accordance with all Federal requirements. In addition to cross-cutting Federal grant requirements, program specific requirements must be met. For example: expenditure on State Administration expenses under State Administered programs must be consistent with the State Management Plan.

b. Preaward authority (beginning October 1, 2008 for the ARRA formula funds or allocation of discretionary funds in a **Federal Register** notice) for capital project implementation activities including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process, signified by FTA's finding that the project is a categorical exclusion (CE) or FTA's signing of an

environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI). Before exercising pre-award authority, grantees must comply with the conditions and Federal requirements outlined in paragraph 4 below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance.

c. Blanket pre-award authority applies to formula funds apportioned under the Transit Capital Assistance Program and the Fixed Guideway Infrastructure Investment Program from October 1, 2008, until September 30, 2010. Blanket pre-award does not apply to Section 5309 Capital Investment Grant funds, Energy savings or Tribal Transit Program funds. Specific instances of pre-award authority for ARRA Capital Investment Grants—New and Small Starts projects are described in paragraph 5 below.

## 4. Conditions

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project.

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

d. Local funds expended by the grantee after the date of the pre-award authority will be eligible for credit toward local match (if applicable for ARRA) or reimbursement if FTA later makes a grant or grant amendment for the project. Local funds expended by the grantee before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of pre-award authority for those activities (*i.e.*, the completion of the NEPA process) would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

e. The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions

with respect to the Federal/local match ratio at the time the funds are obligated.

f. For funds to which the pre-award authority applies, the authority expires with the lapsing of the funds. Grantees should be mindful that a portion of ARRA funds begin to lapse to the UZAs and States on September 1, 2009. Please see the applicable program information in Section III above for program specific lapse dates.

g. When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority.

h. All Federal environmental, planning and other grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. The growth of the Federal transit program has resulted in a growing number of grantees that are inexperienced in compliance with Federal planning and environmental laws. FTA has therefore modified its approach to pre-award authority to use the completion of the NEPA process, which has as a prerequisite the completion of planning and air quality requirements, as the trigger for pre-award authority for all activities except design and environmental review.

i. The requirement that a project be included in a locally adopted metropolitan transportation plan, the metropolitan transportation improvement program and Federally-approved statewide transportation improvement program (23 CFR Part 450) must be satisfied before the grantee may advance the project beyond planning and preliminary design with non-Federal funds under pre-award authority. If the project is located within an EPA-designated non-attainment area or maintenance area for a national air quality standard, the transportation conformity regulations under the Clean Air Act, 40 CFR Part 93, must also be met before the project may be advanced into implementation-related activities under pre-award authority. Compliance with NEPA and other environmental laws and executive orders (*e.g.*, protection of parklands, wetlands, and historic properties) must be completed before State or local funds are spent on implementation activities, such as site preparation, construction, and acquisition, for a project that is expected to be subsequently funded with FTA funds. The grantee may not advance the project beyond planning and preliminary design before FTA has issued a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision consistent with FTA/FHWA environmental regulations at 23 CFR Part 771.



j. In addition, Federal procurement procedures, as well as the whole range of applicable Federal requirements (e.g., Davis-Bacon Act, Disadvantaged Business Enterprise, and Buy America) must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

#### 5. Special Requirements for Pre-Award Authority for ARRA Capital Investment Grants (New and Small Starts)

a. Preliminary Engineering (PE) and Final Design (FD) and Small Starts Project Development (PD). Projects proposed for Section 5309 Capital Investment funds are required to follow a federally defined New Starts project development process. This process includes, among other things, FTA approval of the entry of New Starts projects into PE and into FD and approvals regarding Small Starts projects. In accordance with Section 5309(d) and (e), FTA considers the merits of the project, the strength of its financial plan, and its readiness to enter the next phase in deciding whether or not to approve entry of a New Starts project into PE or FD or a Small Starts project into PD. Upon FTA approval of a New Starts project to enter PE, FTA extends pre-award authority to incur costs for PE activities. Upon FTA approval of a New Starts project to enter FD, FTA extends pre-award authority to incur costs for FD activities. Upon FTA approval of a Small Starts project to enter PD, FTA extends pre-award authority to incur costs for preliminary engineering activities. Once FTA has completed its environmental determination on the Small Starts project, FTA extends pre-award authority to incur costs for final design activities, right-of-way acquisition, and utility relocation. The pre-award authority for each phase is automatic upon FTA's signing of a letter to the project sponsor approving entry into that phase. PE and FD are defined in FTA's New Starts regulation at 49 CFR part 611 and further information on these project development milestones is available at [http://www.fta.dot.gov/index\\_5221.html](http://www.fta.dot.gov/index_5221.html).

b. Real Property Acquisition Activities. FTA extends automatic pre-award authority for the acquisition of real property and real property rights for a New or Small Starts project upon completion of the NEPA process for that project. As noted above, the NEPA process is completed when FTA issues a CE, FONSI, or ROD. With the limitations and caveats described below, real estate acquisition for a New or Small Starts project may commence, at the project sponsor's risk, upon completion of the NEPA process.

For FTA-assisted projects, any acquisition of real property or real property rights must be conducted in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations, 49 CFR part 24. This pre-award authority is strictly limited to costs incurred: (i) to acquire real property and real property rights in accordance with the URA regulation, and (ii) to provide relocation assistance in accordance with the URA regulation. This pre-award authority is limited to the acquisition of real property and real property rights that are explicitly identified in the final environmental impact statement (FEIS), environmental assessment (EA), or CE document, as needed for the selected alternative that is the subject of the FTA-signed ROD or FONSI, or CE determination. This pre-award authority does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA, with one exception. That exception is when a building that has been acquired, has been emptied of its occupants, and awaits demolition poses a potential fire-safety hazard or other hazard to the community in which it is located, or is susceptible to reoccupation by vagrants. Demolition of the building is also covered by this pre-award authority upon FTA's written agreement that the adverse condition exists.

Pre-award authority for property acquisition is also provided when FTA makes a CE determination for a protective buy or hardship acquisition in accordance with 23 CFR 771.117(d)(12), and when FTA makes a CE determination for the acquisition of a pre-existing railroad right-of-way in accordance with 49 U.S.C. section 5324(c). When a tiered environmental review in accordance with 23 CFR 771.111(g) is being used, pre-award authority is NOT provided upon completion of the first-tier environmental document except when the Tier-1 ROD or FONSI signed by FTA explicitly provides such pre-award

authority for a particular identified acquisition.

Project sponsors should use pre-award authority for real property acquisition and relocation assistance very carefully, with a clear understanding that it does not constitute a funding commitment by FTA. FTA provides pre-award authority upon completion of the NEPA process to maximize the time available to project sponsors to move people out of their homes and places of business, in accordance with the requirements of the Uniform Relocation Act, but also with maximum sensitivity to the plight of the people so affected. Although FTA provides pre-award authority for property acquisition upon completion of the NEPA process, FTA will not make a grant to reimburse the sponsor for real estate activities conducted under pre-award authority until a New Starts project has been approved into FD. Even if funds have been appropriated for the project, the timing of an actual grant for property acquisition and related activities must await FD approval to ensure that Federal funds are not risked on a project whose advancement beyond PE is still not yet assured.

c. National Environmental Policy Act (NEPA) Activities. NEPA requires that major projects proposed for FTA funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives to avoid and reduce adverse impacts. Projects of more limited scope also need a level of environmental review, either to support an FTA finding of no significant impact (FONSI) or to demonstrate that the action is categorically excluded from the more rigorous level of NEPA review.

Under FTA's environmental impact procedures at 23 CFR part 771, the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA financial assistance (23 CFR 771.105(e)). Accordingly, FTA extends pre-award authority for costs incurred to comply with NEPA regulations and to conduct NEPA-related activities for a proposed New Starts or Small Starts project, effective as of the date of the Federal approval of the relevant STIP or STIP amendment that includes the project or any phase of the project. NEPA-related activities include, but are not limited to, public involvement activities, historic preservation reviews, section 4(f) evaluations, wetlands evaluations, endangered species consultations, and biological assessments. This pre-award authority is strictly limited to costs

incurred to conduct the NEPA process, and to prepare environmental, historic preservation and related documents. It does not cover PE activities beyond those necessary for NEPA compliance.

d. Other New or Small Starts Activities Requiring Letter of No Prejudice (LONP). Except as discussed in paragraphs a) through c) above, a grant applicant must obtain a written LONP from FTA before incurring costs for any activity expected to be funded by New or Small Starts funds not yet awarded. To obtain an LONP, an applicant must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office, as described in C below.

### C. Grant Application Procedures

Grantees will be able to receive ARRA grant funds through the TEAM-Web system beginning March 9, 2009. The following grant procedures apply to ARRA program funds; however, more detailed grant application instructions including standard grant language can be found in Appendix A of this document.

1. Eligible recipients for project funds under the ARRA are direct and designated recipients in UZAs, States, and Tribal Transit providers.

2. An application for ARRA should be submitted electronically to the appropriate FTA regional office through TEAM-Web.

3. Grantees may not commingle ARRA funds into a grant application that contains FTA funding authorized under SAFETEA-LU or any prior authorization. Furthermore, grantees cannot apply for funding allocated under separate ARRA programs in a single grant. Example: If City "A" receives Transit Capital Assistance program funds under ARRA and funding for Fixed Guideway Infrastructure Investment Funds under ARRA, City "A" must apply to receive the Fixed Guideway Infrastructure Investment funds in one grant and develop a separate grant containing projects to be funded using the Transit Capital Assistance funds. Moreover, neither type of ARRA grant may include any FTA funding under 49 U.S.C. Chapter 53.

4. FTA will process ARRA grants promptly upon receipt of a completed application. Because ARRA grants must be processed in a timely manner to assure that project funds begin to flow into the economy as quickly as possible, FTA will consider an ARRA grant application complete if: (a) The TEAM grant application template has been completed; (b) the budget is firm; (c) the project details contain adequate

information for determining eligibility; and (d) projects requiring a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) have submitted the environmental documentation for review. After these prerequisites are met, FTA will assign a grant number, enabling official submittal of the grant for further processing. Once a grant number is assigned, FTA will immediately send the grant for Department of Labor (DOL) certification.

FTA is modifying its established grant development procedures to speed delivery of ARRA grants. Although FTA is allowing grants to be submitted at an earlier stage in development, the following requirements must still be met before grant award:

a. The project is listed in a currently FTA approved Metropolitan Transportation Plan, Metropolitan Transportation Improvement Program (TIP); and federally approved Statewide Transportation Improvement Program (STIP).

b. The grantee's required Civil Rights submissions are current.

c. The FY 2009 certifications and assurances are properly submitted.

d. The required environmental findings have been made.

e. The milestone information is complete. The grant must include sufficient milestones appropriate to the scale of the project to allow adequate oversight to monitor the progress of projects from the start through completion and closeout.

**Note:** It is critical that grantees receiving ARRA grant funds update activity milestones and the financial status report on a quarterly basis.

f. The grant has been certified by DOL.

g. Necessary certifications are complete.

5. As stated above, grants containing ARRA funds must be submitted to DOL for certification of the labor protective arrangements before FTA can award the grant. To streamline the process, DOL intends to certify ARRA program grants in accordance with its procedures for certifying the current FTA program whose requirements are applicable. Accordingly, ARRA programs that follow the requirements of 49 U.S.C. section 5307 or 49 U.S.C. section 5309 will be referred out to the unions if the grant contains new project activities. Grants for like-kind equipment or replacements will not be referred out to the unions before certification. ARRA programs that follow the requirements of 49 U.S.C. section 5311 will be certified based on the special warranty

provision including grants to Indian tribes. Additional information regarding grants that require referral can be found on DOL's Web site [https://www.dol.gov/esa/olms/regs/compliance/redesign\\_2006/redesign2006\\_transitemplprotect.htm](https://www.dol.gov/esa/olms/regs/compliance/redesign_2006/redesign2006_transitemplprotect.htm).

Consistent with DOL's guidelines, grants subject to a referral may require up to 60 days to complete. (29 CFR 215.3). Accordingly, the obligation deadlines associated with most ARRA program funds make it essential that grantees expecting to utilize the ARRA funding submit grants that require union referral to FTA for processing in a timely manner. FTA will consider a submittal timely if a complete ARRA formula grant is received on or before July 1, 2009.

6. Before executing an ARRA grant, the executing official must inform FTA via the TEAM system of the (1) purpose of the investment, and (2) the rationale for the investment. Grantees must select one or more of the following purposes in TEAM before the grant can be executed:

a. To preserve and create jobs and promote economic recovery.

b. To assist those affected negatively by the recession.

c. To provide investments needed to increase economic efficiency by spurring technological advances.

d. To invest in transportation infrastructure that will provide long-term economic benefits.

e. To stabilize State and local government budgets, in order to minimize reductions in essential services and counterproductive State and local tax increases.

In addition, grantees must also select one or more of the following rationales:

a. Project is ready to go (all applicable federal requirements are complete).

b. Use of Recovery funds for this project frees up other FTA/State/local resources for other purposes.

c. Project is high local/regional priority.

d. Project could not have been implemented without supplemental funding.

e. Funding accelerates completion and decreases over-all project costs.

f. Project provides equipment or facilities to increase transit ridership.

g. Project is a needed investment to bring assets to a state of good repair.

h. Project addresses immediate maintenance needs.

7. Other important issues that affect FTA grant processing activities are discussed below.

a. DBE Goal—Existing DOT and FTA regulations and guidance pertaining to the ADA, EEO, Title VI, and DBE

programs will apply to the ARRA funds. Concerning the DBE program (49 CFR part 26) the U.S. DOT has issued ARRA DBE Questions & Answers at [http://osdbu.dot.gov/DBEProgram/dbeqna.cfm#economic\\_recovery](http://osdbu.dot.gov/DBEProgram/dbeqna.cfm#economic_recovery). This Q&A should address some of the unique issues and opportunities raised by the new spending, express DOT's expectations, and delineate grantees' continued obligations and options as they prepare for and execute their potential grants.

b. **Special Conditions of Grant Award**—In the interest of time, FTA is not issuing a separate grant contract for ARRA funds. However, because different requirements flow with the ARRA funds, these additional requirements will be added by FTA regional staff as conditions of grant approval in each TEAM application. Recipients applying for grants that contain ARRA funds must agree to the following grant conditions that will be included in the grant application.

1. Recipient of ARRA funds agrees to comply with reporting requirements and deadlines set out in section 1201(c) of Public Law 111–5.

2. Recipient of ARRA funds agrees to comply with reporting requirements and deadlines set out in section 1512 of Public Law 111–5.

3. Recipient of ARRA funds agrees that all data submitted to FTA in compliance with the requirements of Public Law 111–5 is accurate, objective, and of the highest integrity.

4. Recipient of ARRA funds acknowledges that receipt of ARRA funds is a “one-time” disbursement that does not create any future obligation by the FTA to advance similar funding amounts.

5. Recipient of ARRA funds agrees that it or its sub-recipients will report any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

c. **Buy America**—The Buy America requirements under 49 U.S.C. section 5323(j) that typically apply to projects accepting Federal assistance under the Federal Transit program authorized under Chapter 53 of title 49, United States Code, apply to all capital public transportation projects funded with amounts appropriated in the ARRA. Therefore, an applicant, in carrying out a procurement financed with Federal assistance authorized under the ARRA must comply with applicable Buy

America requirements in 49 U.S.C. section 5323(j) and 49 CFR part 661.

#### *D. Reporting Requirements and Certifications Applicable to Recipients of ARRA Funds*

As a condition of award, grantees receiving ARRA funds will be required to report on grant activities on a routine basis. FTA grantees will be responsible for reporting up-to-date and accurate information in the milestone status report and financial status report on a quarterly basis, as well as additional data elements that are required to be reported in [www.recovery.gov](http://www.recovery.gov). Additionally, special certifications and grant conditions also will be required of ARRA grant recipients. FTA will issue additional specific guidance on reporting requirements in the near future for your information. The ARRA statutory reporting requirements and certifications are identified below:

##### 1. Section 1511: Certifications

For covered funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, is required to certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification must include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and must be posted on a specified Web site. A State or local agency may not receive infrastructure investment funding from funds made available under ARRA unless this certification is made and posted.

On February 27, 2009, USDOT Secretary LaHood sent a letter to the Governors providing guidance and a template for this certification and instructing them to send the Section 1511 certification and the other two certifications by the Governor described below to the Department at the following address: [TigerTeam@dot.gov](mailto:TigerTeam@dot.gov). A single certification by the Governor, based on the established planning process, and including a link to a Web site posting of the Statewide Transportation Improvement Program, which must contain the required section 1511 information for each investment, will satisfy the requirement for certification by the Governor for both FHWA and FTA projects. FTA will provide further guidance in the near future about any additional certifications that may be required by

local officials to ensure that all ARRA projects have been properly vetted.

##### 2. Section 1512: Reports on Use of Funds

**Recipient Reports.**—Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

(i) The total amount of recovery funds received from that agency;

(ii) the amount of recovery funds received that were expended or obligated to projects or activities; and

(iii) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—

(A) The name of the project or activity;

(B) a description of the project or activity;

(C) an evaluation of the completion status of the project or activity;

(D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(iv) detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

The data elements required to comply with Public Law 109–282 are: name of entity receiving the award; the amount of the award; information on the award including transaction type, funding agency, the North American Industry Classification System Code or Catalog of Federal Domestic Assistance number (where applicable); program source; and an award title descriptive of the purpose of each funding action.

FTA will extract as much as possible of this information from grant information and standard reports provided through the TEAM electronic grants award and management system. Supplemental reporting may be required, however, to provide the project and contract level information. FTA will provide further reporting instructions at a later date. FTA is working with other modal

administrations within the Department of Transportation (DOT) to standardize the information required from all DOT recipients. Additional frequency of reporting may be required to be responsive to Congressional oversight requirements.

### 3. Section 1512(h) Registration

Recipients of ARRA funds that are required to report information per subsection (c)(4) must register with Central Contractor Registration database (CCR) or complete other registration requirements as determined by the Director of the Office of Management and Budget (OMB).

The reporting and registration requirements are effective 180 days after enactment of ARRA. OMB has not yet determined whether to use the CCR or some other registration database. However, OMB has issued guidance requiring FTA and other Federal agencies to ensure that grantees and first tier subawardees (subrecipients and contractors) obtain a DUNS number, or update their DUNS record if necessary. OMB has not yet issued a final determination on the extent to which subawardees will be required to register in CCR.

### 4. Section 1201(a) Maintenance of Effort

Not later than March 19, 2009 for each amount that is distributed to a State or its agency from an appropriation in ARRA for a covered program, the Governor of that State is required to certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor is required to submit to the Secretary of Transportation a statement identifying the amount of funds the State planned to expend from State sources as of February 17, 2009, during the period of February 17, 2009 through September 30, 2010, for the types of projects that are funded by the appropriation.

This requirement applies only to State funding for transportation projects eligible for ARRA funding. DOT will treat this maintenance of effort requirement through one consolidated certification from the Governor to the Secretary, which must include State funding for transit projects, as well as highway and other transportation modal projects.

### 5. Section 1201(2)(c) Periodic Reports

For amounts received under each covered program by a grant recipient under ARRA, the grant recipient shall

include in the periodic reports information tracking:

(A) The amount of Federal funds appropriated, allocated, obligated, and outlayed under the appropriation;

(B) the number of projects that have been put out to bid under the appropriation;

(C) the number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;

(D) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;

(E) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;

(F) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created and the total increase in employment since February 17, 2009 and

(G) the actual aggregate expenditures by each grant recipient from State sources for projects eligible for funding under the program during the period of February 17, 2009 through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of the date of enactment of ARRA.

Each grant recipient is required to submit the first of the periodic reports required alone not later than 90 days from February 17, 2009 and is required to submit updated reports not later than

FTA will extract as much as possible of this information from grant information and standard reports provided through the TEAM electronic grants award and management system. Supplemental reporting may be required, however, to provide the project and contract level information. FTA will provide further reporting instructions at a later date. FTA is working with other modal administrations within DOT to standardize the information required from all DOT recipients, including the possibility of generating the required jobs data through the use of economic models and factors applied to the data provided in the grant awards and other information reported by the grant.

### 6. Section 1607

Section 1607 requires that the Governor certify within 45 days of enactment (April 3, 2009) that, for funds

provided, the state will request and use funds provided by this Act and the funds will be used to create jobs and promote economic health. If the Governor does not provide this certification, then the state legislature may act to accept the funds.

### 7. Section 1609

Under section 1609(c), FTA is required to report to certain congressional committees every 90 days following enactment on the status and progress of projects funded or proposed for funding under the Act with respect to compliance with NEPA and its implementing regulations. FTA will necessarily ask recipients for assistance in compiling this quarterly report.

### 8. Other Reporting

To satisfy the needs for transparency and accountability related to funding appropriated under the ARRA, grantees may be required to provide additional information not yet specified in response to requests from the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), the Government Accountability Office (GAO), or the DOT Inspector General (IG). FTA will inform grantees if and when such additional reports are required.

#### E. Oversight

Two key principles in the ARRA are transparency and accountability. Because the ARRA funds are being provided without a local share, (with the exception of the Capital Investment Grant program), FTA's careful stewardship of these funds is even more critical than under normal program provisions. To ensure funds are deployed rapidly, competently, and for the intended purposes, FTA is adapting some of its oversight reviews to accommodate a specialized ARRA oversight program. FTA will conduct periodic oversight reviews to assess grantee compliance with Federal requirements for projects funded under the ARRA. ARRA grantees already are monitored with FTA's comprehensive oversight program, which includes Triennial Reviews, capital construction reviews, civil rights reviews, drug and alcohol reviews, procurement system reviews, financial system reviews, planning certification reviews, and other more specialized reviews and these will continue under the rubric of our ongoing grant program.

In addition to maintaining its existing oversight program structure, FTA is developing new vehicles for ensuring that ARRA funding is expended consistent with the purpose and

principles of the law. Additional training and technical assistance to support its grantees' efforts to comply with ARRA requirements also is being planned. FTA intends to work closely with its grantees to monitor progress in the implementation of ARRA transit programs and to deploy its oversight resources as necessary to assist in the achievement of the legislation's goals and objectives. FTA will post more details concerning its ARRA oversight program on its Web site as plans are finalized.

#### F. Technical Assistance

FTA headquarters and regional staff are pleased to answer your questions and provide any technical assistance you may need to apply for FTA ARRA funds and to manage the grants you receive. In addition to this notice, Questions and Answers regarding FTA's implementation of the ARRA, and additional resources may be viewed via the FTA Web site <http://www.fta.dot.gov/economicrecovery>. Further, all FTA circular are posted on our Web site, including: C4220.1F, Third Party Contracting Requirements, dated November 1, 2008; and C5010.1D, Grant Management Guidelines (November 1, 2008). FTA is currently developing a toll-free hotline for civil rights-related ARRA inquiries. The number will be available at: [http://www.fta.dot.gov/civil\\_rights.html](http://www.fta.dot.gov/civil_rights.html). You may also contact the regional civil rights officer at the Regional Office listed in Appendix C.

Issued in Washington, DC, this 2nd day of March, 2009.

**Matthew J. Welbes,**

*Acting Deputy Administrator.*

### APPENDIX A—INSTRUCTIONS FOR PREPARING A GRANT APPLICATION USING ARRA FUNDS

#### 1. Pre-Application Stage.

**Note:** To streamline the grant development process, ARRA grants may receive official grant numbers and be submitted before all traditional pre-application requirements are complete. However, ARRA grants may not be awarded until all pre-application requirements have been satisfied. In addition, FTA is minimizing the project level detail required in grants for certain categories of funding, such as vehicle purchases. Sample language is included in this notice and sample grants may be accessed in the TEAM system for information purposes.

a. *Planning.* Project activities to be funded must be included in a Federally-approved Statewide Transportation Improvement Program (STIP) for capital and/or operating projects. FTA will not require that planning requirements be completed before the submission of grant applications for ARRA funding. However, project planning

requirements must be complete and properly documented before grant award.

b. *Environmental Determination.* The impact that a proposed FTA assisted project will have on the environment shall be evaluated and documented in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. section 4321 *et seq.*). Before assigning a grant number, the regional staff should assess the feasibility that any outstanding environmental reviews or actions will be completed in a timely manner and must be completed before grant award.

c. *Annual Submission of Certifications and Assurances.* A grant applicant applying for assistance under Federal Transit Programs including ARRA programs must submit certifications and assurances that are applicable to the grant applicant's active and new grants during the fiscal year. A grantee that has already submitted a FY 2009 Certifications and Assurances does not need to resubmit these assurances.

d. *Civil Rights Submissions.* Civil Rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, and ADA Paratransit Plan. Typically, FTA's Regional Civil Rights Officer must verify that all required Civil Rights submissions are current at the time that the grant application is entered into TEAM. For ARRA funds, the grant number will be assigned before civil rights reviews are complete, but the grant will not be awarded with pending civil rights requirements. In addition, it may be necessary to verify compliance with specific Title VI, EEO, DBE and ADA requirements as part of the grant review and approval process. Please work closely with your Regional Civil Rights officer to ensure no delays in the award of a grant.

2. *Application Stage (Team Information).* Applications for ARRA funds must be submitted electronically through the Transportation Electronic Award Management (TEAM) System. Each ARRA program funding request must be applied for in its own grant (*i.e.*, ARRA Capital Assistance Formula funds may not be applied for in the same grant as ARRA Fixed Guideway Modernization funds). Further, ARRA funds can not be commingled in a grant application with program funds apportioned under SAFETEA-LU.

ARRA grants should be developed using newly created Section codes in TEAM. These codes appear in the color red in the TEAM dropdown menu. The red is only to distinguish the ARRA section codes from other FTA program codes. ARRA grants should be developed using one of the following section codes:

- 96—Urbanized Area Formula—Economic Recovery
- 66—STP Urbanized Area Formula—Economic Recovery (FHWA Flex)
- 86—Nonurbanized Area Formula—Economic Recovery
- 06—STP Nonurbanized Area Formula—Economic Recovery (FHWA Flex)
- 36—New Start—Economic Recovery
- 56—Fixed Guideway—Economic Recovery

Information that should be entered into TEAM when preparing an application includes:

a. *Recipient Information.* Applicants should enter or update all required information about the organization in the appropriate fields in TEAM, including recipient address, contact information, union information, urbanized area identification number (UZA), Congressional district(s), DUNS number, etc. The information shall be current and accurate for each grant and periodically updated as changes occur.

b. *Project Information.* Applicants should identify the project start/end date, program date, Executive Order 12372 review date, metropolitan planning organization (MPO) concurrence date (if applicable), and grant project costs. The "brief project description" field should include information that can be used to report the type of infrastructure investment such as: 25 Replacement Buses, Intermodal Terminal Construction, etc.

(1) *Project Description.* This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. If applicable, the project description should identify subrecipients funded through the grant application and the projects being implemented by each subrecipient. There is a project description field as well as a specific text field for this information associated with each activity line item. Project activities shall be sufficiently described to assist the reviewer in determining eligibility under the program. State DOTs applying for Transit Capital Assistance Grants for rural recipients must include a program of projects (POP), which should be attached using the paperclip feature or included in this section.

(2) *Program Date and Page of STIP or Unified Planning Work Program (UPWP).* All projects for ARRA funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) in the most recently approved STIP on which the project(s) contained in the application are listed. The electronic system has a field designated "program date" where the date of the most recent FTA/FHWA STIP approval should be entered.

In the case of ARRA grants, FTA regional offices will continue to process grants while awaiting STIP amendment actions. Grant numbers will be assigned before the inclusion of the STIP date in the grant application if the grantee is awaiting formal STIP action or approval.

c. *Budget.* The appropriate scopes and activity line items (ALI) should be used when developing the project budget. All sources of funds shall be identified and confirmed. All rolling stock procurements shall include vehicle description and fuel type; expansion activities shall include a brief discussion of the expanded service. The project budget should reflect the precise activities for which the grant funds will be used. As a streamlining measure, FTA is not requiring that grantees include any non-add scopes in the project budget when purchasing activities that are categorized as ITS, ADA, or security.

d. *Project Milestones.* Estimated completion dates for all milestones should be

provided and updated quarterly. If milestones are not pre-populated by the TEAM system for a particular activity line item (ALI), use the add function to add milestones for that ALI to the grant application. At a minimum, activities that will require a contract award should have milestones tracking (1) the date the RFP is issued; (2) the anticipated date of contract award; and (3) the date the contract will be completed. Activity line items that are not contracted out should include (1) the date the activity is initiated and (2) the anticipated completion date.

It is critical that milestones for ARRA grant activities are updated and monitored quarterly from February 17, 2009, the date of enactment of the legislation.

e. *Environmental Findings.* The application should include a proposed classification of each ALI that is an independent project with discrete transit utility, in accordance with the FTA/FHWA environmental impact procedures. (See 23 CFR 771.115 and 771.117.) Grant applicants should refer to 23 CFR 771.117(c) and (d) for listings of projects that qualify as categorical exclusions (CEs). Many projects (such as vehicle purchases that can be accommodated within existing yards and shops, purchase of software and hardware, security upgrades, mobility management, preventive maintenance, preliminary engineering) meet the criteria for a and require no further action.

f. *Fleet Status.* The fleet status report should be completed in order to purchase vehicles under the Transit Capital Assistance Program for UZAs; however, a completed fleet status report will not be required for any other ARRA program funds. A grantee who wishes to use ARRA funds to purchase vehicles that would cause the grantee's fleet to exceed the applicable spare ratio requirements should contact their FTA regional office. FTA will consider approving exceptions to a spare ratio requirement if the request meets certain criteria, such as: the excess spare ratio would be temporary in nature, with it returning to within the 20 percent level within 2–3 years of delivery of the new vehicles, or whether the buses would "green" the fleet of the transit agency.

g. *Application Submission.* Once FTA deems (1) the TEAM application template completed, (2) the activities eligible, (3) the budget complete and firm, and (4) environmental documentation submitted or near submittal for applications requiring a FONSI or ROD, FTA will assign a grant number. At this point, the grant is ready to be pinned and submitted in TEAM by the designated recipient/grantee. As previously stated, ARRA grants may be submitted prior to the completion of all pre-application requirements such as: Civil Rights documentation, Planning, and NEPA review. This concurrent review process is a departure from FTA's standard operating procedures and only applies to grants for ARRA program funds.

**Note:** Although ARRA program grants can be officially submitted to FTA for review and approval, grant funds can not be awarded or obligated until all applicable federal requirements have been met and documented in the application.

h. *Certification of Labor Protective Arrangements.* With the exception of Transit Capital Assistance Grants allocated to nonurbanized areas which are covered by the special warranty provision, ARRA Act grants will be sent to DOL, as soon as the budget is confirmed, budget details are included in the grant, and the application is officially submitted for processing. DOL procedures have minimum wait times built in for replies or objections by management and unions. Accordingly, a grantee's prompt response to DOL communications regarding the grant before the expiration of the minimum wait period could result in the grant being certified before the end of the allowable processing period.

Transit Capital Assistance grants for nonurbanized areas tribes are covered by the special warranty provision and will be sent to DOL for information immediately prior to fund reservation and grant award.

i. *Grant Approval.* Once FTA staff determines through a final review of the application that FTA program requirements have been met and that the ARRA section 1511 certification is made and posted to a Web site, FTA will reserve the funds and obligate the grant.

j. *Grant Execution.* After FTA has awarded the grant, the applicant must execute the award before funds can be drawn down from the grant. Before executing ARRA grants, the grantee will be prompted to select both the rationale for the investment and the purpose of the investment from menus that have been established in the reservation screen. ARRA grants that include activities funded using pre-award authority will require the submission of a Financial Status Report before grant execution.

#### Application Checklist

##### Part I—Recipient Information

1. Is the Grantee Contact & Other information Current and Complete?
2. Are Annual Certifications & Assurances pinned?
3. Is UZA/Congressional District information entered and accurate?
4. Is union contact information entered and accurate?
5. Has Civil Rights Program Documentation been approved by FTA?
6. Has the applicant's DUNS Number been entered in the appropriate field?

##### Part II—Project Details

1. Does the Project Description (including the POP (Transit Capital Assistance—Nonurbanized areas) and other attachments) include adequate descriptive information of funded projects and subrecipients?
2. Are the project activities included in the grant eligible to be funded using ARRA program funds?
3. Has a split allocation letter been submitted for UZAs with more than one direct grant recipient?
4. Is the program of projects attached for state administered grant to nonurbanized grants?

##### Part III—Project Information

1. Has the grant been identified as a new application or amendment?

2. Start/End date entered?
3. Has the Program Date (STIP or UPWP date) been entered?
4. Have Control Totals been entered?
5. Does the brief project description field adequately articulate what is being funded (example: Bus replacements, Intermodal Center Construction, etc.)?
6. If pre-award authority is applicable, has "yes" been selected?
7. Has the EO 12372 Review field been completed, if applicable?

#### Part IV—Budget

1. Are ALI codes entered under the appropriate scope codes?
2. Is grant for up to 100% Federal funds?
3. Does the funding amount entered in the budget match financial information entered in the control totals in the "Project Information" field?
4. Has one percent been budgeted for capital transit enhancements? (only applicable to Transit Capital Assistance Funds allocated to UZAs over 200,000 in population.)
  - a. Federal Funds.
  - b. Local Funds.
4. Does the rolling stock (vehicle) line item contain accurate information such as:
  - a. Description of vehicles purchased.
  - b. Fuel Type.
5. Have details been entered into the "Extended Budget Descriptions"?
  - a. Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item?

#### Part V—Project Milestones

1. Are milestones listed for each ALI? (If an ALI does not have milestones, they should be added.)
2. Have estimated completion dates been entered?

#### Part VI—Environmental Findings (NEPA)

1. Has an environmental finding been entered for each ALI?

#### Standard Language for ARRA Grants

The following standard language has been approved for ARRA grants. This language provides enough detail for FTA to determine eligibility and assign a grant number.

#### Preventive Maintenance

This application is funded as follows: 2009 Transit Capital Assistance Grants—Urbanized Area Funding Formula Funding Program

Our estimated operating budget, as defined by NTD Reporting System (NTD), for \_\_\_\_\_ (insert time-period) is \$ (amount). Estimated Preventive Maintenance (PM) costs in the operating budget for equipment and facilities is \$ (amount) less \$ (amount) for warranty recovery leaving \$ (Balance) available for federal participation at the 100/0 rate. This grant will apply federal funds of \$ (amount applied) to this allowable share. Additional PM for the period of (insert applicable time-period) is in grant (Grant Number).

These grant activities are a categorical exclusion under NEPA.

### Rolling Stock

(Initial Grant) Start of TEAM input—insert this is an initial grant This application is funded as follows:

#### 2009 Transit Capital Assistance Grants—Urbanized Area Funding Program

This grant applies the 2009 ARRA Formula allocation of \$(*amount*) to bus replacement. We will purchase approximately (*number, type and length of buses, e.g. five low floor—40 foot buses*) that have an expected useful life of (*insert applicable useful life for buses being purchased*) years. The vehicles being replaced have met their useful life of (insert applicable useful life standard of replaced vehicles). A Federal ratio of 100/0 will apply. These buses will meet the Clean Air Act standards (CAA) and the Americans with Disabilities Act (ADA) requirements. The fleet status section of TEAM has been updated to reflect this fleet addition. We are able to operate and maintain this vehicle expansion

These grant activities are a categorical exclusion under NEPA.

### Facility

This application is funded as follows: American Recovery and Reinvestment Act—Transit Capital Assistance Program (Urbanized)

This project will use \$(*amount*) of (Section \_\_\_\_\_) ARRA funds for a \_\_\_\_\_ (purpose and location *i.e.*, transit center in Edmonds, WA). This project includes—see sample descriptions:

This center will service the Washington State Ferries, AMTRAK, Sound Transit Commuter rail, North End Taxi, and the bus services of King County Metro and Community Transit (need information for all operators to send to DOL). Additionally, bike racks and lockers will be added for use by ferry, rail and bus passengers. This project will also include a waiting room rest room. This project is also funded under grant number \_\_\_\_\_. A Documented Categorical Exclusion (DCE)/Finding of No Significant Impact (FONSI)/Record of Decision (ROD) was issued on \_\_\_\_\_. A copy of this approval is attached to this grant and the environmental section of TEAM is complete.

### Appendix B—Allocation, Use and Eligibility of FTA ARRA Funds Questions and Answers

Q. Can a local agency combine ARRA funds and other sources to implement a project?

A. While each recipient must apply for a separate grant for each economic recovery funding source, a single project may be funded with multiple funding sources, including economic recovery and other FTA formula and discretionary resources.

Q. Will the Financial Status Report and Milestone Progress Report reporting requirements for ARRA grants be different than current requirements?

A. Yes. Recipients of ARRA funds will be required to report not later than 10 days after the end of each calendar quarter. FTA will extract as much information as possible from grant information standard reports provided through the TEAM system. Supplemental

reporting may be required to provide the contract and project level information.

Q. Can grantees receive economic recovery grants if the agency's ability to apply for FTA program funds is currently suspended?

A. Grantees that are currently in a fundable status to receive a grant under FTA programs will be eligible to receive economic recovery funds. Grantees concerned about their status should contact their FTA regional office.

Q. What can ARRA funds be used for?

A. The law states that funds will be available for capital expenditures authorized under 49 U.S.C. 5302(a)(1), which describes eligible capital expenses. States may continue to use up to 15% of funds apportioned at the State level to administer the non-urbanized program on FTA's behalf.

Q. Are project administration costs eligible for funding?

A. Yes. ARRA funds can be used to fund the administrative costs associated with administering capital projects, including costs associated with reporting on project and grant status.

Q. Do ARRA program funds have pre-award authority?

A. Yes, FTA will extend pre-award authority to economic recovery program funds consistent with the program requirements of the applicable FTA program. Economic recovery funds administered under the requirements of Section 5307, Section 5311, or Fixed Guideway Modernization will have blanket pre-award authority from October 1, 2008, until September 30, 2010. There are two exceptions: the energy savings and tribal transit projects will have pre-award authority from the date that project selections are announced in the **Federal Register**. Economic recovery funds administered in accordance with the requirements of the Section 5309 Capital Investment Grant program (New/Small Starts) will have pre-award authority only for the stage approved up to that point. For example, upon approval to enter preliminary engineering, the grantee has pre-award authority to incur preliminary engineering costs. For more information, refer to the FY 2009 Apportionments Notice published in the **Federal Register**, December 18, 2008.

Q. Can a grantee use ARRA funds to purchase vehicles if the agency's spare ratio will exceed the applicable standard?

A. A grantee wishing to use ARRA funds to purchase vehicles that would cause the grantee's fleet to exceed the applicable spare ratio requirements should contact their FTA regional office. FTA will consider approving exceptions to a spare ratio requirement if the request meets certain criteria, such as: the excess spare ratio would be temporary in nature, with it returning to within the 20 percent level within 2–3 years of delivery of the new vehicles, or whether the buses would "green" the fleet of the transit agency.

Q. Who will be eligible to receive ARRA funds?

A. ARRA funding will be made available to current recipients of: FTA's Urbanized Area Formula Program (49 U.S.C. section 5307); Formula Grants for Other Than Urbanized Areas Program (49 U.S.C. section 5311); Fixed Guideway Modernization Formula Program (49 U.S.C. section 5309);

federally recognized tribes (49 U.S.C. section 5311(c)(1)); and Capital Investment Grants (49 U.S.C. section 5309)

Q. When will FTA consider apportioned funds as "obligated?"

A. For the purposes of the withdrawal provision, FTA will consider funds obligated on the date of grant award.

Q. Is a local match required with use of ARRA funds?

A. No local match is required except for the Capital Investment Grant Program.

Q. Can ARRA funds be used for operating expenses?

A. No. ARRA funds may be used only for capital expenses. The funds differ from the normal eligibility of FTA's Urbanized Area Formula program (Section 5307) for UZAs with less than 200,000 in population and Non-Urbanized Area Formula program (Section 5311), which can be used for operating expenses.

Q. Can ARRA funds be used for preventive maintenance activities?

A. Yes. Capital projects as defined by 49 U.S.C. 5302(a)(1) are eligible under the law, and preventive maintenance is included in the list of eligible capital expenditures.

Q. Can ARRA funds be used for preliminary engineering activities?

A. Yes. Capital projects, as defined by 49 U.S.C. 5302(a)(1), are eligible under the law. Specifically, 49 U.S.C. 5302(a)(1)(A) includes engineering and design work, location surveying, mapping, and right-of-way acquisition as eligible capital expenses.

Q. Can ARRA funds be used by State DOTs to administer the program?

A. Yes. States may continue to use up to 15% of funds apportioned at the State level to administer the program for non-urbanized areas on FTA's behalf.

Q. Will the 50% of funds awarded during the 180-day period be tracked by program or by grantee?

A. Neither. FTA will track the amount of funds obligated on the urbanized area and State level. Therefore, designated recipients and State DOTs should consider project readiness when making allocations. Example: Brownstone is apportioned \$100,000 and obligates \$30,000 before 180 days after apportionment. FTA will withdraw \$20,000 from Brownstone's apportionment which is \$50,000 (50% of apportionment) less the \$30,000 which was obligated. Brownstone will still have \$50,000 (remaining 50% of apportionment) available to be obligated on or before one year of the apportionment.

Q. If a contract has already been signed and/or a bid awarded, can ARRA funds be used?

A. Yes, if local funds were used to advance a project under FTA's pre-award authority provision or a Letter of No Prejudice.

Q. If an FTA grantee receives ARRA funds from FHWA, can the funds be transferred to FTA?

A. Yes.

Q. Can FHWA funds transferred to FTA be used for operating?

A. No. FTA will follow current Surface Transportation Program transfer rules.

Q. Will the states and UZAs be penalized if the vehicles are not delivered in time?

A. No.



Q. Will all current recipients of SAFETEA-LU Fixed Guideway Modernization funds receive ARRA Fixed Guideway Infrastructure Investment funds?

A. No. Some areas do not meet the standard required to be included in the apportionment calculations under the Fixed Guideway Modernization (FGM) tiers for which ARRA funds are available. The \$750 million in FGM funds under AARA is not sufficient to fund all tiers of the FGM formula. The allotment of the funds to the tiers, in accordance with Section 5337, results in full funding of tiers 1, 2, and 3, and partial funding of tier 4, in the amount of \$169,100,000. FTA is not permitted to prorate the \$750 million over all of the FGM formula tiers. The first tier allocates specific amounts to designated areas. Funds allotted to tiers 2, 3, and 4 are apportioned using the 1997 standard.

If an area did not receive an FGM apportionment in 1997, it did not meet the 1997 standard and, thus, it is not eligible to be apportioned funds under tiers 2–4, unless that law specifies otherwise.

#### Actions Required Before Receiving Funds

##### State DOT and MPO Actions

Q. What actions do State DOTs and MPOs need to take, in coordination with transit agencies to ensure timely award and expenditure of funds?

A. States and MPOs, in coordination with transit agencies, should conduct the transportation planning activities necessary for adding proposed ARRA program projects to plans, TIPs and STIPs. Planning tasks such as conducting public involvement, demonstrating fiscal constraint, and performing travel model runs and analyses prerequisite to making transportation air quality conformity determinations should take place now. This is necessary to ensure timely amendment of the documents to include ARRA projects and to award funds as soon as possible. This work should have already begun. If it has not, it should be started immediately.

In identifying and proposing additional projects for amendment into TIPs and STIPs, it is reasonable to assume ARRA program funds equivalent to a doubling of the current full-year amount of comparable FTA program funds—Sections 5307 Urbanized Area Formula program, 5309 Fixed-Guideway Modernization program, and 5311 Non-Urbanized Area Formula program. FTA has not determined how Capital Investment Grant Funding (New/Small Starts program in 49 U.S.C. 5309) will be allocated at this time. Once the necessary planning and air quality conformity work has been completed, MPOs and State DOTs may amend their plans, TIPs and STIPs. FTA, in coordination with FHWA, can make any necessary conformity findings on the amended plans and TIPs, and approve the STIP amendment requests.

Attainment and Nonattainment Conditions. If the project is in an area that is in attainment of air quality standards, the MPOs would take action and then submit the amended TIP to the State for incorporation into the STIP. The State would submit the amended STIP to FHWA/FTA for review and approval. With advance coordination among

the parties, some of these items can be performed concurrently.

If the project is in an air quality nonattainment or maintenance area, the addition of activities or projects that are exempt from conformity could be accomplished as a simple amendment and would not necessitate a conformity determination. See List of Projects that are Exempt from Air Quality Conformity.

States and the MPOs should begin now to do the necessary planning work, such as model runs for the various scenarios; analysis work needed for conformity, if necessary; public involvement; and any other planning support work to get prepared. This preparatory technical work can be completed, and action taken to approve the necessary amendments along with conformity determination, if required.

Once the planning and any necessary conformity work has been completed, the MPO policy boards and State DOTs may amend their plans, TIPs and STIPs, and FTA, in coordination with FHWA, may make any necessary conformity determinations.

Q. Can State DOTs and MPOs count the recovery funds to demonstrate “fiscal constraint” in plans, TIPs, and STIPs?

A. Yes. Funds may be used to demonstrate fiscal constraint of plans, TIPs, and STIPs in areas that are in attainment, nonattainment, or maintenance of air quality standards. This special determination is analogous to the assumption of a continuing flow of Federal funds

Q. Can State DOTs and MPOs use ARRA funds to do transportation planning activities necessary to amend TIPs and STIPs in preparation for subsequent fund award?

A. Funding from the ARRA program is limited to capital program assistance, and transportation planning is not an eligible activity for the funds that will be made available to FTA. MPOs and States should utilize the planning funds programmed in existing Unified Planning Work Programs and State Planning and Research Programs to support their planning efforts.

Q. Can substitution of ARRA funds for FTA funds on projects programmed in the TIP and STIP be handled administratively?

A. Yes, provided that the action involves only a change in the source of the funds. The adopted amendment procedures governing your specific State or region should be consulted to determine what actions are eligible as administrative amendments to the TIP or STIP.

Q. Can ARRA funds be used to support non-federal projects not currently listed in plans, TIPs or STIPs?

A. Yes, provided that the non-federal projects are eligible activities for ARRA funding (*i.e.* capital assistance), that they can be amended into plans, TIPs, and STIPs, and that compliance with applicable federal requirements such as the environmental review process required under NEPA, other environmental laws, and any additional applicable federal requirements can be expeditiously achieved.

Q. Can MPOs and States process TIP and STIP amendments to add ARRA-funded projects as “lump-sum” amounts?

A. It depends. Yes, if the term “lump-sum” refers to a “package” of individually

identified projects proposed for amendment into TIPs and STIPs. In addition, in accordance with 23 CFR Part 450, Statewide and Metropolitan Transportation Planning, projects that are not considered to be of appropriate scale for individual identification in the TIP and STIP may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. The adopted amendment procedures governing your specific state or region should be consulted for guidance as to “lump sum” amendments requirements. A “lump-sum” dollar figure without a list of individual projects or indication of overall project “group” would not provide sufficient information for MPOs, States, and FTA/FHWA to approve amendments of TIPs and STIPs or track the use of ARRA funds.

Q. Can State DOTs and MPOs use ARRA funds to do transportation planning activities necessary to amend TIPs and STIPs in preparation for subsequent fund award?

A. Funding from the ARRA program is limited to capital program assistance, and transportation planning is not an eligible activity for the funds that will be made available to FTA. MPOs and States should utilize the planning funds programmed in existing Unified Planning Work Programs and State Planning and Research Programs to support their planning efforts.

Q. Can FTA, jointly with FHWA, make conditional STIP approvals?

A. No. Conditional STIP approvals are not allowed under existing regulations. The planning regulations (23 CFR 450.218(b)) do allow FTA/FHWA to: approve the entire STIP; approve the STIP subject to certain corrective actions being taken; or under special circumstances, approve a partial STIP covering only a portion of the State. However, if States and MPOs complete the steps detailed above, FTA/FHWA can approve the STIP amendments immediately.

Q. What public review and comment activities do organizations need to undertake prior to receiving funds?

A. The public involvement and consultation provisions adopted and published by metropolitan and statewide transportation planning processes apply to planning and programming of projects supported with ARRA funds. The provisions outlined in MPO Participation Plans and documented public participation processes of States describe the locally agreed upon requirements for public review in the planning process, including the schedule and period of time for public input and comment that must be met. Additionally, public review and comment required by the environmental process must be undertaken.

#### Transit Agency Actions

Q. What actions do transit agencies need to take before applying for funds?

A. Planning Process. Projects must be included in the approved Statewide Transportation Improvement Program (STIP) and, in UZAs, the metropolitan transportation plan (Plan) and Transportation Improvement Program (TIP). Transit agencies should be working within their metropolitan



or statewide transportation planning processes to ensure that their priority projects are included in those documents and made ready for grant award. Therefore, FTA strongly encourages transit agencies to reach out to Metropolitan Planning Organizations (MPO) or State Departments of Transportation (State DOT) to begin work as soon as possible to ensure that public transportation projects are included in approved plans, TIPs and STIPs, so that the projects are ready and available to advance to grant award, and to begin expending funds, as soon as possible.

**Environmental Review.** Environmental requirements that apply to projects—the National Environmental Policy Act (NEPA) and Section 4(f) of the Department of Transportation Act, among others—must be met. Areas should consider prioritizing projects that qualify as categorical exclusions or have completed or nearly completed NEPA in order to meet the anticipated timeframes for obligation of funds in the new legislation. To the extent that other environmental requirements apply and have not been satisfied, grantees should begin consulting with managers of affected resources at the earliest opportunity.

**Projects with Incomplete Environmental Processes.** A project for which a categorical exclusion or an environmental assessment is in the process of being prepared, but nearing completion, likely will qualify as a “quick-start” activity targeted for economic recovery investment. A project for which an environmental impact statement is nearing completion may qualify as a quick-start activity if a record of decision is expected to be executed shortly. In accordance with section 1609(b) of the Act, FTA staff will provide guidance on the most efficient course of action for completing the environmental process (including the National Environmental Policy Act (NEPA) process and other environmental requirements, such as section 106 of the National Historic Preservation Act and section 4(f) of the Department of Transportation Act, for any project that may qualify as a quick-start activity.

**Q.** Can ARRA funds be used to substitute for money in an existing grant that has not been expended?

**A.** No. ARRA program funds cannot be used to replace funds already obligated in an existing FTA grant even if those funds have not been expended. ARRA funds can, however, be used to replace program funds identified in STIP and TIP but not yet awarded in a grant.

Also, because FTA needs to segregate the funds being made available from ARRA legislation, agencies will need to apply for the ARRA funds in a new grant application.

**Q.** Will FTA consider approving grants before completion of the environmental process?

**A.** As a general rule, FTA does not award program funds in a grant until the NEPA process and review have been completed. Grantees with projects in the final stages of NEPA review should contact the appropriate FTA regional office for direction.

### Grant Application Information

**Q.** Can a transit agency combine all ARRA funds into a single grant application?

**A.** No. Each grant recipient must apply for a separate grant for each ARRA program under which they are allocated funds.

**Q.** Can a transit agency amend an existing FTA grant to add the ARRA funds?

**A.** No. FTA program funds cannot be commingled with ARRA funds. Each grant recipient must develop a separate grant for each ARRA program it seeks funds from.

### Procurement & Contracting

**Q.** Can FTA allow progress payments on procurements?

**A.** Progress payments are made to the contractor only for costs incurred in the performance of the contract. The grantee must obtain adequate security for progress payments, which may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment. More discussion on this subject can be found in 4220.1F, Chapter III.

**Q.** Are there any changes to Federal procurement and contracting rules for grantees anticipated with these new ARRA funds?

**A.** Presently, FTA anticipates that existing U.S. DOT procurement and contracting regulations (found in 49 CFR part 18) and official guidance (found in FTA's Third Party Procurement Circular), including the Disadvantage Business Enterprise (DBE) program requirements will apply in full force to ARRA funded projects. U.S. DOT's Office of General Counsel has issued official guidance via an ARRA-specific DBE Question & Answer site to address issues raised by the ARRA legislation, express DOT's expectations, and delineate grantees' continued obligations and options as they advance grants.

**Q.** Are there ways that I can expedite contract delivery of the ARRA funds?

**A.** There are several opportunities that FTA grantees can take to expedite contract delivery of the ARRA funds, as well as any other FTA program funds. FTA's Best Practices Procurement Manual contains information on how transit agencies and other FTA grantees can partner with other grantees to do joint purchases of items such as rolling stock. For any other information on how to issue contracts using FTA funding, please go to FTA's Third Party Procurement web site where you can find an array of procurement resources, including a site-specific search engine and an extensive list of Frequently Asked Questions.

Grantees should identify any capital projects (such as bus garage repairs or renovations) for ARRA funds. Grantees can initiate any contracting (statement of work, purchase requests and independent cost estimates) actions, so that when the funding becomes available, timely contract awards can be made.

**Q.** Is piggybacking onto existing contracts allowed?

**A.** Yes. Piggybacking is permissible when the solicitation document and resultant contract contain an “assignability clause” that provides for the assignment of all or a portion of the specified deliverables as

originally advertised, competed, evaluated and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity contract (IDIQ), then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum. See Attachment 1 of FTA's Best Practices Manual for the Piggybacking Worksheet.

Grantees are encouraged to pursue any joint or cooperative procurements (including piggybacking) of vehicles across state lines. Grantees may place orders against existing State or local contracts. It is advantageous to use existing contract rights if appropriate assignability clauses are in place so that supplies or services can be quickly obtained.

**Q.** Can FTA permit “change orders” to existing Federal or non-Federal contracts?

**A.** Modifications to contracts are allowed based on the terms and conditions established at the time of award. As a general rule, the owner agency of a contract is the only entity permitted to “modify” or “change” that contract's terms and conditions. If the contract stipulates that a portion or portions may be modified, then user agencies are restricted to those instructions. Roles and responsibilities of recipients in modification and changes to contracts are discussed in FTA Circular 4220.1F, chapter VI.

**Q.** Can ARRA funding be added to projects/procurements that don't currently have Federal funding in them?

**A.** Not if construction has already commenced. The FTA planning, environmental, and other requirements for such project will not have been satisfied at the appropriate time. If construction has not been initiated, the applicant should consult with FTA regional office about possible ARRA funding. The planning and environmental requirements would have to be met, and no construction or other implementation activity could commence until these requirements have been met. Also, when adding funding to project/ procurements that were awarded with other than Federal funds, it is imperative that the contract modification issued to add those funds include all of the federally required clauses (see FTA Circular 4220.1F, Appendix D). Also, the modification must be bilateral.

**Q.** Is there any way that our contracting processing can be accelerated?

**A.** Grantees can use design/build and the flexibility to shorten bid times. In addition, you may want to look into setting up contracts that provide the kind of management services essential to moving a collection of projects, including financial management, procurement following Federal procedures, scheduling, cost control, design and construction management, and performance management reporting. This would not relieve a State or transit agency of responsibility for such activities.

In keeping with federal cost principles (2 CFR 225), such costs determined to be “indirect” in nature must be charged to an

approved indirect cost allocation plan for distribution to all benefiting cost objectives or paid for with State funds. Such a task order contract could (1) fill gaps in capacity to deliver a highly peaked, high visibility and high political risk stimulus program, or (2) provide "insurance" in the event they or other agencies in the state need immediate access to such resources. Such a contract would be a clear risk management/mitigation step and at no cost to the client if tasks are not assigned.

#### Department of Labor Certification

Q. Is DOL certification required and can the process be streamlined?

A. Yes. The U.S. Department of Labor (DOL) will need to certify grants awarded using ARRA funds. In accordance with DOL's guidelines, grants subject to a referral may require up to 60 days to complete (29 CFR 215.3). To streamline the process, DOL intends to certify ARRA program funds consistent with its procedures for certifying the current comparable FTA program. Accordingly, ARRA programs that follow the requirements of 49 U.S.C. section 5307 or 49 U.S.C. section 5309 will be referred out if the grant contains new project activities. Grants for like-kind equipment or replacements will no longer need to be referred out to the unions before certification. Furthermore, ARRA programs that follow the requirements of 49 U.S.C. section 5311 will be certified based on the special warranty provision including grants to Indian tribes. Additionally, grantees may reduce processing time by responding immediately to DOL's requests related to your grants. FTA is working closely with DOL to identify additional ways to streamline the process and will post additional information as it becomes available.

Q. When can ARRA grants be assigned official TEAM application numbers and be submitted for DOL review?

A. ARRA grants should be assigned an official number as soon as the budget is developed and project details are sufficient to make an eligibility determination. Departing from FTA's standard grant procedures, FTA will allow ARRA grants to be assigned a number and submitted for DOL review before the completion of in-house FTA reviews. Of course, all reviews must be satisfactorily completed before FTA can obligate any funds in a grant.

#### Transit Capital Assistance—Urbanized Area Grantees

Q. In UZAs with multiple direct FTA grant recipients, should the designated recipient notify FTA about the local allocation of funds?

A. Yes. Consistent with current practice under Section 5307, designated recipients in UZAs with multiple direct recipients should notify FTA, in writing, of the local allocation, or split, of recovery funds.

Q. When will FTA require a supplemental agreement?

A. Consistent with current practice under Section 5307, a supplemental agreement will be required when a grant is awarded to a direct recipient in an urbanized area if that recipient is not the designated recipient.

Q. Will the Governor need to allocate funds to small urbanized areas under the Governor's apportionment (50,000–200,000 in population)?

A. Yes, consistent with current Section 5307 requirements for urbanized areas between 50,000 and 200,000. The Governor should notify FTA of any changes to the published allocations before any application of the small urbanized area is submitted for ARRA formula funds.

Q. Can grantees in small urbanized areas (pop. 50,000–200,000) apply for funding directly from FTA, or will States be required to apply for funds in these areas in a single consolidated grant?

A. ARRA funds allocated to the Governor for small urbanized areas (pop. 50,000–200,000) are subject to the requirements of Section 5307 and will be administered consistent with current practice. FTA will not require a consolidated grant for the urbanized areas of a State with populations less than 200,000. Once a Governor allocates recovery formula funds to each urbanized area between 50,000 and 200,000 in population (in accordance with Section 5307), then FTA will make grants directly to recipients in those areas.

Q. Will the section 5307 amounts include section 5340 funds?

A. Yes. The legislation identified 10% of the transit capital assistance funds to be distributed according to the section 5340 Growing States and High Density States formulas. These amounts are included in the amounts apportioned to the UZAs.

Q. Will the 1% for transit enhancements apply to ARRA funds administered under sections 5307 for urbanized areas over 200,000 in population?

A. Yes, UZAs over 200,000 must spend 1% of the area's Transit Capital Assistance funds on transit enhancements; however, only capital transit enhancement projects can be funded using ARRA funding.

Q. Will we be required to check the security static button in TEAM?

A. Yes. Consistent with the Section 5307 requirement, grantees must check the security static button in TEAM to confirm that the grantee will expend one percent or more of the Transit Capital Assistance funds for security purposes or that spending the one percent is not necessary at that time.

Q. Will Section 5307 transfer rules apply?

A. Yes, the transfer provisions of Section 5336(f) are applicable. (1) Funds can be transferred from small urbanized areas (under the Governor's apportionment) to nonurbanized areas after consultation with local officials and public transportation operators in each area that will lose the amount apportioned. (2) Funds from large urbanized areas may be transferred by the designated recipient to small urbanized areas. (3) The Governor may also use funds apportioned to small urbanized areas throughout the State at the beginning of the 90 day period before the funds lapse (available 90 days after ARRA Transit Capital Assistance allocations are published in the **Federal Register**).

Q. If Section 5307 funds can be transferred in accordance with 5336(f), what is the relationship with the reallocation process?

Will the new grantee receive additional time to contract or spend resources?

A. No—funds must be obligated within the applicable timeframe.

Q. Will the section 5307 apportionment for a small urbanized area that qualifies for Small Transit Intensive Cities (STIC) formula funding, in FY 2009, include STIC funds?

A. No, the language in the ARRA directs that the formula not include 49 U.S.C. § 5307 (i)(1) and (j) that provide for a one percent takedown for STICs and the STIC formula.

Q. Since ADA services are an eligible capital activity, will this be limited to 10% of an urbanized area's ARRA funding?

A. Yes. The 10 percent limitation would apply. Section 5302(a)(1)(I) explicitly defines nonfixed route ADA paratransit as an eligible capital expense but only to the extent that the amount does not exceed 10% of the recipients annual formula apportionments under Section 5307 and 5311.

#### Transit Capital Assistance Program—Nonurbanized Areas Grantees

Q. Are capital intercity bus purchases eligible?

A. Yes, all Chapter 53 requirements apply to ARRA funds.

Q. Are states required to use 15% of formula funds allocated to non-urbanized areas for intercity bus?

A. States must use at least 15% of ARRA formula funds allocated to non-urbanized areas for intercity bus services. However, consistent with Section 5311 requirements, States can certify that intercity bus needs have been met after consultation.

Q. Can States use up to 15% of funds for program administration?

A. Yes. States may use up to 15% of formula funds allocated under the requirements of Section 5311 to cover State administrative expenses, at 100% Federal share.

#### New Starts and Small Starts—Section 5309

Q. How will FTA distribute major capital investment funding provided by the ARRA legislation?

A. ARRA states that funding priority shall be given to New Starts and Small Starts projects currently in construction (which FTA interprets as projects with a Full Funding Grant Agreement (FFGA) or Project Construction Grant Agreement (PCGA)) or to projects able to obligate funds within 150 days of enactment. FTA is still determining how the ARRA funding will be distributed to New and Small Starts projects. The Act specifies that applicable Chapter 53 requirements apply. This would include the federal/local share provisions; it also means that only projects that have received acceptable project ratings in the New or Small Starts process are eligible for the funding.

Q. Will projects with existing FFGAs or PCGAs that receive ARRA funds still receive their FY09 apportionments?

A. FTA will provide projects with their FY09 apportionments as identified in the existing FFGAs or PCGAs, to the extent appropriated by Congress.

#### APPENDIX C

## FTA REGIONAL AND METROPOLITAN OFFICES

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142-1093, Tel. 617 494-2055.	Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817 978-0550.
States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.
Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004-1415, Tel. No. 212 668-2170.	Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816 329-3920.
States served: New Jersey, New York New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004-1415, Tel. 212-668-2202.	States served: Iowa, Kansas, Missouri, and Nebraska.
Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124, Tel. 215 656-7100.	Terry Rosapep, Regional Administrator, Region 8—Denver 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228-2583, Tel. 720-963-3300.
States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.	States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Philadelphia Metropolitan Office, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124, Tel. 215-656-7070. Washington, DC Office, 1990 K St. NW., Suite 510, Washington, DC 20006, Phone: (202) 219-3562 or (202) 219-3565, Fax: (202) 219-3545.	Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Suite 1650, San Francisco, CA 94105-1926, Tel. 415 744-3133.
Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street, NW, Suite 800, Atlanta, GA 30303, Tel. 404 562-3500.	States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.
States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.	Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017-1850, Tel. 213-202-3952.
Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312 353-2789.	Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174-1002, Tel. 206 220-7954,
States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.	States served: Alaska, Idaho, Oregon, and Washington.
Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312-353-2789.	

## FEDERAL TRANSIT ADMINISTRATION

TABLE 1

## AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - FUNDING FOR GRANT PROGRAMS

(The total available amount for a program is based on funding made available under the  
ARRA Grants for Public Transit, 2009 - P.L. 111-5)

<b>FORMULA GRANTS</b>	
<b><u>Transit Capital Assistance - Urbanized Area Formula Program</u></b>	
Total Available	\$5,440,000,000
Less Oversight (three-fourths percent)	(40,800,000)
Total Apportioned	\$5,399,200,000
<b><u>Fixed Guideway Infrastructure Investment</u></b>	
Total Available	\$750,000,000
Less Oversight (one percent)	(7,500,000)
Total Apportioned	\$742,500,000
<b><u>Transit Capital Assistance - Nonurbanized Area Formula Program</u></b>	
Total Available	\$663,000,000 <sup>1/</sup>
Less Oversight (one-half percent)	(3,400,000)
Total Apportioned	\$659,600,000
<b><u>Transit Capital Assistance - Growing States and High Density States Formula</u> <sup>2/</sup></b>	
Total Available	\$680,000,000
Less Oversight (three-fourths percent)	(5,100,000)
Total Apportioned	\$674,900,000
<b>DISCRETIONARY GRANTS</b>	
<b><u>Capital Investment Grants</u></b>	
Total Available	\$750,000,000
Less Oversight (one percent)	(7,500,000)
Funds Available for Allocation	\$742,500,000
<b><u>Transit Capital Assistance - Public Transportation on Indian Reservations</u></b>	\$17,000,000
<b><u>Energy Consumption and Greenhouse Emissions Reduction Program</u></b>	\$100,000,000
<b>TOTAL AVAILABLE (Above Grant Programs) .....</b>	<b>\$8,400,000,000</b>
<b>TOTAL APPORTIONMENTS/ALLOCATIONS (Above Grant Programs) .....</b>	<b>\$8,218,700,000</b>

<sup>1/</sup> This amount represents the total amount appropriated less the required 2.5 percent takedown for Transit Capital Assistance - Public Transportation on Indian Reservation

<sup>2/</sup> Apportionments derived from the Section 5340 formula are combined with the Transit Capital Assistance apportionments

**FEDERAL TRANSIT ADMINISTRATION  
TABLE 2**

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL  
ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**

*(The total available amount for a program is based on funding made available under the  
ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
1,000,000 or more in Population	\$4,299,422,010
200,000 - 999,999 in Population	1,096,725,713
50,000 - 199,999 in Population	571,704,316
National Total	\$5,967,852,039
<i>Amounts Apportioned to Urbanized Areas 1,000,000 or more in Population:</i>	
Atlanta, GA	\$87,666,704
Baltimore, MD	78,672,010
Boston, MA--NH--RI	199,807,530
Chicago, IL--IN	327,605,424
Cincinnati, OH--KY--IN	25,078,214
Cleveland, OH	39,805,494
Columbus, OH	16,214,025
Dallas--Fort Worth--Arlington, TX	87,883,502
Denver--Aurora, CO	66,616,795
Detroit, MI	57,769,261
Houston, TX	90,901,726
Indianapolis, IN	16,050,078
Kansas City, MO--KS	20,363,424
Las Vegas, NV	33,661,651
Los Angeles--Long Beach--Santa Ana, CA	388,488,754
Miami, FL	139,733,611
Milwaukee, WI	28,531,852
Minneapolis--St. Paul, MN	67,184,150
New Orleans, LA	24,694,244
New York--Newark, NY--NJ--CT	1,181,702,647
Orlando, FL	26,360,654
Philadelphia, PA--NJ--DE--MD	188,486,280
Phoenix--Mesa, AZ	64,421,217
Pittsburgh, PA	49,286,424
Portland, OR--WA	49,825,468
Providence, RI--MA	46,863,445
Riverside--San Bernardino, CA	36,415,543
Sacramento, CA	30,108,880
San Antonio, TX	31,234,746
San Diego, CA	80,799,384
San Francisco--Oakland, CA	173,683,507
San Jose, CA	55,184,394
San Juan, PR	44,467,699
Seattle, WA	124,701,827
St. Louis, MO--IL	45,792,022
Tampa--St. Petersburg, FL	33,366,348
Virginia Beach, VA	25,355,487
Washington, DC--VA--MD	214,637,589
<b>Total</b>	<b>\$4,299,422,010</b>

**FEDERAL TRANSIT ADMINISTRATION  
TABLE 2**

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL  
ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**

*(The total available amount for a program is based on funding made available under the  
ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
<i>Amounts Apportioned to Urbanized Areas 200,000 to 999,999 in Population</i>	
Aguadilla--Isabela--San Sebastian, PR	\$5,525,702
Akron, OH	8,778,597
Albany, NY	14,685,875
Albuquerque, NM	11,388,245
Allentown--Bethlehem, PA--NJ	10,487,606
Anchorage, AK	31,785,578
Ann Arbor, MI	6,450,056
Antioch, CA	8,607,799
Asheville, NC	2,590,439
Atlantic City, NJ	14,404,210
Augusta-Richmond County, GA--SC	3,318,716
Austin, TX	26,107,448
Bakersfield, CA	8,129,407
Barnstable Town, MA	7,563,363
Baton Rouge, LA	6,630,292
Birmingham, AL	8,694,931
Boise City, ID	3,616,444
Bonita Springs--Naples, FL	3,367,342
Bridgeport--Stamford, CT--NY	35,284,547
Buffalo, NY	24,430,788
Canton, OH	5,145,273
Cape Coral, FL	5,802,600
Charleston--North Charleston, SC	6,478,887
Charlotte, NC--SC	20,766,306
Chattanooga, TN--GA	4,672,108
Colorado Springs, CO	8,788,893
Columbia, SC	5,346,374
Columbus, GA--AL	2,968,483
Concord, CA	28,209,809
Corpus Christi, TX	6,326,792
Davenport, IA--IL	5,248,108
Dayton, OH	20,709,105
Daytona Beach--Port Orange, FL	5,958,540
Denton--Lewisville, TX	4,143,011
Des Moines, IA	7,888,026
Durham, NC	8,377,719
El Paso, TX--NM	15,092,084
Eugene, OR	6,467,817
Evansville, IN--KY	2,945,993
Fayetteville, NC	3,129,010
Flint, MI	7,985,140
Fort Collins, CO	3,403,060
Fort Wayne, IN	4,095,327
Fresno, CA	12,062,685
Grand Rapids, MI	10,603,305
Greensboro, NC	5,455,967
Greenville, SC	2,989,341
Gulfport--Biloxi, MS	2,422,428

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL  
ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**

*(The total available amount for a program is based on funding made available under the  
ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
Harrisburg, PA	7,017,442
Hartford, CT	29,265,468
Honolulu, HI	37,739,811
Huntsville, AL	2,439,917
Indio--Cathedral City--Palm Springs, CA	4,714,391
Jackson, MS	3,461,148
Jacksonville, FL	19,359,908
Knoxville, TN	5,811,349
Lancaster, PA	9,770,062
Lancaster--Palmdale, CA	9,766,721
Lansing, MI	7,133,486
Lexington-Fayette, KY	5,488,895
Lincoln, NE	3,798,058
Little Rock, AR	5,434,699
Louisville, KY--IN	17,654,877
Lubbock, TX	3,905,453
Madison, WI	9,502,302
McAllen, TX	4,745,658
Memphis, TN--MS--AR	17,772,565
Mission Viejo, CA	13,384,248
Mobile, AL	4,090,571
Modesto, CA	5,586,606
Nashville-Davidson, TN	14,020,151
New Haven, CT	26,273,909
Ogden--Layton, UT	9,684,595
Oklahoma City, OK	10,021,473
Omaha, NE--IA	9,879,481
Oxnard, CA	10,172,272
Palm Bay--Melbourne, FL	6,009,370
Pensacola, FL--AL	4,031,579
Peoria, IL	4,203,803
Port St. Lucie, FL	3,156,747
Poughkeepsie--Newburgh, NY	23,421,242
Provo--Orem, UT	7,189,214
Raleigh, NC	9,087,039
Reading, PA	4,272,356
Reno, NV	7,359,598
Richmond, VA	13,837,772
Rochester, NY	15,796,418
Rockford, IL	3,693,756
Round Lake Beach--McHenry--Grayslake, IL--WI	5,546,846
Salem, OR	5,164,353
Salt Lake City, UT	31,459,589
Santa Rosa, CA	6,244,177
Sarasota--Bradenton, FL	9,237,386
Savannah, GA	4,490,394
Scranton, PA	5,686,825
Shreveport, LA	4,716,500
South Bend, IN--MI	5,646,486
Spokane, WA--ID	10,584,251
Springfield, MA--CT	17,867,531
Springfield, MO	2,878,526

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**

*(The total available amount for a program is based on funding made available under the ARRA for Public Transit, 2009 - P.L. 111-5)*

<b>URBANIZED AREA/STATE</b>	<b>APPORTIONMENT</b>
Stockton, CA	10,037,182
Syracuse, NY	10,310,927
Tallahassee, FL	3,453,321
Temecula--Murrieta, CA	4,066,829
Thousand Oaks, CA	3,951,073
Toledo, OH--MI	8,811,732
Trenton, NJ	15,484,545
Tucson, AZ	16,022,390
Tulsa, OK	8,853,448
Victorville--Hesperia--Apple Valley, CA	3,413,070
Wichita, KS	6,629,186
Winston-Salem, NC	3,810,207
Worcester, MA--CT	12,424,784
Youngstown, OH--PA	4,650,169
<b>Total</b>	<b>\$1,096,725,713</b>



## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**


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*(The total available amount for a program is based on funding made available under the ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
<i>Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 199,999 in Population</i>	
ALABAMA	<u>\$11,112,689</u>
Anniston, AL	1,032,870
Auburn, AL	954,040
Decatur, AL	906,873
Dothan, AL	870,715
Florence, AL	1,093,785
Gadsden, AL	856,964
Montgomery, AL	3,526,918
Tuscaloosa, AL	1,870,524
ALASKA	<u>\$763,234</u>
Fairbanks, AK	763,234
ARIZONA	<u>\$5,295,617</u>
Avondale, AZ	1,333,602
Flagstaff, AZ	989,946
Prescott, AZ	1,031,987
Yuma, AZ--CA	1,940,082
ARKANSAS	<u>\$7,511,234</u>
Fayetteville--Springdale, AR	2,803,208
Fort Smith, AR--OK	1,845,928
Hot Springs, AR	744,481
Jonesboro, AR	778,925
Pine Bluff, AR	967,502
Texarkana, TX--Texarkana, AR	371,190
CALIFORNIA	<u>\$75,286,909</u>
Atascadero--El Paso de Robles (Paso Robles), CA	935,580
Camarillo, CA	1,379,610
Chico, CA	1,813,957
Davis, CA	1,975,933
El Centro, CA	1,221,911
Fairfield, CA	3,134,985
Gilroy--Morgan Hill, CA	1,598,470
Hanford, CA	1,468,346
Hemet, CA	2,505,051
Livermore, CA	1,859,406
Lodi, CA	2,054,603
Lompoc, CA	752,123
Madera, CA	1,182,667
Manteca, CA	1,299,009
Merced, CA	2,485,982
Napa, CA	1,905,158
Petaluma, CA	1,392,821
Porterville, CA	1,301,660
Redding, CA	1,670,987
Salinas, CA	4,721,366
San Luis Obispo, CA	1,323,660
Santa Barbara, CA	4,589,601
Santa Clarita, CA	3,883,135
Santa Cruz, CA	3,404,708
Santa Maria, CA	2,864,037
Seaside--Monterey--Marina, CA	2,832,360
Simi Valley, CA	3,034,749
Tracy, CA	1,711,239
Turlock, CA	1,754,117

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**


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*(The total available amount for a program is based on funding made available under the ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
Vacaville, CA	2,217,074
Vallejo, CA	4,649,082
Visalia, CA	2,668,930
Watsonville, CA	1,609,701
Yuba City, CA	2,069,900
Yuma, AZ--CA	14,991
<b>COLORADO</b>	<b>\$11,414,720</b>
Boulder, CO	2,702,566
Grand Junction, CO	1,538,694
Greeley, CO	2,010,332
Lafayette--Louisville, CO	1,077,600
Longmont, CO	1,695,215
Pueblo, CO	2,390,313
<b>CONNECTICUT</b>	<b>\$25,903,741</b>
Danbury, CT--NY	9,836,891
Norwich--New London, CT	4,660,961
Waterbury, CT	11,405,889
<b>DELAWARE</b>	<b>\$1,701,428</b>
Dover, DE	1,656,635
Salisbury, MD--DE	44,793
<b>FLORIDA</b>	<b>\$30,627,507</b>
Brooksville, FL	1,519,355
Deltona, FL	2,461,585
Fort Walton Beach, FL	2,501,864
Gainesville, FL	2,931,440
Kissimmee, FL	3,213,961
Lady Lake, FL	710,324
Lakeland, FL	3,327,724
Leesburg--Eustis, FL	1,511,618
North Port--Punta Gorda, FL	1,896,507
Ocala, FL	1,573,748
Panama City, FL	2,013,673
St. Augustine, FL	868,559
Titusville, FL	888,356
Vero Beach--Sebastian, FL	1,932,179
Winter Haven, FL	2,454,182
Zephyrhills, FL	822,432
<b>GEORGIA</b>	<b>\$12,323,977</b>
Albany, GA	1,517,062
Athens-Clarke County, GA	1,642,889
Brunswick, GA	767,300
Dalton, GA	822,560
Gainesville, GA	1,235,602
Hinesville, GA	885,852
Macon, GA	2,278,601
Rome, GA	921,030
Valdosta, GA	933,375
Warner Robins, GA	1,319,706

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL  
ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**

*(The total available amount for a program is based on funding made available under the  
ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
<b>HAWAII</b>	<b>\$2,909,337</b>
Kailua (Honolulu County)--Kaneohe, HI	2,909,337
<b>IDAHO</b>	<b>\$6,039,344</b>
Coeur d'Alene, ID	1,290,202
Idaho Falls, ID	1,263,774
Lewiston, ID--WA	546,956
Nampa, ID	1,778,455
Pocatello, ID	1,159,957
<b>ILLINOIS</b>	<b>\$14,615,424</b>
Alton, IL	1,394,277
Beloit, WI--IL	217,421
Bloomington--Normal, IL	2,496,653
Champaign, IL	2,750,493
Darville, IL	891,527
Decatur, IL	1,697,301
DeKalb, IL	1,262,063
Dubuque, IA--IL	44,137
Kankakee, IL	1,263,671
Springfield, IL	2,597,881
<b>INDIANA</b>	<b>\$14,031,801</b>
Anderson, IN	1,550,513
Bloomington, IN	1,716,658
Columbus, IN	888,815
Elkhart, IN--MI	2,158,560
Kokomo, IN	1,089,206
Lafayette, IN	2,413,099
Michigan City, IN--MI	1,177,582
Muncie, IN	1,667,980
Terre Haute, IN	1,369,388
<b>IOWA</b>	<b>\$10,689,659</b>
Ames, IA	1,165,267
Cedar Rapids, IA	3,181,774
Dubuque, IA--IL	1,167,034
Iowa City, IA	1,662,587
Sioux City, IA--NE--SD	1,551,010
Waterloo, IA	1,961,987
<b>KANSAS</b>	<b>\$4,517,278</b>
Lawrence, KS	1,930,929
St. Joseph, MO--KS	16,140
Topeka, KS	2,570,209
<b>KENTUCKY</b>	<b>\$4,378,485</b>
Bowling Green, KY	949,238
Clarksville, TN--KY	409,999
Huntington, WV--KY--OH	855,190
Owensboro, KY	1,145,674
Radcliff--Elizabethtown, KY	1,018,384
<b>LOUISIANA</b>	<b>\$11,994,124</b>
Alexandria, LA	1,183,712
Houma, LA	2,052,316
Lafayette, LA	2,747,057
Lake Charles, LA	2,063,566
Mandeville--Covington, LA	950,286
Monroe, LA	1,766,253
Slidell, LA	1,230,934

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL  
ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**

*(The total available amount for a program is based on funding made available under the  
ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
<b>MAINE</b>	<b>\$5,156,662</b>
Bangor, ME	938,365
Dover--Rochester, NH--ME	99,767
Lewiston, ME	1,000,844
Portland, ME	2,989,029
Portsmouth, NH--ME	128,657
<b>MARYLAND</b>	<b>\$16,082,811</b>
Aberdeen--Havre de Grace--Bel Air, MD	4,575,531
Cumberland, MD--WV--PA	1,279,671
Frederick, MD	3,024,473
Hagerstown, MD--WV--PA	2,271,913
Salisbury, MD--DE	1,431,349
St. Charles, MD	1,930,171
Westminster, MD	1,569,703
<b>MASSACHUSETTS</b>	<b>\$9,210,481</b>
Leominster--Fitchburg, MA	3,227,669
Nashua, NH--MA	808
New Bedford, MA	4,527,613
Pittsfield, MA	1,454,391
<b>MICHIGAN</b>	<b>\$18,470,937</b>
Battle Creek, MI	1,262,889
Bay City, MI	1,279,109
Benton Harbor--St. Joseph, MI	936,998
Elkhart, IN--MI	26,698
Holland, MI	1,609,413
Jackson, MI	1,463,808
Kalamazoo, MI	3,155,510
Michigan City, IN--MI	7,688
Monroe, MI	903,695
Muskegon, MI	2,473,157
Port Huron, MI	1,383,824
Saginaw, MI	2,465,504
South Lyon--Howell--Brighton, MI	1,502,644
<b>MINNESOTA</b>	<b>\$6,027,804</b>
Duluth, MN--WI	1,525,004
Fargo, ND--MN	748,840
Grand Forks, ND--MN	159,770
La Crosse, WI--MN	92,720
Rochester, MN	1,741,613
St. Cloud, MN	1,759,857
<b>MISSISSIPPI</b>	<b>\$1,869,409</b>
Hattiesburg, MS	991,811
Pascagoula, MS	877,598
<b>MISSOURI</b>	<b>\$6,102,930</b>
Columbia, MO	1,739,155
Jefferson City, MO	831,184
Joplin, MO	1,070,225
Lee's Summit, MO	1,092,881
St. Joseph, MO--KS	1,369,485
<b>MONTANA</b>	<b>\$4,332,320</b>
Billings, MT	1,884,898
Great Falls, MT	1,223,819
Missoula, MT	1,223,603

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL  
ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**

*(The total available amount for a program is based on funding made available under the  
ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
N. MARIANA ISLANDS	\$1,061,782
Saipan, MP	1,061,782
NEBRASKA	\$302,017
Sioux City, IA--NE--SD	302,017
NEVADA	\$1,092,274
Carson City, NV	1,092,274
NEW HAMPSHIRE	\$7,375,671
Dover--Rochester, NH--ME	1,098,534
Manchester, NH	2,591,645
Nashua, NH--MA	3,073,417
Portsmouth, NH--ME	612,075
NEW JERSEY	\$6,288,571
Hightstown, NJ	2,265,408
Vineland, NJ	2,538,548
Wildwood--North Wildwood--Cape May, NJ	1,484,615
NEW MEXICO	\$3,874,605
Farmington, NM	790,312
Las Cruces, NM	1,713,911
Santa Fe, NM	1,370,382
NEW YORK	\$13,670,714
Binghamton, NY--PA	3,651,619
Danbury, CT--NY	92,168
Elmira, NY	1,535,510
Glens Falls, NY	1,242,494
Ithaca, NY	1,192,685
Kingston, NY	1,143,201
Middletown, NY	1,110,414
Saratoga Springs, NY	1,051,227
Utica, NY	2,651,396
NORTH CAROLINA	\$17,290,589
Burlington, NC	1,493,823
Concord, NC	1,730,136
Gastonia, NC	2,083,715
Goldsboro, NC	885,922
Greenville, NC	1,478,464
Hickory, NC	2,532,222
High Point, NC	2,081,079
Jacksonville, NC	1,527,492
Rocky Mount, NC	991,722
Wilmington, NC	2,486,014
NORTH DAKOTA	\$5,040,826
Bismarck, ND	1,404,227
Fargo, ND--MN	2,460,032
Grand Forks, ND--MN	1,176,567
OHIO	\$13,610,553
Huntington, WV--KY--OH	559,059
Lima, OH	1,198,957
Lorain--Elyria, OH	3,628,995
Mansfield, OH	1,281,024
Middletown, OH	1,671,558
Newark, OH	1,243,924
Parkersburg, WV--OH	393,234
Sandusky, OH	848,579

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**


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*(The total available amount for a program is based on funding made available under the ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
Springfield, OH	1,619,240
Weirton, WV--Steubenville, OH--PA	675,713
Wheeling, WV--OH	490,270
<b>OKLAHOMA</b>	<b>\$3,365,330</b>
Fort Smith, AR--OK	35,001
Lawton, OK	1,466,299
Norman, OK	1,864,030
<b>OREGON</b>	<b>\$4,445,943</b>
Bend, OR	937,612
Corvallis, OR	1,053,488
Longview, WA--OR	25,131
Medford, OR	2,429,712
<b>PENNSYLVANIA</b>	<b>\$17,631,217</b>
Altoona, PA	1,542,404
Binghamton, NY--PA	55,771
Cumberland, MD--WV--PA	210
Erie, PA	3,866,369
Hagerstown, MD--WV--PA	19,327
Hazleton, PA	879,623
Johnstown, PA	1,289,689
Lebanon, PA	1,174,273
Monessen, PA	902,575
Pottstown, PA	1,111,400
State College, PA	1,672,019
Uniontown--Connellsville, PA	875,442
Weirton, WV--Steubenville, OH--PA	4,191
Williamsport, PA	1,092,130
York, PA	3,145,794
<b>PUERTO RICO</b>	<b>\$16,191,202</b>
Arecibo, PR	2,205,143
Fajardo, PR	1,260,116
Florida--Barceloneta--Bajadero, PR	981,027
Guayama, PR	1,281,501
Juana Diaz, PR	860,794
Mayaguez, PR	1,994,539
Ponce, PR	4,390,179
San German--Cabo Rojo--Sabana Grande, PR	1,542,969
Yauco, PR	1,674,934
<b>RHODE ISLAND</b>	<b>0</b>
<b>SOUTH CAROLINA</b>	<b>\$9,041,882</b>
Anderson, SC	984,622
Florence, SC	955,925
Mauldin--Simpsonville, SC	1,208,633
Myrtle Beach, SC	1,820,168
Rock Hill, SC	1,014,111
Spartanburg, SC	2,047,206
Sumter, SC	1,011,217
<b>SOUTH DAKOTA</b>	<b>\$3,916,275</b>
Rapid City, SD	1,255,528
Sioux City, IA--NE--SD	51,585
Sioux Falls, SD	2,609,162
<b>TENNESSEE</b>	<b>\$9,771,871</b>
Bristol, TN--Bristol, VA	533,730
Clarksville, TN--KY	1,550,795

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 2

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**


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*(The total available amount for a program is based on funding made available under the ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
Cleveland, TN	855,317
Jackson, TN	1,085,613
Johnson City, TN	1,472,011
Kingsport, TN--VA	1,291,347
Morristown, TN	797,289
Murfreesboro, TN	2,185,769
<b>TEXAS</b>	<b>\$51,218,815</b>
Ablene, TX	2,057,460
Amarillo, TX	3,574,296
Beaumont, TX	2,362,469
Brownsville, TX	3,631,569
College Station--Bryan, TX	2,793,817
Galveston, TX	1,575,182
Harlingen, TX	1,953,732
Killeen, TX	3,489,770
Lake Jackson--Angleton, TX	1,386,542
Laredo, TX	4,757,091
Longview, TX	1,269,052
McKinney, TX	992,990
Midland, TX	1,882,626
Odessa, TX	2,066,952
Port Arthur, TX	2,323,428
San Angelo, TX	1,572,211
Sherman, TX	964,558
Temple, TX	1,228,725
Texarkana, TX--Texarkana, AR	709,396
Texas City, TX	1,609,294
The Woodlands, TX	1,679,525
Tyler, TX	1,744,631
Victoria, TX	913,309
Waco, TX	2,909,998
Wichita Falls, TX	1,770,192
<b>UTAH</b>	<b>\$2,497,807</b>
Logan, UT	1,388,584
St. George, UT	1,109,223
<b>VERMONT</b>	<b>\$1,753,649</b>
Burlington, VT	1,753,649
<b>VIRGIN ISLANDS</b>	<b>1,284,112</b>
<b>VIRGINIA</b>	<b>\$11,993,189</b>
Blacksburg, VA	1,074,183
Bristol, TN--Bristol, VA	310,963
Charlottesville, VA	1,528,262
Danville, VA	824,382
Fredericksburg, VA	1,542,104
Harrisonburg, VA	943,287
Kingsport, TN--VA	24,387
Lynchburg, VA	1,501,126
Roanoke, VA	3,364,742
Winchester, VA	879,753
<b>WASHINGTON</b>	<b>\$16,824,921</b>
Bellingham, WA	1,655,804
Bremerton, WA	2,861,382
Kennewick--Richland, WA	2,659,484
Lewiston, ID--WA	318,847
Longview, WA--OR	1,129,826
Marysville, WA	1,852,474
Mount Vernon, WA	841,295
Olympia--Lacey, WA	2,334,961

## FEDERAL TRANSIT ADMINISTRATION

TABLE 2

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE AND SECTION 5340 URBANIZED AREA APPORTIONMENTS**


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*(The total available amount for a program is based on funding made available under the ARRA for Public Transit, 2009 - P.L. 111-5)*

URBANIZED AREA/STATE	APPORTIONMENT
Wenatchee, WA	1,019,843
Yakima, WA	2,151,005
<b>WEST VIRGINIA</b>	<b>\$8,314,897</b>
Charleston, WV	2,970,523
Cumberland, MD-WV-PA	34,795
Hagerstown, MD--WV--PA	455,306
Huntington, WV--KY--OH	1,510,771
Morgantown, WV	915,342
Parkersburg, WV--OH	1,026,517
Weirton, WV--Steubenville, OH--PA	469,158
Wheeling, WV--OH	932,485
<b>WISCONSIN</b>	<b>\$23,154,677</b>
Appleton, WI	3,814,399
Beloit, WI--IL	801,608
Duluth, MN--WI	492,284
Eau Claire, WI	1,482,618
Fond du Lac, WI	994,292
Green Bay, WI	3,580,948
Janesville, WI	1,253,807
Kenosha, WI	2,284,023
La Crosse, WI--MN	1,607,332
Oshkosh, WI	1,475,958
Racine, WI	2,771,751
Sheboygan, WI	1,421,214
Wausau, WI	1,174,443
<b>WYOMING</b>	<b>\$2,321,065</b>
Casper, WY	1,089,586
Cheyenne, WY	1,231,479
<b>Total</b>	<b>\$571,704,316</b>



## FEDERAL TRANSIT ADMINISTRATION

TABLE 3

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE APPORTIONMENT  
FORMULA (URBANIZED AREAS)**


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Distribution of Available Funds

The funds made available to the Transit Capital Assistance Program for Urbanized areas is to be distributed based on the Section 5307 program formula.

Funds are apportioned to small, medium, and large sized urbanized areas (UZAs). 9.32% is made available for UZAs 50,000-199,999 in population, and 90.68% to UZAs 200,000 or more in population.

UZA Population and Weighting Factors

50,000-199,999 in population : (Apportioned to Governors)	<b>9.32% of available Section 5307 funds</b> <i>50% apportioned based on population</i> <i>50% apportioned based on population x population density</i>
200,000 and greater in population: (Apportioned to UZAs)	<b>90.68% of available Section 5307 funds</b> <b>33.29% (Fixed Guideway Tier*)</b> <b>95.61% (Non-incentive Portion of Tier)</b> -- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater 60% - fixed guideway revenue vehicle miles 40% - fixed guideway route miles  <b>4.39% ("Incentive" Portion of Tier)</b> -- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater -- fixed guideway passenger miles x fixed guideway passenger miles/operating cost  <b>66.71% ("Bus" Tier)</b> <b>90.8% (Non-incentive Portion of Tier)</b> 73.39% for UZAs with population 1,000,000 or greater 50% - bus revenue vehicle miles 25% - population 25% - population x population density 26.61% for UZAs pop. < 1,000,000 50% - bus revenue vehicle miles 25% - population 25% - population x density  <b>9.2% ("Incentive" Portion of Tier)</b> -- bus passenger miles x bus passenger miles/operating cost

\* Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

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## FEDERAL TRANSIT ADMINISTRATION

TABLE 4

## AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - APPORTIONMENT DATA UNIT VALUES

(Apportionment unit values are based on funding made available under the  
ARRA Grants for Public Transit, 2009 - P.L. 111-5)

	APPORTIONMENT DATA UNIT VALUE
Transit Capital Assistance - Urbanized Area Formula Program - Bus Tier	
Urbanized Areas Over 1,000,000:	
Population .....	\$4.56870848
Population x Density .....	\$0.00115923
Bus Revenue Vehicle Mile .....	\$0.57543626
Urbanized Areas Under 1,000,000:	
Population .....	\$4.18704147
Population x Density .....	\$0.00183199
Bus Revenue Vehicle Mile .....	\$0.74818662
Bus Incentive (PM denotes Passenger Mile):	
$\frac{\text{Bus PM} \times \text{Bus PM}}{\text{Operating Cost}} =$	\$0.01233613
Transit Capital Assistance - Urbanized Area Formula Program - Fixed Guideway Tier	
Fixed Guideway Revenue Vehicle Mile .....	\$0.84595249
Fixed Guideway Route Mile .....	\$44,730
Commuter Rail Floor .....	\$11,687,438
Fixed Guideway Incentive:	
$\frac{\text{Fixed Guideway PM} \times \text{Fixed Guideway PM}}{\text{Operating Cost}} =$	\$0.00087401
Commuter Rail Incentive Floor .....	\$536,637
Transit Capital Assistance - Urbanized Area Formula Program - Areas Under 200,000	
Population .....	\$8.42133731
Population x Density .....	\$0.00418916
Transit Capital Assistance - Nonurbanized Area Formula Program - Areas Under 50,000	
Population .....	\$5.89404722

## Fixed Guideway Infrastructure Investment

	Tier 2	Tier 3	Tier 4
Legislatively Specified Areas:			
Revenue Vehicle Mile	\$0.03043443	-----	\$0.12389280
Route Mile	\$2,122.43	-----	\$7,091.50
Other Urbanized Areas:			
Revenue Vehicle Mile	\$0.16288440	\$0.00576164	\$0.12389280
Route Mile	\$4,758.70	\$168.33	\$7,091.50

## Notes:

- Unit values for Transit Capital Assistance - Urbanized Areas funding do not take into account Section 5340 funding added to the program.
- The unit value for Transit Capital Assistance - Nonurbanized Areas is based on the total nonurbanized/rural population for the States and territories and does not take into account funds allocated based on land area in nonurbanized areas, or Section 5340 funding added.

## FEDERAL TRANSIT ADMINISTRATION

TABLE 5

## AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - TRANSIT CAPITAL ASSISTANCE AND SECTION 5340 NONURBANIZED APPORTIONMENTS

*(The total available amount for a program is based on funding made available under the ARRA Grants for Public Transit, 2009 - P.L. 111-5)*

STATE	APPORTIONMENT
Alabama	\$19,849,776
Alaska	9,083,890
American Samoa	341,099
Arizona	14,182,654
Arkansas	15,139,150
California	33,963,166
Colorado	12,492,195
Connecticut	4,039,580
Delaware	1,886,750
Florida	20,333,034
Georgia	25,649,675
Guam	921,976
Hawaii	2,933,435
Idaho	8,742,509
Illinois	21,184,115
Indiana	20,316,134
Iowa	15,156,406
Kansas	14,056,694
Kentucky	19,201,019
Louisiana	15,273,707
Maine	8,109,443
Maryland	7,425,244
Massachusetts	5,219,346
Michigan	25,787,129
Minnesota	19,029,588
Mississippi	17,252,566
Missouri	20,698,281
Montana	11,279,390
N. Mariana Islands	52,510
Nebraska	9,811,054
Nevada	7,350,247
New Hampshire	5,217,298
New Jersey	4,838,468
New Mexico	12,255,602
New York	26,250,240
North Carolina	33,055,504
North Dakota	5,956,263
Ohio	29,837,234
Oklahoma	16,923,315
Oregon	14,627,158
Pennsylvania	30,209,184
Puerto Rico	2,110,579
Rhode Island	864,972
South Carolina	16,617,727
South Dakota	7,372,825
Tennessee	21,168,758
Texas	50,587,402
Utah	7,253,443
Vermont	3,926,923
Virginia	18,555,163
Washington	14,297,473
West Virginia	10,051,239
Wisconsin	20,130,095
Wyoming	6,979,334
<b>TOTAL</b>	<b>\$765,847,961</b>

## FEDERAL TRANSIT ADMINISTRATION

TABLE 6

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - FIXED GUIDEWAY  
INFRASTRUCTURE INVESTMENT APPORTIONMENTS

(The total available amount for a program is based on funding made available under the  
ARRA Grants for Public Transit, 2009 - P.L. 111-5)

STATE	AREA	APPORTIONMENT
Arizona	Phoenix--Mesa, AZ	\$640,070
California	Los Angeles--Long Beach--Santa Ana, CA	10,003,084
California	Sacramento, CA	946,296
California	San Diego, CA	2,872,834
California	San Francisco--Oakland, CA	48,263,671
California	San Jose, CA	4,086,004
Colorado	Denver--Aurora, CO	753,399
Connecticut	Hartford, CT	493,947
Connecticut	Southwestern Connecticut	31,536,449
District of Columbia	Washington, DC--VA--MD	17,749,826
Florida	Jacksonville, FL	36,559
Florida	Miami, FL	5,339,589
Florida	Tampa--St. Petersburg, FL	34,618
Georgia	Atlanta, GA	7,380,854
Hawaii	Honolulu, HI	254,793
Illinois	Chicago, IL--IN	101,947,337
Louisiana	New Orleans, LA	2,425,343
Maryland	Baltimore Commuter Rail	12,377,914
Maryland	Baltimore, MD	2,798,571
Massachusetts	Boston, MA-NH-RI	51,513,648
Michigan	Detroit, MI	133,125
Minnesota	Minneapolis--St. Paul, MN	1,851,573
Missouri	St. Louis, MO--IL	1,289,449
New Jersey	Northeastern New Jersey	64,690,048
New Jersey	Trenton, NJ	565,172
New York	Buffalo, NY	409,946
New York	New York	254,407,861
Ohio	Cleveland, OH	11,182,724
Ohio	Dayton, OH	1,590,055
Oregon	Portland, OR--WA	1,125,728
Pennsylvania	Philadelphia, PA-NJ-DE-MD	73,401,954
Pennsylvania	Pittsburgh, PA	18,482,383
Puerto Rico	San Juan, PR	675,314
Rhode Island	Providence, RI--MA	913,220
Tennessee	Chattanooga, TN--GA	28,040
Texas	Dallas--Fort Worth--Arlington, TX	300,940
Texas	Houston, TX	2,308,667
Virginia	Virginia Beach, VA	437,148
Washington	Seattle, WA	6,699,276
West Virginia	Morgantown, WV	309,339
Wisconsin	Madison, WI	243,232
<b>TOTAL</b>		<b>\$742,500,000</b>

## FEDERAL TRANSIT ADMINISTRATION

TABLE 7

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**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - FIXED GUIDEWAY INFRASTRUCTURE INVESTMENT PROGRAM  
 APPORTIONMENT FORMULA**


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The funds available for appropriation under the Fixed Guideway Infrastructure Investment Program were exhausted within Tier 4, which was prorated to account for the remaining funds.

Tier 1 First \$497,700,000 to the following areas:

Baltimore	\$	8,372,000
Boston	\$	38,948,000
Chicago/N.W. Indiana	\$	78,169,000
Cleveland	\$	9,509,500
New Orleans	\$	1,730,588
New York	\$	176,034,461
N. E. New Jersey	\$	50,604,653
Philadelphia/So. New Jersey	\$	58,924,764
Pittsburgh	\$	13,662,463
San Francisco	\$	33,989,571
SW Connecticut	\$	27,755,000

Tier 2 Next \$70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1; Tier 2(B): 50 percent is allocated to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next \$5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next \$186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

All funds available for apportionment under the Fixed Guideway Infrastructure Investment Program were exhausted within Tier 4.

Tier 5 Next \$70,000,000 as follows: Funds were exhausted within Tier 4. Therefore, no funds were apportioned in Tier 5.

Tier 6 Next \$50,000,000 as follows: Funds were exhausted within Tier 4. Therefore, no funds were apportioned in Tier 6.

Tier 7 Remaining amounts as follows: Funds were exhausted within Tier 4. Therefore, no funds were apportioned in Tier 7.

[FR Doc. E9-4745 Filed 3-4-09; 8:45 am]

BILLING CODE 4910-57-P

**DEPARTMENT OF THE TREASURY****Fiscal Service****Financial Management Service;  
Proposed Collection of Information:  
Voucher for Payment of Awards****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Voucher for Payment of Awards."

**DATES:** Written comments should be received on or before May 4, 2009.**ADDRESSES:** Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Kevin McIntyre, Manager, Judgment Fund Branch, 3700 East West Highway, Room 630F, Hyattsville, MD 20782, (202) 874-1130.**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:*Title:* Voucher for Payment of Awards.*OMB Number:* 1510-0037.*Form Number:* TFS 5135.

*Abstract:* Awards certificate to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to award holders showing payments due. Award holders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as a basis for payment.

*Current Actions:* Extension of currently approved collection.*Type of Review:* Regular.*Affected Public:* Individuals or households.*Estimated Number of Respondents:* 1,400.*Estimated Time per Respondent:* 30 minutes.*Estimated Total Annual Burden Hours:* 700.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 25, 2009.

**David Rebich,***Acting Assistant Commissioner, Management (CFO).*

[FR Doc. E9-4537 Filed 3-4-09; 8:45 am]

BILLING CODE 4810-35-M

**DEPARTMENT OF THE TREASURY****Fiscal Service****Financial Management Service;  
Proposed Collection of Information:  
Claims Against the United States for  
Amounts Due in the Case of a  
Deceased Creditor****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning "Claims Against the United States for Amounts Due in the Case of a Deceased Creditor".

**DATES:** Written comments should be received on or before May 4, 2009.**ADDRESSES:** Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.**FOR FURTHER INFORMATION CONTACT:** Requests for additional information

should be directed to Kevin McIntyre, Judgment Fund Branch, 3700 East West Highway, Room 630F, Hyattsville, MD 20782, (202) 874-1130.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:*Title:* Claim Against the United States for Amounts Due in the Case of a Deceased Creditor.*OMB Number:* 15 10-0042.*Form Number:* SF-1055.

*Abstract:* This form is required to determine who is entitled to the funds of a deceased Postal Savings depositor or deceased award holder. The form, with supporting documentation, enables the government to decide who is legally entitled to payment.

*Current Actions:* Extension of currently approved collection.*Type of Review:* Regular.*Affected Public:* Individuals or households.*Estimated Number of Respondents:* 400.*Estimated Time per Respondent:* 1 hour.*Estimated Total Annual Burden Hours:* 400.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 25, 2009.

**David Rebich,***Acting Assistant Commissioner, Management (CFO).*

[FR Doc. E9-4538 Filed 3-4-09; 8:45 am]

BILLING CODE 4810-35-M

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Form 5472**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

**DATES:** Written comments should be received on or before May 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622-6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at [Carolyn.N.Brown@irs.gov](mailto:Carolyn.N.Brown@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

*OMB Number:* 1545-0805.

*Form Number:* 5472.

*Abstract:* Form 5472 is used to report information about transactions between a U.S. corporation that is 25% foreign owned or a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

*Current Actions:* Due to a 2007 revision of Form 5472, a line item was added causing the burden to decrease to 2,544,784.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 103,784.

*Estimated Time Per Response:* 24 hrs. 31 min.

*Estimated Total Annual Burden Hours:* 2,544,784.

The following paragraph applies to all of the collections of information covered by this notice:

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

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

Approved: February 13, 2009.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E9-4688 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service**

**[REG-125071-06 (TD 9308)]**

**Proposed Collection; Comment Request for Regulation Project**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning a final Regulation 125071-06 (TD 9308), Reporting Requirements for Widely Held Fixed Investment Trusts (§ 1.671-5).

**DATES:** Written comments should be received on or before May 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, (202) 622-6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [Carolyn.N.Brown@irs.gov](mailto:Carolyn.N.Brown@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Reporting Requirements for Widely Held Fixed Investment Trusts.

*OMB Number:* 1545-1540.

*Regulation Project Number:* REG-125071-06 (TD 9308).

*Abstract:* Under regulation section 1.671-5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,200.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2009.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E9-4689 Filed 3-4-09; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8832

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8832, Entity Classification Election.

**DATES:** Written comments should be received on or before May 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622-6688, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at [Carolyn.N.Brown@irs.gov](mailto:Carolyn.N.Brown@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Entity Classification Election.

*OMB Number:* 1545-1516.

*Form Number:* Form 8832.

*Abstract:* An eligible entity that chooses not to be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect a classification.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations, Farms.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 4 hours 38 minutes.

*Estimated Total Annual Burden Hours:* 23,200.

The following paragraph applies to all of the collections of information covered by this notice:

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 13, 2009.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E9-4690 Filed 3-4-09; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 21, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, April 21, 2009, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1-888-912-1227 or 718-488-2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E9-4684 Filed 3-4-09; 8:45 am]

BILLING CODE 4830-01-P



**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Monday, April 13, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227 or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, April 13, 2009, at 12:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1-888-912-1227 or 954-423-7975, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E9-4667 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)**

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 4 Taxpayer Advocacy Panel will be

conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ellen Smiley at 1-888-912-1227 or 414-231-2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, April 21, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1-888-912-1227 or 414-231-2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E9-4685 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)**

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patricia Robb at 1-888-912-1227 or 414-231-2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, April 14, 2009, at 9:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1-888-912-1227 or 414-231-2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E9-4664 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)**

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, April 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1-888-912-1227 or 206-220-6098.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, April 15, 2009, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1-888-912-1227 or 206-220-6098, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4665 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of Taxpayer Advocacy Panel Notice Improvement Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, April 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1-888-912-1227, or 954-423-7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be held Thursday, April 9, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1-888-912-1227 or 954-423-7975, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4658 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1-888-912-1227 or 718-488-3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, April 14, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1-888-912-1227 or 718-488-3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4659 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be

conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ellen Smiley at 1-888-912-1227 or 414-231-2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, April 28, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1-888-912-1227 or 414-231-2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4660 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, April 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Marianne Ayala at 1-888-912-1227 or 954-423-7978.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be held Wednesday, April 1, 2009, at Noon, Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1-888-912-1227 or 954-423-7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4661 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, April 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Susan Gilbert at 1-888-912-1227 or 404-338-7185.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, April 22, 2009, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of

intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1-888-912-1227 or 404-338-7185 or write TAP Office, Stop 211-D, 401 West Peachtree Street, NW., Atlanta, GA, 30308-3520, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4663 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, April 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1-888-912-1227 or 206-220-6098.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be held Thursday, April 23, 2009, at 8:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1-888-912-1227 or 206-220-6098, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4666 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, April 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1-888-912-1227 or 718-488-3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be held Thursday, April 9, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1-888-912-1227 or 718-488-3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS Issues.

Dated: February 26, 2009.

**Shawn F. Collins,**

*Acting Director, Taxpayer Advocacy Panel.*  
[FR Doc. E9-4669 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Thursday,  
March 5, 2009**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Part 63**

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**National Emission Standards for  
Hazardous Air Pollutants for  
Reciprocating Internal Combustion  
Engines; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[EPA-HQ-OAR-2008-0708, FRL-8778-6]

RIN 2060-AP36

**National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing national emission standards for hazardous air pollutants for existing stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions. In addition, EPA is proposing national emission standards for hazardous air pollutants for existing stationary compression ignition engines greater than 500 brake horsepower that are located at major sources, based on a new review of these engines following the first RICE NESHAP rulemaking in 2004. In addition, EPA is proposing to amend the previously promulgated regulations regarding operation of stationary reciprocating internal combustion engines during periods of startup, shutdown and malfunction.

**DATES:** Comments must be received on or before May 4, 2009, or 30 days after date of public hearing if later. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before April 6, 2009.

**Public Hearing.** If anyone contacts us requesting to speak at a public hearing by March 25, 2009, a public hearing will be held on April 6, 2009. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541-7966 to verify that a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0708, 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](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T,

1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0708. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <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.

**Public Hearing:** If a public hearing is held, it will be held at EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC or an alternate site nearby.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. We also rely on documents in Docket ID Nos. EPA-HQ-OAR-2002-0059, EPA-HQ-OAR-2005-0029, and EPA-HQ-OAR-2005-0030, and incorporate those dockets into the record for this proposed rule. 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 Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-2469; facsimile number (919) 541-5450; e-mail address "[king.melanie@epa.gov](mailto:king.melanie@epa.gov)."

**SUPPLEMENTARY INFORMATION:** *Organization of This Document.* The following outline is provided to aid in locating information in the preamble.

I. General Information  
 A. Does this action apply to me?  
 B. What should I consider as I prepare my comments for EPA?

II. Background

III. Summary of This Proposed Rule  
 A. What is the source category regulated by this proposed rule?  
 B. What are the pollutants regulated by this proposed rule?  
 C. What are the proposed standards?  
 D. What are the requirements for demonstrating compliance?  
 E. What are the reporting and recordkeeping requirements?

IV. Rationale for Proposed Rule  
 A. Which control technologies apply to stationary RICE?  
 B. How did EPA determine the basis and level of the proposed standards?  
 C. How did EPA determine the compliance requirements?  
 D. How did EPA determine the reporting and recordkeeping requirements?

V. Summary of Environmental, Energy and Economic Impacts  
 A. What are the air quality impacts?  
 B. What are the cost impacts?  
 C. What are the benefits?  
 D. What are the non-air health, environmental and energy impacts?

**SUPPLEMENTARY INFORMATION:** *Organization of This Document.* The following outline is provided to aid in locating information in the preamble.

I. General Information  
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- VI. Solicitation of Public Comments and Participation
- VII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act of 1995
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in

Minority Populations and Low-Income Populations

**I. General Information**

*A. Does this action apply to me?*

*Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS <sup>1</sup>	Examples of regulated entities
Any industry using a stationary internal combustion engine as defined in this proposed rule.	2211	Electric power generation, transmission, or distribution.
	622110	Medical and surgical hospitals.
	48621	Natural gas transmission.
	211111	Crude petroleum and natural gas production.
	211112	Natural gas liquids producers.
	92811	National security.

<sup>1</sup> 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 regulated by this action. To determine whether your engine is regulated by this action, you should examine the applicability criteria of this proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the following address: Mrs. Melanie King, c/o OAQPS Document Control Officer (Room C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2008-0708.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

(a) Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

(b) Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

(c) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

(d) Describe any assumptions and provide any technical information and/or data that you used.

(e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

(g) Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

(h) Make sure to submit your comments by the comment period deadline identified.

*Docket.* The docket number for this proposed rule is Docket ID No. EPA-HQ-OAR-2008-0708.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of this proposed rule will be posted on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA will post a copy of this proposed rule on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

**II. Background**

This action proposes national emission standards for hazardous air pollutants (NESHAP) from existing stationary reciprocating internal combustion engines (RICE) with a site rating of less than or equal to 500 horsepower (HP) located at major sources, existing non-emergency CI engines with a site rating >500 HP at major sources, and existing stationary RICE of any power rating located at area sources. EPA is proposing these requirements to meet its statutory obligation to address hazardous air pollutants (HAP) emissions from these sources under sections 112(d), 112(c)(3) and 112(k) of the CAA. The final NESHAP for stationary RICE would be promulgated under 40 CFR part 63, subpart ZZZZ, which already contains standards applicable to new stationary RICE and some existing stationary RICE.

EPA promulgated NESHAP for existing, new, and reconstructed stationary RICE greater than 500 HP located at major sources on June 15, 2004 (69 FR 33474). EPA promulgated NESHAP for new and reconstructed stationary RICE that are located at area sources of HAP emissions and for new and reconstructed stationary RICE that have a site rating of less than or equal to 500 HP that are located at major sources of HAP emissions on January 18, 2008 (73 FR 3568). At that time, EPA did not promulgate final requirements for existing stationary RICE that are located at area sources of HAP emissions or for existing stationary RICE that have a site rating of less than or equal to 500 HP that are located at major sources of HAP emissions. Although EPA proposed requirements for these sources, EPA did not finalize these

requirements due to comments received indicating that the proposed Maximum Achievable Control Technology (MACT) determinations for existing sources were inappropriate and because of a decision by the U.S. Court of Appeals for the District of Columbia Circuit on March 13, 2007, which vacated EPA's MACT standards for the Brick and Structural Clay Products Manufacturing source category (40 CFR part 63, subpart JJJJJ). *Sierra Club v. EPA*, 479 F.3d 875 (DC Cir 2007). Among other things, the D.C. Circuit found that EPA's no emission reduction MACT determination in the challenged rule was unlawful. Because in the proposed stationary RICE rule, EPA had used a MACT floor methodology similar to the methodology used in the Brick MACT, EPA decided to re-evaluate the MACT floors for existing major sources that have a site rating of less than or equal to 500 brake HP consistent with the Court's decision in the Brick MACT case. EPA has also re-evaluated the standards for existing area sources in light of the comments received on the proposed rule.

This proposal initiates a separate rulemaking process that focuses on existing sources. EPA has gathered further information on existing engines and has considered comments it received on the original proposed rule and the intervening court decision in creating this proposed rulemaking. Commenters are advised to provide new comments in response to this proposal and not to rely on any comments they may have provided in previous rulemaking actions.

In addition, stakeholders have encouraged the Agency to review whether there are further ways to reduce emissions of pollutants from existing stationary diesel engines. In its comments on EPA's 2006 proposed rule for new stationary diesel engines,<sup>1</sup> the Environmental Defense Fund (EDF) suggested several possible avenues for the regulation of existing stationary diesel engines, including use of diesel oxidation catalysts or catalyzed diesel particulate filters (CDPF), as well as the use of ultra low sulfur diesel (ULSD) fuel. EDF suggested that such controls can provide significant pollution reductions at reasonable cost. EPA issued an advance notice of proposed rulemaking (ANPRM) in January 2008, where it solicited comment on several issues concerning options to regulate emissions of pollutants from existing

stationary diesel engines, generally, and specifically from larger, older stationary diesel engines. EPA solicited comment and collected information to aid decision-making related to the reduction of HAP emissions from existing stationary diesel engines and specifically from larger, older engines under Clean Air Act (CAA) section 112 authorities. The Agency sought comment on the larger, older engines because available data indicate that those engines emit the majority of particulate matter (PM) and toxic emissions from non-emergency stationary engines as a whole. A summary of comments and responses that were received on the ANPRM was added to docket EPA-HQ-OAR-2007-0995.

EPA has taken several actions over the past several years to reduce exhaust pollutants from stationary diesel engines, but believes that further reducing exhaust pollutants from stationary diesel engines, particularly existing stationary diesel engines that have not been subject to Federal standards, is justified. Therefore, EPA is proposing emissions reductions from existing stationary diesel engines.

### III. Summary of This Proposed Rule

#### A. What is the source category regulated by this proposed rule?

This proposed rule addresses emissions from existing stationary engines less than or equal to 500 HP located at major sources and all existing stationary engines located at area sources. A major source of HAP emissions is a stationary source that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year, except that for oil and gas production facilities, a major source of HAP emissions is determined for each surface site. 42 § 7412(n)(4). An area source of HAP emissions is a source that is not a major source. This proposed rule also addresses emissions from existing compression ignition (CI) engines greater than 500 HP located at major sources.

This action is a revision to the regulations in 40 CFR part 63, subpart ZZZZ, currently applicable to existing, new, and reconstructed stationary RICE greater than 500 HP located at major sources; new and reconstructed stationary RICE less than or equal to 500 HP located at major sources; and new and reconstructed stationary RICE located at area sources. Subpart ZZZZ does not currently cover existing

stationary engines located at area sources of HAP emissions, nor does it apply to existing stationary engines located at major sources with a site rating of 500 HP or less. When the subpart ZZZZ regulations were promulgated (see 69 FR 33474, June 15, 2004), EPA deferred promulgating regulations with respect to stationary engines 500 HP or less at major sources until further information on the engines could be obtained and analyzed. EPA decided to regulate these smaller engines at the same time that it regulated engines located at area sources. EPA issued regulations for new stationary engines located at area sources of HAP emissions and new stationary engines located at major sources with a site rating of 500 HP or less in the rulemaking issued on January 18, 2008 (73 FR 3568), but did not promulgate a final regulation for existing stationary engines.

#### 1. Stationary RICE ≤500 HP at Major Sources

This action proposes to revise 40 CFR part 63, subpart ZZZZ, to address HAP emissions from existing stationary RICE less than or equal to 500 HP located at major sources. For stationary engines less than or equal to 500 HP at major sources, EPA must determine what is the appropriate MACT for those engines under section 112(d)(3) of the CAA.

EPA has divided the source category into the following subcategories:

- Stationary RICE less than 50 HP,
- Landfill and digester gas stationary RICE greater than or equal to 50 HP,
- CI stationary RICE greater than or equal to 50 HP,
  - Emergency
  - Non-emergency and
- Spark ignition (SI) stationary RICE greater than or equal to 50 HP
  - Emergency
  - Non-emergency
  - 2-stroke lean burn (2SLB)
    - <250 HP
    - ≥250 HP
  - 4-stroke lean burn (4SLB)
    - <250 HP
    - ≥250 HP
  - 4-stroke rich burn (4SRB).

#### 2. Stationary RICE at Area Sources

This action proposes to revise 40 CFR part 63, subpart ZZZZ, in order to address HAP emissions from existing stationary RICE located at area sources. Section 112(d) of the Clean Air Act (CAA) requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). As noted above, an area

<sup>1</sup> "Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollution for Reciprocating Internal Combustion Engines," 71 FR 33803-33855, <http://www.epa.gov/ttn/atw/rice/ricepg.html>, June 12, 2006.

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 that, as a result of emissions of 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. EPA implemented these requirements through the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). The area source stationary engine source category was one of the listed categories. A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), EPA may elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." Additional information on generally available control technologies (GACT) or management practices is found in the Senate report on the legislation (Senate report Number 101-228, December 20, 1989), which describes GACT as:

\* \* \* methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, EPA can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have many small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. EPA also considers the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, EPA may also consider

technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as EPA has already noted, in determining GACT for a particular area source category, EPA considers the costs and economic impacts of available control technologies and management practices on that category.

The urban HAP that must be regulated at stationary RICE to achieve the section 112(c)(3) requirement to regulate categories accounting for 90 percent of the urban HAP are: 7 PAH, formaldehyde, acetaldehyde, arsenic, benzene, beryllium compounds, and cadmium compounds. As explained below, EPA chose to select formaldehyde to serve as a surrogate for HAP emissions. Formaldehyde is the hazardous air pollutant present in the highest concentration from stationary engines. In addition, emissions data show that formaldehyde emission levels are related to other HAP emission levels. EPA is proposing standards for area source stationary RICE below.

The subcategories for area sources are the same as those for major sources and are listed in section A.1. above.

### 3. Stationary CI RICE >500 HP at Major Sources

In addition, EPA is proposing emission standards for non-emergency stationary CI engines greater than 500 HP at major sources under its authority to review and revise emission standards as necessary under section 112(d) of the CAA.

#### *B. What are the pollutants regulated by this proposed rule?*

The rule being proposed in this action would regulate emissions of HAP. Available emissions data show that several HAP, which are formed during the combustion process or which are contained within the fuel burned, are emitted from stationary engines. The HAP which have been measured in emission tests conducted on natural gas fired and diesel fired RICE include: 1,1,2,2-tetrachloroethane, 1,3-butadiene, 2,2,4-trimethylpentane, acetaldehyde, acrolein, benzene, chlorobenzene, chloroethane, ethylbenzene, formaldehyde, methanol, methylene chloride, n-hexane, naphthalene, polycyclic aromatic hydrocarbons, polycyclic organic matter, styrene, tetrachloroethane, toluene, and xylene. Metallic HAP from diesel fired stationary RICE that have been measured are: cadmium, chromium, lead, manganese, mercury, nickel, and

selenium. Although numerous HAP may be emitted from RICE, only a few account for essentially all of the mass of HAP emissions from stationary RICE. These HAP are: Formaldehyde, acrolein, methanol, and acetaldehyde.

EPA described the health effects of these HAP and other HAP emitted from the operation of stationary RICE in the preamble to 40 CFR part 63, subpart ZZZZ, published on June 15, 2004 (69 FR 33474). These HAP emissions are known to cause, or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare.

EPA is proposing to limit emissions of HAP through emissions standards for formaldehyde for non-emergency 4SRB engines, emergency SI engines, and engines less than 50 HP, and through emission standards for carbon monoxide (CO) for all other engines. For the RICE NESHAP promulgated in 2004 (69 FR 33474) for engines greater than 500 HP located at major sources, EPA chose to select formaldehyde to serve as a surrogate for HAP emissions. Formaldehyde is the hazardous air pollutant present in the highest concentration in the exhaust from stationary engines. In addition, emissions data show that formaldehyde emission levels are related to other HAP emission levels.

For the NESHAP promulgated in 2004, EPA also found that there is a relationship between CO emissions reductions and HAP emissions reductions from 2SLB, 4SLB, and CI stationary engines. Therefore, because testing for CO emissions has many advantages over testing for formaldehyde, CO emissions were chosen as a surrogate for HAP emissions reductions for 2SLB, 4SLB, and CI stationary engines operating with oxidation catalyst systems for that rule. However, EPA could not confirm the same relationship between CO and formaldehyde for 4SRB engines, so emission standards for such engines were provided in terms of formaldehyde.

For the standards being proposed in this action, EPA believes that previous decisions regarding the appropriateness of using formaldehyde and CO both in concentration (ppm) levels as has been done for stationary sources before as surrogates for HAP are still valid.<sup>2</sup> Consequently, EPA is proposing emission standards for formaldehyde for 4SRB engines and emission standards

<sup>2</sup> In contrast, mobile source emission standards for diesel engines (both nonroad and on-highway) are promulgated on a mass basis rather than concentration.



for CO for lean burn and CI engines in order to regulate HAP emissions. Information EPA has received from stationary engine manufacturers indicate that most SI emergency engines and engines below 50 HP are and will be 4SRB engines. As discussed above, EPA could not confirm a relationship between CO and formaldehyde emissions for 4SRB engines. Therefore, EPA is proposing standards for formaldehyde for those engines. EPA is interested in receiving comments on the use of formaldehyde as a surrogate for HAP and information on any other surrogates that may be better indicators of total HAP emissions and their reductions.

We recognize that stationary diesel engines emit trace amounts of metal HAP that remain in the particle phase. EPA believes that formaldehyde and CO are reasonable surrogates for total HAP.

Although metal HAP emissions from existing diesel engines are very small—a total of about 200 tons per year—we are interested in receiving comments and data about more appropriate surrogates, if any, for the metallic HAP emissions.

In addition to reducing HAP and CO, the proposed rule would likely result in the reduction of PM emissions from existing diesel engines. The aftertreatment technologies expected to be used to reduce HAP and CO emissions also reduce emissions of PM from diesel engines. Furthermore, this proposed rule would also result in nitrogen oxides (NO<sub>x</sub>) reductions from rich burn engines since these engines would likely need to install non-selective catalytic reduction (NSCR) technology that helps reduce NO<sub>x</sub> in addition to CO and HAP emissions. Also, we propose the use of ULSD for

diesel-fueled stationary non-emergency CI engines greater than 300 HP with a displacement of less than 30 liters per cylinder. This will result in lower emissions of sulfur oxides (SO<sub>x</sub>) and sulfate particulate from these engines by reducing the sulfur content in the fuel.

C. What are the proposed standards?

1. Existing Stationary RICE at Major Sources

The emission standards that are being proposed in this action for stationary RICE less than or equal to 500 HP located at major sources and stationary CI RICE greater than 300 HP located at major sources are shown in Table 1 of this preamble. Note that EPA is also co-proposing that the same standards apply during both normal operation and periods of startup and malfunctions.

TABLE 1—EMISSION STANDARDS FOR EXISTING STATIONARY RICE LOCATED AT MAJOR SOURCES

Subcategory	Emission standards at 15 percent O <sub>2</sub> (parts per million by volume on a dry basis)	
	Except during periods of startup, or malfunction	During periods of startup, or malfunction
Non-Emergency 2SLB 50≥HP≤249 .....	85 ppmvd CO .....	85 ppmvd CO.
Non-Emergency 2SLB 250≥HP≤500 .....	8 ppmvd CO or 90% CO reduction .....	85 ppmvd CO.
Non-Emergency 4SLB 50≥HP≤249 .....	95 ppmvd CO .....	95 ppmvd CO.
Non-Emergency 4SLB 250 ≥HP≤500 .....	9 ppmvd CO or 90% CO reduction .....	95 ppmvd CO.
Non-Emergency 4SRB 50≥HP≤500 .....	200 ppbvd formaldehyde or 90% formaldehyde reduction.	2 ppmvd formaldehyde.
All CI 50≥HP≤300 .....	40 ppmvd CO .....	40 ppmvd CO.
Emergency CI 300>HP≤500 .....	40 ppmvd CO .....	40 ppmvd CO.
Non-Emergency CI >300 HP .....	4 ppmvd CO or 90% CO reduction .....	40 ppmvd CO.
<50 HP .....	2 ppmvd formaldehyde .....	2 ppmvd formaldehyde.
Landfill/Digester 50≥HP≤500 .....	177 ppmvd CO .....	177 ppmvd CO.
Emergency SI 50≥HP≤500 .....	2 ppmvd formaldehyde .....	2 ppmvd formaldehyde.

In addition, certain existing stationary RICE located at major sources are subject to fuel requirements. Owners and operators of existing stationary non-emergency diesel-fueled CI engines greater than 300 HP with a displacement of less than 30 liters per cylinder located at major sources that use diesel fuel must use only diesel fuel meeting the requirements of 40 CFR 80.510(b).

This section requires that diesel fuel have a maximum sulfur content of 15 parts per million (ppm) and either a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent.

2. Existing Stationary RICE at Area Sources

The emission requirements that we are proposing in this action for existing stationary RICE located at existing area sources are shown in Table 2 of this preamble. Note that EPA is also co-proposing that the same standards apply during both normal operation and periods of startup and malfunctions.

TABLE 2—EMISSION STANDARDS AND REQUIREMENTS FOR EXISTING STATIONARY RICE LOCATED AT AREA SOURCES

Subcategory	Emission standards at 15 percent O <sub>2</sub> , as applicable, or management practice	
	Except during periods of startup, or malfunction	During periods of startup, or malfunction
Non-Emergency 2SLB 50≥HP≤249 .....	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.
Non-Emergency 2SLB HP≥250 .....	8 ppmvd CO or 90% CO reduction .....	85 ppmvd CO.

TABLE 2—EMISSION STANDARDS AND REQUIREMENTS FOR EXISTING STATIONARY RICE LOCATED AT AREA SOURCES—Continued

Subcategory	Emission standards at 15 percent O <sub>2</sub> , as applicable, or management practice	
	Except during periods of startup, or malfunction	During periods of startup, or malfunction
Non-Emergency 4SLB 50≥HP≤249 .....	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.
Non-Emergency 4SLB HP≥250 .....	9 ppmvd CO or 90% CO reduction .....	95 ppmvd CO.
Non-Emergency 4SRB HP≥50 .....	200 ppbvd formaldehyde or 90% formaldehyde reduction.	2 ppmvd formaldehyde.
Emergency CI 50≥HP≤500 .....	Change oil and filter every 500 hours; inspect air cleaner every 1000 hours, inspect all hoses and belts every 500 hours and replace as necessary.	Change oil and filter every 500 hours; inspect air cleaner every 1000 hours, inspect all hoses and belts every 500 hours and replace as necessary.
Emergency CI HP>500 .....	40 ppmvd CO .....	40 ppmvd CO.
Non-Emergency CI 50≥HP≤300 .....	Change oil and filter every 500 hours; inspect air cleaner every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.
Non-Emergency CI HP>300 .....	4 ppmvd CO or 90% CO reduction .....	40 ppmvd CO.
HP<50 .....	Change oil and filter every 200 hours; replace spark plugs every 500 hours; and inspect all hoses and belts every 500 hours and replace as necessary.	Change oil and filter every 200 hours; replace spark plugs every 500 hours; and inspect all hoses and belts every 500 hours and replace as necessary.
Landfill/Digester Gas 50≥HP≤500 .....	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.
Landfill/Digester Gas HP>500 .....	177 ppmvd CO .....	177 ppmvd CO.
Emergency SI 50≥HP≤500 .....	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.	Change oil and filter every 500 hours; replace spark plugs every 1000 hours; and inspect all hoses and belts every 500 hours and replace as necessary.
Emergency SI HP>500 .....	2 ppmvd formaldehyde .....	2 ppmvd formaldehyde.

3. New or Reconstructed Stationary RICE >500 HP at Major Sources, New or Reconstructed 4SLB Stationary RICE ≥250 HP at Major Sources and Existing 4SRB Stationary RICE >500 HP at Major Sources.

The EPA is co-proposing, in the alternative, as explained below, to

amend the existing regulations for new and reconstructed non-emergency 2SLB and CI stationary RICE >500 HP at major sources, new and reconstructed non-emergency 4SLB stationary RICE ≥250 HP at major sources, and existing 4SRB stationary RICE >500 HP at major sources, in order to set limits during

periods of startup and malfunction. These emission limitations are shown in Table 3 of this preamble. Note that EPA is also co-proposing that the same standards apply during both normal operation and periods of startup and malfunctions.

TABLE 3—EMISSION STANDARDS FOR NEW OR RECONSTRUCTED NON-EMERGENCY STATIONARY RICE >500 HP AT MAJOR SOURCES AND EXISTING NON-EMERGENCY 4SRB STATIONARY RICE >500 HP AT MAJOR SOURCES DURING PERIODS OF STARTUP OR MALFUNCTION

Subcategory	Emission standards at 15 percent O <sub>2</sub>
New or reconstructed non-emergency 2SLB >500 HP located at a major source of HAP emissions.	Limit concentration of CO in the stationary RICE exhaust to 259 ppmvd or less at 15 percent O <sub>2</sub> during periods of startup or malfunction.
New or reconstructed non-emergency 4SLB ≥250 HP located at a major source of HAP emissions.	Limit concentration of CO in the stationary RICE exhaust to 420 ppmvd or less at 15 percent O <sub>2</sub> during periods of startup or malfunction.
Existing non-emergency 4SRB >500 HP located at a major source of HAP emissions; or New or reconstructed non-emergency 4SRB >500 HP located at a major source of HAP emissions.	Limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> during periods of startup or malfunction.
New or reconstructed non-emergency CI >500 HP located at a major source of HAP emissions.	Limit concentration of CO in the stationary RICE exhaust to 77 ppmvd or less at 15 percent O <sub>2</sub> during periods of startup or malfunction.

4. Operating Limitations

The EPA is proposing operating limitations for existing stationary non-emergency 2SLB, 4SLB, 4SRB, and CI

RICE that are greater than 500 HP and are located at an area source, and existing stationary non-emergency CI RICE that are greater than 500 HP and are located at a major source. These are

large engines that are subject to proposed standards that would require the use of aftertreatment. Owners and operators of engines that are equipped with oxidation catalyst or NSCR must

maintain the catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water from the pressure drop across the catalyst that was measured during the initial performance test. Owners and operators of these engines must also maintain the temperature of the stationary RICE exhaust so that the catalyst inlet temperature is between 450 and 1350 degrees Fahrenheit (°F) for engines with an oxidation catalyst and 750 to 1250 °F for engines with NSCR. Owners and operators of engines that are not using oxidation catalyst or NSCR must comply with any operating limitations approved by the Administrator.

#### 5. Management Practices

As shown in Table 2 above, the EPA is proposing management practices for several subcategories of engines located at area sources. Such management practices include maintenance requirements that are expected to ensure that emission control systems are working properly. EPA asks for comments on these management practices and requests suggestions of additional maintenance requirements that may be needed for some of these engine subcategories.

#### 6. Fuel Requirements

In addition to emission standards and management practices, certain stationary CI RICE located at existing area sources are subject to fuel requirements. These fuel requirements are proposed in order to reduce the potential formation of sulfate compounds that are emitted when high sulfur diesel fuel is used in combination with oxidation catalysts and to assist in the efficient operation of the oxidation catalysts. Thus, owners and operators of stationary non-emergency diesel-fueled CI engines greater than 300 HP with a displacement of less than 30 liters per cylinder located at existing area sources must only use diesel fuel meeting the requirements of 40 CFR 80.510(b), which requires that diesel fuel have a maximum sulfur content of 15 ppm and either a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent.

#### *D. What are the requirements for demonstrating compliance?*

The following sections describe the requirements for demonstrating compliance under the proposed rule.

#### 1. Existing Stationary RICE at Major Sources

Owners and operators of existing stationary non-emergency RICE located

at major sources that are less than 100 HP and stationary emergency RICE located at major sources must operate and maintain their stationary RICE and aftertreatment control device (if any) according to the manufacturer's emission-related written instructions or develop their own maintenance plan. Owners and operators of existing stationary non-emergency RICE located at major sources that are less than 100 HP and existing stationary emergency RICE located at major sources do not have to conduct any performance testing.

Owners and operators of existing stationary non-emergency RICE located at major sources that are greater than or equal to 100 HP and less than or equal to 500 HP must conduct an initial performance test to demonstrate that they are achieving the required emission standards.

Owners and operators of existing stationary non-emergency RICE greater than 500 HP located at major sources must conduct an initial performance test and must test every 8,760 hours of operation or 3 years, whichever comes first, to demonstrate that they are achieving the required emission standards.

Owners and operators of stationary non-emergency CI RICE that are greater than 500 HP and are located at a major source must continuously monitor and record the catalyst inlet temperature if an oxidation catalyst is being used on the engine. The pressure drop across the catalyst must also be measured monthly. If an oxidation catalyst is not being used on the engine, the owner or operator must continuously monitor and record the operating parameters (if any) approved by the Administrator.

#### 2. Existing Stationary RICE at Area Sources

Owners and operators of existing stationary RICE located at area sources, that are subject to management practices, as shown in Table 2 of this preamble, must develop a maintenance plan that specifies how the management practices will be met. Owners and operators of existing stationary RICE that are subject to management practices do not have to conduct any performance testing.

Owners and operators of existing stationary RICE subject to numerical emission standards and that are located at area sources, as shown in Table 2 of this preamble, must conduct an initial performance test to demonstrate that they are achieving the required emission standards.

Owners and operators of existing stationary non-emergency RICE that are

greater than 500 HP and located at area sources must conduct an initial performance test and must test every 8,760 hours of operation or 3 years, whichever comes first, to demonstrate that they are achieving the required emission standards.

Owners and operators of existing stationary non-emergency 2SLB, 4SLB, 4SRB, and CI RICE that are greater than 500 HP and are located at an area source must continuously monitor and record the catalyst inlet temperature if an oxidation catalyst or NSCR is being used on the engine. The pressure drop across the catalyst must also be measured monthly. If an oxidation catalyst or NSCR is not being used on the engine, the owner or operator must continuously monitor and record the operating parameters (if any) approved by the Administrator.

#### *E. What are the reporting and recordkeeping requirements?*

The following sections describe the reporting and recordkeeping requirements that are required under the proposed rule.

Owners and operators of existing stationary emergency RICE that do not meet the requirements for non-emergency engines are required to keep records of their hours of operation. Owners and operators of existing stationary emergency RICE must install a non-resettable hour meter on their engines to record the necessary information. Emergency stationary RICE may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by the Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units are limited to 100 hours per year. Owners and operators can petition the Administrator for additional hours, beyond the allowed 100 hours per year, if such additional hours should prove to be necessary for maintenance and testing reasons. A petition is not required if the engine is mandated by regulation such as State or local requirements to run more than 100 hours per year for maintenance and testing purposes. There is no time limit on the use of emergency stationary engines in emergency situations, however, the owner or operator is required to record the length of operation and the reason the engine was in operation during that time. Records must be maintained documenting why the engine was operating to ensure the 100 hours per year limit for maintenance and testing operation is

not exceeded. In addition, owners and operators are allowed to operate their stationary emergency RICE for non-emergency purposes for 50 hours per year, but those 50 hours are counted towards the total 100 hours provided for operation other than for true emergencies and owners and operators may not engage in income-generating activities during those 50 hours. The 50 hours per year for non-emergency purposes cannot be used to generate income for a facility, for example, to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

Owners and operators of existing stationary RICE located at area sources, that are subject to management practices as shown in Table 2, are required to keep records that show that management practices that are required are being met. Such records are to be kept on-site by owners and operators. These records must include, but may not be limited to: oil and filter change dates, oil amounts added and corresponding hour on the hour meter, fuel consumption rates, air filter change dates, records of repairs and other maintenance performed.

In terms of reporting requirements, owners and operators of existing stationary RICE, except stationary RICE that are less than 100 HP, existing emergency stationary RICE, and existing stationary RICE that are not subject to numerical emission standards, must submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance test, and a notification of compliance for each stationary RICE which must comply with the specified emission limitations.

#### IV. Rationale for Proposed Rule

##### A. Which control technologies apply to stationary RICE?

EPA reviewed various control technologies applicable to stationary engines. For detailed information on the control technology review that EPA conducted, refer to information in the docket for this proposed rule. The following sections provide general descriptions of currently available controls that can be used to reduce emissions from stationary engines.

Non-selective catalytic reduction has been commercially available for many years and has been widely used on stationary engines. This technology utilizes catalytic material to reduce some pollutants like NO<sub>x</sub>, while also oxidizing other pollutants like CO, HAP

and VOC. The technology can be applied to rich burn stationary engines and is capable of significantly reducing HAP emissions from stationary RICE. Based on available information, NSCR appears to be technically feasible for rich burn engines down to 25 HP. The NESHAP for stationary rich burn RICE greater than 500 HP located at major sources that were promulgated in 2004 were based upon applying NSCR to meet the emission standards. In order to meet the emission standards promulgated on January 18, 2008 (73 FR 3568), new stationary rich burn engines are also expected to use NSCR.

Oxidation catalysts are another type of aftertreatment that can be applied to stationary engines and are typically used with lean burn engines. The technology can be applied to either diesel or natural gas fired lean burn engines. Significant reductions in HAP and CO are achieved with oxidation catalysts and applying the technology to diesel fired engines also yields PM mass emissions reductions. Oxidation catalyst control has been widely used and has been available for decades for use with lean burn stationary engines. While oxidation catalysts are very effective at reducing HAP and CO emissions, there is some concern about increasing NO<sub>2</sub> emissions as a result of using highly catalyzed devices. Thus, EPA requests comments and information on the potential increase in NO<sub>2</sub> emissions and any strategies to help reduce their formation.

Catalyzed diesel particulate filters are applicable to CI engines using diesel fuel and are primarily used to reduce PM emissions. Applying CDPF can significantly reduce PM emissions, while also significantly reducing emissions of HAP and CO. Catalyzed diesel particulate filters are the basis for EPA's current on-highway diesel PM standards (40 CFR Part 86), the Tier 4 emission standards for PM for most nonroad CI engines regulated by 40 CFR part 1039, the most recent locomotive and marine engine standards and also for most new non-emergency stationary CI engines regulated under 40 CFR part 60, subpart III. Recently finalized standards for stationary CI engines in California are also based on the use of particulate filters in some cases.

##### B. How did EPA determine the basis and level of the proposed standards?

###### 1. Stationary RICE at Major Sources

Section 112 of the CAA requires that EPA establish NESHAP for the control of HAP from new and existing sources in regulated source categories. The CAA requires the NESHAP for major sources

to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the maximum achievable control technology, or MACT.

In promulgating a MACT standard, EPA must first calculate the minimum stringency levels for new and existing sources in a category or subcategory. The minimum level of stringency is called the MACT "floor," and CAA section 112(d)(3) sets forth differing levels of minimum stringency that EPA's standards must achieve, based on whether they regulate new and reconstructed sources, or existing sources. For new and reconstructed sources, CAA section 112(d)(3) provides that the "degree of reduction in emissions that is deemed achievable [\* \* \*] shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar source, as determined by the Administrator." Emissions standards for existing units may be less stringent than standards for new units, but "shall not be less stringent \* \* \* than the average emissions limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information)," (or the best performing 5 sources for categories or subcategories with fewer than 30 sources). CAA section 112(d)(3). The MACT standard must be no less stringent than the MACT floor.

In developing MACT, EPA must also determine whether to control emissions "beyond-the-floor," after considering the costs, nonair quality health and environmental impacts, and energy requirements of such more stringent control. Section 112 of the CAA allows EPA to establish subcategories among a group of sources, based on criteria that differentiate such sources. The subcategories that have been developed for stationary RICE were previously listed and are necessary in order to capture the distinct differences, which could affect the emissions of HAP from these engines. The complete rationale explaining the development of these subcategories is provided in the memorandum titled "Subcategorization and MACT Floor Determination for Stationary Reciprocating Internal Combustion Engines ≤500 HP at Major Sources" and is available from the docket.

For the MACT floor determination, EPA reviewed the data in its Office of Air Quality Planning and Standards' RICE Population Database (hereafter referred to as the "Population Database") and RICE Emissions

Database (hereafter referred to as the "Emissions Database"). The Population and Emissions Databases represent the best information available to EPA. Information in the Population and Emissions Database was obtained from several sources and is further described in the notice of proposed rulemaking for the RICE NESHAP for engines greater than 500 HP at major sources (67 FR 77830, December 19, 2002) and in the docket for the RICE NESHAP rulemaking (EPA-HQ-OAR-2002-0059). In order to establish the emission standard for each subcategory of stationary existing RICE, EPA referred to the Emissions Database. The following sections describe the MACT floor review and proposed MACT determinations for each subcategory of existing stationary RICE.

a. *Stationary RICE <50 HP.* According to the Population Database there are no existing stationary RICE less than 50 HP using catalyst type controls. In assessing the average of the top twelve percent best performing engines, EPA determined that the MACT floor is 2 ppmvd formaldehyde. EPA is not expecting any stationary CI engines less than 50 HP since such engines are typically considered nonroad mobile engines and regulated under EPA's mobile source requirements. Also, EPA does not expect any lean burn engines in this subcategory as lean burn engines tend to be found in larger engine size segments. Therefore, EPA believes that engines less than 50 HP would be 4SRB engines. Subsequently, EPA reviewed formaldehyde emissions from 4SRB engines and averaged the emissions associated with the best performing 12 percent of sources. As a result, the MACT floor for engines below 50 HP is 2 parts per million by volume, dry basis (ppmvd) of formaldehyde at 15 percent oxygen (O<sub>2</sub>).

EPA considered regulatory options more stringent than the MACT floor, in particular, emission standards based on the use of NSCR. The cost per ton of HAP reduced for stationary engines less than 50 HP equipped with NSCR is substantial, particularly when considering the potential HAP reductions that would be expected. Therefore, MACT is equivalent to the MACT floor. For details on the cost per ton analysis, refer to the memorandum entitled "Above-the-Floor Determination for Stationary RICE," included in the docket.

b. *Stationary Landfill/Digester Gas ≥50 HP.* According to the Population Database there are no existing landfill or digester gas engines using catalyst type controls. EPA consulted several sources, including the Emissions Database, in

order to determine the level being achieved by the best performing 12 percent of landfill and digester gas engines.

Based on reviewing recently obtained test reports for landfill and digester gas engines, EPA concluded that the latest information obtained on the current levels being achieved by landfill gas engines is the most appropriate and representative information and therefore was used to determine the MACT floor limit. EPA analyzed the CO emissions from landfill and digester gas test reports. EPA has previously discussed the appropriateness of using CO emissions as a surrogate for HAP emissions and therefore reviewed CO emissions from landfill and digester gas engines. EPA selected the best performing 12 percent and averaged those 12 percent to determine the MACT floor. As a result, the MACT floor for landfill and digester gas stationary RICE greater than or equal to 50 HP is 177 ppmvd of CO at 15 percent O<sub>2</sub>.

Currently, there are no viable beyond-the-floor options for engines that combust landfill or digester gas. Aftertreatment controls could theoretically be applied to engines burning waste gas; however, numerous studies have shown that a family of silicon-based compounds named siloxanes present in landfill gas can foul add-on catalyst controls. Such fouling can render the catalyst inoperable within short periods of time. Pre-treatment systems could be applied to clean the fuel prior to combustion theoretically allowing catalysts to be used, but has not shown to be a reliable technology at this time. Therefore, MACT is equivalent to the MACT floor.

c. *Stationary Emergency CI 50≥ HP ≤500.* EPA reviewed CO emissions from CI engines and selected the best performing 12 percent. As a result, the MACT floor for CI emergency stationary RICE greater than or equal to 50 HP and less than or equal to 500 HP is 40 ppmvd of CO at 15 percent O<sub>2</sub>.

As part of our analysis for the possibility of going beyond the MACT floor, EPA considered requiring add-on controls for emergency engines. However, due to the limited operation of emergency engines (about 50 hours per year on average), the cost per ton of HAP removed by such controls is high. The estimated cost of oxidation catalyst per ton of HAP reduced ranges from \$1 million to \$2.8 million for emergency CI engines in this size range. For CDPF, the estimated cost per ton of HAP reduced for emergency CI engines between 50 and 500 HP ranges from \$3.7 million to \$8.7 million. In addition, the total HAP

reductions achieved by applying aftertreatment controls would be minimal since stationary emergency engines are operated only an average of about 50 hours per year. Therefore, MACT is equivalent to the MACT floor. A fuller discussion of EPA's analysis of regulatory alternatives above-the-floor is presented in the memorandum entitled "Above-the-Floor Determination for Stationary RICE."

d. *Stationary Non-Emergency CI 50≥ HP ≤500.* As a result of our review of the Emissions Database, the MACT floor for CI non-emergency stationary RICE greater than or equal to 50 HP and less than or equal to 500 HP is 40 ppmvd of CO at 15 percent O<sub>2</sub>.

As part of our analysis of going beyond the MACT floor, EPA considered the use of add-on controls for this subcategory of engines. The applicable add-on controls that yield significant HAP reductions are oxidation catalyst and CDPF. Diesel oxidation catalysts are capable of reducing HAP emissions by significant amounts in excess of 90 percent in some cases. Diesel oxidation catalysts also reduce emissions of CO as well as PM. Achievable mass reductions of PM are on the order of 30 percent for oxidation catalysts. Catalyzed diesel particulate filters are capable of reducing HAP and CO emissions by similar if not greater amounts, and are more efficient in reducing PM than oxidation catalysts. Achievable PM reductions are on the order of 90 percent or more with CDPF. However, CDPFs are considerably more expensive than diesel oxidation catalysts.

EPA estimated the cost per ton of HAP removal by potentially applying oxidation catalysts and CDPFs to existing non-emergency CI engines. The specific costs associated with add-on controls can be found in memoranda available from the rulemaking docket. The cost per ton of HAP removed for CDPFs is in general significantly higher than the cost per ton of HAP removed for oxidation catalysts, and the cost per ton for both options drastically increases as the size of the engine decreases and is more favorable towards larger size engines. EPA requests data and other information on the ability of oxidation catalysts to remove HAP compared to CDPF. In addition, we request comment on the performance capability of these control devices to remove metallic HAP.

Considering the HAP emission reductions capable from oxidation catalysts, the cost of oxidation catalyst control compared to CDPF, and the low capital costs associated with oxidation catalyst makes oxidation catalysts a

favorable option for reduction of HAP emissions from larger existing non-emergency stationary diesel engines. However, going above-the-floor and requiring oxidation catalysts on all non-emergency stationary CI engines would require significant total capital investment and total annual control costs. As stated, the cost per ton significantly decreases with increasing HP. For the greater than 300 HP segment the cost per ton of HAP removed, which includes a mixture of organic and metallic HAP, is estimated to be \$51,973. This cost is almost a third less than the estimated cost per ton of \$140,395 for stationary engines 50 to 100 HP.

Stationary existing diesel engines were largely uncontrolled at the Federal level prior to the promulgation of EPA's emission standards for stationary diesel engines in 2004, which affected engines constructed beginning in 2002. Non-emergency diesel engines are estimated to emit 90 percent of total combined PM and NO<sub>x</sub> emissions from all existing stationary diesel engines, with emergency engines emitting the remaining 10 percent. Of the non-emergency diesel engines, about 50,000 non-emergency engines rated 300 HP or higher were built prior to 2002, which is about 29 percent of the existing population of non-emergency stationary diesel engines. These 50,000 non-emergency diesel engines emit approximately 72 percent of the total HAP emissions, 66 percent of the total PM emissions, and 62 percent of the total NO<sub>x</sub> emissions from existing non-emergency stationary diesel engines. This information is based on data from the Power Systems Research Database that was presented in Tables 1–4 of EPA's January 24, 2008 ANPRM for stationary diesel engines emission standards (73 FR 4136).

For these reasons, EPA concluded that it can achieve the highest level of HAP emission reduction relative to cost, while requiring controls where appropriate, by requiring more stringent emission standards on non-emergency stationary diesel engines with a power rating greater than 300 HP. For these reasons and considering the higher level of HAP reductions achieved from engines greater than 300 HP and the reduced annual cost of control, EPA believes that requiring above-the-floor levels that rely on oxidation catalyst control is appropriate for engines greater than 300 HP. EPA solicits comments and data on whether 300 HP is the appropriate size division for setting beyond-the-floor MACT standards requiring the use of add-on controls. Specifically, EPA is seeking comment

on whether it would be appropriate to extend the more stringent standards to engines that are less than 300 HP.

Of further consideration are the co-benefits that would be achieved by the use of oxidation catalyst as it will reduce other pollutants such as CO and PM. Taking into account the reductions in CO and PM associated with applying oxidation catalyst to non-emergency CI engines, the cost per ton of pollutants reduced decreases. The total co-benefits of this proposed regulation are presented in a separate memorandum titled "Impacts Associated with NESHAP for Existing Stationary RICE," which provides the costs and emissions impacts of this regulation. These emission estimates are also summarized in Chapter 4 of the RIA.

EPA believes that the emission reductions associated with use of oxidation catalysts, taking into account the costs of such controls, are justified under section 112(d). Therefore, EPA is proposing MACT to be the level that is achieved by applying oxidation catalyst to non-emergency CI engines greater than 300 HP, which is 4 ppmvd of CO at 15 percent O<sub>2</sub>, or 90 percent CO efficiency. A fuller discussion of EPA's analysis of regulatory alternatives above-the-floor is presented in the memorandum entitled "Above-the-Floor Determination for Stationary RICE."

While these proposed HAP emission standards would not require the use of CDPFs, EPA notes that when compared to oxidation catalysts, CDPFs provide significantly greater reductions in levels of PM from diesel engines, which are a significant health concern. PM emissions from these engines contain several constituents, including black carbon and trace amounts of metallic HAP. EPA estimates that the range of PM<sub>2.5</sub> emission reductions would increase from 2,600 tons to 7,600 tons if CDPFs are used rather than oxidation catalysts.

The contribution of black carbon emissions to global climate is being evaluated in a number of scientific forums.<sup>3,4</sup> EPA is interested in comments and information on other regulatory and non-regulatory approaches that could help address black carbon emissions from existing stationary diesel engines.

<sup>3</sup> Intergovernmental Panel on Climate Change (IPCC). 2007. Changes in Atmospheric Constituents and in Radiative Forcing, in *Climate Change 2007*, Cambridge University Press, New York, Cambridge University Press.

<sup>4</sup> Atmospheric Aerosol Properties and Climate Impacts. 2009. U.S. Climate Change Science Program Synthesis and Assessment Product 2.3, January 2009.

Sources may wish to review whether it is appropriate for some existing CI engines to use CDPFs to meet the requirements of this rule, given the considerable co-benefits of using CDPF. For example, the cost effectiveness associated with reducing PM<sub>2.5</sub> with oxidation catalysts on a 300 HP diesel engine is \$27,000 per ton, while using a CDPF improves the cost effectiveness to about \$9,000 per ton. These cost effectiveness numbers include any potential reductions of metallic HAP which would be emitted in the particle phase. EPA notes, however, that some have suggested that the use of CDPF on older uncontrolled engines may be more problematic than for newer engines that already have some level of engine control.

One of the potential problems raised by industry are the difficulties with retrofitting CDPFs on mechanically-controlled engines versus those that use electronic controls. Furthermore, the diesel PM levels from older engines are, according to some, too high for efficient operation of a CDPF. EPA is requesting comment on the use of CDPF to meet the HAP standards for this rule and on the benefits generally of using CDPFs on older stationary CI engines. EPA also asks for comment on technical feasibility issues that might preclude the use of such devices on older diesel engines.

Stationary diesel engines also emit trace amounts of metallic HAP. EPA believes that formaldehyde and CO are reasonable surrogates for total HAP, including these very small trace emissions of metals. Nonetheless, EPA is taking comment on whether there are more appropriate surrogates for metallic HAP from stationary diesel engines. EPA does not have data regarding the use of other surrogates for these emissions from stationary diesel engines, so EPA is soliciting data on any other such surrogates.

The proposed rule requires the use of ULSD for existing non-emergency stationary diesel engines greater than 300 HP with a displacement of less than 30 liters per cylinder. The use of ULSD is necessary due to concerns about oxidation catalysts simultaneously oxidizing SO<sub>2</sub> to form sulfate particulate. A limit on the diesel fuel sulfur level of 15 ppm will reduce the potential for increased sulfate emissions from diesel engines equipped with oxidation catalysts. The limit on fuel sulfur will also improve the efficiency of the oxidation catalyst. The use of ULSD will also enable stationary diesel engines to utilize CDPF if desired. EPA has already promulgated similar diesel fuel sulfur standards for highway and

nonroad diesel engines and for new stationary diesel engines.

e. *Stationary Non-Emergency CI >500 HP.* A regulation covering existing stationary diesel engines greater than 500 HP at major sources was promulgated in 2004. However, based on the MACT floor analysis conducted at that time, the regulation subjected existing diesel engines greater than 500 HP at major sources to emission standards of no further emission control.

However, due to the availability of technically feasible and reasonably cost-effective technologies to control emissions from these existing large stationary CI engines, and the potential of reducing exhaust HAP (as well as PM), EPA is proposing to address HAP emissions from these existing diesel engines >500 HP pursuant to its authority under CAA section 112(d).

As a result of our review of the Emissions Database, the MACT floor for CI non-emergency stationary RICE greater than or equal to 50 HP and less than or equal to 500 HP is 40 ppmvd of CO at 15 percent O<sub>2</sub>.

As part of our analysis of going beyond the MACT floor, EPA considered the emissions associated with the use of oxidation catalysts. Similar to EPA's analysis of the emission reductions and costs associated with the use of oxidation catalysts for diesel engines from 300–500 HP, EPA believes the HAP emission reductions associated with use of oxidation catalysts, taking into account the costs of such controls, are justified under section 112(d). A fuller discussion of EPA's analysis of regulatory alternatives above-the-floor is presented in the memorandum entitled "Above-the-Floor Determination for Stationary RICE."

EPA is proposing to address emissions from existing non-emergency CI engines greater than 500 HP located at major sources by limiting the CO to 4 ppmvd at 15 percent O<sub>2</sub> or by reducing CO by 90 percent or more. The proposed standards are based on what is achieved by applying oxidation catalyst controls. Oxidation catalyst controls reduce HAP, CO, and PM from diesel engines. The proposed emission standard is in terms of CO, which has been shown to be an appropriate surrogate for HAP. Stationary diesel engines also emit trace amounts of metallic HAP. EPA believes that formaldehyde and CO are reasonable surrogates for total HAP, including these very small trace emissions of metals. Nonetheless, EPA is taking comment on whether there are more appropriate surrogates for metallic HAP from

stationary diesel engines. EPA does not have data regarding the use of other surrogates for these emissions from stationary diesel engines, so EPA is soliciting data on any other such surrogates.

For the same reasons provided above for non-emergency diesel engines between 300–500 HP, EPA is requiring the use of ULSD for non-emergency diesel engines above 500 HP.

f. *Stationary Emergency SI 50≥HP≥500.* As a result of our review of the Emissions Database and industry estimates, EPA determined the MACT floor for SI emergency stationary RICE greater than or equal to 50 HP and less than or equal to 500 HP is 2 ppmvd of formaldehyde at 15 percent O<sub>2</sub>.

As part of EPA's beyond-the-floor MACT analysis, EPA considered add-on controls for this subcategory. However, the same issues apply to emergency SI engines as to emergency CI engines; in particular, the cost-effectiveness of such controls for HAP reduction on emergency engines and questions about the feasibility of such controls on emergency engines. According to the Population Database there are no SI emergency stationary RICE greater than or equal to 50 HP and less than or equal to 500 HP using catalyst type controls. Therefore, it is not appropriate to require add-on controls on emergency SI engines. EPA also found no other techniques appropriate to go beyond the MACT floor. MACT is therefore equivalent to the MACT floor.

g. *Stationary Non-Emergency 2SLB 50≥HP≤500.* EPA selected the best performing 12 percent of engines for formaldehyde, identified the corresponding CO tests, and averaged the CO emissions from the corresponding tests. As a result, the MACT floor for non-emergency 2SLB stationary RICE greater than or equal to 50 HP and less than or equal to 500 HP is 85 ppmvd of CO at 15 percent O<sub>2</sub>.

As part of EPA's beyond-the-floor MACT analysis, EPA considered applying oxidation catalyst controls to this subcategory and estimated the cost per ton of HAP removed. EPA believes the costs to be reasonable for engines 250 HP and above equipped with oxidation catalyst and can be justified in light of the significant reductions of HAP that would be achieved. For example, the cost effectiveness of reducing HAP from 2SLB engines in the 300 to 500 HP size range is about \$2,900 per ton. Oxidation catalysts can reduce HAP and CO from stationary spark-ignition engines by approximately 90 percent. The Emissions Database did not indicate any other proven and cost-effective control technologies or other

methods that can reduce HAP emissions from 2SLB engines to levels lower than those achieved by oxidation catalysts. The proposed emission limit is in terms of CO, which has been shown to be an appropriate surrogate for HAP. EPA believes the HAP emission reductions associated with use of oxidation catalysts, taking into account the costs of such controls, are justified. Therefore, MACT for engines 250 HP and above is the level that is achievable by applying oxidation catalyst and is 8 ppmvd of CO at 15 percent O<sub>2</sub> or 90 percent CO efficiency. MACT for engines below 250 HP is equivalent to the MACT floor.

h. *Non-Emergency 4SLB 50≥HP≤249.* According to the Population Database, there are no non-emergency 4SLB stationary RICE greater than or equal to 50 HP and less than or equal to 249 HP using catalyst type controls.

EPA reviewed formaldehyde emissions tests from 4SLB engines. EPA selected the best performing 12 percent of engines for formaldehyde and identified the corresponding CO values from the top 12 tests for formaldehyde. The corresponding CO values were then averaged. As a result, the MACT floor for 4SLB stationary RICE greater than or equal to 50 HP and less than or equal to 249 HP is 95 ppmvd of CO at 15 percent O<sub>2</sub>.

As part of EPA's beyond-the-floor MACT analysis, EPA considered applying oxidation catalyst controls to this subcategory. However the cost per ton of HAP removed was determined to be too significant and to outweigh the expected HAP reductions from these stationary engines. Therefore, MACT is equivalent to the MACT floor.

i. *Non-Emergency 4SLB 250≥HP≤500.* For non-emergency 4SLB engines between 250 and 500 HP, EPA found that 5.7 percent of the population is controlled with aftertreatment that yields HAP reductions, particularly oxidation catalysts.

As part of EPA's beyond-the-floor MACT analysis, EPA considered applying oxidation catalyst and estimated the cost per ton of HAP removed. The use of oxidation catalysts on these engines can achieve 90 percent HAP reductions. EPA concluded that the control costs associated with installing oxidation catalysts are reasonable for this type of stationary engine, and thus can be justified considering the significant reductions of HAP that would be achieved by using oxidation catalysts. Oxidation catalysts can reduce HAP and CO from stationary spark-ignition engines. The proposed emission limit is in terms of CO, which has been shown to be an appropriate surrogate for HAP. EPA believes the



HAP emission reductions associated with use of oxidation catalysts, taking into account the costs of such controls, are justified. The Emissions Database did not indicate any other proven and cost-effective control technologies or other methods that can reduce HAP emissions from 4SLB engines to levels lower than those achieved by oxidation catalysts.

EPA determined that the appropriate numerical MACT level could be determined by analyzing uncontrolled levels of HAP and reducing the levels by the expected reductions from oxidation catalysts. EPA analyzed formaldehyde emissions from 4SLB tests for engines without add-on controls. EPA took the average of the best performing 12 percent of engines for formaldehyde and identified the corresponding CO values from the best performing 12 percent of tests. The corresponding CO values were then averaged. The result for 4SLB stationary RICE greater than or equal to 250 HP and less than or equal to 500 HP is 95 ppmvd of CO at 15 percent O<sub>2</sub>.

Given an expected 90 percent reduction from the use of oxidation catalysts, MACT is 9 ppmvd of CO at 15 percent O<sub>2</sub> or 90 percent CO efficiency. A fuller discussion of EPA's analysis of regulatory alternatives above-the-floor is presented in the memorandum entitled "Above-the-Floor Determination for Stationary RICE."

*j. Non-Emergency 4SRB 50≥HP≤500.* For SI non-emergency stationary 4SRB engines greater than or equal to 50 HP and less than or equal to 500 HP, EPA found that 5.6 percent of the population are using catalyst type controls, according to the Population Database. The add-on control that typically applies to this subcategory of engines is NSCR.

As part of EPA's beyond-the-floor MACT analysis, EPA considered the application of NSCR to such engines. The Emissions Database provided no other proven and cost effective emission control methods currently available which can reduce HAP emissions from 4SRB engines to levels lower than that achieved through NSCR control.

The technology is proven, has been applied to thousands of rich burn engines, and is efficient at reducing HAP emissions. EPA considered applying NSCR and estimated the cost per ton of HAP removed. EPA believes the costs are reasonable and appropriate and can be justified considering the significant reductions of HAP that would be achieved by using NSCR on this subcategory of engines. For example, the cost effectiveness of reducing HAP from stationary 4SRB

engines in the 300 to 500 HP size range is about \$5,000 per ton.

Other pollutants are also reduced through the use of NSCR including significant reductions in NO<sub>x</sub> and CO emissions. Taking into consideration the emission reductions achieved by applying NSCR to 4SRB engines greater than 50 HP, the cost per ton of emissions reduced is favorable for this type of stationary engines. A fuller discussion of EPA's analysis of regulatory alternatives above-the-floor is presented in the memorandum entitled "Above-the-Floor Determination for Stationary RICE."

EPA determined that the appropriate numerical MACT level could be determined by analyzing uncontrolled levels of HAP and reducing the levels by the expected reductions from NSCR. EPA analyzed formaldehyde emissions from 4SRB engines without add-on controls and averaged the emissions from the best performing 12 percent of engines. The result for 4SRB stationary RICE greater than or equal to 50 HP and less than or equal to 500 HP is 2 ppmvd of formaldehyde at 15 percent O<sub>2</sub>.

Therefore, MACT is the level that is achievable by applying NSCR and is 200 ppbv of formaldehyde at 15 percent O<sub>2</sub> or 90 percent formaldehyde efficiency.

## 2. Engines at Area Sources

Under section 112(k) of the CAA, EPA developed a national strategy to address air toxic pollution from area sources. The strategy is part of EPA's overall national effort to reduce toxics, but focuses on the particular needs of urban areas. Section 112(k) requires EPA to list area source categories and to ensure 90 percent of the emissions from area sources are subject to standards pursuant to section 112(d) of the CAA. Under section 112(k), the CAA specifically mandated that EPA develop a strategy to address public health risks posed by air toxics from area sources in urban areas. Section 112(k) also mandates that the strategy achieve a 75 percent reduction in cancer incidence attributable to HAP emitted by stationary sources. As mentioned, stationary RICE are listed as a source category under the Urban Air Toxics Strategy developed under the authority of sections 112(k) and 112(c)(3) of the CAA. These area sources are subject to standards under section 112(d).

Section 112(d)(5) of the CAA indicates that EPA may elect to promulgate standards or requirements to area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." For

determining emission limitations, GACT standards can be more flexible requirements than MACT standards. For example, the CAA provisions for setting GACT do not require setting control baseline or "floor" that is equal to the average emission levels achieved by the best performing 12 percent of a type of facility, for existing sources, or the emission control achieved in practice by the best controlled similar source, for new sources. EPA is permitted to consider costs and other factors during the GACT analysis. Control technology options available to stationary RICE located at area sources are the same as those discussed for engines located at major sources.

The requirements being proposed in this action are applicable to stationary RICE located at area sources of HAP emissions. EPA has chosen to propose national requirements, which not only focus on urban areas, but address emissions from area sources in all areas (urban and rural).

For stationary RICE, it would not be practical or appropriate to limit the applicability to urban areas and EPA has determined that national standards are appropriate. Stationary RICE are located in both urban and rural areas. In fact, there are some rural areas with high concentrations of stationary RICE. Stationary RICE are employed in various industries used for both the private and public sector for a wide range of applications such as generator sets, irrigation sets, air and gas compressors, pumps, welders, and hydro power units. Stationary RICE may be used by private entities for agricultural purposes and be located in a rural area, or it may be used as a standby generator for an office building located in an urban area. Other stationary RICE may operate at large sources for electric power generation, transmission, or distribution purposes.

In previous rulemakings, EPA had determined that stationary RICE are located all over the U.S., and EPA cannot say that these sources are more prevalent in certain areas of the country. Therefore, for the source category of stationary RICE, EPA is proposing national requirements without a distinction between urban and non-urban areas. EPA requests comment on this approach and its appropriateness for today's population of stationary RICE.

For subcategories of larger engines, particularly those above 500 HP and those for which EPA has based MACT on the use of add-on controls, the control technologies that create the basis for the emission standards for engines located at major sources are readily available and feasible for all engines.



Further, for those cases where EPA is basing the MACT emission standards on add-on controls, the MACT standards is in all cases beyond the MACT floor. In these cases, EPA determined that costs associated with implementing HAP-reducing technologies are reasonable and justified. Hence, there is no reason why GACT should be any different than MACT for larger engines located at area sources. Consequently, EPA has determined that for area sources that are non-emergency 2SLB engines greater than or equal to 250 HP, non-emergency 4SLB engines greater than or equal to 250 HP, non-emergency 4SRB greater than or equal to 50 HP, emergency CI engines greater than 500 HP, non-emergency CI engines greater than 300 HP, landfill and digester gas engines greater than 500 HP, and emergency SI engines greater than 500 HP, GACT is based on the same emission controls as are discussed above for major sources.

As discussed, GACT provides EPA more flexibility in setting requirements than MACT and can include available control technologies or management practices to reduce HAP emissions. EPA has determined that for area sources that are non-emergency 2SLB engines greater than or equal to 50 HP and less than 250 HP, non-emergency 4SLB engines greater than or equal to 50 HP and less than 250 HP, emergency CI engines greater than or equal to 50 HP and less than or equal to 500 HP, non-emergency CI engines greater than or equal to 50 HP and less than or equal to 300 HP, engines less than 50 HP, landfill and digester gas engines greater than or equal to 50 HP and less than or equal to 500 HP, and emergency SI engines greater than or equal to 50 HP and less than or equal to 500 HP, EPA proposes that GACT is management practices.

Management practices include several specific maintenance requirements that will help ensure that the exhaust emissions from these engines are minimized. Some of the management practices include changing oil and filter, changing spark plugs and replacement of air cleaners. EPA specifically requests comments on these management practices and asks commenters to provide information on any additional management practices that may be appropriate for these engines. A maintenance plan is required in order to help keep records that the management practices are being followed.

Although add-on controls are technically feasible for some engines located at area sources, control costs are high and EPA believes that it is possible to achieve reasonable controls using management practices. For example, capital costs associated with installing

an oxidation catalyst on a 200 HP diesel engine are about \$2,100 with annual costs of \$700. Such costs are significant particularly when one considers that the cost per ton of this option is on the order of \$72,000 per ton of HAP reduced. Considering the high cost per ton of HAP reduced, it is difficult to justify requiring add-on controls on these engines.

Furthermore, EPA is attempting to minimize the burden of the proposed rule, specifically on small businesses and individual owners and operators. EPA does not believe that management practices would be a substantial burden on owners and operators such as private owners and small entities.

### 3. Startup, Shutdown, and Malfunction Limits

With respect to the exemption from emission standards during periods of Startup, Shutdown and Malfunction in the General Provisions (*see, e.g.*, 40 CFR 63.6(f)(1) (exemption from non-opacity emission standards) and (h)(1) (exemption from opacity and visible emission standards)), we note that on December 19, 2008, in a decision addressing a challenge to the 2002, 2004 and 2006 amendments to those provisions, the Court of Appeals for the District of Columbia Circuit vacated the SSM exemption. *Sierra Club v. EPA* 2008 U.S. App. LEXIS 25578 (D.C. Cir. Dec. 19, 2008). We are still evaluating the recent court decision, and the time for appeal of that decision has not yet run. However, in light of the court decision, EPA is proposing not to apply the SSM exemption for non-opacity standards set forth in 40 CFR 63.6(f)(1) to this NESHAP. The SSM exemption for opacity and visible emissions standards in 40 CFR 63.6(h)(1) is not relevant here because the standards proposed in this action do not constitute opacity or visible emission standards.

EPA recognizes that there are different modes of operation for any stationary source, and those modes generally include start-up, normal operations, shut-down, and malfunctions. EPA does not believe that emissions should be different during periods of shutdown compared to normal operations, but EPA does believe that emissions will likely be different during periods of startup and malfunction, particularly for engines relying on catalytic controls.

EPA is proposing two options in this action for subcategories where the proposed emission standard is based on the use of catalytic controls. The first option is to have the same standards apply during both normal operation and periods of startup and malfunctions. While EPA is aware of the general

properties of engine catalytic controls, our Emissions Database has no specific data showing that emissions during periods of startup and malfunction are different than during normal operation. Furthermore, EPA does not have substantial information regarding the specific parameters (e.g. timing, temperature) of such differences in emissions.

Although we lack specific data on emissions during start-up and malfunction, EPA recognizes that emissions are likely to differ during these periods for engines relying on catalytic controls. Accordingly, for subcategories where the proposed emission standard is based on the use of catalytic controls, EPA is also co-proposing emission limitations that would apply to stationary RICE during periods of startup and malfunction in order to account for the different emissions characteristics of stationary internal combustion engines during startup and malfunction periods, compared to other periods of operation. In particular, engines using catalytic controls like OC and NSCR to reduce emissions cannot rely on the operation of such devices during periods of startup, because the engine exhaust temperatures need to increase up to a certain level for such controls to work effectively. In addition, add-on controls cannot be presumed to work reliably during periods of malfunction. Malfunctions may include failure of engine control systems that are essential for the proper performance and emissions of the engine. Engine malfunctions may affect the exhaust gas temperatures and composition of the exhaust gases in ways that could decrease the effectiveness or even damage permanently the emission control device.

During startup operation with an OC, engine exhaust temperatures must reach about 250 to 300 degrees C in order to work effectively. In the case of NSCR, exhaust gas temperatures must reach between 425 to 650 degrees C in order to work effectively. It can take about 15 to 30 minutes of operation—depending on engine size—for exhaust temperatures to reach those temperature levels. Thus, for the subcategories of stationary RICE discussed above where the proposed emission standard is based on the use of catalytic controls, EPA is co-proposing that the standards during periods of startup and malfunction will be based on emissions expected from the best controlled sources prior to the full warm-up of the catalytic control. The standard is based on the emissions levels from the best controlled engines that do not include catalytic controls,

because prior to warm-up, the engine conditions do not allow for effective catalytic control.

Under either co-proposal, for the subcategories of stationary RICE discussed above where the proposed emission limitations during normal operation are not based on the use of oxidation catalyst or NSCR, we are proposing the same emission limitations during startup and malfunction as during periods of normal operation.

EPA requests comment on these proposed approaches to addressing emissions during start-up, shutdown and malfunction and the proposed standards that would apply during these periods. See Tables 1, 2 and 3 of this preamble, setting forth proposed standards using the approach of differentiating between periods of start-up and malfunction and normal operations. EPA requests comment on other approaches to setting MACT standards during periods of start-up, shutdown or malfunction, and notes that an approach that sets a single MACT standard that applies at all times, including SSM periods, may result in a higher overall MACT standard, based on the need to account for variation of operations in setting MACT standards. *Sierra Club v. EPA*, 439 F.3d 875 (D.C. Cir. 2007) (holding that EPA may legitimately account for variability because "each [source] must meet the [specified] standard every day and under all operating conditions." (quoting *Mossville Environmental Action Network v. EPA*, 370 F.3d 1232 (D.C. Cir. 2004)). EPA also asks for comment on the level of specificity needed to define the periods of startup and malfunction to assure clarity regarding when standards for those periods apply, including whether it should be based on the time necessary for an engine to warm to temperatures needed for effective catalytic control and whether maximum time limits should be included.

### C. How did EPA determine the compliance requirements?

EPA discussed the specific compliance requirements that are being proposed in section III of the preamble. In general, EPA has attempted to reduce the burden on affected owners and operators. The following presents the rationale for the proposed compliance requirements.

Stationary non-emergency RICE located at major sources that are less than 100 HP, stationary RICE located at area sources that are not subject to numerical emission standards, and all stationary emergency RICE are only subject to compliance requirements in

the form of management practices to minimize emissions. EPA does not believe that the proposed management practices are a burdensome requirement, and it is expected that most owners and operators are already using such practices. It is in the owner's best interest to operate and maintain the engine and aftertreatment device (if one is installed) properly. The proposed requirements minimize the burden on individual owners and operators and small entities, while ensuring that the engine and aftertreatment device is operated and maintained correctly. Further, EPA does not believe that it is reasonable to subject small stationary RICE and stationary emergency RICE to performance testing. Subjecting the engines to maintenance requirements will assist in minimizing and maintaining emissions below the emission standards. The cost of requiring performance testing on these engines would be too significant when compared to the cost of the unit itself and to the benefits of such testing. In addition, subjecting stationary RICE located at area sources that are not subject to numerical emission standards to performance testing would serve little purpose, given that the purpose of testing is to determine whether the engine is meeting numerical limits, which is unnecessary where no such limits apply.

For stationary non-emergency RICE located at major sources that are greater than or equal to 100 HP and stationary RICE located at area sources that are subject to numerical emission standards, EPA determined that performance testing is necessary to confirm that the emission standards are being met. Again, EPA has attempted to reduce compliance requirements and is proposing a level of performance testing commensurate with ensuring that the emission standards are being met. Therefore, for non-emergency stationary RICE located at major sources that are greater than or equal to 100 HP and less than or equal to 500 HP and stationary RICE located at area sources that are subject to numerical emission standards, EPA chose to require an initial performance test only. However, if the engine is rebuilt or overhauled, the engine must be re-tested to demonstrate that it meets the emission standards.

For existing non-emergency stationary RICE greater than 500 HP, testing every 8,760 hours of operation of 3 years, whichever comes first, is also required. EPA believes such a requirement is appropriate for these size engines, but does not believe that further testing is necessary for smaller engines, i.e., those

less than or equal to 500 HP. Subsequent performance testing is appropriate for engines greater than 500 HP due to their size and frequency of operation. Plus, many States mandate more stringent compliance requirements for large engines. Finally, the RICE NESHAP for engines greater than 500 HP located at major sources also required further performance testing following the initial compliance demonstration.

Owners and operators of stationary non-emergency 2SLB, 4SLB, 4SRB, and CI RICE that are greater than 500 HP and are located at an area source, and stationary non-emergency CI RICE that are greater than 500 HP and are located at a major source must continuously monitor pressure drop across the catalyst and catalyst inlet temperature if the engine is equipped with oxidation catalyst or NSCR. These parameters serve as surrogates of the catalyst performance. The pressure drop across the catalyst can indicate if the catalyst is damaged or fouled, in which case, catalyst performance would decrease. If the pressure drop across the catalyst deviates by more than two inches of water from the pressure drop across the catalyst measured during the initial performance test, the catalyst might be damaged or plugged. If the catalyst is changed, the pressure drop across the catalyst must be reestablished. The catalyst inlet temperature is a requirement for proper performance of the catalyst. In general, the catalyst performance will decrease as the catalyst inlet temperature decreases. In addition, if the catalyst inlet temperature is too high, it might be an indication of ignition misfiring, poisoning, or fouling, which would decrease catalyst performance. In addition, the catalyst requires inlet temperatures to be greater than or equal to the specified temperature for the reduction of HAP emissions.

EPA is proposing to remove the proposed EPA Method 323 from 40 CFR part 63, subpart ZZZZ, as an acceptable method for determining compliance with the formaldehyde emission limitation. The method is currently included as an optional test method for measuring formaldehyde in addition to EPA Method 320 and ASTM D6348-03 for stationary engines. EPA Method 323 was first proposed as part of the NESHAP for Stationary Combustion Turbines published January 14, 2003 (68 FR 1888) for measuring formaldehyde emissions from natural gas-fired sources. However, the method was not included in the final rule due to reliability concerns and EPA never promulgated EPA Method 323 as a final

standard in 40 CFR part 63, appendix A. Due to unresolved technical issues associated with the method affecting engine test results, EPA has no plans to finalize EPA Method 323. Therefore, EPA finds it appropriate to propose to remove the method from subpart ZZZZ.

*D. How did EPA determine the reporting and recordkeeping requirements?*

EPA discussed the specific reporting and recordkeeping requirements that are being proposed in section III of the preamble. In general, EPA has attempted to reduce the reporting and recordkeeping burden on affected owners and operators. The following presents the rationale for the proposed reporting and recordkeeping requirements.

Owners and operators of emergency engines are required to keep records of their hours of operation (emergency and non-emergency). Owners and operators must install a non-resettable hour meter on their engines to record the necessary information. The owner and operators are required to record the time of operation and the reason the engine was in operation during that time. EPA believes these requirements are appropriate for emergency engines. The requirement to maintain records documenting why the engine was operating will ensure that regulatory agencies have the necessary information to determine if the engine was in compliance with the maintenance and testing hour limitation of 100 hours per year.

EPA does not believe the recordkeeping requirements being placed upon owners and operators of stationary emergency engines are onerous. Emergency engines are often equipped with the equipment necessary to record hours of operation and operators may already be recording the information. Even as a brand new requirement, recording the time and reason of operation should take minimal time and effort. Further, recording the hours and reason for operation is necessary to assure that the engine is in compliance. Finally, these requirements

are consistent with previously promulgated requirements affecting the same or similar engines, namely under the CI and SI NSPS.

The reporting requirements being proposed in this rule are consistent with those required for engines subject to the 2004 rule, i.e., stationary RICE greater than 500 HP located at major sources, and are based on the General Provisions. Owners and operators of existing emergency stationary RICE, existing stationary RICE that are less than 100 HP and existing stationary RICE that are not subject to any numerical emission standards, do not have to submit the notifications listed in the NESHAP General Provisions (40 CFR part 63, subpart A). Owners and operators of all other engines must submit an initial notification, notification of performance test, and a notification of compliance for each stationary RICE which must comply with the specified emission limitations.

**V. Summary of Environmental, Energy and Economic Impacts**

*A. What are the air quality impacts?*

The proposed rule is expected to reduce total HAP emissions from stationary RICE by 13,000 tons per year (tpy) beginning in the year 2013 or the first year the rule will become effective. EPA estimates that approximately 290,000 stationary SI engines will be subject to the rule and nearly 1 million stationary CI engines will be subject to the rule. These estimates include stationary engines located at major and area sources; however, not all stationary engines are subject to numerical emission standards. Further information regarding the estimated reductions of the proposed rule can be found in the memorandum entitled "Impacts Associated with NESHAP for Existing Stationary RICE," which is available in the docket.

In addition to HAP emissions reductions, the proposed rule will reduce other pollutants such as CO, NO<sub>x</sub>, and PM. The proposed rule is expected to reduce emissions of CO by more than 510,000 tpy in the year 2013.

Emissions of NO<sub>x</sub> are expected to be reduced by 79,000 tpy in the year 2013. Reductions of PM are estimated at close to 2,600 tpy in the year 2013, and SO<sub>x</sub> reductions are expected to be more than 4,000 tpy in the year 2013. Emissions of volatile organic compounds (VOC) are estimated to be reduced by 90,000 tpy in the year 2013.

*B. What are the cost impacts?*

The total national capital cost for the final rule for existing stationary RICE is estimated to be \$528 million, with a total national annual cost of \$345 million in year 2013 (the first year the rule is implemented). Further information regarding the estimated cost impacts of this proposed rule can be found in the memorandum entitled "Impacts Associated with NESHAP for Existing Stationary RICE," which is available in the docket.

*C. What are the benefits?*

We estimate the monetized benefits of this proposed NESHAP to be \$930 million to \$2.0 billion (2007\$, 3% discount rate) in the year of full implementation (2013); higher or lower estimates are plausible according to alternate models identified by experts describing the relationship between PM<sub>2.5</sub> and premature mortality.<sup>5</sup> The benefits at a 7% discount rate are \$850 million to \$1.8 billion (2007\$). We base the estimate of human health benefits derived from the PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor emission reductions on the approach and methodology laid out in the Technical Support Document that accompanied the Regulatory Impact Analysis (RIA) for the revision to the National Ambient Air Quality Standard for Ground-level Ozone (NAAQS), March 2008. We generated estimates that represent the total monetized human health benefits (the sum of premature mortality and morbidity) of reducing PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor emissions. A summary of the range of the monetized benefits estimates at discount rates of 3% and 7% is in Table 4 of this preamble.

TABLE 4—SUMMARY OF THE RANGE OF MONETIZED BENEFITS ESTIMATES FOR THE PROPOSED RICE NESHAP

Pollutant	Emission reductions (tons)	Total monetized benefits (millions of 2007 dollars, 3% discount) <sup>1</sup>	Total monetized benefits (millions of 2007 dollars, 7% discount) <sup>1</sup>
Direct PM <sub>2.5</sub> .....	2,561	\$550 to \$1,200 .....	\$500 to \$1,100.
PM <sub>2.5</sub> precursors .....	184,536	\$380 to \$820 .....	\$350 to \$740.

<sup>5</sup> Roman et al., 2008. Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine

Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268–2274.

TABLE 4—SUMMARY OF THE RANGE OF MONETIZED BENEFITS ESTIMATES FOR THE PROPOSED RICE NESHAP—  
Continued

Pollutant	Emission reductions (tons)	Total monetized benefits (millions of 2007 dollars, 3% discount) <sup>1</sup>	Total monetized benefits (millions of 2007 dollars, 7% discount) <sup>1</sup>
Grand total .....	.....	\$930 to \$2,000 .....	\$850 to \$1,800.

<sup>1</sup> All estimates are for the analysis year (full implementation, 2013), and are rounded to two significant figures so numbers may not sum across rows. We assume that 40% of emissions reductions are from major point sources and 60% are from area sources. PM<sub>2.5</sub> precursors reflect emission reductions of NO<sub>x</sub>, SO<sub>x</sub>, and VOCs. All fine particles are assumed to have equivalent health effects, and the monetized benefits incorporate the conversion from precursor emissions to ambient fine particles. Monetized benefits from HAP reductions are not included in these estimates.

The specific estimates of benefits per ton of pollutant reductions included in this analysis are largely driven by the concentration response function for premature mortality. Experts have advised EPA to consider a variety of assumptions, including estimates based both on empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between PM<sub>2.5</sub> concentrations and premature mortality. For this proposed NESHAP we cite two key empirical studies, one based on the American Cancer Society cohort study<sup>6</sup> and the extended Six Cities cohort study.<sup>7</sup> Alternate models identified by experts describing the relationship between PM<sub>2.5</sub> and premature mortality would yield higher and lower estimates (Roman *et al.* 2008).

EPA is exploring updates to the benefit-per-ton estimates, including two technical updates, as well as addressing the assumption regarding thresholds in the health impact function. For more information, please consult the RIA for this proposed rule that is available in the docket.

To generate the benefit-per-ton estimates, we used a model to convert emissions of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors into changes in PM<sub>2.5</sub> air quality and another model to estimate the changes in human health based on that change in air quality. Finally, the monetized health benefits were divided by the emission reductions to create the benefit-per-ton estimates. Even though all fine particles are assumed to have equivalent health effects, the benefit-per-ton estimates vary between precursors because each ton of precursor reduced has a different propensity to form PM<sub>2.5</sub>. For example, NO<sub>x</sub> has a lower benefit-per-ton

estimate than direct PM<sub>2.5</sub> because it does not form as much PM<sub>2.5</sub>, thus the exposure would be lower, and the monetized health benefits would be lower.

This analysis does not include the type of detailed uncertainty assessment found in the 2006 PM<sub>2.5</sub> NAAQS RIA because we lack the necessary air quality input and monitoring data to run the benefits model. However, the 2006 PM<sub>2.5</sub> NAAQS benefits analysis provides an indication of the sensitivity of our results to the use of alternative concentration response functions, including those derived from the PM expert elicitation study.

The annualized costs of this rulemaking are estimated at \$345 million (2007 dollars) in the year of full implementation, and the benefits are estimated at \$930 million to \$2.0 billion (2007 dollars, 3% discount rate) for that same year. Thus, net benefits of this rulemaking are estimated at \$590 million to \$1.6 billion (2007 dollars, 3% discount rate); higher or lower estimates are plausible according to alternate models identified by experts describing the relationship between PM<sub>2.5</sub> and premature mortality. The net benefits at a 7% discount rate are \$500 million to \$1.5 billion (2007\$). EPA believes that the benefits are likely to exceed the costs by a significant margin even when taking into account the uncertainties in the cost and benefit estimates. It should be noted that the range of benefits estimates provided above does not include ozone-related benefits from the reductions in VOC and NO<sub>x</sub> emissions expected to occur as a result of this final rule, nor does this range include benefits from the portion of total PM emissions reduction that is not PM<sub>2.5</sub> or other hazardous air pollutants. We do not have sufficient information or modeling available to provide such estimates for this rulemaking. For more information, please refer to the RIA for this proposed rule that is available in the docket.

#### D. What are the non-air health, environmental and energy impacts?

EPA does not anticipate any adverse non-air health, environmental or energy impacts as a result of this proposed rule.

#### VI. Solicitation of Public Comments and Participation

EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposed rule from all interested parties. Whenever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions.

EPA is requesting specific comment on the proposed emission standards for existing non-emergency 4SLB engines greater than or equal to 250 HP and existing non-emergency 4SRB engines greater than or equal to 50 HP. Specifically, EPA is seeking comment on the appropriateness of setting more stringent emission standards for certain existing rich burn engines than what is currently required for other rich burn engines already regulated. For example, the proposed emission standards for existing non-emergency 4SRB engines greater than or equal to 50 HP is 200 ppbvd of formaldehyde or 90 percent formaldehyde reduction, whereas the current emission standards for existing and new non-emergency 4SRB engines greater than 500 HP at major sources is 350 ppbvd and 75 percent formaldehyde reduction.

EPA is also requesting comment on the proposed formaldehyde emission standards that apply to rich burn engines. EPA is particularly interested in determining whether it would be appropriate to include a VOC emission standard in place of or as an alternative to the formaldehyde emission standards. If so, EPA is requesting information on what an appropriate VOC emission standard should be. Commenters are

<sup>6</sup> Pope *et al.*, 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution." *Journal of the American Medical Association*. 287:1132–1141.

<sup>7</sup> Laden *et al.*, 2006. "Reduction in Fine Particulate Air Pollution and Mortality." *American Journal of Respiratory and Critical Care Medicine*. 173: 667–672.

encouraged to submit stationary engine test data containing VOC emissions pre- and post-catalyst as well as any engine test data that includes both formaldehyde and VOC emissions from the same engine. In addition, we ask for comments and data on whether there are other more appropriate surrogates than formaldehyde and CO for the metallic HAP that are emitted by stationary diesel engines.

EPA is proposing emission standards for existing stationary non-emergency CI engines that are greater than 300 HP that are based on the use of oxidation catalyst. EPA solicits comments on whether 300 HP is the appropriate size division for setting beyond-the-floor MACT standards requiring the use of add-on controls. Specifically, EPA is seeking comment on whether it is feasible or appropriate to extend the more stringent standards to engines that are less than 300 HP. EPA also requests comments on the possibility of requiring CDPFs for existing diesel engines, rather than oxidation catalysts, and, if so, which subcategory or subcategories of stationary diesel engines would be most appropriate for control using CDPFs. The use of CDPFs would help achieve the same level of HAP reduction as oxidation catalysts, with a higher level of control of diesel PM. EPA is also interested in comments and information on other regulatory and non-regulatory approaches for addressing black carbon emissions from existing stationary diesel engines.

EPA also requests comments on other proven technologies that may be able to achieve significant HAP reductions. For example, we request comment on the possible requirement of using closed crankcase ventilation systems on engines affected by this proposed rule. Closed crankcase ventilation systems have been used in mobile engine applications for many years.

In addition, EPA is requesting comment on the fuel requirements. EPA is proposing that existing stationary non-emergency CI engines greater than 300 HP with a displacement of less than 30 liters per cylinder must meet the ULSD fuel requirement of 40 CFR 80.510(b). These engines would be required to be operated with fuel having a sulfur content of less than or equal to 15 ppm. EPA is specifically interested in whether it would be appropriate to require all existing stationary CI engines (except those with a displacement of greater than or equal to 30 liters per cylinder) to use 15 ppm sulfur fuel. EPA is interested in determining if smaller engines, i.e., those less than 300 HP, and emergency engines should be subject to fuel requirements also and is requesting

comment on this issue. Furthermore, EPA is also interested in receiving comments and information about the option of adding a requirement to the regulations that would prohibit the burning of crankcase oil or mixing crankcase oil with fuel in engines equipped with exhaust aftertreatment technologies. EPA is interested in information on whether such practice has the potential for increasing HAP emissions or damaging exhaust aftertreatment technologies that would be used to meet the proposed emission limits.

Finally, EPA is requesting comment on the management practices being proposed for some subcategories of engines located at area sources. EPA is interested to receive information on any additional management practices that could be required.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an “economically significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

### B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1975.06.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

This proposed rule will not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after sources must comply) is estimated to be 3,422,879 labor hours per year at a total annual cost of \$15,554,937. This estimate includes notifications of compliance and performance tests, engine performance testing, semiannual compliance reports, continuous monitoring, and recordkeeping. The total capital costs associated with the requirements over the 3-year period of the ICR is estimated to be \$30,772,678 per year. There are no additional operation and maintenance costs for the requirements over the 3-year period of the ICR.

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 40 CFR are listed in 40 CFR part 9.

To comment on the Agency’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2008-0708. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this action for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725

17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 5, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by April 6, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### C. Regulatory Flexibility Act

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small 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.

The companies owning facilities with affected RICE can be grouped into small and large categories using Small Business Administration (SBA) general size standard definitions. Size standards are based on industry classification codes (i.e., North American Industrial Classification System, or NAICS) that each company uses to identify the industry or industries in which they operate in. The SBA defines a small business in terms of the maximum employment, annual sales, or annual energy-generating capacity (for electricity generating units—EGUs) of the owning entity. These thresholds vary by industry and are evaluated based on the primary industry classification of the affected companies. In cases where companies are classified by multiple NAICS codes, the most conservative SBA definition (i.e., the NAICS code with the highest employee or revenue size standard) was used.

As mentioned earlier in this preamble, facilities across several industries use affected RICE, so therefore a number of size standards are utilized in this analysis. For the 9 industries identified at the 6-digit NAICS code represented in this analysis, the employment size standard varies from 500 to 1,000 employees. The annual sales standard is as low as 0.75 million dollars and as high as 34 million dollars. In addition, for the electric power generation industry, the small business size standard is an ultimate parent entity defined as having a total electric output of 4 million megawatt-hours (MW-hr) in the previous fiscal year. The specific SBA size standard is

identified for each affected industry within the industry profile to support this economic analysis.

After considering the economic impacts of this final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities (or SISNOSE). This certification is based on the economic impact of this proposed action to all affected small entities across all industries affected. We estimate that all small entities will have annualized costs of less than 1 percent of their sales in all industries except NAICS 2211 (electric power generation, transmission, and distribution). In this case, however, the number of small entities having annualized costs of greater than 1 percent of their sales is less than 10 percent. Hence, we conclude that there is no SISNOSE for this proposal.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed rule on small entities. We held meetings with industry trade associations and company representatives to discuss the proposed rule and included provisions to limit monitoring and recordkeeping requirements to the extent possible. We continue to be interested in the potential impacts of the proposed action on small entities and welcome comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains 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. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

As discussed previously in this preamble, the statutory authority for the proposed rule is section 112 of the CAA. Section 112(b) lists the 189 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP. Section 112(d) of the CAA directs us to develop NESHAP based on MACT, which require existing and new major sources to control emissions of

HAP. EPA is required to address HAP emissions from stationary RICE located at area sources under section 112(k) of the CAA, based on criteria set forth by EPA in the Urban Air Toxics Strategy previously discussed in this preamble. These NESHAP apply to existing stationary RICE less than or equal to 500 HP located at major sources of HAP emissions, existing non-emergency stationary CI RICE greater than 300 HP, and existing stationary RICE located at area sources of HAP emissions.

In compliance with section 205(a), we identified and considered a reasonable number of regulatory alternatives. The regulatory alternative upon which the rule is based is the least costly, most cost-effective alternative to achieve the statutory requirements of Clean Air Act section 112.

### 1. Social Costs and Benefits

The RIA prepared for the proposed rule, including the Agency's assessment of costs and benefits, is detailed in the "Regulatory Impact Analysis for the Proposed RICE NESHAP" in the docket. Based on estimated compliance costs on all sources associated with the proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of the proposed rule are \$345 million (2007 dollars). It is estimated that by 2013, HAP will be reduced by 13,000 tpy due to reductions in formaldehyde, acetaldehyde, acrolein, methanol and other HAP from existing stationary RICE. Formaldehyde and acetaldehyde have been classified as "probable human carcinogens." Acrolein, methanol and the other HAP are not considered carcinogenic, but produce several other toxic effects. The proposed rule will also achieve reductions in 511,000 tons of CO, approximately 79,000 tons of NO<sub>x</sub> per year, about 90,000 tons of VOC per year, and approximately 2,600 tons of PM per year, in the year 2013. Exposure to CO can affect the cardiovascular system and the central nervous system. Emissions of NO<sub>x</sub> can transform into PM, which can result in fatalities and many respiratory problems (such as asthma or bronchitis); and NO<sub>x</sub> can also transform into ozone causing several respiratory problems to affected populations.

The total monetized benefits of the proposed rule range from \$0.9 to \$2.0 billion. (2007 dollars).

### 2. Future and Disproportionate Costs

The UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the rule and any disproportionate budgetary effects. Our

estimates of the future compliance costs of the proposed rule are discussed previously in this preamble. We do not believe that there will be any disproportionate budgetary effects of the proposed rule on any particular areas of the country, State or local governments, types of communities (e.g., urban, rural), or particular industry segments.

3. Effects on the National Economy

The UMRA requires that we estimate the effect of the proposed rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material. The nationwide economic impact of the proposed rule is presented in the “Regulatory Impact Analysis for RICE NESHAP” in the docket. This analysis provides estimates of the effect of the proposed rule on most of the categories mentioned above. The results of the economic impact analysis were summarized previously in this preamble. In addition, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, this rule is not subject to the requirements of section 203 of the UMRA.

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” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule primarily affects private industry, and does not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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 only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology

performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (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. EPA has prepared an analysis of energy impacts that explains this conclusion as follows below.

With respect to energy supply and prices, EPA’s analysis suggests that at the industry level, the annualized costs represent a very small fraction of revenue (less than 0.7 percent). As a result, EPA can conclude supply and price impacts on affected energy producers and consumers should be small.

To enhance understanding regarding the regulation’s influence on energy consumption, EPA examined publicly available data describing energy consumption for the electric power sector. The electric power sector is expected to incur more than 40 percent of the \$345 million in compliance costs associated with the proposed rule, and the industry is expected to incur the greatest share of the costs relative to other affected industries. The Annual Energy Outlook 2009 (EIA, 2008) provides energy consumption data. Since this rule only affects diesel and natural gas-fired RICE, EPA’s analysis focuses on impacts of consumption of these fuels. As shown in Table 6 of this preamble, the electric power sector accounts for less than 0.5 percent of the U.S. total liquid fuels (which includes diesel fuel) and less than 6.5 percent of U.S. natural gas consumption. As a result, any energy consumption changes attributable to the proposed rule should not significantly influence the supply, distribution, or use of energy nationwide.

TABLE 6—U.S. ELECTRIC POWER<sup>a</sup> SECTOR ENERGY CONSUMPTION (QUADRILLION BTUS): 2013

	Quantity	Share of total energy use (percent)
Distillate fuel oil .....	0.12	0.1
Residual fuel oil .....	0.38	0.4
Liquid fuels subtotal .....	0.50	0.5
Natural gas .....	6.27	6.1
Steam coal .....	21.55	21.0
Nuclear power .....	8.53	8.3
Renewable energy <sup>b</sup> .....	4.80	4.7
Electricity Imports .....	0.08	0.1
Total Electric Power Energy Consumption <sup>c</sup> .....	41.86	40.8



TABLE 6—U.S. ELECTRIC POWER<sup>a</sup> SECTOR ENERGY CONSUMPTION (QUADRILLION BTUS): 2013

	Quantity	Share of total energy use (percent)
Delivered Energy Use .....	74.05	72.2
Total Energy Use .....	102.58	100.0

<sup>a</sup>Includes consumption of energy by electricity-only and combined heat and power plants whose primary business is to sell electricity, or electricity and heat, to the public. Includes small power producers and exempt wholesale generators.

<sup>b</sup>Includes conventional hydroelectric, geothermal, wood and wood waste, biogenic municipal solid waste, other biomass, petroleum coke, wind, photovoltaic and solar thermal sources. Excludes net electricity imports.

<sup>c</sup>Includes non-biogenic municipal waste not included above.

Source: U.S. Energy Information Administration. 2008a. Supplemental Tables to the Annual Energy Outlook 2009. Table 10. Available at: <http://www.eia.doe.gov/oiaf/aec/supplement/supref.html>.

**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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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 or referenced 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 (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. This proposed rule is expected to reduce HAP emissions from stationary RICE and thus decrease the amount of such emissions to which all affected populations are exposed.

**List of Subjects in 40 CFR Part 63**

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 25, 2009.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be 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. Section 63.6590 is amended by revising paragraphs (b)(1) introductory text and (b)(3) to read as follows:

**§ 63.6590 What parts of my plant does this subpart cover?**

\* \* \* \* \*

(b) \* \* \*

(1) An affected source which meets either of the criteria in paragraphs (b)(1)(i) through (ii) of this section does not have to meet the requirements of this subpart and of subpart A of this part

except for the initial notification requirements of § 63.6645(f).

\* \* \* \* \*

(3) A stationary RICE which is an existing spark ignition 2 stroke lean burn (2SLB) stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, an existing spark ignition 4 stroke lean burn (4SLB) stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, an existing emergency stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, an existing limited use stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, or an existing stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, does not have to meet the requirements of this subpart and of subpart A of this part. No initial notification is necessary.

\* \* \* \* \*

3. Section 63.6595 is amended by revising paragraph (a)(1) to read as follows:

**§ 63.6595 When do I have to comply with this subpart?**

(a) \* \* \*

(1) If you have an existing stationary RICE, excluding existing non-emergency CI stationary RICE, with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must comply with the applicable emission limitations and operating limitations no later than June 15, 2007. If you have an existing non-emergency CI stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, an existing stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions, or an existing stationary



RICE located at an area source of HAP emissions, you must comply with the applicable emission limitations and operating limitations no later than [DATE 3 YEARS FROM THE EFFECTIVE DATE OF THE RULE].

\* \* \* \* \*

4. Section 63.6600 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

**§ 63.6600 What emission limitations and operating limitations must I meet if I own or operate a stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions?**

\* \* \* \* \*

(c) If you own or operate any of the following stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with the emission limitations in Tables 1a and 2a to this subpart or operating limitations in Tables 1b and 2b to this subpart: an existing 2SLB stationary RICE or an existing 4SLB stationary RICE; a stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis; an emergency stationary RICE; or a limited use stationary RICE.

(d) If you own or operate an existing stationary CI RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must comply with the emission limitations in Table 2c to this subpart and the operating limitations in Table 2b to this subpart which apply to you.

5. The heading of section 63.6601 is revised to read as follows:

**§ 63.6601 What emission limitations must I meet if I own or operate a new or reconstructed 4SLB stationary RICE with a site rating of greater than or equal to 250 brake HP and less than 500 brake HP located at a major source of HAP emissions?**

\* \* \* \* \*

6. Section 63.6602 is added to read as follows:

**§ 63.6602 What emission limitations must I meet if I own or operate an existing stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions?**

If you own or operate an existing stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions, you must comply with the emission limitations in Table 2c to this subpart which apply to you.

7. Section 63.6603 is added to read as follows:

**§ 63.6603 What emission limitations and operating limitations must I meet if I own or operate an existing stationary RICE located at an area source of HAP emissions?**

If you own or operate an existing stationary RICE located at an area source of HAP emissions, you must comply with the requirements in Table 2d to this subpart and the operating limitations in Tables 1b and 2b to this subpart which apply to you.

8. Section 63.6604 is added to read as follows:

**§ 63.6604 What fuel requirements must I meet if I own or operate an existing stationary CI RICE?**

If you own or operate an existing non-emergency CI stationary RICE with a site rating of more than 300 brake HP with a displacement of less than 30 liters per cylinder that uses diesel fuel, you must use diesel fuel that meets the requirements in 40 CFR 80.510(b) for nonroad diesel fuel. Existing non-emergency CI stationary RICE used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands are exempt from the requirements of this section.

9. Section 63.6605 is amended by revising paragraph (a) to read as follows:

**§ 63.6605 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the emission limitations and operating limitations in this subpart that apply to you at all times.

\* \* \* \* \*

10. The heading of § 63.6611 is revised to read as follows:

**§ 63.6611 By what date must I conduct the initial performance tests or other initial compliance demonstrations if I own or operate a new or reconstructed 4SLB SI stationary RICE with a site rating of greater than or equal to 250 and less than or equal to 500 brake HP located at a major source of HAP emissions?**

\* \* \* \* \*

11. Section 63.6612 is added to read as follows:

**§ 63.6612 By what date must I conduct the initial performance tests or other initial compliance demonstrations if I own or operate an existing stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions or an existing stationary RICE located at an area source of HAP emissions?**

If you own or operate an existing stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions or an existing stationary RICE located at an area source of HAP emissions you are

subject to the requirements of this section.

(a) You must conduct the initial performance test or other initial compliance demonstration according to Tables 4 and 5 to this subpart that apply to you within 180 days after the compliance date that is specified for your stationary RICE in § 63.6595 and according to the provisions in § 63.7(a)(2).

(b) An owner or operator is not required to conduct an initial performance test on a unit for which a performance test has been previously conducted, but the test must meet all of the conditions described in paragraphs (b)(1) through (5) of this section.

(1) The test must have been conducted using the same methods specified in this subpart, and these methods must have been followed correctly.

(2) The test must not be older than 2 years.

(3) The test must be reviewed and accepted by the Administrator.

(4) Either no process or equipment changes must have been made since the test was performed, or the owner or operator must be able to demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process or equipment changes.

(5) The test must be conducted at any load condition within plus or minus 10 percent of 100 percent load.

**§ 63.6620—[Amended]**

12. Section 63.6620 is amended by removing and reserving paragraph (c).

\* \* \* \* \*

13. Section 63.6625 is amended by adding paragraphs (e), (f) and (g) to read as follows:

**§ 63.6625 What are my monitoring, installation, operation, and maintenance requirements?**

\* \* \* \* \*

(e) If you own or operate an existing stationary RICE with a site rating of less than 100 brake HP located at a major source of HAP emissions, an existing stationary emergency RICE, or an existing stationary RICE located at an area source of HAP emissions not subject to any numerical emission standards shown in Table 2d to this subpart, you must operate and maintain the stationary RICE and aftertreatment control device (if any) according to the manufacturer's emission-related written instructions or develop your own maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good

air pollution control practice for minimizing emissions.

(f) If you own or operate an existing emergency stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions or an existing emergency stationary RICE located at an area source of HAP emissions, you must install a non-resettable hour meter if one is not already installed.

(g) If you own or operate an existing stationary 4SRB RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions or an existing stationary 4SRB RICE located at an area source of HAP emissions, air-to-fuel ratio controllers (AFRC) are required to be used with the operation of three-way catalysts/non-selective catalytic reduction. The AFRC must be maintained and operated appropriately in order to ensure proper operation of the engine and control device to minimize emissions at all times.

14. Section 63.6640 is amended as follows:

- a. By revising paragraph (a);
- b. By revising paragraph (b);
- c. By revising paragraph (e); and
- d. By adding paragraph (f).

**§ 63.6640 How do I demonstrate continuous compliance with the emission limitations and operating limitations?**

(a) You must demonstrate continuous compliance with each emission limitation and operating limitation in Tables 1a and 1b, Tables 2a and 2b, Table 2c, and Table 2d to this subpart that apply to you according to methods specified in Table 6 to this subpart.

(b) You must report each instance in which you did not meet each emission limitation or operating limitation in Tables 1a and 1b, Tables 2a and 2b, Table 2c, and Table 2d to this subpart that apply to you. These instances are deviations from the emission and operating limitations in this subpart. These deviations must be reported according to the requirements in § 63.6650. If you change your catalyst, you must reestablish the values of the operating parameters measured during the initial performance test. When you reestablish the values of your operating parameters, you must also conduct a performance test to demonstrate that you are meeting the required emission limitation applicable to your stationary RICE.

\* \* \* \* \*

(e) You must also report each instance in which you did not meet the requirements in Table 8 to this subpart that apply to you. If you own or operate a new or reconstructed stationary RICE

with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions (except new or reconstructed 4SLB engines greater than or equal to 250 and less than or equal to 500 brake HP), a new or reconstructed stationary RICE located at an area source of HAP emissions, or any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with the requirements in Table 8 to this subpart: An existing 2SLB stationary RICE, an existing 4SLB stationary RICE, an existing emergency stationary RICE, an existing limited use emergency stationary RICE, or an existing stationary RICE which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis. If you own or operate any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with the requirements in Table 8 to this subpart, except for the initial notification requirements: a new or reconstructed stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, a new or reconstructed emergency stationary RICE, or a new or reconstructed limited use stationary RICE.

(f) If you own or operate an existing emergency stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions or an existing emergency stationary RICE located at an area source of HAP emissions, you may operate your emergency stationary RICE for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. There is no time limit on the use of emergency stationary RICE in emergency situations. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency RICE beyond 100 hours per year. Emergency stationary RICE may operate up to 50 hours per year in non-emergency situations, but those 50 hours are counted towards the 100 hours per year provided for

maintenance and testing. The 50 hours per year for non-emergency situations cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity. For owners and operators of emergency engines, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as permitted in this section, is prohibited.

15. Section 63.6645 is amended by revising paragraph (a) to read as follows:

**§ 63.6645 What notifications must I submit and when?**

(a) If you own or operate an existing stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions, an existing stationary RICE located at an area source of HAP emissions, a stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, or a new or reconstructed 4SLB stationary RICE with a site rating of greater than or equal to 250 HP located at a major source of HAP emissions, except existing stationary RICE less than 100 HP, existing stationary emergency RICE, and existing stationary RICE not subject to any numerical emission standards, you must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9(b) through (e), and (g) and (h) that apply to you by the dates specified.

\* \* \* \* \*

16. Section 63.6655 is amended by adding paragraphs (e) and (f) to read as follows:

**§ 63.6655 What records must I keep?**

\* \* \* \* \*

(e) If you own or operate an existing stationary RICE with a site rating of less than 100 brake HP located at a major source of HAP emissions, an existing stationary emergency RICE, or an existing stationary RICE located at an area source of HAP emissions subject to management practices as shown in Table 2d to this subpart, you must keep records of the maintenance conducted on the stationary RICE in order to demonstrate that you operate and maintain the stationary RICE and aftertreatment control device (if any) according to your own maintenance plan.

(f) If you own or operate an existing emergency stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions that does not meet the standards applicable to non-emergency engines or an existing emergency

stationary RICE located at an area source of HAP emissions that does not meet the standards applicable to non-emergency engines, you must keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. The owner or operator must document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation.

17. Section 63.6665 is revised to read as follows:

**§ 63.6665 What parts of the General Provisions apply to me?**

Table 8 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you. If you own or operate a new or reconstructed stationary RICE with a site rating of less than or equal to 500

brake HP located at a major source of HAP emissions (except new or reconstructed 4SLB engines greater than or equal to 250 and less than or equal to 500 brake HP), a new or reconstructed stationary RICE located at an area source of HAP emissions, or any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with any of the requirements of the General Provisions: An existing 2SLB RICE, an existing 4SLB stationary RICE, an existing stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, an existing emergency stationary RICE, or an existing limited use stationary RICE. If you own or operate any of the following RICE with a site rating of more than 500 brake HP located at a major source of

HAP emissions, you do not need to comply with the requirements in the General Provisions except for the initial notification requirements: A new stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, a new emergency stationary RICE, or a new limited use stationary RICE.

18. Table 1a to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 1a to Subpart ZZZZ of Part 63—Emission Limitations for Existing, New, and Reconstructed Spark Ignition, 4SRB Stationary RICE**

As stated in §§ 63.6600 and 63.6640, you must comply with the following emission limitations for existing, new and reconstructed 4SRB stationary RICE at 100 percent load plus or minus 10 percent:

For each * * *	You must meet the following emission limitation at all times, except during periods of startup, or malfunction * * *	You must meet the following emission limitation during periods of startup, or malfunction * * *
1. 4SRB stationary RICE .....	a. reduce formaldehyde emissions by 76 percent or more. If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, you may reduce formaldehyde emissions by 75 percent or more until June 15, 2007 or b. limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O <sub>2</sub> .	limit the concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .

19. Table 1b to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 1b to Subpart ZZZZ of Part 63—Operating Limitations for Existing, New, and Reconstructed Spark Ignition, 4SRB Stationary RICE >500 HP Located at a Major Source of HAP Emissions and Existing 4SRB Stationary RICE >500 HP Located at an Area Source of HAP Emissions**

As stated in §§ 63.6600, 63.6603, 63.6630 and 63.6640, you must comply

with the following operating emission limitations for existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions and existing 4SRB stationary RICE >500 HP located at an area source of HAP emissions:

For each * * *	You must meet the following operating limitation * * *	
1. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and using NSCR; or	a. maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst measured during the initial performance test; and	
2. 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O <sub>2</sub> and using NSCR; or	b. maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 750 °F and less than or equal to 1250 °F.	
4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 90 percent or more and using NSCR; or		
4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 200 ppbvd or less at 15 percent O <sub>2</sub> and using NSCR.		
3. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and not using NSCR; or	a. comply with any operating limitations approved by the Administrator.	
4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O <sub>2</sub> and not using NSCR; or		

For each * * *	You must meet the following operating limitation * * *
4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 90 percent or more and not using NSCR; or 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 200 ppbvd or less at 15 percent O <sub>2</sub> and not using NSCR.	

20. Table 2a to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 2a to Subpart ZZZZ of Part 63—  
Emission Limitations for New and Reconstructed 2SLB and Compression Ignition Stationary RICE >500 HP and 4SLB Stationary RICE ≥250 HP Located at a Major Source of HAP Emissions**

As stated in §§ 63.6600 and 63.6640, you must comply with the following

emission limitations for new and reconstructed lean burn and new and reconstructed compression ignition stationary RICE at 100 percent load plus or minus 10 percent:

For each * * *	You must meet the following emission limitation at all times, except during periods of startup, or malfunction * * *	You must meet the following emission limitation during periods of startup, or malfunction * * *
1. 2SLB stationary RICE .....	a. reduce CO emissions by 58 percent or more; or b. limit concentration of formaldehyde in the stationary RICE exhaust to 12 ppmvd or less at 15 percent O <sub>2</sub> . If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, you may limit concentration of formaldehyde to 17 ppmvd or less at 15 percent O <sub>2</sub> until June 15, 2007.	limit concentration of CO in the stationary RICE exhaust to 259 ppmvd or less at 15 percent O <sub>2</sub> .
2. 4SLB stationary RICE .....	a. reduce CO emissions by 93 percent or more; or b. limit concentration of formaldehyde in the stationary RICE exhaust to 14 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 420 ppmvd or less at 15 percent O <sub>2</sub> .
3. CI stationary RICE .....	a. reduce CO emissions by 70 percent or more; or b. limit concentration of formaldehyde in the stationary RICE exhaust to 580 ppbvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 77 ppmvd or less at 15 percent O <sub>2</sub> .

21. Table 2b to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 2b to Subpart ZZZZ of Part 63—  
Operating Limitations for New and Reconstructed 2SLB and Compression Ignition Stationary RICE >500 HP, Existing Compression Ignition Stationary RICE >500 HP, and 4SLB Burn Stationary RICE ≥250 HP Located at a Major Source of HAP Emissions**

As stated in §§ 63.6600, 63.6601, 63.6630, and 63.6640, you must comply

with the following operating limitations for new and reconstructed lean burn and existing, new and reconstructed compression ignition stationary RICE:

For each * * *	You must meet the following operating limitation * * *	
1. 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to reduce CO emissions and using an oxidation catalyst; or 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and using an oxidation catalyst.	a. maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst that was measured during the initial performance test; and b. maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 450 °F and less than or equal to 1350 °F.	

For each * * *	You must meet the following operating limitation * * *
2. 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to reduce CO emissions and not using an oxidation catalyst; or 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and not using an oxidation catalyst.	comply with any operating limitations approved by the Administrator.

22. Table 2c to Subpart ZZZZ of Part 63 is added to read as follows:

**Table 2c to Subpart ZZZZ of Part 63—  
Emission Limitations for Existing  
Stationary RICE Located at a Major  
Source of HAP Emissions**

As stated in §§ 63.6601, 63.6602 and 63.6604, you must comply with the

following emission limitations for existing stationary RICE located at a major source of HAP emissions at 100 percent load plus or minus 10 percent:

For each * * *	You must meet the following emission limitation at all times, except during periods of startup, or malfunction * * *	You must meet the following emission limitation during periods of startup, or malfunction * * *
1. Non-Emergency 2SLB 50≥HP≤249 .....	a. limit concentration of CO in the stationary RICE exhaust to 85 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 85 ppmvd or less at 15 percent O <sub>2</sub> .
2. Non-Emergency 2SLB 250≥HP≤500 .....	a. limit concentration of CO in the stationary RICE exhaust to 8 ppmvd or less at 15 percent O <sub>2</sub> ; or b. Reduce CO emissions by 90 percent or more.	limit concentration of CO in the stationary RICE exhaust to 85 ppmvd or less at 15 percent O <sub>2</sub> .
3. Non-Emergency 4SLB 50≥HP≤249 .....	a. limit concentration of CO in the stationary RICE exhaust to 95 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 95 ppmvd or less at 15 percent O <sub>2</sub> .
4. Non-Emergency 4SLB 250≥HP≤500 .....	a. limit concentration of CO in the stationary RICE exhaust to 9 ppmvd or less at 15 percent O <sub>2</sub> ; or b. Reduce CO emissions by 90 percent or more.	limit concentration of CO in the stationary RICE exhaust to 95 ppmvd or less at 15 percent O <sub>2</sub> .
5. Non-Emergency 4SRB 50≥HP≤500 .....	a. limit concentration of formaldehyde in the stationary RICE exhaust to 200 ppbvd or less at 15 percent O <sub>2</sub> ; or b. reduce formaldehyde emissions by 90 percent or more.	limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .
6. All CI 50≥HP≤300 .....	a. limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .
7. Emergency CI 300>HP≤500 .....	a. limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .
8. Non-Emergency CI >300 HP .....	a. limit concentration of CO in the stationary RICE exhaust to 4 ppmvd or less at 15 percent O <sub>2</sub> ; or b. Reduce CO emissions by 90 percent or more.	limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .
9. <50 HP .....	a. limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .
10. Landfill/Digester 50≥HP≤500 .....	a. limit concentration of CO in the stationary RICE exhaust to 177 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 177 ppmvd or less at 15 percent O <sub>2</sub> .
11. Emergency SI 50≥HP≤500 .....	a. limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .

23. Table 2d to Subpart ZZZZ of Part 63 is added to read as follows:

**Table 2d to Subpart ZZZZ of Part 63—  
Requirements for Existing Stationary  
RICE Located at an Area Source of HAP  
Emissions**

As stated in §§ 63.6603 and 63.6625, you must comply with the following

requirements for existing stationary RICE located at an area source of HAP emissions at 100 percent load plus or minus 10 percent:

For each * * *	You must meet the following emission or operating limitation at all times, except during periods of startup, or malfunction * * *	You must meet the following emission or operating limitation during periods of startup, or malfunction * * *
1. Non-Emergency 2SLB 50≥HP≤249 .....	a. change oil and filter every 500 hours; b. replace spark plugs every 1000 hours; and c. inspect all hoses and belts every 500 hours and replace as necessary.	i. change oil and filter every 500 hours; ii. replace spark plugs every 1000 hours; and iii. inspect all hoses and belts every 500 hours and replace as necessary.
2. Non-Emergency 2SLB ≥250 HP .....	a. limit concentration of CO in the stationary RICE exhaust to 8 ppmvd or less at 15 percent O <sub>2</sub> ; or b. reduce CO emissions by 90 percent or more.	limit concentration of CO in the stationary RICE exhaust to 85 ppmvd or less at 15 percent O <sub>2</sub> .
3. Non-Emergency 4SLB 50≥HP≤249 .....	a. change oil and filter every 500 hours; b. replace spark plugs every 1000 hours; and c. inspect all hoses and belts every 500 hours and replace as necessary.	i. change oil and filter every 500 hours; ii. replace spark plugs every 1000 hours; and iii. inspect all hoses and belts every 500 hours and replace as necessary.
4. Non-Emergency 4SLB ≥250 HP .....	a. limit concentration of CO in the stationary RICE exhaust to 9 ppmvd or less at 15 percent O <sub>2</sub> ; or b. reduce CO emissions by 90 percent or more.	limit concentration of CO in the stationary RICE exhaust to 95 ppmvd or less at 15 percent O <sub>2</sub> .
5. Non-Emergency 4SRB ≥50 HP .....	a. limit concentration of formaldehyde in the stationary RICE exhaust to 200 ppbvd or less at 15 percent O <sub>2</sub> ; or b. reduce formaldehyde emissions by 90 percent or more.	limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .
6. Emergency CI 50≥HP≤500 .....	a. change oil and filter every 500 hours; b. inspect air cleaner every 1000 hours and replace as necessary; and c. inspect all hoses and belts every 500 hours and replace as necessary.	i. change oil and filter every 500 hours; ii. inspect air cleaner every 1000 hours and replace as necessary; and iii. inspect all hoses and belts every 500 hours and replace as necessary.
7. Emergency CI >500 HP .....	a. limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .
8. Non-Emergency CI 50≥HP≤300 .....	a. change oil and filter every 500 hours; b. inspect air cleaner every 1000 hours and replace as necessary; and c. inspect all hoses and belts every 500 hours and replace as necessary.	i. change oil and filter every 500 hours; ii. inspect air cleaner every 1000 hours and replace as necessary; and iii. inspect all hoses and belts every 500 hours and replace as necessary.
9. Non-Emergency CI >300 HP .....	a. limit concentration of CO in the stationary RICE exhaust to 4 ppmvd or less at 15 percent O <sub>2</sub> ; or b. reduce CO emissions by 90 percent or more.	limit concentration of CO in the stationary RICE exhaust to 40 ppmvd or less at 15 percent O <sub>2</sub> .
10. <50 HP .....	a. change oil and filter every 200 hours; b. replace spark plugs every 500 hours (SI engines only); and c. inspect all hoses and belts every 500 hours and replace as necessary.	i. change oil and filter every 200 hours; ii. replace spark plugs every 500 hours (SI engines only); and iii. inspect all hoses and belts every 500 hours and replace as necessary.
11. Landfill/Digester Gas 50≥HP≤500 .....	a. change oil and filter every 500 hours; b. replace spark plugs every 1000 hours; and c. inspect all hoses and belts every 500 hours and replace as necessary.	i. change oil and filter every 500 hours; ii. replace spark plugs every 1000 hours; and iii. inspect all hoses and belts every 500 hours and replace as necessary.
12. Landfill/Digester Gas >500 HP .....	a. limit concentration of CO in the stationary RICE exhaust to 177 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of CO in the stationary RICE exhaust to 177 ppmvd or less at 15 percent O <sub>2</sub> .
13. Emergency SI 50≥HP≤500 .....	a. change oil and filter every 500 hours; b. replace spark plugs every 1000 hours; and c. inspect all hoses and belts every 500 hours and replace as necessary.	i. change oil and filter every 500 hours; ii. replace spark plugs every 1000 hours; and iii. inspect all hoses and belts every 500 hours and replace as necessary.
14. Emergency SI >500 HP .....	a. limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .	limit concentration of formaldehyde in the stationary RICE exhaust to 2 ppmvd or less at 15 percent O <sub>2</sub> .

24. Table 3 to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 3 to Subpart ZZZZ of Part 63—  
Subsequent Performance Tests**

As stated in §§ 63.6615 and 63.6620, you must comply with the following

subsequent performance test requirements:

For each * * *	Complying with the requirement to * * *	You must * * *
1. 2SLB and 4SLB stationary RICE with a brake horsepower >500 located at major sources and new or reconstructed CI stationary RICE with a brake horsepower >500 located at major sources.	reduce CO emissions and not using a CEMS	conduct subsequent performance tests semi-annually. <sup>1</sup>
2. 4SRB stationary RICE with a brake horsepower ≥5,000 located at major sources.	reduce formaldehyde emissions .....	conduct subsequent performance tests semi-annually. <sup>1</sup>
3. Stationary RICE with a brake horsepower >500 located at major sources.	limit the concentration of formaldehyde in the stationary RICE exhaust.	conduct subsequent performance tests semi-annually. <sup>1</sup>
4. Existing non-emergency stationary RICE with a brake horsepower >500.	limit or reduce CO or formaldehyde emissions	conduct subsequent performance tests every 8,760 hrs or 3 years, whichever comes first.

<sup>1</sup> After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the CO or formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

25. Table 4 to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 4 to Subpart ZZZZ of Part 63— Requirements for Performance Tests**

As stated in §§ 63.6610, 63.6611, 63.6612, 63.6620, and 63.6640, you

must comply with the following requirements for performance tests for stationary RICE:

For each * * *	Complying with the requirement to * * *	You must * * *	Using * * *	According to the following requirements * * *
1. 2SLB, 4SLB, and CI stationary RICE.	a. reduce CO emissions ...	i. measure the O <sub>2</sub> at the inlet and outlet of the control device; and  ii. measure the CO at the inlet and the outlet of the control device.	(1) portable CO and O <sub>2</sub> analyzer.  (1) portable CO and O <sub>2</sub> analyzer.	(a) using ASTM D6522–00 (2005) <sup>a</sup> (incorporated by reference, see § 63.14). Measurements to determine O <sub>2</sub> must be made at the same time as the measurements for CO concentration. (a) using ASTM D6522–00 (2005) <sup>a</sup> (incorporated by reference, see § 63.14) or Method 10 of 40 CFR appendix A. The CO concentration must be at 15 percent O <sub>2</sub> , dry basis.
2. 4SRB stationary RICE ...	a. reduce formaldehyde emissions.	i. select the sampling port location and the number of traverse points; and  ii. measure O <sub>2</sub> at the inlet and outlet of the control device; and  iii. measure moisture content at the inlet and outlet of the control device; and  iv. measure formaldehyde at the inlet and the outlet of the control device.	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).  (1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522–00(2005).  (1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03.  (1) Method 320 of 40 CFR part 63, appendix A; or ASTM D6348–03, <sup>b</sup> provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) sampling sites must be located at the inlet and outlet of the control device. (a) measurements to determine O <sub>2</sub> concentration must be made at the same time as the measurements for formaldehyde concentration. (a) measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration. (a) formaldehyde concentration must be at 15 percent O <sub>2</sub> , dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
3. Stationary RICE .....	a. limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	i. select the sampling port location and the number of traverse points; and	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) if using a control device, the sampling site must be located at the outlet of the control device.

For each * * *	Complying with the requirement to * * *	You must * * *	Using * * *	According to the following requirements * * *
		ii. determine the O <sub>2</sub> concentration of the stationary RICE exhaust at the sampling port location; and  iii. measure moisture content of the stationary RICE exhaust at the sampling port location; and  iv. measure formaldehyde at the exhaust of the stationary RICE; or  v. measure CO at the exhaust of the stationary RICE	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522-00 (2005).  (1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348-03.  (1) Method 320 of 40 CFR part 63, appendix A; or ASTM D6348-03, <sup>b</sup> provided in ASTM D6348-03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.  (1) Method 10 of 40 CFR part 60, appendix A, ASTM Method D6522-00 (2005), <sup>a</sup> Method 320 of 40 CFR part 63, appendix A, or ASTM D6348-03.	(a) measurements to determine O <sub>2</sub> concentration must be made at the same time and location as the measurements for formaldehyde concentration. (a) measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration. (a) Formaldehyde concentration must be at 15 percent O <sub>2</sub> , dry basis. Results of this test consist of the average of the three 1-hour or longer runs.  (a) CO concentration must be at 15 percent O <sub>2</sub> , dry basis. Results of this test consist of the average of the three 1-hour longer runs.

<sup>a</sup>You may also use Methods 3A and 10 as options to ASTM-D6522-00 (2005). You may obtain a copy of ASTM-D6522-00 (2005) from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

<sup>b</sup>You may obtain a copy of ASTM-D6348-03 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

26. Table 5 to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 5 to Subpart ZZZZ of Part 63—  
Initial Compliance with Emission  
Limitations and Operating Limitations**

As stated in §§ 63.6612, 63.6625 and 63.6630, you must initially comply with

the emission and operating limitations as required by the following:

For each * * *	Complying with the requirement to * * *	You have demonstrated initial compliance if * * *
1. 2SLB and 4SLB stationary RICE >500 HP located at a major source and new or reconstructed CI stationary RICE >500 HP located at a major source.	a. Reduce CO emissions and using oxidation catalyst, and using a CPMS.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
2. 2SLB and 4SLB stationary RICE >500 HP located at a major source and new or reconstructed CI stationary RICE >500 HP located at a major source.	a. Reduce CO emissions and not using oxidation catalyst.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.



For each * * *	Complying with the requirement to * * *	You have demonstrated initial compliance if * * *
3. 2SLB and 4SLB stationary RICE >500 HP located at a major source and new or reconstructed CI stationary RICE >500 HP located at a major source.	a. Reduce CO emissions, and using a CEMS	i. You have installed a CEMS to continuously monitor CO and either O <sub>2</sub> or CO <sub>2</sub> at both the inlet and outlet of the oxidation catalyst according to the requirements in § 63.6625(a); and ii. You have conducted a performance evaluation of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B; and iii. The average reduction of CO calculated using § 63.6620 equals or exceeds the required percent reduction. The initial test comprises the first 4-hour period after successful validation of the CEMS. Compliance is based on the average percent reduction achieved during the 4-hour period.
4. 4SRB stationary RICE >500 HP located at a major source.	a. Reduce formaldehyde emissions and using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
5. 4SRB stationary RICE >500 HP located at a major source.	a. Reduce formaldehyde emissions and not using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
6. Stationary RICE >500 HP located at a major source.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O <sub>2</sub> , dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
7. Stationary RICE >500 HP located at a major source.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O <sub>2</sub> , dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
8. Existing stationary non-emergency RICE ≥100 HP located at a major source, existing non-emergency CI stationary RICE >500 HP, and existing stationary non-emergency RICE ≥100 HP located at an area source.	a. Reduce CO or formaldehyde emissions .....	i. The average reduction of emissions of CO or formaldehyde, as applicable determined from the initial performance test is equal to or greater than the required CO or formaldehyde, as applicable, percent reduction.
9. Existing stationary non-emergency RICE ≥100 HP located at a major source, existing non-emergency CI stationary RICE >500 HP, and existing stationary non-emergency RICE ≥100 HP located at an area source.	a. Limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	i. The average formaldehyde or CO concentration, as applicable, corrected to 15 percent O <sub>2</sub> , dry basis, from the three test runs is less than or equal to the formaldehyde or CO emission limitation, as applicable.

27. Table 6 to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 6 to Subpart ZZZZ of Part 63—  
Continuous Compliance with Emission  
Limitations and Operating Limitations**

As stated in § 63.6640, you must continuously comply with the

emissions and operating limitations as required by the following:

For each * * *	Complying with the requirement to * * *	You must demonstrate continuous compliance by * * *
1. 2SLB and 4SLB stationary RICE >500 HP located at a major source and CI stationary RICE >500 HP located at a major source.	a. Reduce CO emissions and using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved; <sup>a</sup> and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
2. 2SLB and 4SLB stationary RICE >500 HP located at a major source and CI stationary RICE >500 HP located at a major source.	a. Reduce CO emissions and not using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved; <sup>a</sup> and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
3. 2SLB and 4SLB stationary RICE >500 HP located at a major source and CI stationary RICE >500 HP located at a major source.	a. Reduce CO emissions and using a CEMS	i. Collecting the monitoring data according to § 63.6625(a), reducing the measurements to 1-hour averages, calculating the percent reduction of CO emissions according to § 63.6620; and ii. Demonstrating that the catalyst achieves the required percent reduction of CO emissions over the 4-hour averaging period; and iii. Conducting an annual RATA of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B, as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.
4. 4SRB stationary RICE >500 HP located at a major source.	a. Reduce formaldehyde emissions and using NSCR.	i. Collecting the catalyst inlet temperature data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and iv. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
5. 4SRB stationary RICE >500 HP located at a major source.	a. Reduce formaldehyde emissions and not using NSCR.	i. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
6. 4SRB stationary RICE with a brake HP ≥5,000 located at a major source.	Reduce formaldehyde emissions .....	Conducting semiannual performance tests for formaldehyde to demonstrate that the required formaldehyde percent reduction is achieved <sup>a</sup> .

For each * * *	Complying with the requirement to * * *	You must demonstrate continuous compliance by * * *
7. Stationary RICE >500 HP located at a major source.	Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit; <sup>a</sup> and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
8. Stationary RICE >500 HP located at a major source.	Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit; <sup>a</sup> and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
9. Existing stationary RICE <100 HP located at a major or area source.	a. Reduce formaldehyde emissions; or  b. Limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	i. Operating and maintaining the stationary RICE according to the manufacturer's emission-related operation and maintenance instructions; or ii. Develop and follow your own maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good air pollution control practice for minimizing emissions.
10. Existing stationary RICE located at an area source not subject to any numerical emission limitations.	a. Management practices .....	i. Operating and maintaining the stationary RICE according to the manufacturer's emission-related operation and maintenance instructions; or ii. Develop and follow your own maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good air pollution control practice for minimizing emissions.
11. Existing stationary RICE >500 HP, except 4SRB >500 HP located at major sources.	a. Reduce CO or formaldehyde emissions; or  b. Limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	i. Conducting performance tests every 8,760 hours or 3 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit.

<sup>a</sup> After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the CO or formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

28. Table 8 to Subpart ZZZZ of Part 63 is revised to read as follows:

**Table 8 to Subpart ZZZZ of Part 63—  
Applicability of General Provisions to  
Subpart ZZZZ**

As stated in § 63.6665, you must comply with the following applicable general provisions.

General provisions citation	Subject of citation	Applies to subpart	Explanation			
§ 63.1	General applicability of the General Provisions.	Yes.				
§ 63.2	Definitions	Yes	Additional terms defined in § 63.6675.			
§ 63.3	Units and abbreviations	Yes.				
§ 63.4	Prohibited activities and circumvention	Yes.				
§ 63.5	Construction and reconstruction	Yes.				
§ 63.6(a)	Applicability	Yes.				
§ 63.6(b)(1)–(4)	Compliance dates for new and reconstructed sources.	Yes.				
§ 63.6(b)(5)	Notification	Yes.				
§ 63.6(b)(6)	[Reserved].					
§ 63.6(b)(7)	Compliance dates for new and reconstructed area sources that become major sources.	Yes.				
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes.				
§ 63.6(c)(3)–(4)	[Reserved].					
§ 63.6(c)(5)	Compliance dates for existing area sources that become major sources.	Yes.				
§ 63.6(d)	[Reserved].					
§ 63.6(e)(1)	Operation and maintenance	Yes		Additional requirements are specified in § 63.6625 and in Tables 2d and 6 to this subpart.		
§ 63.6(e)(2)	[Reserved].					
§ 63.6(e)(3)	Startup, shutdown, and malfunction plan	Yes.				
§ 63.6(f)(1)	Applicability of standards except during startup shutdown malfunction (SSM).	No.				
§ 63.6(f)(2)	Methods for determining compliance	Yes.				
§ 63.6(f)(3)	Finding of compliance	Yes.				
§ 63.6(g)(1)–(3)	Use of alternate standard	Yes.				
§ 63.6(h)	Opacity and visible emission standards	No	Subpart ZZZZ does not contain opacity or visible emission standards.			
§ 63.6(i)	Compliance extension procedures and criteria.	Yes.				
§ 63.6(j)	Presidential compliance exemption	Yes.				
§ 63.7(a)(1)–(2)	Performance test dates	Yes			Subpart ZZZZ contains performance test dates at §§ 63.6610, 63.6611, and 63.6612.	
§ 63.7(a)(3)	CAA section 114 authority	Yes.				
§ 63.7(b)(1)	Notification of performance test	Yes				Except that § 63.7(b)(1) only applies as specified in § 63.6645.
§ 63.7(b)(2)	Notification of rescheduling	Yes				
§ 63.7(c)	Quality assurance/test plan	Yes		Except that § 63.7(c) only applies as specified in § 63.6645.		
§ 63.7(d)	Testing facilities	Yes.				
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.		Subpart ZZZZ specifies test methods at § 63.6620.		
§ 63.7(e)(2)	Conduct of performance tests and reduction of data.	Yes				
§ 63.7(e)(3)	Test run duration	Yes.				
§ 63.7(e)(4)	Administrator may require other testing under section 114 of the CAA.	Yes.				
§ 63.7(f)	Alternative test method provisions	Yes.		Subpart ZZZZ contains specific requirements for monitoring at § 63.6625.		
§ 63.7(g)	Performance test data analysis, record-keeping, and reporting.	Yes.				
§ 63.7(h)	Waiver of tests	Yes.				
§ 63.8(a)(1)	Applicability of monitoring requirements	Yes				
§ 63.8(a)(2)	Performance specifications	Yes.				
§ 63.8(a)(3)	[Reserved].					
§ 63.8(a)(4)	Monitoring for control devices	No.				
§ 63.8(b)(1)	Monitoring	Yes.				
§ 63.8(b)(2)–(3)	Multiple effluents and multiple monitoring systems.	Yes.				
§ 63.8(c)(1)	Monitoring system operation and maintenance.	Yes.				
§ 63.8(c)(1)(i)	Routine and predictable SSM	Yes.				
§ 63.8(c)(1)(ii)	SSM not in Startup Shutdown Malfunction Plan.	Yes.				
§ 63.8(c)(1)(iii)	Compliance with operation and maintenance requirements.	Yes.				
§ 63.8(c)(2)–(3)	Monitoring system installation	Yes.				

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.8(c)(4)	Continuous monitoring system (CMS) requirements.	Yes	Except that subpart ZZZZ does not require Continuous Opacity Monitoring System (COMS).
§ 63.8(c)(5)	COMS minimum procedures	No	Subpart ZZZZ does not require COMS.
§ 63.8(c)(6)–(8)	CMS requirements	Yes	Except that subpart ZZZZ does not require COMS.
§ 63.8(d)	CMS quality control	Yes.	Except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(e)	CMS performance evaluation	Yes	Except that § 63.8(e) only applies as specified in § 63.6645.
§ 63.8(f)(1)–(5)	Alternative monitoring method	Yes	Except that § 63.8(f)(4) only applies as specified in § 63.6645.
§ 63.8(f)(6)	Alternative to relative accuracy test	Yes	Except that § 63.8(f)(6) only applies as specified in § 63.6645.
§ 63.8(g)	Data reduction	Yes	Except that provisions for COMS are not applicable. Averaging periods for demonstrating compliance are specified at §§ 63.6635 and 63.6640.
§ 63.9(a)	Applicability and State delegation of notification requirements.	Yes.	
§ 63.9(b)(1)–(5)	Initial notifications	Yes	Except that § 63.9(b)(3) is reserved. Except that § 63.9(b) only applies as specified in § 63.6645.
§ 63.9(c)	Request for compliance extension	Yes	Except that § 63.9(c) only applies as specified in § 63.6645.
§ 63.9(d)	Notification of special compliance requirements for new sources.	Yes	Except that § 63.9(d) only applies as specified in § 63.6645.
§ 63.9(e)	Notification of performance test	Yes	Except that § 63.9(e) only applies as specified in § 63.6645.
§ 63.9(f)	Notification of visible emission (VE)/opacity test.	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.9(g)(1)	Notification of performance evaluation	Yes	Except that § 63.9(g) only applies as specified in § 63.6645.
§ 63.9(g)(2)	Notification of use of COMS data	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.9(g)(3)	Notification that criterion for alternative to RATA is exceeded.	Yes	If alternative is in use.
§ 63.9(h)(1)–(6)	Notification of compliance status	Yes	Except that § 63.9(g) only applies as specified in § 63.6645. Except that notifications for sources using a CEMS are due 30 days after completion of performance evaluations. § 63.9(h)(4) is reserved. Except that § 63.9(h) only applies as specified in § 63.6645.
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Administrative provisions for record-keeping/reporting.	Yes.	
§ 63.10(b)(1)	Record retention	Yes.	
§ 63.10(b)(2)(i)–(v)	Records related to SSM	Yes.	
§ 63.10(b)(2)(vi)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Record when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to RATA	Yes	For CO standard if using RATA alternative.
§ 63.10(b)(2)(xiv)	Records of supporting documentation	Yes.	
§ 63.10(b)(3)	Records of applicability determination	Yes.	
§ 63.10(c)	Additional records for sources using CEMS.	Yes	Except that § 63.10(c)(2)–(4) and (9) are reserved.
§ 63.10(d)(1)	General reporting requirements	Yes.	
§ 63.10(d)(2)	Report of performance test results	Yes.	
§ 63.10(d)(3)	Reporting opacity or VE observations	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.10(d)(4)	Progress reports	Yes.	
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes.	
§ 63.10(e)(1) and (2)(i)	Additional CMS reports	Yes.	
§ 63.10(e)(2)(ii)	COMS-related report	No	Subpart ZZZZ does not require COMS.
§ 63.10(e)(3)	Excess emission and parameter exceedances reports.	Yes	Except that § 63.10(e)(3)(i)(C) is reserved.
§ 63.10(e)(4)	Reporting COMS data	No	Subpart ZZZZ does not require COMS.
§ 63.10(f)	Waiver for recordkeeping/reporting	Yes.	

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.11 .....	Flares .....	No.	
§ 63.12 .....	State authority and delegations .....	Yes.	
§ 63.13 .....	Addresses .....	Yes.	
§ 63.14 .....	Incorporation by reference .....	Yes.	
§ 63.15 .....	Availability of information .....	Yes.	

[FR Doc. E9-4595 Filed 3-4-09; 8:45 am]

BILLING CODE 6560-50-P



# Federal Register

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**Thursday,  
March 5, 2009**

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## **Part III**

## **The President**

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**Proclamation 8346—American Red Cross  
Month, 2009**

**Proclamation 8347—National Consumer  
Protection Month, 2009**

**Proclamation 8348—Save Your Vision  
Week, 2009**

**Proclamation 8349—Read Across America  
Day, 2009**





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**Presidential Documents**

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**Title 3—****Proclamation 8346 of February 27, 2009****The President****American Red Cross Month, 2009****By the President of the United States of America****A Proclamation**

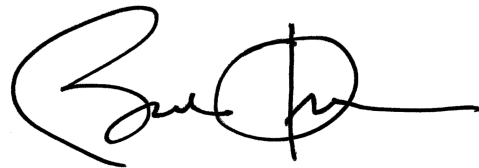
Sixty-two years after its founding, the Red Cross was instrumental in what President Franklin D. Roosevelt called the “greatest single crusade of mercy in all of history.” In 1943, at the height of World War II, President Roosevelt called on the American people to support the troops by supporting the Red Cross, which provided food, blood, and supplies to American troops, allies, and civilians across the world. President Roosevelt asked Americans to donate funds to the Red Cross, setting a goal of \$125 million for 6 weeks of fundraising. The American people responded with characteristic generosity, opening their hearts and wallets. The Red Cross met this goal in less than 6 weeks. During that season of generosity and unity, President Roosevelt proclaimed March 1943 as the first Red Cross Month.

The Red Cross has continued to serve those suffering from large- and small-scale disasters. The organization is best known for its work helping communities deal with major disasters such as hurricanes, floods, and wildfires. These large-scale disasters represent a major part of the work of the American Red Cross. Just as important are the tens of thousands of small-scale disasters that occur every day in communities nationwide, and the volunteers who respond to them. These efforts include supporting our military and their families, collecting and distributing blood, helping the needy, delivering health and safety education, and providing aid abroad.

In every response, volunteers are the key to Red Cross efforts. Volunteers represent 96 percent of the Red Cross workforce. Without their giving spirit, disaster relief operations would fall short, blood donations would fail, and the mission of the Red Cross would go unfulfilled. Whether helping military families stay connected with service members around the world, teaching CPR and first aid, or supporting other members of the International Red Cross and Red Crescent Movement, volunteers are critical to the success of each and every Red Cross endeavor. These individuals epitomize the generosity and community spirit of the American people.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States do hereby proclaim March 2009 as American Red Cross Month. I encourage all Americans to support this organization's noble humanitarian mission.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text.

[FR Doc. E9-4818

Filed 3-4-09; 8:45 am]

Billing code 3195-W9-P

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## Presidential Documents

**Proclamation 8347 of February 27, 2009**

### **National Consumer Protection Week, 2009**

**By the President of the United States of America**

#### **A Proclamation**

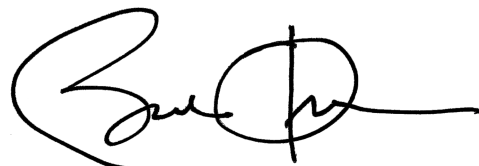
Consumer education helps every American who enters the marketplace. When making a purchase, consumers should know their rights and should learn about goods and services before they buy. This knowledge allows consumers to make sound decisions and protects families and individuals from fraud and abuse. Consumer vigilance also prevents problems before they arise. During National Consumer Protection Week, we highlight consumer education efforts to help Americans make wise decisions. Federal, State, and local agencies; private sector organizations; and consumer advocacy groups band together to encourage Americans to learn about the protections the law affords and to take full advantage of the resources available for consumers of every age.

This year's theme for National Consumer Protection Week, "Nuts & Bolts: Tools for Today's Economy," focuses on the basic information consumers need as they face the opportunities and pitfalls of the marketplace. Every day, consumers make tough choices about saving, investing, and spending their hard-earned money. Whether selecting a mortgage payment plan, seeking a credit report, or buying a car, staying well-informed and vigilant can help citizens make prudent choices. A few days, hours, or even minutes of preparatory research can ultimately save time and money.

As part of National Consumer Protection Week, the Federal Trade Commission has organized a coalition of public- and private-sector organizations to provide practical tips on a wide range of topics. These tips are available at [www.consumer.gov/ncpw](http://www.consumer.gov/ncpw). The website also includes information on home foreclosure, identity theft, and protecting businesses. Working together, consumers, businesses, and Government can strengthen our robust free market for the benefit of all Americans.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1 through March 7, 2009, as National Consumer Protection Week. I call upon Government officials, industry leaders, and advocates across the Nation to provide our citizens with information about consumer rights, and I encourage all Americans to take a proactive role in strengthening our economy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to read 'Barack Obama', with a stylized flourish extending to the right.

[FR Doc. E9-4819

Filed 3-4-09; 8:45 am]

Billing code 3195-W9-P

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## Presidential Documents

**Proclamation 8348 of February 27, 2009**

**Save Your Vision Week, 2009**

**By the President of the United States of America**

### **A Proclamation**

Blindness and visual impairment affect millions of Americans. Early diagnosis and timely treatment are critical to minimize vision loss from eye diseases as well as vision loss that is correctable with eye glasses or contact lenses. During Save Your Vision Week, I encourage all Americans to take action to protect their vision.

Unfortunately, most people have limited knowledge of blinding eye disorders. In a 2005 study by the National Eye Institute, part of the National Institutes of Health, only eight percent of respondents knew that glaucoma, a condition that can damage the optic nerve and cause vision loss and blindness, strikes without early warning. Similarly, only 11 percent knew that diabetic eye disease also begins as a silent vision threat.

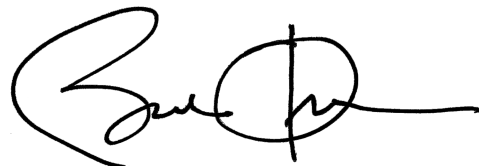
Several demographic groups are at higher risk for visual impairment, including teenagers, diabetics, Hispanics, African Americans, and the economically disadvantaged. Older Americans are more susceptible to eye conditions such as age-related macular degeneration, diabetic retinopathy, and glaucoma. Children need regular vision screenings because vision disorders left untreated during childhood can lead to permanent visual impairment during adulthood.

Still, eye disease knows no bounds, and every American should take steps to protect his or her eyesight. Doctors recommend seeking routine eye examinations, maintaining a healthy diet, wearing sunglasses to protect the eyes from damaging ultraviolet rays, and using protective eyewear in hazardous environments. The National Eye Institute's website, [www.nei.nih.gov](http://www.nei.nih.gov), provides resources for learning more about common vision conditions and information on finding an eye health professional. By being proactive and seeking out information, Americans can do their part to prevent or reduce vision loss.

To remind Americans about the importance of safeguarding their eyesight, the Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim March 1 through March 7, 2009, as Save Your Vision Week. During this time, I invite eye care professionals, teachers, members of the media, and all organizations dedicated to preserving eyesight to join in activities that will raise awareness of vision diseases and disorders.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text.

[FR Doc. E9-4820

Filed 3-4-09; 8:45 am]

Billing code 3195-W9-P

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## Presidential Documents

**Proclamation 8349 of February 27, 2009**

**Read Across America Day, 2009**

**By the President of the United States of America**

### **A Proclamation**

Read Across America Day provides an opportunity to support efforts to excite children about reading and to educate families about the importance of literacy. I encourage families and all citizens to celebrate the joy and emphasize the importance of reading.

Every American child deserves the opportunity to solve the puzzles of mystery novels, to discover the beauty of poetry, to imagine the fantastical worlds of science fiction, and to explore their own world through books about nature and foreign lands. Reading provides unending enjoyment and helps unlock a child's creative potential. We must make literacy the birthright of every American.

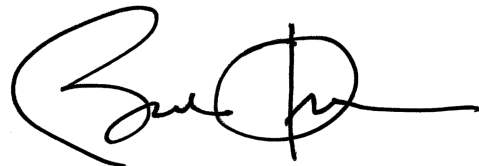
Every child also deserves the tools they will need for success. Students must read well to meet high standards in the classroom. Understanding science, mathematics, and the arts requires the ability to read proficiently. Beyond the schoolyard, our youth must be prepared to meet the demands of the global economy. New technologies and steep competition abroad require our Nation to focus on children's reading skills as a building block for future personal achievements.

Families must play an active role in this effort. On Read Across America Day, parents are encouraged to read to their children for at least 30 minutes. I also encourage parents to recognize the critical importance of literacy for their children's future and to develop habits at home that encourage reading, such as reading to their children every night or providing incentives for them to read on their own.

On Read Across America Day, we partner with the National Education Association and mark the birthday of Theodor Geisel, whose beloved Dr. Seuss books still inspire children throughout the world to read.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2, 2009, as Read Across America Day. I call upon children, families, educators, librarians, public officials, and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large, stylized initial "B" and a circular flourish.

[FR Doc. E9-4822

Filed 3-4-09; 8:45 am]

Billing code 3195-W9-P





# Federal Register

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**Thursday,  
March 5, 2009**

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**Part IV**

## **The President**

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**Proclamation 8350—Irish-American  
Heritage Month, 2009**

**Proclamation 8351—Women's History  
Month, 2009**



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# Presidential Documents

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Title 3—

Proclamation 8350 of March 2, 2009

The President

Irish-American Heritage Month, 2009

By the President of the United States of America

## A Proclamation

Even before the birth of our Nation, the sons and daughters of Erin departed their homes in search of liberty and a more hopeful future. As these early pioneers left familiar lands, they carried with them the rich traditions of home. This March we honor their journey and their lasting contributions to the history and culture of the United States.

Following the colonial migrations, the United States enjoyed the greatest influx of Irish during the 1840s as Ireland suffered the Great Famine. Hungry but hopeful, poor but perseverant, Irish-Americans seized the opportunity to work hard, enjoy success, and pursue the American Dream.

Many took on the difficult work of constructing America's infrastructure. Others assumed positions of leadership. Among those leaders were signers of the Declaration of Independence and Presidents of the United States. Still others enjoyed great success and influence in the arts and literature. From social activists to business leaders, athletes to clergy, and first responders to soldiers, distinguished Irish-Americans have made indelible contributions to our national identity.

Today, tens of millions of Irish-Americans can look back with pride on the legacy of their forebears. Irish-Americans are integral to the rich fabric of the United States, and we are grateful for their service and contributions.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2009 as Irish-American Heritage Month. I encourage all Americans to observe this month with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

[FR Doc. E9-4855

Filed 3-4-09; 11:15 am]

Billing code 3195-W9-P

## Presidential Documents

**Proclamation 8351 of March 3, 2009**

**Women's History Month, 2009**

**By the President of the United States of America**

### **A Proclamation**

With passion and courage, women have taught us that when we band together to advocate for our highest ideals, we can advance our common well-being and strengthen the fabric of our Nation. Each year during Women's History Month, we remember and celebrate women from all walks of life who have shaped this great Nation. This year, in accordance with the theme, "Women Taking the Lead to Save our Planet," we pay particular tribute to the efforts of women in preserving and protecting the environment for present and future generations.

Ellen Swallow Richards is known to have been the first woman in the United States to be accepted at a scientific school. She graduated from the Massachusetts Institute of Technology in 1873 and went on to become a prominent chemist. In 1887, she conducted a survey of water quality in Massachusetts. This study, the first of its kind in America, led to the Nation's first state water-quality standards.

Women have also taken the lead throughout our history in preserving our natural environment. In 1900, Maria Sanford led the Minnesota Federation of Women's Groups in their efforts to protect forestland near the Mississippi River, which eventually became the Chippewa National Forest, the first Congressionally mandated national forest. Marjory Stoneman Douglas dedicated her life to protecting and restoring the Florida Everglades. Her book, *The Everglades: Rivers of Grass*, published in 1947, led to the preservation of the Everglades as a National Park. She was awarded the Presidential Medal of Freedom in 1993.

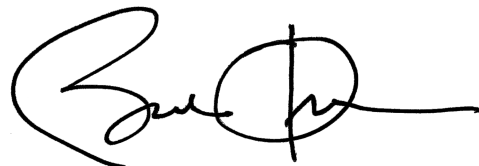
Rachel Carson brought even greater attention to the environment by exposing the dangers of certain pesticides to the environment and to human health. Her landmark 1962 book, *Silent Spring*, was fiercely criticized for its unconventional perspective. As early as 1963, however, President Kennedy acknowledged its importance and appointed a panel to investigate the book's findings. *Silent Spring* has emerged as a seminal work in environmental studies. Carson was awarded the Presidential Medal of Freedom posthumously in 1980.

Grace Thorpe, another leading environmental advocate, also connected environmental protection with human well-being by emphasizing the vulnerability of certain populations to environmental hazards. In 1992, she launched a successful campaign to organize Native Americans to oppose the storage of nuclear waste on their reservations, which she said contradicted Native American principles of stewardship of the earth. She also proposed that America invest in alternative energy sources such as hydroelectricity, solar power, and wind power.

These women helped protect our environment and our people while challenging the status quo and breaking social barriers. Their achievements inspired generations of American women and men not only to save our planet, but also to overcome obstacles and pursue their interests and talents. They join a long and proud history of American women leaders, and this month we honor the contributions of all women to our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2009 as Women's History Month. I call upon all our citizens to observe this month with appropriate programs, ceremonies, and activities that honor the history, accomplishments, and contributions of American women.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text above it.



# Federal Register

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**Thursday,  
March 5, 2009**

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**Part V**

## **The President**

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**Notice of March 3, 2009—Continuation of  
the National Emergency with Respect to  
Zimbabwe**





**Title 3—****Notice of March 3, 2009****The President****Continuation of the National Emergency with Respect to Zimbabwe**

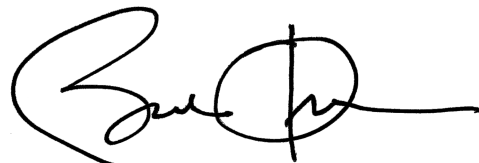
On March 6, 2003, by Executive Order 13288, the President declared a national emergency and blocked the property of persons undermining democratic processes or institutions in Zimbabwe, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). He took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. These actions have contributed to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation, and to political and economic instability in the southern African region.

On November 22, 2005, the President issued Executive Order 13391 to take additional steps with respect to the national emergency declared in Executive Order 13288 by ordering the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

On July 25, 2008, the President issued Executive Order 13469, which expanded the scope of the national emergency declared in Executive Order 13288 and ordered the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on March 6, 2003, and the measures adopted on that date, on November 22, 2005, and on July 25, 2008, to deal with that emergency, must continue in effect beyond March 6, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
*March 3, 2009.*

# Reader Aids

## Federal Register

Vol. 74, No. 42

Thursday, March 5, 2009

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**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

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