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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Doc. #AMS–FV–08–0013; FV08–379]

Regulations Under the Perishable Agricultural Commodities Act, 1930; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This notice summarizes the results of an Agricultural Marketing Service (AMS) review of the Regulations (Other than Rules of Practice) under the Perishable Agricultural Commodities Act, 1930, as amended, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS has determined that the Regulations (Other than Rules of Practice) under the Perishable Agricultural Commodities Act, 1930, as amended, should be continued without change.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of the review. Requests for copies should be sent to Michiko Shaw, Assistant to the Chief, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Stop 0242, Washington DC 20250–0242, (202) 205–4887, e-mail: *Michiko.Shaw@ams.usda.gov* or by accessing our Web site at *http://www.ams.usda.gov/paca*.

SUPPLEMENTARY INFORMATION: USDA's Agricultural Marketing Service (AMS) administers and enforces The Perishable Agricultural Commodities Act (PACA). The PACA establishes a code of fair trade practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. The law also provides a forum to adjudicate or mediate commercial disputes. Licensees who violate the PACA may have their license suspended or revoked, and principals of such a licensee are restricted from employment or operating in the produce industry for a period of time.

The PACA also imposes a statutory trust for the benefit of unpaid suppliers or sellers on perishable agricultural commodities received and accepted but not yet paid for, and may encumber products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products.

In the case of a business failure or bankruptcy of an entity subject to PACA, the debtor's inventory and receivables (PACA trust assets) are not property of the estate and are not available for general distribution until the claims of PACA creditors who have preserved their trust rights have been satisfied. Because of the statutory trust provision, PACA trust creditors who have preserved their trust rights with the appropriate written notices, including sellers outside of the United States, have a far greater chance of recovering the money owed to them should an entity subject to PACA go out of business. The PACA trust provisions protect producers and the majority of firms trading in fruits and vegetables as each buyer of perishable agricultural commodities in the marketing chain becomes a seller in its own turn.

There are approximately 14,500 firms that are licensed under the PACA to operate in the produce industry. PACA licensees are located nationwide and include dealers, brokers and commission merchants who buy, sell, or negotiate the purchase or sale of fresh and frozen fruits and vegetables in interstate and/or foreign commerce.

AMS published in the **Federal Register** (68 FR 48574, August 14, 2003) its plan to review certain regulations, including regulations (7 CFR Part 46) under the PACA, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601—612). An updated plan was published in the **Federal Register** on March 24, 2006 (71 FR 14827). Because many of AMS' regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not have a significant economic impact on a substantial number of small entities as required in section 610 of the RFA (5 U.S.C. 610), merit review.

The review was undertaken to determine whether the PACA Regulations (Other than Rules of Practice) should be continued without change, or should be amended or rescinded (consistent with the objectives of the Act) to minimize any significant economic impact of the regulations upon a substantial number of small businesses. In conducting this review, AMS considered the following factors: (1) The continued need for the PACA regulations; (2) the nature of the complaints or comments received from the public concerning the PACA regulations; (3) the complexity of the PACA regulations; (4) the extent to which the PACA regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the PACA regulations have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the PACA regulations.

AMS published a notice of review and request for written comments in the **Federal Register** on March 21, 2008 (73 FR 15122). The comment period ended on May 20, 2008. AMS received three written comments in response to the notice of review.

One comment was received from Thomas R. Oliveri, Director of Trade Practices and Commodity Services, Western Growers (WG), Irvine, California. WG is an agricultural trade association whose nearly 3,000 members grow, pack, and ship approximately 90 percent of the fresh vegetables and nearly 70 percent of the fresh fruits and nuts grown in California and Arizona, which accounts for more than 50 percent of U.S. fresh produce production. WG was fully supportive of the program and the continued need for the PACA regulations. WG stated that the PACA is a user fee, self-funded program which has been supported by, and protecting the produce industry for nearly eighty years. WG stated that the primary purpose of the PACA is to prevent unfair and fraudulent marketing and selling of fresh fruits and

vegetables, and to facilitate the orderly marketing of fresh fruits and vegetables in interstate and foreign commerce. WG further stated that the program is the most efficient and inexpensive way for disputes between buyers and sellers of fresh fruits and vegetables to settle their differences under the Rules and Regulations of the PACA and its precedent decisions. AMS concurs with the stated position of WG.

Another comment was received from Elise Cortina, Executive Director of the Frozen Potato Products Institute (FPPI), McLean, Virginia. FPPI is a national trade association representing domestic manufacturers and processors of frozen potato products. Its member companies account for approximately 95 percent of the total annual United States production of frozen potato products. Ms. Cortina specifically urged AMS to retain the current regulations recognizing battered and coated vegetables as being within the PACA's scope. Ms. Cortina also stated that the inclusion of this definition has no detrimental impact on small businesses and, in fact, is beneficial to small businesses. AMS agrees that the definition of coated and battered within the regulations should remain as is.

An e-mail comment was received from Jennifer Jambor, a staff attorney for Farmers' Legal Action Group, Inc. (FLAG), of Saint Paul, Minnesota, on behalf of the Farmworker Association of Florida, Inc., which represents more than 6,330 farmer worker families from predominately Mexican, Haitian, African American, Guatemalan, and Salvadorian communities. FLAG works with beginning fruit and vegetable farmers from these and other communities in Florida to assist them in understanding their legal rights under the PACA.

FLAG suggested that although the PACA regulations set forth specific time frames for buyers to make payment to sellers, the regulations also permit buyers and sellers to enter into agreements for payment outside the prescribed time limits, thereby creating a perceived loophole. FLAG believes that this loophole provides a buyer the opportunity to undermine a grower's right to full and prompt payment because such an agreement may result in a waiver of the seller's right to payment under the PACA trust. In its comment, FLAG states that it is a common practice for packing houses to obtain growers' initials on a receipt for delivered produce that has a pre-printed purchase contract on the reverse side, which includes an express waiver of trust rights. The terms of the preprinted contracts are not subject to negotiation and result in the sellers' unknowing and involuntary waiver of their trust rights. Growers are faced with a take-it-or-leave-it situation because of their relative bargaining position vis-à-vis the packing houses. FLAG argues that under these circumstances, no real agreement to alter the payment terms has been reached. FLAG therefore states that AMS should consider removing the provision in the PACA regulations that allows agreement to payment terms outside the prescribed time limits. In the alternative, FLAG suggests that the provision be amended to require that any waiver of trust rights under the PACA must be made knowingly and voluntarily. FLAG also opined that any written agreement must contain a disclosure describing a grower's right to full and prompt payment under the PACA and must either be in a language that the grower can read, or be read aloud to the grower in the grower's preferred language.[1]

The agency does not believe that the best interests of the firms engaged in buying and selling fruits and vegetables would be served by significantly limiting, through regulation, the ability of these businesses to negotiate contract terms. Currently the PACA regulations set forth the payment terms under which payment must be made from buyers and sellers in order to comply with the PACA. However, the regulations allow the parties the flexibility to deviate from these terms, if they agree to different terms and enter into a separate written agreement prior to the date of the transaction. The regulations also specifically provide the maximum time that sellers can extend credit terms and still qualify for trust protection.

Aside from the comments from FLAG, the Department has not received complaints about the PACA regulations. Based on these comments, AMS has determined that the PACA regulations should be continued without change.

AMS has determined that the PACA regulations are not unduly complex and will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the PACA regulations.

The agency meets about twice a year with the Fruit and Vegetable Industry Advisory Committee, which is appointed by the Secretary, to discuss the administration of the PACA and other USDA fruit and vegetable programs. In addition, PACA administrators continue to hold periodic discussions with industry associations, such as the government relations committee of the United Fresh Fruit and Vegetable Association, Alexandria, Virginia; the Produce Marketing Association, Newark, Delaware; Western Growers, Newport Beach, California; Food Marketing Institute, Arlington, Virginia; and other individuals and firms regulated under the Act. The recordkeeping requirements of the PACA have never raised great controversy in the industry. Changes in the regulations have been and will continue to be implemented through notice and comment rulemaking to reflect current industry practices and technological advances.

For example, a recent amendment to the PACA regulations was made as a result of changes in the produce industry's buying, selling and billing practices. The changes to the regulations will ensure trust protection for produce sellers using electronic invoicing or other billing statements to invoice buyers. The PACA trust provisions protect unpaid sellers in the event that a buyer files for bankruptcy or goes out of business. Under the new regulations, a buyer operating subject to the PACA, or its representative is required to accept a trust notice submitted by a seller in documentary form, by electronic invoice, or other billing statement. The buyer must also allow sufficient data space for the seller to include the required trust language in its electronic billing system. Any failure, act or omission inconsistent with this responsibility is unlawful and a violation of the PACA.

Based upon its review, AMS has determined that the Regulations (Other than Rules of Practice) under the Perishable Agricultural Commodities Act, 1930, as amended, should be continued without change. AMS plans to continue working with the fruit and vegetable industry to maintain an effective program.

Dated: March 16, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–6055 Filed 3–19–09; 8:45 am]

BILLING CODE 3410–02–P

[1] FLAG recognizes that litigation can be used to challenge these contracts, but argues that amendment of the regulations would be a more effective and comprehensive response to the problem.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. FSIS–2008–0027]

RIN 0583–AD38

Mandatory Country of Origin Labeling of Muscle Cuts of Beef (Including Veal), Lamb, Chicken, Goat, and Pork; Ground Beef, Ground Lamb, Ground Chicken, Ground Goat, and Ground Pork

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is affirming, without change, its interim final rule requiring a country of origin statement on the label of any meat or poultry product that is a covered commodity, as defined by the Agricultural Marketing Service (AMS), and that is to be sold by a retailer, also as defined by AMS, in accordance with the regulations set out in AMS' final rule, ''Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts.'' FSIS is also affirming, without change, the provisions of the interim final rule that amended its regulations to provide that it will consider the addition of compliant country of origin statements to the labels of covered meat or poultry products to be generically approved. FSIS is thus conforming its regulations to the AMS final rule. FSIS is not amending its regulations or labeling policies for meat or poultry products that are non-covered commodities.

DATES: This final rule is effective on March 20, 2009.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins, Acting Director, Labeling and Program Delivery Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

FSIS' Interim Final Rule

On August 28, 2008 (73 FR 50701), FSIS published an interim final rule conforming its regulations to the AMS interim final country of origin labeling (COOL) rule, published August 1, 2008 (73 FR 45106). As FSIS explained in its interim final rule, the Farm Security and Rural Investment Act of 2002 (Section 10816 of Public Law 107–171) and the Food, Conservation and Energy Act of 2008 (Section 11002 of Public Law 110–246) amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to require that retailers notify their customers of the country of origin of covered commodities. Under the law, covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; as well as other non-meat covered commodities.

The law defines ''retailer'' as having the meaning given that term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (PACA) (7 U.S.C. 499 *et seq.*). In addition, the law states that any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer about the country of origin of the covered commodity.

The law exempts covered commodities from mandatory COOL if they are ingredients in processed foods. The law also prescribes specific criteria that must be met for a covered commodity to bear a ''United States country of origin'' declaration. Furthermore, the law requires that country of origin labeling for ground beef, ground lamb, ground pork, ground goat, and ground chicken include a list of all the countries of origin contained therein or reasonably contained therein.

The Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006 (Pub. L. 109–97) delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shell fish until September 30, 2008. Therefore, FSIS' interim final COOL regulations were effective September 30, 2008. The requirements of the interim final rule did not apply to meat or poultry product covered commodities produced or packaged before September 30, 2008. FSIS' interim final rule remains in effect until this final rule becomes effective.

AMS Final Rule

AMS's final COOL regulations were published on January 15, 2009 (74 FR 2658). The preamble to AMS final COOL regulations summarizes the contents of the final rule and highlights changes from the interim final rule.

AMS made two changes to the definitions of meat product covered commodities in 7 CFR part 65, subpart A. AMS changed the definition of ''ground beef'' in the final rule in response to comments. The revised definition excludes ''beef patties,'' as defined in 9 CFR 319.15(c), from the definition of ''covered commodity.'' Under AMS' final rule, the term ''ground beef'' includes products defined in 9 CFR 319.15(a), *i.e.*, chopped fresh or frozen beef, with or without seasoning and without the addition of beef fat as such, containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders. The term ''ground beef'' also includes products defined by the term ''hamburger'' in 9 CFR 319.15(b) (7 CFR 65.155).

In response to comments, AMS also changed the definition of ''lamb'' in the final rule to include mutton. Under AMS' final rule, the term ''lamb'' means meat produced from sheep (7 CFR 65.190).

AMS' country of origin regulations in 7 CFR 65.300 include requirements for labeling covered commodities of United States origin (7 CFR 65.300(d)). AMS' interim final rule contained a provision allowing U.S. origin covered commodities to be further processed or handled in a foreign country and to retain their U.S. origin. In response to comments, AMS deleted this provision. To the extent that it is allowed under existing Department of Homeland Security Customs and Border Protection (CBP) or FSIS regulations, U.S. origin covered commodities may still be eligible to bear a U.S. origin declaration if they are processed in another country such that a substantial transformation (as determined by CBP) does not occur. Below, FSIS has included a discussion of the effect of the COOL regulations on U.S. meat and poultry products exported for processing.

The effective date of AMS's January 15, 2009, final regulation is March 16, 2009. In its final rule, AMS explained that it had provided a six month education and outreach period following the effective date of its interim final rule to allow the regulated industries to adapt to the changes in its COOL regulations. AMS provided in its final rule that this period of education and outreach would continue through March 2009.

FSIS Final Rule

This final rule will conform its final rule to AMS' final rule. In this final rule, FSIS made no changes to its interim final rule in response to comments. Therefore, consistent with FSIS' interim final rule, FSIS is amending 9 CFR 317.8(b) and 381.129 to require that a country of origin statement on the label of a meat or poultry product that is a ''covered commodity,'' as defined in 7 CFR part 65, subpart A, that is to be sold by a ''retailer,'' as defined in 7 CFR 65.240, comply with the country of origin notification and markings

requirements in 7 CFR 65.300 and 65.400.

Also, consistent with its interim final rule, FSIS is amending its generic approval labeling regulations (9 CFR 317.5 and 381.133) to specify that the addition of country of origin statements on the labels of meat or poultry product covered commodities that are to be sold by retailers and that comply with COOL requirements will be considered to be generically approved. FSIS is providing that such country of origin statements will be generically approved to facilitate implementation of COOL. Under the Federal meat and poultry products inspection regulations, country of origin statements on non-covered meat or poultry products generally are not generically approved labeling. FSIS generally considers country of origin statements on non-covered commodities to be special claims that require sketch approval from FSIS (9 CFR 317.4 and 381.132).

The Federal meat and poultry product inspection regulations require country of origin statements on the immediate containers of imported products (9 CFR 327.14 and 381.205). These regulations require that the country of origin statement be immediately under the name or descriptive designation of the product. AMS' final regulations do not affect these requirements.

This action is authorized under the Federal Meat Inspection Act and the Poultry Products Inspection Act and is consistent with the Agricultural Marketing Act of 1946.

The AMS final rule was effective March 16, 2009. Because it is important that AMS and FSIS have consistent regulations, the Administrator has determined under 5 U.S.C. 533 that it is in the public interest to make this final rule effective on the date of publication. Making this rule effective on the date of publication is in the public interest because it will minimize confusion among industry and consumers. For this reason, FSIS's final rule will be effective on the date of publication.

Responses to Comments

FSIS received 33 comments in response to the interim final rule. Several commenters supported FSIS conforming its regulations to AMS' regulations and supported FSIS providing for generic approval of country of origin statements that comply with AMS' regulations.

Many of the comments raised issues concerning the requirements and effects of AMS' interim final COOL regulations, including recordkeeping requirements, acceptable abbreviations, costs and benefits, international effects, and health effects. These comments were directed to the AMS interim final regulations, did not specifically address FSIS' interim final rule, and are considered to be outside the scope of this rulemaking. Furthermore, AMS has addressed the issues these comments raised in the preamble to its final rule. Therefore, FSIS has not responded to these comments in the discussion below.

Comments: Many of the comments recommended that COOL be required on all products, including processed food products.

Response: The COOL statute specifically defines the commodities covered by the mandatory COOL program. The COOL statute specifically exempts covered commodities from mandatory COOL if they are an ingredient in a processed food item. These comments are outside the scope of this FSIS rulemaking.

Comments: One company recommended more guidance on what is considered a ''processed food item.'' Specifically, the commenter questioned whether FSIS generic approval for COOL will be available when the product is marinated, enhanced or injected with tenderizers such as papain, bromelin, or ficin or with ingredients such as lemon juice concentrates, chicken broth, dried beef stock, natural flavor and spices.

Response: AMS' final rule defines a ''processed food item'' as a retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce). The ''processed food item'' definition also provides that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item (7 CFR 65.220). Furthermore, in the preamble to its final rule, AMS stated that enhancement with enzymatic tenderizers, such as ficin and bromelain, do not by themselves change the character of the covered commodity. Therefore, the use of the ingredients listed in the comment would not, by themselves, result in a covered commodity becoming a processed food item. Based on AMS' regulations, if an establishment used such ingredients in a covered commodity and did not process the product in a way that resulted in a change in the character of the product, the product would continue to be a covered commodity. In this situation, the required compliant country of origin statements on the product label could be generically approved.

Comments: One commenter questioned whether FSIS or another Federal agency would use a COOL noncompliance as a basis to recall product.

Response: AMS provided a six month education and outreach period following the effective date of its interim final COOL regulations. As FSIS explained in a notice to inspection program personnel, FSIS will follow AMS enforcement policy during this same period. After this period has elapsed, if noncompliance with COOL regulations is disclosed on meat or poultry product labeling, FSIS will consult with AMS and consider appropriate enforcement action. If FSIS enforcement action is necessary, FSIS will consider rescinding label approval (9 CFR 500.8), requesting a recall, or taking such other enforcement action as is appropriate in light of the facts involved in the particular situation.

Comments: One industry association recommended that FSIS work with AMS to convey information concerning COOL requirements. The commenter also recommended that FSIS provide additional guidance on COOL as it relates to FSIS' labeling requirements.

Response: FSIS will continue to consult closely with AMS concerning COOL requirements. FSIS is working with AMS to develop additional COOL guidance for meat and poultry establishments.

Comments: One commenter questioned whether establishments can use up existing label stocks or are required to have new labels printed immediately to be compliant with the COOL rule.

Response: AMS' and FSIS' final rules do not require that covered commodities be individually labeled with COOL information. Retailers can use placards and other signage to convey origin information.

Comments: One commenter questioned how beef trim co-mingled from different countries is to be labeled when it leaves the establishment.

Response: As is noted above, the establishment is not required to label the product. Rather, in this situation, the establishment is required to make available to the purchasers of the trim information about the countries of origin of the beef trim (7 CFR 65.500(b)).

COOL for U.S. Products Exported for Processing

In addition to the comments discussed above, an industry association

has questioned how United States origin meat or poultry products that are exported to a foreign country for processing prior to re-importation back to the United States should be labeled under the final COOL regulations. To the extent that existing CBP or FSIS regulations allow for products that have been minimally processed in a foreign country to reenter the United States as ''Product of the U.S.,'' nothing in the AMS final rule precludes this practice.

It should be noted, however, that FSIS meat and poultry product inspection regulations require country of origin statements on the immediate containers of imported products (9 CFR 327.14 and 381.205). Therefore, if a U.S. country of origin meat or poultry product is transported to be minimally processed (*e.g.*, marinated) in Canada prior to re-importation back to the United States, the immediate containers of the finished product would have to be labeled with the statement, ''product of Canada.'' Notwithstanding this requirement, FSIS regulations allow such product to be repackaged for sale at retail. If such product is repackaged for sale at retail, the retailer could provide labeling indicating that the product is of U.S. origin if the product otherwise meets the criteria in 7 CFR 65.260.

Executive Order 12988

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this final rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). All costs and benefits associated with this rule are accounted for in AMS' final rule economic analysis.

Effect on Small Entities

AMS' final rule includes a final regulatory flexibility analysis. AMS believes that its regulations will have a significant economic impact on a substantial number of small entities. FSIS' conforming regulations will not have any additional impact on small entities.

Paperwork Reduction Act

AMS' final rule includes an estimate of the annual recordkeeping burden associated with COOL requirements. FSIS' final rule has been reviewed under the Paperwork Reduction Act and imposes no additional paperwork or recordkeeping requirements.

Government Paperwork Elimination Act (GPEA)

FSIS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of communicating electronically with the government to the maximum extent possible. The Agency will ensure that all forms used by the establishments are made available electronically.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2009_Interim_&_Final_Rules_Index/index.asp*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

■ For the reasons discussed in the preamble, FSIS adopts the interim rule published August 28, 2008 (73 FR 50701) as final without change.

Done in Washington, DC, on March 17, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–6127 Filed 3–19–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 820

RIN 1990–AA30

Procedural Rules for DOE Nuclear Activities

AGENCY: Office of Health, Safety and Security, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is today publishing a final rule to amend its Procedural Rules for DOE Nuclear Activities at Part 820 to be consistent with section 610 of the Energy Policy Act of 2005, Public Law 109–58 (EPAct of 2005), signed into law by President Bush on August 8, 2005. Section 610 amends provisions in section 234A. of the Atomic Energy Act of 1954 (AEA) concerning civil penalty assessments against certain DOE contractors, subcontractors and suppliers. Specifically, this final rule revises DOE regulations at section 820.20 to be consistent with the changes under section 610 of the EPAct of 2005.

DATES: *Effective Date:* This rulemaking is effective on April 20, 2009.

FOR FURTHER INFORMATION CONTACT: John S. Boulden III, Acting Director (HS–40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, (301) 903–2178; or Sophia Angelini, Attorney Advisor (GC–52), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. DOE's Response to Comments
III. Procedural Requirements
A. Review Under Executive Order 12866

B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under the Treasury and General Government Appropriations Act, 2001
J. Review Under Executive Order 13211
K. Congressional Notification

I. Background

In 1988, Congress amended the Atomic Energy Act of 1954 (AEA) (codified at 42 U.S.C. 2011 *et seq.*) by adding section 234A. (42 U.S.C. 2282a.) that establishes a system of civil penalties for DOE contractors, subcontractors, and suppliers that are covered by an indemnification agreement under section 170d. of the AEA (42 U.S.C. 2210d.) (commonly referred to as the Price-Anderson Act). The civil penalties govern DOE contractors, subcontractors and suppliers that violate, or whose employees violate, any applicable rule, regulation or order related to nuclear safety issued by the Secretary of Energy. Section 234A. specifically exempted seven institutions (and any subcontractors or suppliers thereto) from such civil penalties and directed the Secretary of Energy to determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty. On August 17, 1993, DOE promulgated ''Procedural Rules for DOE Nuclear Activities,'' codified at 10 CFR part 820 (Part 820), to provide for the enforcement under section 234A. of the AEA of DOE nuclear safety requirements. Under Part 820, the exemption provision for the seven institutions is set forth in section 820.20(c); the provision for an automatic remission of civil penalties for ''nonprofit educational institutions'' is established in section 820.20(d).

On April 11, 2008, DOE published a notice of proposed rulemaking (NOPR) for the purpose of amending subpart B of Part 820 to incorporate the changes required by section 610 of the EPAct of 2005, 73 FR 19761 (April 11, 2008). Section 610, entitled ''Civil Penalties,'' amended section 234A. of the AEA by:

(1) Repealing the automatic remission of civil penalties for nonprofit educational institutions by striking the last sentence of subsection 234A.b.(2) which reads: ''In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.'';

(2) Removing exemptions provided to seven institutions (including their subcontractors and suppliers) for activities at certain facilities by deleting existing subsection 234A.d. and replacing with a new subsection 234A.d.(1) in which the total amount of civil penalties for violations under subsection 234A.a. of the AEA by any not-for-profit contractor, subcontractor, or supplier may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract; and

(3) Adding a new section 234A.d.(2) that defines the term ''not-for-profit'' to mean that ''no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.''

Finally, section 610 of the EPAct of 2005 included an effective date provision at subsection 234A.c. specifying that the amendments to section 234A. shall not apply to any violation of the AEA occurring under a contract entered into before the date of enactment of the EPAct of 2005, which was August 8, 2005.

Accordingly, in the NOPR DOE proposed to amend section 820.20 by: (1) Limiting at paragraph (c) the exemption for seven institutions (and their subcontractors and suppliers) from civil penalties to violations occurring under contracts entered into before August 8, 2005; (2) limiting at paragraph (d) the automatic remission of civil penalties for nonprofit educational institutions to violations occurring under contracts entered into before August 8, 2005; (3) providing at new paragraph (e) that, for any violation occurring under a contract entered into on or after August 8, 2005, the total civil penalties paid by any not-for-profit contractor, subcontractor, or supplier may not exceed the total amount of fees paid within the fiscal year in which the violation occurs; and (4) providing at new paragraph (f) the EPAct of 2005 definition of a ''not-for-profit.'' In summary, for contracts entered into with DOE on or after August 8, 2005, all contractors, subcontractors and suppliers would be subject to civil penalties for violations of nuclear safety regulations; however, not-for-profit contractors, subcontractors and suppliers could not be assessed any such penalties greater than the total amount of fees paid to them by DOE within the fiscal year in which the violation occurs. For contracts entered into with DOE prior to August 8, 2005, the existing provisions of section 820.20 pertaining to the exemption from civil penalties for the seven institutions (including their subcontractors and suppliers) and the automatic remission of civil penalties for nonprofit educational institutions would remain unchanged.

In section II of the NOPR, DOE provided a detailed discussion of the proposed modifications to section 820.20. Specifically, DOE addressed the following topics to explain the operation of its proposed rule: (1) When a contract is ''entered into'' for purposes of section 820.20; (2) what subcontractors and suppliers are entitled to the exemption from civil penalties; (3) how DOE would determine the ''1-year period'' to calculate the limitation on civil penalties for not-for-profit entities; (4) how DOE would determine the ''total amount of fees paid'' to calculate the limitation on civil penalties for not-for-profit entities; (5) the repeal of the automatic remission of civil penalties for nonprofit educational institutions; and (6) how a ''not-for-profit'' contractor under section 610 of the EPAct of 2005 is not considered the same as a nonprofit educational institution.

II. DOE's Response to Comments

The following discussion describes the major issues raised in the three comments received on the proposed rule. The three commenters, private entities that currently operate DOE National Laboratories under Management and Operating (M&O) contracts, expressed concern with respect to the ''entered into'' date of a contract which determines when the amendments of section 610 of the EPAct of 2005 are applicable. After reviewing these comments, DOE has concluded that the rule should be finalized as proposed and without change. DOE's response to these comments is fully explained below.

As noted, DOE received comments regarding its interpretation of when a contract is ''entered into'' for purposes of section 610 of the EPAct of 2005. The interpretation of this phrase is significant in order to determine whether: (1) A contractor remains exempt from the payment of civil penalties; (2) a contractor remains entitled to receive an automatic remission of a civil penalty; or (3) a contractor is covered by the civil penalty cap provisions of section 610.

The commenters offered various rationales for their respective positions on the ''entered into'' date. Two commenters wrote that when DOE extends a contract through an exercise

of its option to extend the term of a contract, it includes updated regulation clauses which contractually obligate the contractor to new standards and therefore effectively creates a ''new'' contract with a new ''entered into'' date. One commenter stated that for not-for-profit contractors that do not receive the automatic remission, the effective date of section 610 should be interpreted as the date when such not-for-profit contractors would be covered by the cap on civil penalties. Another commenter stated that it is not legally acceptable to define the term ''entered into'' as supporting a different legal result because one contract is extended with a pre-existing clause (option to extend the term of the contract) versus an extension exercised for the Government's convenience (noncompetitive extension). This commenter further believed that DOE's position was inconsistent with a prior Department position expressed in a January 3, 2008, letter, attached to its comments, which discussed a waiver of civil penalties for Price-Anderson Act violations (discussed further below).

DOE generally disagrees with the commenters about whether there is a difference between a noncompetitive extension of an M&O contract and the exercise of an option to extend a contract. The exercise of an option to extend the term of the contract is a different action than the noncompetitive extension of a contract. In the first instance, the exercise of an option is based on the options clause contained in the original contract that sets out specific terms for the Government to exercise its option. Thus, as stated in the NOPR, if DOE exercises its option, the contract retains the same ''entered into'' date as the initially competed contract for the purpose of section 820.20. 73 FR 19762. In the second instance, an extension of a contract pursuant to the applicable provisions of the FAR and DEAR addressing the extension of M&O contracts is not part of the original contract but is, in procurement terms, a new contract action. Consequently, the ''entered into'' date for a contract where DOE exercises an option is the date of the original contract, whereas the ''entered into'' date of a contract extended by DOE under applicable FAR and DEAR provisions is the date of the extension.

A contract extended by an option to extend the term of the contract is treated differently from a contract that has been noncompetitively extended under the applicable provisions of the FAR and DEAR. A contract extended under the FAR and DEAR must be justified as by an exception to competition. (*See* DEAR section 917.602 which states that a ''management and operating contract may be awarded or extended at the completion of its term without providing for full and open competition only when award or extension is justified under one of the statutory authorities identified in 48 CFR section 6.302 and only when authorized by the Secretary.'') The justification for other than full and open competition is prepared and approved before extending the contract, thereby further establishing the effect of the extension as creating a new contract with a new ''entered into'' date. When an option to extend the term of a contract is exercised under an M&O contract under DEAR section 970.17, the contract is unilaterally extended by DOE and no justification for other than full and open competition is required. Therefore, no new contract is entered into.

The fact that DOE may use the opportunity to update contract terms and conditions when it exercises an option to extend the term of an M&O contract is not dispositive on this issue. As previously explained, the key factor in determining whether the extension of an M&O contract constitutes a new award or contract is whether DOE is required to prepare a justification for other than full and open competition.

One commenter stated that DOE's proposed definition of ''entered into'' was inconsistent with the Department's position in a January 3, 2008, letter, attached to its comments, which discussed the waiver of civil penalties for nuclear safety violations. In that letter, DOE indicated that civil penalties were waived because the violations occurred under a contract that was entered into in August 2003, prior to the enactment of the EPAct of 2005. DOE does not believe that the proposed definition of the ''entered into'' date is inconsistent with the Department's position in that letter. The commenter, furthermore, is one of the seven exempt contractors under section 820.20(c). This commenter's contract was extended before the effective date of the EPAct of 2005 and the civil penalties were issued for violations that occurred during the term subsequent to that extension. Therefore, DOE's position that the contractor was exempt from civil penalty assessment is entirely consistent with the Department's proposed definition of when a contract is ''entered into'' under section 610.

Lastly, one commenter addressed the situation where a not-for-profit contractor may be under a contract entered into prior to August 8, 2005, but does not qualify for an exemption or the automatic remission of civil penalties, and would not be entitled to the civil penalty cap. This commenter stated that DOE's proposed interpretation of the ''entered into'' date is contrary to the intent of Congress in passing section 610 of the EPAct of 2005 with regard to limiting civil penalties, and that the ''effective date of the Act should be the date when the penalties of not-for-profits are capped at their annual fee.'' The commenter argued that there is no indication that Congress intended for such a gap where a not-for-profit contractor could pay civil penalties greater than the amount of its fee in any given year.

DOE's interpretation of the ''entered into'' date is consistent with the language and intent of Congress in enacting section 610. It is clear that Congress intended for a certain type of contractor to be eligible for the cap on civil penalties, as Congress expressly defined the term ''not-for-profit'' contractor, subcontractor or supplier. It is also clear that Congress intended for the system establishing a cap on civil penalties to apply only to violations occurring under contracts entered into after the effective date of section 610 (August 8, 2005), and that for violations associated with contracts entered into before that date, the existing system of either exemption or automatic remission of penalties would continue to apply to those contractors previously granted such benefits. Under either system, a qualifying contractor would not be required to pay civil penalties that exceed any annual fee paid by DOE.

In the NOPR, DOE noted that the definition of a not-for-profit contractor is not the same as the definition of a nonprofit educational institution. 73 FR 19763. While this change in definition may create a situation where some contractors previously entitled to the automatic remission of civil penalties are now ineligible for a cap on civil penalties and, conversely, there may be some contractors that are eligible as not-for-profit contractors under the new law but are ineligible for the cap on civil penalties because they remain under a contract entered into prior to August 8, 2005, DOE is required to establish these regulations in accordance with the Congressional language of section 610. Therefore, contracts entered into by not-for-profit contractors before the effective date of section 610 are not entitled to the cap on civil penalties established in section 610.

Other than the above issues, there were no additional objections or adverse comments raised. For the reasons stated above, DOE's final rule on section 820.20, implementing section 610 of the

EPAct of 2005, is the same as set forth in the NOPR.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this notice of final rulemaking was not subject to review by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) under Executive Order 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process, 68 FR 7990 (February 19, 2003), and has made them available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov*. DOE has reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

Today's final rule amends DOE's Procedural Rules for DOE Nuclear Activities to incorporate statutory changes made under the EPAct of 2005. The amendments to section 820.20 are changes required to conform DOE's regulations to the new statutory provisions. The changes affect the seven institutions listed in AEA section 234A.d., prior to the amendments under section 610 of the EPAct of 2005, which are not small entities, and their subcontractors and suppliers, which may or may not be small entities. While the amended part 820 would expose small entities that are subcontractors and suppliers to potential liability for civil penalties, DOE does not expect that a substantial number of these entities will violate a DOE nuclear safety requirement, a DOE Compliance Order, or a DOE nuclear safety program, plan, or other provision, resulting in the imposition of a civil penalty. Based on the foregoing, DOE certifies that today's final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends an existing regulation without changing the environmental effect of the regulation being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to establish an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and, (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a written assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State,

local, and tribal governments. 2. U.S.C. 1534.

This final rule will not impose a Federal mandate on State, local and tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies of those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804.

List of Subjects in 10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

Issued in Washington, DC.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

■ For the reasons stated in the preamble, DOE hereby amends Chapter III of title 10 of the Code of Federal Regulations to read as follows:

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

■ 1. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

■ 2. Section 820.20 is amended by revising paragraphs (c) and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 820.20 Purpose and scope.

* * * * *

(c) *Exemptions.* With respect to a violation occurring under a contract entered into before August 8, 2005, the following contractors, and subcontractors and suppliers to that prime contract only, are exempt from the assessment of civil penalties under this subpart with respect to the activities specified below:

(1) The University of Chicago for activities associated with Argonne National Laboratory;

(2) The University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratories;

(4) University Research Association, Inc. for activities associated with FERMI National Laboratory;

(5) Princeton University for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

(d) *Nonprofit educational institutions.* With respect to a violation occurring under a contract entered into before August 8, 2005, any educational institution that is considered nonprofit under the United States Internal Revenue Code shall receive automatic remission of any civil penalty assessed under this part.

(e) *Limitation for not-for-profits.* With respect to any violation occurring under a contract entered into on or after August 8, 2005, in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under this part may not exceed the total amount of fees paid by DOE to that entity within the U.S. Government fiscal year in which the violation occurs.

(f) *Not-for-profit.* For purposes of this part, a ''not-for-profit'' contractor, subcontractor, or supplier is one for which no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

[FR Doc. E9–6134 Filed 3–19–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9438]

RIN 1545–BI50

Guidance Regarding Foreign Base Company Sales Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations that were published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79334) relating to foreign base company sales income.

DATES: The corrections are effective July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ethan Atticks, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are subject to these corrections are under section 954 of the Internal Revenue Code.

Need for Correction

As published the final and temporary regulations (TD 9438) contain errors that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9438) that were the subject of FR Doc. E8–30727 is corrected as follows:

1. On page 79340, column 2, in the preamble under paragraph caption Determination of Hypothetical Effective Tax Rate, the first paragraph, line 8 of the paragraph, the language ''effective tax rate of tax.'' is corrected to read ''effective tax rate.''.

2. On page 79340, column 3, in the preamble under paragraph caption Determination of Hypothetical Effective Tax Rate, lines 2, 3, and 4, the language ''In contrast, if a sales affiliate in the country of manufacturing can theoretically receive certain tax relief by'' is corrected to read ''In contrast, if a manufacturing branch could receive tax relief with respect to sales income derived from sources within the country in which the manufacturing branch is located by''.

3. On page 79341, column 3, in the preamble, the first paragraph, the language ''Under the temporary regulations, if a demonstrably greater amount of manufacturing activity with respect to the personal property occurs in jurisdictions without tax rate disparity relative to the sales or purchase branch, the location of the sales or purchase branch will be deemed to be the location of manufacture of the personal property. In that case, the purchase or sales activities with respect to the property purchased or sold by or through the sales or purchase branch of the CFC will not, for purposes of determining FBCSI in connection with the sale of that property, be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC. Otherwise, the location of manufacture of the personal property will be deemed to be the location of a manufacturing branch (or remainder) that has tax rate disparity relative to the sales or purchase branch. In that case, the purchase or sales activities with respect to the property purchased or sold by or through the sales or purchase branch of the CFC will be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC, and that branch will be treated as a separate corporation for purposes of applying the regulations.'' is corrected to read ''Under the temporary regulations, if a demonstrably greater amount of manufacturing activity with respect to the income derived by a sales or purchase branch with respect to the personal property occurs in jurisdictions without tax rate disparity relative to that sales or purchase branch, the location of that sales or purchase branch will be deemed to be the location of manufacture of the personal property with respect to the income derived by that sales or purchase branch from the purchase or sale of the property. In that case, the use of the purchase or sales branch for purchase or sales activities with respect to the property purchased or sold by or through that sales or purchase branch of the CFC will not, for purposes of determining FBCSI in connection with the income derived by that sales or purchase branch from the purchase or sale of that property, be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC. Otherwise, the location of manufacture of the personal property with respect to the income derived by that sales or purchase branch from the purchase or sale of that property will be deemed to be the location of a manufacturing branch (or remainder) that has tax rate disparity relative to that sales or purchase branch. In that case, the use of the purchase or sales branch for purchase or sales activities with respect to the property purchased or sold by or through that sales or purchase branch of the CFC will, for purposes of determining FBCSI in connection with the income derived by that sales or purchase branch from the purchase or sale of that property, be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC, and that branch will be treated as a separate corporation for purposes of applying the regulations.''.

4. On page 79342, column 1, in the preamble under the paragraph caption Clarifying Application of the Rule for Determining the Remainder of the CFC When Activities are Performed in Multiple Locations, the first paragraph, line 18 of the paragraph, the language ''the CFC when activities are preformed'' is corrected to read ''the CFC when activities are performed''.

§ 1.954–3 [Corrected]

■ 5. On page 79344, column 1, under amendatory instruction paragraph 2, item 3, line 5, the language ''*Example (3).*'' is corrected to read ''*Examples (3), (6),* and *(7).*''.

■ 6. On page 79345, column 3, paragraph (a)(4)(iv)(d), *Example 1* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 7. On page 79346, column 1, paragraph (a)(4)(iv)(d), *Example 2* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 8. On page 79346, column 1, paragraph (a)(4)(iv)(d), *Example 3* (i), line 11, the language ''FS for use outside of FS's country of'' is corrected to read ''FS to a related person for use outside of FS's country of''.

■ 9. On page 79346, column 1, paragraph (a)(4)(iv)(d), *Example 3* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 10. On page 79346, column 2, paragraph (a)(4)(iv)(d), *Example 4* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 11. On page 79346, column 3, paragraph (a)(4)(iv)(d), *Example 5* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 12. On page 79346, column 3, paragraph (a)(4)(iv)(d), *Example 6* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 13. On page 79347, column 1, paragraph (a)(4)(iv)(d), *Example 7* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 14. On page 79347, column 2, paragraph (a)(4)(iv)(d), *Example 8* (ii), line 1, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 15. On page 79347, column 2, paragraph (a)(4)(iv)(d), *Example 8* (ii), line 9, the language ''X, it is irrelevant to the substantial'' is corrected to read ''X, it is not important to the substantial''.

■ 16. On page 79347, column 2, paragraph (a)(4)(iv)(d), *Example 9* (ii),

line 3, the language ''to sale were undertaken by FS1 or FS2'' is corrected to read ''to sale had been undertaken by FS1 or FS2''.

■ 17. On page 79347, column 3, paragraph (a)(4)(iv)(d), *Example 10* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 18. On page 79348, column 1, paragraph (a)(4)(iv)(d), *Example 11* (ii), line 3, the language ''to sale were undertaken by FS through the'' is corrected to read ''to sale had been undertaken by FS through the''.

■ 19. On page 79348, column 1, paragraph (b)(2)(i)(*d*), the language ''[Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(d).'' is corrected to read ''[Reserved].''.

■ 20. On page 79348, column 2, following the language ''*Example (3).* [Reserved]. For further guidance, see § 1.954–3(b)(4) *Example (3).*'', the language ''*Example (6).* [Reserved].'' is added on the next line.

■ 21. On page 79348, column 2, following the new language ''*Example (6).* [Reserved].'', the language ''*Example (7).* [Reserved].'' is added on the next line.

■ 22. On page 79348, column 2, paragraph (d), the last two lines, the language ''subsequent taxable years of the taxpayer.'' is corrected to read ''subsequent taxable years.''.

§ 1.954–3T [Corrected]

■ 23. On page 79349, column 2, in paragraph (b)(1)(ii)(*c*)(*2*), *Example* (i), line 18, the language ''effective rate imposed in Country M on the'' is corrected to read ''effective rate of tax imposed in Country M on the''.

■ 24. On page 79349, column 3, paragraph (b)(1)(ii)(*c*)(*3*)(*i*), a new sentence is added after the first sentence to read ''This paragraph (b)(1)(ii)(*c*)(*3*) is applied separately with respect to the income derived by each purchasing or selling branch (or similar establishment) or purchasing or selling remainder of the controlled foreign corporation as provided under paragraphs (b)(1)(i) and (b)(1)(ii) of this section and §§ 1.954–3(b)(1)(i) and (b)(1)(ii).''.

■ 25. On page 79350, column 2, line 2, in paragraph (b)(1)(ii)(*c*)(*3*)(*iii*), the language ''construction with respect to that'' is corrected to read ''construction with respect to the income derived by a purchasing or selling branch (or similar establishment) or the purchasing or selling remainder of the controlled foreign corporation in connection with the purchase or sale of that''.

■ 26. On page 79350, column 2, line 15, in paragraph (b)(1)(ii)(*c*)(*3*)(*iii*), the language ''any, and that would, after applying'' is corrected to read ''any, that would, after applying''.

■ 27. On page 79350, column 2, the second full sentence, in paragraph (b)(1)(ii)(*c*)(*3*)(*iii*), the language ''The tested sales location is the location where the branch (or similar establishment) or the remainder of the controlled foreign corporation purchases or sells the personal property.'' is corrected to read ''The tested sales location is the location of the purchasing or selling branch (or similar establishment) or the remainder of the controlled foreign corporation by or through which the purchasing or selling activities are carried on with respect to the personal property.''.

■ 28. On page 79350, column 2, the last line, in paragraph (b)(1)(ii)(*c*)(*3*)(*iii*), the language ''(b)(1)(ii)(*c*)(*3*)(*v*) *Examples 4, 5,* and *6* of'' is corrected to read ''(b)(1)(ii)(*c*)(*3*)(*v*) *Examples 3, 4, 5,* and *6* of''.

■ 29. On page 79350, column 3, lines 13, 14, and 15, in paragraph (b)(1)(ii)(*c*)(*3*)(*iii*), the language ''apply with respect to the sales income related to that property and the use of the purchasing or selling branch (or'' is corrected to read ''apply with respect to the income derived by the tested sales location in connection with the purchase or sale of that property and the use of that purchasing or selling branch (or''.

■ 30. On page 79351, column 1, line 4, in paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 1* (i), the language ''branches. Employees of FS located in'' is corrected to read ''branches. The activities of the remainder of FS in Country M do not independently satisfy § 1.954–3(a)(4)(i). Employees of FS located in''.

■ 31. On page 79351, column 2, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 3* (ii), lines 14, 15, 16, and 17, the language ''(b)(1)(ii)(*c*)(*3*)(*iii*) of this section The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X. The'' is corrected to read ''(b)(1)(ii)(*c*)(*3*)(*iii*) of this section. The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS. The''.

■ 32. On page 79351, column 3, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 4,* the paragraph heading, the language *''Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation, remainder contribution includes branch manufacturing activities.''* is corrected to read *''Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities carried on by remainder of the controlled foreign corporation, remainder contribution includes branch manufacturing activities.''*.

■ 33. On page 79351, column 3, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 4* (ii), the fourth sentence, the language ''The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X.'' is corrected to read ''The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS.''.

■ 34. On page 79351, column 3, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 4* (ii), the last sentence, the language ''Therefore, the rules of paragraph (b)(1)(ii)(*a*) of this section will not apply and neither Branch A nor Branch B will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).'' is corrected to read ''Therefore, the rules of paragraph (b)(1)(ii)(*a*) of this section will not apply with respect to the income derived by the remainder of FS in connection with the sale of Product X, and neither Branch A nor Branch B will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).''.

■ 35. On page 79351, column 3, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 5,* the paragraph heading, the language *''Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation and a sales branch.''* is corrected to read *''Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities carried on by remainder of the controlled foreign corporation and a sales branch.''*.

■ 36. On page 79352, column 1, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 5* (i), the first sentence, the language ''The facts are the same as *Example 3,* except that selling activities are also performed by Branch D in Country D, and Country D imposes a 16% effective rate of tax on sales income.'' is corrected to read ''The facts are the same as *Example 3,* except that sales of Product X are also carried on through Branch D in Country D, and Country D imposes a 16% effective rate of tax on sales income.''.

■ 37. On page 79352, column 1, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 5* (ii), the fifth sentence, the language

''The results with respect to the remainder of FS in this *Example 6* are the same as in *Example 3*.'' is corrected to read ''The results with respect to income derived by the remainder of FS in connection with the sale of Product X in this *Example 5* are the same as in *Example 3*.''.

■ 38. On page 79352, column 1, in paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 5* (ii), the sixth sentence, the language ''However, paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section must also be applied with respect to Branch D because Branch D performs selling activities with respect to Product X.'' is corrected to read ''However, paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section must also be applied with respect to Branch D because the sale of Product X is also carried on through Branch D.''.

■ 39. On page 79352, column 1, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 5* (ii), line 29, the language ''rate of tax imposed on the Branch D's sales'' is corrected to read ''rate of tax imposed on Branch D's sales''.

■ 40. On page 79352, column 1, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 5* (ii), the last sentence, the language ''Therefore, the rules of paragraph (b)(1)(ii)(*a*) of this section will not apply to Branch D and neither Branch A nor Branch D will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).'' is corrected to read ''Therefore, the rules of paragraph (b)(1)(ii)(*a*) of this section will not apply with respect to the income derived by Branch D in connection with the sale of Product X and the use of Branch D to sell Product X will not result in a branch being treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).''.

■ 41. On page 79352, column 2, paragraph (b)(1)(ii)(*c*)(*3*)(*v*), *Example 6* (ii), the fourth sentence, the language ''The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X.'' is corrected to read ''The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS.''.

■ 42. On page 79352, column 3, paragraph (b)(2)(i)(*b*) is corrected to read as follows:

''(*b*) *Activities treated as performed on behalf of the remainder of corporation.* (*1*) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property manufactured, produced, constructed, grown, or extracted by the remainder of the controlled foreign corporation, be treated as performed on behalf of the remainder of the controlled foreign corporation.

(*2*) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property (other than property described in paragraph (b)(2)(i)(*b*)(*1*) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated as performed on behalf of the remainder of the controlled foreign corporation.''.

■ 43. On page 79352, column 3, paragraph (b)(2)(i)(*c*), the language ''(*c*) [Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(*c*).'' is corrected to read ''(*c*) through (*e*) [Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(*c*) and (*e*).''.

■ 44. On page 79352, column 3, paragraph (b)(2)(i)(*d*) is removed.

■ 45. On page 79353, column 1, paragraph (b)(2)(i)(*e*) is removed.

■ 46. On page 79353, columns 1 and 2, paragraph (b)(2)(ii)(*b*) is corrected to read as follows:

''(*b*) *Activities treated as performed on behalf of the remainder of corporation.* (*1*) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property manufactured, produced, constructed, grown, or extracted by the remainder of the controlled foreign corporation, be treated as performed on behalf of the remainder of the controlled foreign corporation.

(*2*) With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will, with respect to personal property (other than property described in paragraph (b)(2)(ii)(*b*)(*1*) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated as performed on behalf of the remainder of the controlled foreign corporation.''.

■ 47. On page 79353, column 3, paragraph (b)(4), *Examples (4)* through *(7)*, the language ''[Reserved]. For further guidance, see § 1.954–3(b)(4) *Examples (4)* through *(7).*'' is corrected to read ''[Reserved]. For further guidance, see § 1.954–3(b)(4) *Examples (4)* and *(5).*''.

■ 48. On page 79353, column 3, paragraph (b)(4), *Example 8* (i), line 13, the language ''located in Country M perform only sales'' is corrected to read ''located in Country M carry on only sales''.

■ 49. On page 79354, column 1, paragraph (b)(4), *Example 9,* the paragraph heading, the language *''Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation, branch manufacturing activities included in remainder contribution.''* is corrected to read *''Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities carried on by remainder of the controlled foreign corporation, some branch manufacturing activities included in remainder contribution.''*.

■ 50. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the first sentence, the language ''FS, a controlled foreign corporation organized in Country M, has two branches, Branch A and Branch B, located in Country A and Country B respectively.'' is corrected to read ''FS, a controlled foreign corporation organized in Country M, has three branches, Branch A, Branch B, and Branch C, located in Country A, Country B, and Country C respectively.''.

■ 51. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), line 33, the language ''Country B, provides quality control and'' is corrected to read ''Country B, provides quality control. Branch C, through the activities of employees of FS located in Country C, provides''.

■ 52. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the eleventh sentence, the language ''Country A imposes an effective rate of tax on sales income of 12%, and Country B imposes an effective rate of tax on sales income of 24%.'' is corrected to read ''Country A imposes an effective rate of tax on sales income of 12%, Country B imposes an effective rate of tax on sales income of 24%, and Country C imposes an effective rate of tax on sales income of 25%.''.

■ 53. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the twelfth sentence, the language ''None of the remainder of FS, Branch A, or Branch B independently satisfies § 1.954–3(a)(4)(i).'' is corrected to read ''None of the remainder of FS, Branch A, Branch B, or Branch C independently satisfies § 1.954–3(a)(4)(i).''.

■ 54. On page 79354, column 1, paragraph (b)(4), *Example 9* (i), the fourteenth sentence, the language ''Under the facts and circumstances of the business, the activities of the remainder of FS and Branch A, if considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B.'' is corrected to read ''Under the facts and circumstances of the business, the activities of the remainder of FS and Branch A, if considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B and Branch C, if considered together.''.

■ 55. On page 79354, columns 1 and 2, paragraph (b)(4), *Example 9* (ii), the second sentence, the language ''The remainder of FS, Branch A, and Branch B each provide a contribution through the activities of employees to the manufacture of Product X.'' is corrected to read ''The remainder of FS, Branch A, Branch B, and Branch C each provide a contribution through the activities of employees to the manufacture of Product X.''.

■ 56. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), the fourth sentence, the language ''The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X.'' is corrected to read ''The tested sales location is Country M because the selling activities with respect to Product X are carried on by the remainder of FS.''.

■ 57. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), the fifth sentence, the language ''The location of Branch B is the tested manufacturing location because the effective rate of tax imposed on FS's sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (24%): and Branch B is the only manufacturing branch that would, after applying § 1.954–3(b)(1)(ii)(*b*), be treated as a separate corporation.'' is corrected to read ''The location of Branch B is the tested manufacturing location because the effective rate of tax imposed on FS's sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than the effective rate of tax that would apply to such income in Country B (24%), and Country B has the lowest effective rate of tax among the manufacturing branches that would, after applying § 1.954–3(b)(1)(ii)(*b*), be treated as a separate corporation.''.

■ 58. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), line nineteen from the top of the column, the language ''Country A will be included in the'' is corrected to read ''Country A by Branch A, will be included in the''.

■ 59. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), a new sentence is added between the sixth and seventh sentences to read ''The manufacturing activities performed in Country C by Branch C will be included in the contribution of Branch B for purposes of determining the location of manufacture of Product X because the effective rate of tax imposed on the sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country C (25%).''.

■ 60. On page 79354, column 2, paragraph (b)(4), *Example 9* (ii), the seventh sentence, the language ''Under the facts and circumstances of the business, the manufacturing activities of the remainder of FS and Branch A, considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B.'' is corrected to read ''Under the facts and circumstances of the business, the manufacturing activities of the remainder of FS and Branch A, considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B and Branch C, considered together.''

Guy R. Traynor,

Federal Register Liaison, Publications & Regulations Br., Associate Chief Counsel, Procedure & Administration.

[FR Doc. E9–5894 Filed 3–19–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB13

Investment Advice—Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule; delay of effective date and applicability date.

SUMMARY: This document delays the effective and applicability dates of final rules under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). These rules were published in the **Federal Register** on January 21, 2009. This document postpones the effective and applicability dates of these final rules from March 23, 2009 until May 22, 2009, to allow additional time for the Department to evaluate questions of law and policy concerning the rules.

DATES: The effective and applicability date of the rule amending 29 CFR part 2550, published January 21, 2009, at 74 FR 3822, is delayed until May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts (74 FR 3822). The rules contain regulations implementing a statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g) and an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. Paragraph (g) of Sec. 2550.408g–1 provided that the rule would apply to covered transactions occurring on or after March 23, 2009.

By memorandum dated January 20, 2009, Rahm Emanuel, Assistant to the President and Chief of Staff, directed Agency Heads to consider extending for 60 days the effective date of regulations that have been published in the **Federal Register** but not yet taken effect. The memorandum further advised that, where such regulations are extended, agencies should allow 30 days for interested persons to comment on issues of law and policy raised by the rules. In accordance with that memorandum, and taking into account the considerations listed in the Memorandum of January 21, 2009, from Peter R. Orszag, Director of the Office of Management and Budget, the Department published in the **Federal Register** on February 4, 2009, a document seeking comment on a proposed 60 day extension to the effective dates for these rules until May 22, 2009, and a proposed conforming amendment to the applicability date of

Sec. 2550.408g–1. The document also requested comment on issues of law and policy raised by the final rules. The comment period on the proposed extension ended on February 18, 2009. The comment period on issues of law and policy concerning the final rules ended on March 6, 2009.

For the reasons discussed below, the Department has decided to postpone, for 60 days, the effective and applicability dates of the final rules published on January 21, 2009, until May 22, 2009, for agency review of questions of law and policy.

B. Comments Received and the Department's Decision

In response to its request, the Department received 26 comment letters.[1] A number of commenters expressed the view that the final rules raise significant issues of law and policy that should be further reviewed by the Department. In particular, these comments raised questions as to the scope of the final rules' administrative class exemption, and expressed disagreement with the interpretation of the statutory exemption's conditions contained within the final rules. Other commenters, however, expressed the view that the conditions of the final rules would be adequate to safeguard the interests of plan participants and beneficiaries, and opposed a delay of the final rules' effective and applicability dates, noting increased participant interest in investment advice in response to the current economic environment.

After consideration of the comments, the Department has concluded that the legal and policy issues raised by commenters are sufficiently significant to justify delaying the March 23 effective and applicability dates of the final rule in order to afford the Department an opportunity to review those issues. Accordingly, the Department is adopting herein the proposed 60 day delay of the effective and applicability date of the final rule. With the adoption of this delay, the effective and applicability dates of the final rule will be May 22, 2009.

[1] These comments are available on the Department's Web site at: *http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html.*

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

■ For the reasons set forth above, the publication on January 21, 2009 (74 FR 3822), of the final rule amending 29 CFR part 2550, is further amended as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408b–19 also issued under sec. 611, Public Law 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408g–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408g–2 also issued under 29 U.S.C. 1108(g) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

§ 2550.408g–1 [Amended]

■ 2. Section 2550.408g–1 is amended by removing the date ''March 23, 2009'' and adding in its place ''May 22, 2009'' in paragraph (g).

Signed at Washington, DC, this 17th day of March 2009.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E9–6210 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–29–P

POSTAL SERVICE

39 CFR Part 20

International Product and Price Changes; Correction

AGENCY: Postal Service™.

ACTION: Final rule; correction.

SUMMARY: The Postal Service published in the **Federal Register** of February 25, 2009, a document concerning international product and price changes for implementation in May 2009. Inadvertently, Exhibit 293.452 included in that document, did not include all destination countries. This document corrects the table.

DATES: This correction is effective May 11, 2009. We will implement this international price change concurrent with our domestic Mailing Services price change on May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at 703–292-5260 or Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: The Postal Service published a document in the **Federal Register** on February 25, 2009 (74 FR 8473), amending sub-section 293 of the *International Mail Manual* (IMM®). In FR Doc. 36–8473, published in the **Federal Register** of February 25, 2009 (74 FR 8473), sub-section 293.452 was inadvertently published without a complete list of ISAL destination countries. This amendment corrects Exhibit 293.452 published on February 25, 2009.

In rule FR Doc. 36–8473 published on February 25, 2009 (74 FR 8473), make the following correction. On pages 8485 and 8486, remove the current Exhibit 293.452 and insert the following exhibit.

Exhibit 293.452

ISAL Country Price Groups and Foreign Exchange Offices

INTERNATIONAL SURFACE AIR LIFT (ISAL) SERVICE NETWORK COUNTRIES AND PRICE GROUPS

Country	City	3-Letter exchange office code	Price group
Albania	Tirana	TIA	12
Algeria	Algiers	ALG	15
Angola	Luanda	LAD	15
Argentina	Buenos Aires	BUE	13
Aruba	Oranjestad	AUA	13
Australia	Sydney	SYD	9
Austria	Vienna	VIE	11
Bahrain	Bahrain	BAH	15
Bangladesh	Dhaka	DAC	15
Belgium	Brussels	BRU	11
Belize	Belize City	BZE	13
Benin	Cotonou	COO	15
Bolivia	La Paz	LPB	13
Brazil	Rio de Janeiro	RIO	13
Bulgaria	Sofia	SOF	12
Burkina Faso	Ouagadougou	OUA	15
Cameroon	Douala	DLA	15
Canada	See 292.47		1
Central African Republic	Bangui	BGF	15
Chile	Santiago	SCL	13
China	Beijing	BJS	14
Colombia	Bogota	BOG	13
Congo, Democratic Republic of the	Kinshasa	FIH	15
Costa Rica	San Jose	SJO	13
Cote d'Ivoire (Ivory Coast)	Abidjan	ABJ	15
Cuba	Havana	HAV	13
Czech Republic	Prague	PRG	12
Denmark	Copenhagen	CPH	11
Dominican Republic	Santo Domingo	SDQ	13
Ecuador	Guayaquil	GYE	13
Egypt	Cairo	CAI	15
El Salvador	San Salvador	SAL	13
Ethiopia	Addis Ababa	ADD	15
Fiji	Nadi	NAN	14
Finland	Helsinki	HEL	11
France	Paris	PAR	5
French Guiana	Cayenne	CAY	13
Gabon	Libreville	LBV	15
Germany	Frankfurt	FRA	4
Ghana	Accra	ACC	15
Great Britain	London	LON	3
Greece	Athens	ATH	11
Guatemala	Guatemala City	GUA	13
Guyana	Georgetown	GEO	13
Haiti	Port-au-Prince	PAP	13
Honduras	Tegucigalpa	TGU	13
Hong Kong	Hong Kong	HKG	14
Hungary	Budapest	BUD	12
Iceland	Reykjavik	REK	11
India	Mumbai	BOM	15
Indonesia	Jakarta	JKT	14
Iran	Tehran	THR	15
Ireland	Dublin	DUB	11
Israel	Tel Aviv	TLV	11
Italy	Rome	ROM	7
Jamaica	Kingston	KIN	13
Japan [1]	Osaka Int'l	OSA	10
	Tokyo	TYO	10
Jordan	Amman	AMM	15
Kenya	Nairobi	NBO	15
Korea, Rep. of (South)	Seoul	SEL	14
Kuwait	Kuwait City	KWI	15
Lebanon	Beirut	BEY	15
Liechtenstein	Basel	BSL	11
Luxembourg	Luxembourg	LUX	11
Madagascar	Antananariva	TNR	15
Malaysia	Kuala Lumpur	KUL	14
Mali	Bamako	BKO	15
Mauritania	Nouakchott	NKC	15
Mauritius	Port Louis	MRU	15
Mexico	Mexico City	MEX	2

INTERNATIONAL SURFACE AIR LIFT (ISAL) SERVICE NETWORK COUNTRIES AND PRICE GROUPS—Continued

Country	City	3-Letter exchange office code	Price group
Morocco	Casablanca	CAS	15
Mozambique	Maputo	MPM	15
Netherlands	Amsterdam	AMS	8
Netherlands Antilles	Curacao	CUR	13
New Zealand	Auckland	AKL	11
Nicaragua	Managua	MGA	13
Niger	Niamey	NIM	15
Nigeria	Lagos	LOS	15
Norway	Oslo	OSL	11
Oman	Muscat	MCT	15
Pakistan	Karachi	KHI	15
Panama	Panama City	PTY	13
Papua New Guinea	Port Moresby	POM	14
Paraguay	Asuncion	ASU	13
Peru	Lima	LIM	13
Philippines	Manila	MNL	14
Poland	Warsaw	WAW	12
Portugal	Lisbon	LIS	11
Qatar	Doha	DOH	15
Reunion Island	St. Denis	RUN	15
Romania	Bucharest	BUH	12
Russia	Moscow	MOW	12
Saudi Arabia	Dhahran	DHA	15
Senegal	Dakar	DKR	15
Singapore	Singapore	SIN	14
Slovak Republic (Slovakia)	Bratislava	BTS	12
South Africa	Johannesburg	JNB	15
Spain[2]	Madrid	MAD	11
Sri Lanka	Colombo	CMB	15
Sudan	Khartoum	KRT	15
Suriname	Paramaribo	PBM	13
Sweden	Stockholm	STO	11
Switzerland	Basel	BSL	6
Syria	Damascus	DAM	15
Taiwan	Taipei	TPE	14
Tanzania	Dar es Salaam	DAR	15
Thailand	Bangkok	BKK	14
Togo	Lome	LFW	15
Trinidad and Tobago	Port of Spain	POS	13
Tunisia	Tunis	TUN	15
Turkey	Istanbul	IST	12
Uganda	Kampala	KLA	15
United Arab Emirates	Dubai	DXB	15
Uruguay	Montevideo	MVD	13
Venezuela	Caracas	CCS	13
Yemen	Sanaa	SAH	15
Zambia	Ndola	NLA	15
Zimbabwe	Harare	HRE	15

[1] To expedite handling, Japan Post has requested that U.S. shippers make the following optional separation of their ISAL mail:
—Mail destined for locations in Japan with post code prefixes 52–93 should be labeled to Osaka International (OSA).
—Mail destined for all other post code prefixes should be labeled to Tokyo (TYO).
All ISAL mail that is not optionally separated as specified above should be labeled to Tokyo (TYO).
[2] Including the Canary Islands.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–6053 Filed 3–19–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0026; FRL–8780–5]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Permits by Rule and Regulations for Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on July 22, 1998, October 4, 2002, and September 25, 2003; these revisions amend existing sections and create new sections in Title 30 of the Texas Administrative Code (TAC), Chapter 106—Permits by Rule and Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. The July 22, 1998, revision repeals and replaces the Renewal Application Fees section with a new section. The October 4, 2002, revision increases the determination of fees for NSR permits, corrects addresses, and makes other administrative changes. The September 25, 2003, revision clarifies that an emission reduction credit must be certified and banked to be creditable as an offset in the NSR permitting program, repeals and replaces the section that addresses the use of emission reductions as offsets for NSR permitting and the definition of ''offset ratio,'' and makes administrative changes. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: This direct final rule is effective on May 19, 2009 without further notice, unless EPA receives relevant adverse comment by April 20, 2009. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2005–TX–0026, by one of the following methods:

(1) *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at *robinson.jeffrey@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2005–TX–0026. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that 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 along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information the disclosure of which 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 Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's direct final action, please contact Ms. Melanie Magee (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7161. Ms. Magee can also be reached via electronic mail at *magee.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever any reference to ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What Action Is EPA Taking?

We are taking direct final action to approve portions of three revisions to the Texas SIP submitted on July 22, 1998, October 4, 2002, and September 25, 2003. The July 22, 1998 SIP submittal repeals the existing SIP-approved rule addressing fees for permit renewal applications and replaces it with a new rule establishing a fee schedule for permit renewals under 30 TAC Chapter 116 based on the total annual allowable emissions from the permitted facility. The October 4, 2002, SIP submittal establishes the registration fee requirements for Permits by Rule under 30 TAC Chapter 106, and revises the air emission fee requirements found in 30 TAC Chapter 116 by increasing fees based on estimated capital costs for new and renewal permits and updating remittance information for the Texas Commission on Environmental Quality (TCEQ). The September 25, 2003, SIP revision updates the requirements for emission reductions to be used as NSR offsets, removes an expired provision for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas, and corrects errors in the TCEQ's mailing address used for air permit fee remittance. We are approving the repeal and replacement of section 116.313 submitted on July 22, 1998. We are approving new section 106.50 submitted on October 4, 2002, as well as revisions to sections 116.141(b) and (e), 116.143 Introductory Paragraph, 116.163(a) and (b), 116.313(a) and (b), and 116.614. We are approving revisions to sections 116.12, 116.143, 116.150, and 116.313, and the repeal and replacement of section 116.170 and new section 116.172 submitted on September 25, 2003.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 19, 2009 without further notice unless we receive relevant adverse comment by April 20, 2009. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Did Texas Submit?

We are approving provisions from three SIP revisions that the TCEQ submitted to EPA on July 22, 1998, October 4, 2002, and September 25, 2003. Copies of the revised rules as well as the Technical Support Documents (TSDs) can be obtained from the Docket, as discussed in the ''Docket'' section above. A discussion of the specific Texas rule changes that we are approving is included in the TSDs and summarized below. The TSDs also contain a discussion as to why EPA is not taking action on certain provisions of each Texas SIP submittal and documents why these provisions are separable from the provisions that we are approving. We are unable to act upon revisions to 30 TAC Chapter 101, sections 101.24 and 101.27 for air emission and inspection fees submitted on October 4, 2002, because previous revisions are still pending for review by EPA. We are also unable to act upon the flexible permit fee requirements at 30 TAC Chapter 116, section 116.750 submitted on October 4, 2002, because EPA has not yet approved the flexible permit program. Additionally, we are unable to act upon revisions to 30 TAC Chapter 116, sections 116.114, 116.115, 116.120, 116.315, and 116.715, submitted on September 25, 2003, because these sections reference or rely upon non-SIP approved State regulations. EPA will address these provisions, as appropriate, in separate actions.

A. July 22, 1998 Submittal

Section 116.313—Renewal Application Fees

The existing SIP-approved version of section 116.313 was adopted by the State on August 16, 1993, and approved by EPA on March 10, 2006 (see 71 FR 12285). The State repealed and replaced the 1993 version of section 116.313 with a similar program for assessing permit renewal application fees on July 22, 1998. The 1998 version of new section 116.313 establishes a fee schedule for permit renewals under 30 TAC Chapter 116 based on the total annual allowable emissions from the permitted facility.

B. October 4, 2002 Submittal

1. Section 106.50—Registration Fees for Permits by Rule

The TCEQ adopted new section 106.50 to establish the registration fees for permits by rule (PBR) issued under 30 TAC Chapter 106. These registration fees cover the review and processing costs for the PBR program. New section 106.50 specifies that PBR registration will be $100 for small businesses and municipalities, counties, and independent school districts; all other entities submitting PBR registration will pay $450.

2. Section 116.141—Determination of Fees

The previous State version of section 116.141(a) through (e), which is the existing SIP-approved version (see 67 FR 58697, September 18, 2002), established a fee schedule for NSR permits based on the estimated capital cost of the project. The revisions to section 116.141(b) and (e) adopted by the TCEQ on September 25, 2002, increased the fee from $450 to $900 for projects where the estimated capital cost is less than $300,000 or the project consists of new facilities controlled and operated directly by the federal government and federal Prevention of Significant Deterioration (PSD) regulations do not apply. For projects where the estimated capital cost is greater than $300,000 and PSD regulations do not apply, the fee was increased from 0.15% to 0.30% of the estimated capital cost. Additionally, the September 25, 2002 adoption increased the fee from $450 to $900 for a permit or permit amendment not involving any capital expenditure.

3. Section 116.143—Payment of Fees

The previous State version of section 116.143, Introductory Paragraph (1) and (2), which is the existing SIP-approved version (see 67 FR 58697, September 18, 2002), established the methods by which the permit fees were to be submitted to the Texas Natural Resource Conservation Commission (TNRCC).[1] The revisions to section 116.143, Introductory Paragraph, adopted by the TCEQ on September 25, 2002 replaced the references to the TNRCC with updated references to the TCEQ, corrected the address for fee remittance, and provided additional payment

[1] The TNRCC was changed to the TCEQ, effective September 1, 2002.

options through certified check and electronic funds transfer.

4. Section 116.163—Prevention of Significant Deterioration Permit Fees

The previous State version of section 116.163, which is the existing SIP-approved version (see 62 FR 44083, August 19, 1997), established a fee schedule for PSD permits based on the estimated capital cost of the project. The revisions to section 116.163(a) and (b) adopted by the TCEQ on September 25, 2002, increased the fee from $1,500 to $3,000 for projects where the estimated capital cost is less than $300,000 or the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, and Federal PSD regulations do apply. For projects where the estimated capital cost is greater than $300,000 and PSD regulations do apply, the fee was increased from 0.5% to 1.0% of the estimated capital cost.

5. Section 116.313—Renewal Application Fees

The revisions to section 116.313(a) and (b) adopted by the TCEQ on September 25, 2002, increased the base and incremental fees in the permit renewal fee calculation and increased the minimum permit renewal fee from $300 to $600. The revision to section (a) Renewal Fee Table increases the base fee from $965 to $1,265 and $28 per ton for allowable tons per year greater than 24 but less than or equal to 99. Further, the revision to section (a) decreases the total allowable tons per year from 994 to 651. It also increases the base fee from $2,840 to $3,365 and increases the incremental fee from $8 per ton to $12 per ton. Additionally, the September 25, 2002 revisions replaced the references to the TNRCC with updated references to the TCEQ, corrected the address for fee remittance, and provided additional payment options through certified check and electronic funds transfer.

6. Section 116.614—Standard Permit Fees

The previous State version of section 116.614, which is the existing SIP-approved version (see 68 FR 64543, November 14, 2003), established the methods by which the permit fees for standard permits were to be submitted to the TNRCC. The revisions to section 116.614 adopted by the TCEQ on September 25, 2002 replaced the references to the TNRCC with updated references to the TCEQ, corrected the address for fee remittance, and provided additional payment options through certified check and electronic funds transfer.

C. September 25, 2003 Submittal

1. Section 116.12—Nonattainment Review Definitions

The previous State version of this section, which is the existing SIP-approved version (see 69 FR 43572, July 22, 2004), established the definitions to be used in the NSR permitting program. The revisions to the introductory paragraph, and paragraphs (7)–(11), (13), and (18) of section 116.12 adopted by the TCEQ on August 20, 2003, include minor corrections to abbreviations, rule citations, and acronyms. In 116.12(14) the definition of ''offset ratio'' is amended to clarify that a reduction creditable as an offset in the NSR permitting program must be certified and banked as either an emission reduction credit under 30 TAC Chapter 101, Subchapter H, Division 1 (approved at 71 FR 52698, September 6, 2006) or as a discrete emission reduction credit under 30 TAC Chapter 101, Subchapter H, Division 4 (approved at 71 FR 52703, September 6, 2006).

2. Section 116.143—Payment of Fees

The revisions to section 116.143, Introductory Paragraph and (2), adopted by the TCEQ on August 20, 2003, further revise the revisions adopted by the TCEQ on September 25, 2002. The 2003 revision to the introductory paragraph updates the mailing address for the TCEQ. The revisions to (2) update the existing language by explaining when the fee is due and stating the review of the permit application will not begin until the fee is received.

3. Section 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas

The previous State version of section 116.150, which is the existing SIP-approved version (see 65 FR 43986, July 17, 2000), established requirements for new major sources and major modifications in ozone nonattainment areas, including the nitrogen oxide (NO_X) waiver provisions at 116.150(c) for the Houston/Galveston[2] and Beaumont/Port Arthur ozone nonattainment areas. The revisions to section 116.150 adopted by the TCEQ on August 20, 2003, remove the NO_X waiver provisions at 116.150(c). These provisions were removed because the time period specified for the NO_X waiver has expired.

4. Section 116.170—Applicability of Emission Reductions as Offsets

The previous State version of section 116.170, which is the existing SIP-approved version (see 67 FR 58697), was repealed and replaced by the TCEQ on August 20, 2003. The new section 116.170 establishes the requirements for the use of emission reductions as offsets for NSR permitting; consistent with the revisions to the definition of ''offset ratio'' reductions to be used as NSR offsets must be certified and banked under 30 TAC Chapter 101, Subchapter H, Divisions 1 or 4. The previous requirements for emissions offsets from rocket engine firing and cleaning have been moved to new section 116.172.

5. Section 116.172—Emissions Offsets From Rocket Engine Firing and Cleaning

The TCEQ adopted new section 116.172 on August 20, 2003. This new section contains the conditions under which emissions from rocket engine firing or cleaning may be offset by alternative means. The requirements for rocket engine firing and cleaning were moved without changes from section 116.170 as a result of the repeal and replacement of section 116.170, to new section 116.172.

6. Section 116.313—Renewal Application Fees

The revisions to section 116.313(b) adopted by the TCEQ on August 20, 2003, further revise the revisions adopted by the TCEQ on September 25, 2002. The 2003 revision to subsection (b) updates the mailing address for the TCEQ.

III. What Is EPA's Evaluation of These SIP Revisions?

A. July 22, 1998 Submittal

The *July 22, 1998* submittal (adopted June 17, 1998), which repealed the SIP-approved section 116.313 and replaced it with a new section 116.313 is approvable. The new section 116.313 is necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. The provisions found at section 116.313 are consistent with the fee assessment provisions of 110(a)(2)(L) of the CAA. The new section 116.313 did not increase the fee assessment established in the previously SIP-approved version of section 116.313. New section 116.313 rearranged previous requirements and updated mailing and billing information

[2] Note that in 1999 when the NO_X waiver was put in place, the Houston/Galveston/Brazoria ozone nonattainment area was designated the Houston/Galveston ozone nonattainment area.

from the Texas Air Control Board [3] to the Texas Natural Resource Conservation Commission.

B. October 4, 2002 Submittal

1. Section 106.50—Registration Fees for New Permits by Rule

New section 106.50 adopted by the TCEQ on September 25, 2002, is approvable. The fees assessed by the TCEQ under section 106.50 are necessary to adequately implement the Chapter 106 PBR program. These requirements are consistent with 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fees are necessary to cover the cost of review and processing of PBRs.

2. Section 116.141—Determination of Fees

EPA approved section 116.141(a) and (c) through (e), on August 19, 1997 (62 FR 44083) into the Texas SIP. EPA approved section 116.141(b) into the Texas SIP on September 18, 2002 (67 FR 58709). The revisions to 116.141(b) and (e) adopted by the TCEQ on September 25, 2002, are approvable. The fees assessed by the TCEQ under section 116.141 are necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. These revisions are consistent with 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fee increases are necessary to cover the cost of review and processing of NSR permits.

3. Section 116.143—Payment of Fees

On September 18, 2002, EPA approved section 116.143, Introductory Paragraph and (1) and (2) into the Texas SIP (67 FR 58709). The revisions to section 116.143, Introductory Paragraph, adopted by the TCEQ on September 25, 2002, are approvable. The revisions to section 116.143 are non-substantive changes; updating the name and address of the TCEQ (formerly the TNRCC) and allowing for additional payment methods. These revisions do not impact the functionality of the air permits for new construction or modification program.

4. Section 116.163—Prevention of Significant Deterioration Permit Fees

EPA approved section 116.163(a) through (e) into the Texas SIP on August 19, 1997 (62 FR 44083). The revisions to 116.163(a) and (b) adopted by the TCEQ on September 25, 2002, are approvable. The fees assessed by the TCEQ under section 116.163 are necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. These revisions are consistent with 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fee increases are necessary to cover the cost of review and processing of PSD permits.

5. Section 116.313—Permit Renewal Fees

On March 10, 2006, EPA approved section 116.313 into the Texas SIP as adopted by the TCEQ on August 16, 1993 (71 FR 12285). TCEQ repealed and replaced section 116.313 on June 17, 1998 with a new section 116.313. Section 116.313(a) and (b) was further revised on September 25, 2002. The new section 116.313 adopted by the TCEQ on June 17, 1998, and further revised on September 25, 2002, is approvable. Section 116.313 and the subsequent revisions are necessary to adequately implement the Chapter 116 permitting program for new construction and modifications. These revisions are consistent with the fee assessment provisions of 110(a)(2)(L) of the CAA. TCEQ made a sufficient demonstration that these fee increases are necessary to cover the cost of review and processing of PSD permits. Additionally, the non-substantive changes; updating the name and address of the TCEQ and allowing for additional payment methods, do not impact the functionality of the air permits for new construction or modification program.

6. Section 116.614—Standard Permit Fees

EPA previously approved section 116.614 into the Texas SIP on November 14, 2003 (68 FR 64548). The revisions to section 116.614 adopted by the TCEQ on September 25, 2002, are approvable. The revisions to section 116.614 are non-substantive changes; updating the name and address of the TCEQ and allowing for additional payment methods. These revisions do not impact the functionality of the air permits for new construction or modification program.

C. September 25, 2003 Submittal

1. Section 116.12—Nonattainment Review Definitions

EPA approved section 116.12 into the Texas SIP on July 22, 2004 (69 FR 43752). The revisions to section 116.12 adopted by the TCEQ on August 20, 2003, are approvable. The revisions to introductory paragraph and (7)–(11), 13 and 18 of section 116.12 include several minor changes to abbreviations, rule citations, and acronyms to conform to Texas Register formatting. These revisions do not impact the functionality of the air permits for new construction or modification program.

Additionally, in section 116.12(14) TCEQ revised the definition of ''offset ratio'' to state that an emission reduction must be certified under 30 TAC Chapter 101, Subchapter H, Divisions 1 or 4, to be creditable as an offset under the NSR permitting program. The revisions to the definition of ''offset ratio'' do not change EPA's initial determination that the definition is consistent with the requirements of section 173 of the CAA. The revisions only serve to reference TCEQ's established emissions banking and trading programs. EPA proposed approval of the Chapter 101, Subchapter H, Division 1 Emission Credit Banking and Trading program, and conditional approval of the Division 4 Discrete Emission Credit Banking and Trading program on October 5, 2005, and finalized our approvals on September 6, 2006. Our proposed rulemakings discuss our rationale that the credits generated under the programs can be used as NSR offsets. The administrative record for these rulemakings is available in the rulemaking dockets, EPA–R06–OAR–2005–TX–0006 and EPA–R06–OAR–2005–TX–0029, respectively. These revisions are consistent with 110(l) of the CAA.

2. Section 116.143—Payment of Fees

EPA approved section 116.143 into the Texas SIP on September 16, 2002 (67 FR 58697). The August 20, 2003, revisions to section 116.143 introductory paragraph do not substantively change the requirements of section 116.143 adopted by the State on June 17, 1998 and further revised on September 25, 2002. The revisions to 116.143 adopted by the State on September 25, 2002, and further revised on August 20, 2003 are approvable. These revisions do not impact the functionality of the air permits for new construction or modification program. The revisions to section (2) of 116.143 reorder existing language and further explain the permit application review process. These revisions are consistent with 110(l) of the CAA.

3. Section 116.150—New Major Source of Major Modification in Ozone Nonattainment Areas

EPA approved section 116.150 into the Texas SIP on July 17, 2000 (65 FR 43986). The revisions to section 116.150, adopted August 20, 2003, are

[3] In 1993, the Texas Air Control Board merged with the Texas Water Commission and the combined agency was renamed the Texas Natural Resource Conservation Commission.

approvable. These revisions remove the NO_X waiver provisions for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas because the time period for the waiver has expired. This revision is consistent with 110(l) of the CAA.

4. Section 116.170—Applicability of Emission Reductions as Offsets

The former § 116.170 was approved by EPA into the Texas SIP on September 18, 2002 (67 FR 58697). Subsection 116.170(2) is not in the SIP. On August 20, 2003 § 116.170 was repealed and replaced with a new § 116.170. The August 20, 2003, repeal and adoption of new section 116.170 are approvable. The requirements for the use of emission reductions as offsets for NSR permitting are consistent with the revised definition of ''offset ratio'' and the TCEQ's established emissions banking and trading programs. EPA proposed approval of the Chapter 101, Subchapter H, Division 1 Emission Credit Banking and Trading program, and conditional approval of the Division 4 Discrete Emission Credit Banking and Trading program on October 5, 2005, and finalized our approvals on September 6, 2006. Our proposed rulemakings discuss our rationale that the credits generated under the programs can be used as NSR offsets. The administrative record for these rulemakings is available in the rulemaking dockets, EPA–R06–OAR–2005–TX–0006 and EPA–R06–OAR–2005–TX–0029, respectively. This revision is consistent with 110(l) of the CAA.

5. Section 116.172—Emissions Offsets From Rocket Engine Firing and Cleaning

The August 20, 2003 adoption of new section 116.172 is approvable. These provisions have been moved unchanged from the repealed section 116.170, which was SIP-approved September 18, 2002 as consistent with the CAA. This revision is consistent with 110(l) of the CAA.

6. Section 116.313—Renewal Application Fees

EPA approved section 116.313 into the Texas SIP March 10, 2006 (71 FR 12285). The revisions to section 116.313, adopted August 20, 2003, do not substantively change the requirements of section 116.313, as adopted by TCEQ on June 17, 1998, and further revised on September 25, 2002. The revisions to update the mailing address of the TCEQ are non-substantive and will not impact the NSR permit renewal process. New section 116.313 as adopted by the State on June 17, 1998 and further revised on September 25, 2002 and August 20, 2003 is approvable.

D. Does Approval of Texas's Rule Revisions Interfere With Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act?

Section 110(l) of the CAA states that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. Our review of the Texas SIP submittals indicate that the revisions will not interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act.

IV. Final Action

EPA is taking direct final action to approve revisions to the Texas SIP submitted on July 22, 1998, October 4, 2002, and September 25, 2003. Specifically, EPA is approving the repeal and replacement of section 116.313 submitted on July 22, 1998 to assess fee requirements for permit renewals. EPA is also approving new fee provisions for permits by rule at 30 TAC Chapter 106, Subchapter B, section 106.50 submitted October 4, 2002. We are also approving the following revisions to the Texas SIP submitted on October 4, 2002: Revisions to section 116.141(b) and (e) to increase permit fee determinations, revisions to section 116.143 Introductory Paragraph to update the fee payment information, revisions to section 116.163(a) and (b) to increase permit fees for PSD permits, revisions to section 116.313(a) and (b) to increase permit renewal fees and update fee remittance information for the TCEQ, and revisions to section 116.614 to update the fee remittance information for standard permits. We are also approving the following revisions to the Texas SIP submitted on September 25, 2003: Revisions to section 116.12 to update the nonattainment review definitions, revisions to section 116.143 to update the TCEQ's mailing address, revisions to section 116.150 to remove the expired NO_X waiver in the HGB nonattainment area, and revisions to section 116.313 to update the TCEQ's mailing address. We are also approving the September 25, 2003, repeal and replacement of section 116.170 with a new section 116.170 that establishes the requirements of emission reductions used as NSR offsets consistent with the revised nonattainment review definitions under section 116.12 and the current SIP approved trading programs under 30 TAC Chapter 101, Divisions 1 and 4. Finally, we are approving new section 116.172 submitted on September 25, 2003, which establishes the requirements for emission offsets from rocket engine firing and cleaning.

EPA is not taking action on the revisions to sections 101.24, 101.27, and 116.750 submitted on October 4, 2002 or revisions to sections 116.114, 116.115, 116.120, 116.315, and 116.715, submitted on September 25, 2003. These revisions remain under review by EPA and will be addressed in separate actions.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 26, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, EPA Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. Section 52.2270 is amended as follows:

■ a. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 106—Permits by Rule, by adding the following immediately after the existing entry section 106.13: A new centered heading entitled ''Subchapter B—Registration Fees for New Permits by Rule'' followed by a new entry for section 106.50;

■ b. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter A—Definitions, by revising the entry for section 116.12;

■ c. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New Source Review Permits, Division 4—Permit Fees, by revising the entries for sections 116.141 and 116.143;

■ d. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New Source Review Permits, Division 5—Nonattainment Review, by revising the entry for section 116.150;

■ e. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New Source Review Permits, Division 6—Prevention of Significant Deterioration, by revising the entry for section 116.163;

■ f. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter B—New Source Review Permits, Division 7—Emission Reductions: Offsets, by revising the entry for section 116.170 and adding a new entry in numerical order for section 116.172;

■ g. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter D—Permit Renewals, by revising the entry for section 116.313;

■ h. In paragraph (c) the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended the under Chapter 116—Control of Air Pollution by Permits for New Construction and Modification, Subchapter F—Standard Permits, by revising the entry for section 116.614.

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 106—Permits by Rule				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	* * * *	*	*	*
	Subchapter B—Registration Fees for New Permits by Rule			
Section 106.50	Registration Fees for Permits by Rule	9/25/2002	3/20/2009 [Insert *FR* page number where document begins].	
*	* * * *	*	*	*
	Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification			
	Subchapter A—Definitions			
*	* * * *	*	*	*
Section 116.12	Nonattainment Review Definitions	8/20/2003	3/20/2009 [Insert *FR* page number where document begins].	
*	* * * *	*	*	*
	Subchapter B—New Source Review Permits			
*	* * * *	*	*	*
	Division 4—Permit Fees			
*	* * * *	*	*	*
Section 116.141 ..	Determination of Fees	9/25/2002	3/20/2009 [Insert *FR* page number where document begins].	
Section 116.143 ..	Payment of Fees	8/20/2003	3/20/2009 [Insert *FR* page number where document begins].	
	Division 5—Nonattainment Review			
Section 116.150 ..	New Major Source or Major Modification in Ozone Non-attainment Area.	8/20/2003	3/20/2009 [Insert *FR* page number where document begins].	
*	* * * *	*	*	*
	Division 6—Prevention of Significant Deterioration Review			
*	* * * *	*	*	*
Section 116.163 ..	Prevention of Significant Deterioration Permit Fees	9/25/2002	3/20/2009 [Insert *FR* page number where document begins].	
	Division 7—Emission Reductions: Offsets			
Section 116.170 ..	Applicability of Emission Reductions as Offsets	8/20/2003	3/20/2009 [Insert *FR* page number where document begins].	
Section 116.172 ..	Emissions Offsets from Rocket Engine Firing and Cleaning	8/20/2003	3/20/2009 [Insert *FR* page number where document begins].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	* * * *	*	*	*
	Subchapter D—Permit Renewals			
*	* * * *	*	*	*
Section 116.313 ..	Renewal Application Fees	8/20/2003	3/20/2009 [Insert *FR* page number where document begins].	
*	* * * *	*	*	*
	Subchapter F—Standard Permits			
*	* * * *	*	*	*
Section 116.614 ..	Standard Permit Fees	9/25/2002	3/20/2009 [Insert *FR* page number where document begins].	
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[FR Doc. E9–5835 Filed 3–19–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2004–0490; FRL–8784–4]

RIN 2060–AO23

Standards of Performance for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the sulfur dioxide air emission standards for stationary combustion turbines that burn biogas (landfill gas, digester gas, etc.). Without these amendments, owners/operators of new stationary combustion turbines burning biogas containing relatively low amounts of sulfur-containing compounds will be required to install pretreatment facilities to remove the sulfur compounds prior to combustion or to install post combustion controls to lower sulfur dioxide emissions. It was not EPA's intent to require the use of either of these approaches, and the costs associated with either approach are substantially greater than the environmental benefit resulting from the decrease in sulfur dioxide emissions.

DATES: This direct final rule is effective on May 19, 2009 without further notice, unless EPA receives relevant adverse comment by April 20, 2009. If EPA receives relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0748 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: a-and-r-docket@epa.gov* and *fellner.christian@epa.gov.*

3. *Facsimile:* (202) 566–9744.

4. *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

5. *Hand Delivery:* Deliver in person or by courier to: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2084–0748. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov.* This includes any personal information provided, unless the comment contains 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. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2008–0748. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then electronically identify 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.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, facsimile number (919) 541–5450, electronic mail (e-mail) address: *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Why is EPA using a direct final rule?
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C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
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F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Why is EPA using a direct final rule?

We are publishing the rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. As explained below, this action amends the sulfur dioxide emission limit for the stationary combustion turbine new source performance standards, subpart KKKK of 40 CFR part 60, to account for the lower heating value of biogas relative to distillate oil. Without these amendments, the rule will require owners/operators of new stationary combustion turbines burning biogas containing relatively low concentrations of sulfur-containing compounds to either install pretreatment facilities to remove the sulfur from the gas prior to combustion or post combustion controls to lower sulfur dioxide emissions. This requirement is problematic for a number of reasons. First, we did not intend this outcome. Second, since the outcome was not intended, it was not reflected in the proposed rule (70 FR 3814) thereby depriving people of a meaningful opportunity to comment on the requirement. Third, we have concluded that the costs associated with either of these options are substantially greater than any environmental benefit resulting from the decrease in sulfur dioxide emissions.

If we receive relevant adverse comment on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect. Any parties interested in commenting must do so at this time.

II. Does this action apply to me?

The categories and entities potentially regulated by this direct final rule include, but are not limited to, the following:

Category	NAICS [1]	Examples of regulated entities
Industry	2211	Electric services.
	486210	Natural gas transmission.
	211111	Crude petroleum and natural gas.
	211112	Natural gas liquids.
	221	Electric and other services, combined.

[1] North American Industry Classification System (NAICS) code.

III. Where can I get a copy of this document?

In addition to the docket, an electronic copy of this final action will be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

IV. Why are we amending the rule?

The proposal for subpart KKKK (70 FR 8314) included a fuel-based sulfur dioxide (SO_2) limit of 500 parts per million by weight (ppmw) sulfur. The rule, as adopted, (71 FR 38482) contains a fuel-based SO_2 limit of 0.060 pounds per million British thermal units (lb/MMBtu). The adopted SO_2 limit was based on the potential SO_2 emissions rate of natural gas containing 20 grains of sulfur per 100 standard cubic feet and 500 ppmw sulfur distillate oil. The change from a fuel-based limit to a

potential SO_2 emission rate was not intended to substantially change the stringency of the standard. However, fuels with low energy density, such as biogas, have a higher potential SO_2 emission rate relative to the sulfur concentration in the fuel because of their lower heating value. As a result, this change in format is causing difficulties for owners/operators of new stationary combustion turbines planning to burn landfill gas. We did not intend, in adopting the rule, to require biogas projects (landfill gas, digester gas, etc.) burning fuel with less than 500 ppmw sulfur, but having a potential SO_2 emission rate of greater than 0.060 lb/MMBtu due to the low heating value of the gas, to install an SO_2 control device.

Much of the biogas generated in the United States has a potential SO_2 emissions rate of less than 0.060 lb/MMBtu; however, this is not true in all cases. It was not our intent to require owners/operators of biogas projects containing higher, but still moderate, amounts of sulfur-containing compounds to install additional controls. The control requirement was not supported by our impacts analysis or by public comments received on the proposal. Furthermore, the costs associated with installing and operating any such controls substantially outweigh any environmental benefits resulting from lower sulfur emissions.

Most of stationary combustion turbine projects burning biogas are small sources of criteria pollutant emissions and produce less than 10 megawatts of power. Biogas projects that use moderate amounts of sulfur-containing compounds would have less attractive economic returns if required to achieve an emissions rate of 0.060 lb SO_2/MMBtu due to the substantial costs associated with installing and operating the necessary controls and may be cancelled. Unless an alternate use for biogas is found, it is often flared or directly vented to the atmosphere. Stationary combustion turbines that burn biogas have comparable emissions to landfill flares and have the added benefit of using an opportunity fuel that would otherwise be wasted, thereby reducing emissions. Accordingly, we are concerned that requiring biogas burning units to comply with the 0.060 lb SO_2/MMBtu standard will result in a worse environmental outcome and will waste energy resources and thus would not constitute best demonstrated technology for such units.

V. What amendments are we making to the rule?

As currently written, § 60.4330(a)(2) requires owners/operators of stationary combustion turbines burning biogas containing more than approximately 180 ppm hydrogen sulfide (H_2S) to install SO_2 controls, which was neither proposed nor intented. To remedy this, we are establishing a new subcategory for owners/operators of stationary combustion turbines burning over fifty percent biogas. The new subcategory will have an SO_2 limit of 0.15 lb/MMBtu (closer to the original fuel-based 500 ppm sulfur limit) for new units, i.e., those for which construction, reconstruction, or modification is commenced after the effective date of this rule, and units presently subject to subpart KKKK. We are also adding a definition for biogas.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed amendments result in no changes to the information collection requirements of the existing standards of performance and will have little or no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. However, OMB has previously approved the information collection requirements contained in the existing regulations (subpart KKKK, 40 CFR part 60) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060–0582 (ICR 2177.02). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's 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.

After considering the economic impacts of this direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Although this direct final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. If adopted, the amended sulfur dioxide limit for owners and operators of turbines burning biogas will reduce the compliance burden of the rule.

Therefore, EPA has concluded that this direct final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This direct final rule reduces burden and does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of UMRA.

This direct final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. If adopted, the amended

sulfur dioxide limit for owners and operators of turbines burning biogas will reduce the regulatory burden for small governments that own or operate stationary combustion turbines burning biogas.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule will not impose substantial direct compliance costs on State or local governments; it will not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). EPA is not aware of any stationary combustion turbine owned by an Indian tribe. In the event that an Indian tribe does own a stationary combustion turbine burning biogas, the amendments will benefit the tribe to the same extent as any other owner/operator. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

These direct final rule amendments do not involve technical standards as defined in the NTTAA. Therefore, this direct final rule is not subject to NTTAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practical and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high 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. In the absence of the proposed amendments, the biogas would likely either be flared or combusted in reciprocating internal combustion engines. Emissions from either of these options would be similar or higher than the proposed amended limits for stationary combustion turbines burning biogas.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register.** The direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). The direct final rule is effective May 19, 2009.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Sulfur oxides.

Dated: March 16, 2009.

Lisa Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

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

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

Subpart KKKK—[AMENDED]

■ 2. Section 60.4330 is amended by revising paragraph (a) to read as follows:

§ 60.4330 What emission limits must I meet for sulfur dioxide (SO_2)?

(a) If your turbine is located in a continental area, you must comply with either paragraph (a)(1), (a)(2), or (a)(3) of this section. If your turbine is located in Alaska, you do not have to comply with the requirements in paragraph (a) of this section until January 1, 2008.

(1) You must not cause to be discharged into the atmosphere from the subject stationary combustion turbine any gases which contain SO_2 in excess of 110 nanograms per Joule (ng/J) (0.90 pounds per megawatt-hour (lb/MWh)) gross output;

(2) You must not burn in the subject stationary combustion turbine any fuel which contains total potential sulfur emissions in excess of 26 ng SO_2/J (0.060 lb SO_2/MMBtu) heat input. If your turbine simultaneously fires multiple fuels, each fuel must meet this requirement; or

(3) For each stationary combustion turbine burning at least 50 percent biogas on a calendar month basis, as determined based on total heat input, you must not cause to be discharged into the atmosphere from the affected source any gases that contain SO_2 in excess of 65 ng SO_2/J (0.15 lb SO_2/MMBtu) heat input.

* * * * *

■ 3. Section 60.4420 is amended by adding the definition of ''Biogas'' in alphabetical order to read as follows:

§ 60.4420 What definitions apply to this subpart?

* * * * *

Biogas means gas produced by the anaerobic digestion or fermentation of organic matter including manure, sewage sludge, municipal solid waste, biodegradable waste, or any other biodegradable feedstock, under anaerobic conditions. Biogas is comprised primarily of methane and CO_2.

* * * * *

[FR Doc. E9–6163 Filed 3–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–8784–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Partial Deletion of the Griffiss Air Force Base Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 announces the deletion of approximately 2,900 acres of property (identified in more detail below) of the Griffiss Air Force Base Superfund Site (Site) located in Rome, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the soil and groundwater of 23 parcels at the Site. All other properties at Griffiss Air Force Base (GAFB) will remain on the NPL and are not being considered for deletion as part of this action. The EPA and the State of New York, through the New York State Department of Environmental Conservation, have determined that, with regard to the specified properties at the GAFB Site (i.e., the soil and groundwater beneath), either no significant threat to public health or the environment exists or all appropriate response actions, other than operation, maintenance, and five-year reviews, have been implemented such that they no longer pose a significant threat to public health or the environment.

DATES: *Effective Date:* This action is effective March 20, 2009.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1987–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone: (212) 637–4308, Hours: Monday to Friday from 9 a.m. to 5 p.m., and

Griffiss Business and Technology Park, Information Repository/Administrative File, 153 Brooks Road, Rome, NY 13441, (315) 356–0810, Hours: Please call to determine hours of operation and whether an appointment is needed.

FOR FURTHER INFORMATION CONTACT: Douglas M. Pocze, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, Emergency and Remedial Response Division, 290 Broadway, New York, NY, 10007–1866, (212) 637–4432, e-mail: *pocze.doug@epa.gov*.

SUPPLEMENTARY INFORMATION: The properties to be deleted from the NPL (23 parcels) are listed below:

	Acres
1. Property A1A—Airfield	1324.45
2. Building 750—Former Air Force Special Investigations	4.07
3. Central Heating Plant	17.78
4. Parcel F1	61.40
5. Parcel F2	88.37
6. Electrical Power Substation	3.20
7. Parcel F3A	75.99
8. Parcel F3B	14.04
9. Parcel F4A	107.59
10. Parcel F4C	56.96
11. Parcel F6A	52.20
12. Parcel F7NR	52.09
13. Parcel F7R	223.75
14. Parcel F8 Housing	69.22
15. Parcel F9A	135.25
16. Parcel F9B	64.99
17. Parcel F10A	11.05
18. Parcel F10B	275.82
19. Parcel F11A Housing	152.56
20. Parcel F11C	4.24
21. Parcel F11D	45.23
22. Parcel F12A	41.82
23. MGC—Mohawk Glen Club	15.13

These properties were identified in the Notice of Intent for Partial Deletion for this Site published in the **Federal Register** on December 19, 2008. Additional information can also be found on the Air Force's Web site at *http://www.griffiss.com*. In the Notice of Intent for Partial Deletion, EPA requested public comment on the proposed NPL partial deletion by January 20, 2009. No public comments were received and therefore EPA has no information which leads it to believe that the partial deletion action is inappropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 19, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

■ For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 2 of Appendix B to part 300 is amended by revising the entry under ''Griffiss Air Force Base'', ''New York'' to read as follows:

Appendix B to Part 300—National Priorities List

* * * * *

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes (a)
*	* * * * *	*	*
NY	Griffiss Air Force Base	Rome	P
*	* * * * *	*	*

(a) P = Sites with partial deletion(s).

[FR Doc. E9–6154 Filed 3–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2008–0382; FRL–8404–2]

RIN 2070–AJ40

Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities and Renovation Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to revise the existing fees for EPA's Lead-based Paint Activities Regulations and establish fees for the Renovation, Repair, and Painting Rule. As specified in section 402 of the Toxic Substances Control Act (TSCA), EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's costs of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors. Specifically, this final rule establishes the fees that will be charged, in those States and Indian Tribes without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, for firms engaged in renovations seeking certification under 40 CFR 745.89, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

DATES: This final rule is effective April 20, 2009.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2008–0382. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Marc Edmonds, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566-0758; e-mail address: *edmonds.marc@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm who must be certified to conduct renovation activities in accordance with 40 CFR 745.89, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226.

This final rule applies only in States, Territories, and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States, Territories, and Indian Tribes, contact the National Lead Information Center (NLIC) at 1–800–424–LEAD. Potentially affected categories and entities may include, but are not limited to:

- Building construction (NAICS code 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors; painting and wall covering contractors; electrical contractors; finish carpentry contractors; drywall and insulation contractors; siding contractors; tile and terrazzo

contractors; glass and glazing contractors.

- Real estate (NAICS code 531), e.g., lessors of residential building and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.
- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.
- Lead abatement contractors and professionals (NAICS code 562910), e.g., firms and supervisors engaged in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 745.89, 40 CFR 745.225, and 40 CFR 745.226. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

EPA is revising the existing fees for training providers, firms, and individuals under the Lead-based Paint Activities Regulations. EPA is also establishing fees for training providers and renovation firms under the Renovation, Repair, and Painting Rule published in the **Federal Register** issue of April 22, 2008 (Ref. 1). As specified in TSCA section 402, EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's costs of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors. Specifically, this final rule establishes the fees that will be charged, in those States and Indian Tribes without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, for firms engaged in renovations seeking certification under 40 CFR 745.89, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

B. What is the Agency's Authority for Taking this Action?

This final rule is being issued under the authority of TSCA sections 402(a)(3) and 402(c)(3) (15 U.S.C. 2682(a)(3) and 2682(c)(3)).

C. What Regulations Have Already Been Promulgated Under TSCA Section 402?

In 1992, Congress found that low-level lead poisoning was widespread among American children, affecting, at that time, as many as 3,000,000 children under age 6; that the ingestion of household dust containing lead from deteriorating or abraded lead-based paint was the most common cause of lead poisoning in children; and that the health and development of children living in as many as 3,800,000 American homes was endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes. Congress further determined that the prior Federal response to this threat was insufficient and enacted Title X of the Housing and Community Development Act of 1992, Public Law 102–550 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992) (Title X). Title X established a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible and provided a leadership role for the Federal Government in building the infrastructure necessary to achieve this goal.

Title X added a new title to TSCA, entitled *Title IV–Lead Exposure Reduction*. Most of EPA's responsibilities for addressing lead-based paint hazards can be found in Title IV, with TSCA section 402 being one source of the rulemaking authority to carry out these responsibilities. Section 402(a) of TSCA directs EPA to promulgate regulations covering lead-based paint activities to ensure persons performing these activities are properly trained, that training programs are accredited, and that contractors performing these activities are certified. These regulations must contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. On August 29, 1996, EPA promulgated final regulations under TSCA section 402(a) that govern lead-based paint inspections, lead hazard screens, risk assessments, and abatements in target housing and child-occupied facilities (also referred to as the Lead-based Paint Activities Regulations) (Ref. 2). These regulations, codified at 40 CFR part 745, subpart L, contain an accreditation program for training providers and training and certification requirements for lead-based paint inspectors, risk assessors, project designers, abatement supervisors, and abatement workers. Work practice standards for lead-based paint activities are also included. Pursuant to TSCA section 404, provision was made for interested States, Territories, and Indian Tribes to apply for and receive authorization to administer their own lead-based paint activities programs. Requirements applicable to State, Territorial, and Tribal programs are codified in 40 CFR part 745, subpart Q.

Section 402(a)(3) of TSCA directs the Agency to establish fees to recover for the U.S. Treasury the cost of administering and enforcing the standards and requirements established under TSCA section 402 and applicable to lead-based paint training programs and contractors. On June 9, 1999, 40 CFR part 745, subpart L, was amended to include a fee schedule for training programs seeking EPA accreditation and for individuals and firms seeking EPA certification (Ref. 3). These fees were established as directed by TSCA section 402(a)(3), which requires EPA to recover the cost of administering and enforcing the lead-based paint activities requirements in States without authorized programs.

Section 402(c) of TSCA pertains to renovation and remodeling activities. TSCA section 402(c)(3) requires EPA to revise the regulations issued under TSCA section 402(a), the Lead-based Paint Activities Regulations, to apply to renovation or remodeling activities that create lead-based paint hazards. In the **Federal Register** issue of April 22, 2008, EPA issued a final rule covering renovation, repair, and painting activities in target housing and child-occupied facilities (the Renovation, Repair, and Painting Rule) (Ref. 1). Pursuant to the Renovation, Repair, and Painting Rule, persons performing covered renovation activities must be properly trained, renovators and renovation firms must be certified, and persons who provide renovator or dust sampling training must be accredited. As described in 40 CFR 745.81, the requirements of the Renovation, Repair, and Painting Rule become effective in stages with the entire rule becoming effective as of April 22, 2010.

D. Proposed Rule

In the **Federal Register** issue of August 21, 2008, EPA issued a proposed rule to revise the existing fees for

training providers, firms, and individuals under the Lead-based Paint Activities Regulations and to establish fees for training providers and renovation firms under the Renovation, Repair, and Painting Rule (Ref. 4). As specified in TSCA section 402, EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's costs of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors. As explained in the preamble of the proposal for this rule, EPA interprets the language of TSCA section 402(c)(3), which requires EPA to revise the TSCA section 402(a) regulations to apply to renovation and remodeling activities that create lead-based paint hazards, to include the establishment of fees as directed by TSCA section 402(a).

To estimate the costs of administering the accreditation and certification program, EPA directly estimated total costs for enforcement activities and Headquarters administrative activities (e.g., the cost to maintain the Federal Lead-based Paint Program (FLPP) database, the cost to enter data into the database), since these activities cannot be linked to specific applications. Enforcement cost estimates were generated based on the actual resources currently allocated for enforcement. EPA calculated the costs for Regional administrative activities on a per application basis, (e.g., the cost to review an application, the cost to issue a certificate), because these costs depend largely on the number and type of applications received. As described in the economic analysis for this final rule, the information pertaining to the Regional cost of processing applications was determined by observing and recording actual Regional application processing activities over a 30–day period (Ref. 5). The total program cost for EPA Regional administrative activities is the sum of the EPA Regional administrative costs for each type of application multiplied by the total number of that type of application received.

III. Provisions of the Final Rule

This final rule revises fees for training providers, firms, and individuals under the Lead-based Paint Activities Regulations and establishes fees for training providers and renovation firms under the Renovation, Repair, and Painting Rule. The Agency based these fees on the cost of administering and enforcing the Lead-based Paint Activities Regulations and the estimated cost of administering and enforcing the Renovation, Repair, and Painting Rule. The fees in this final rule are the same as those published in the proposed rule with one exception. After consideration of the comments on the proposed rule, EPA decided to assess a single fee of $550 for firms that apply for certification under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule on a single application in States where EPA implements both programs. For Tribal government entities, the fee is $20. The combined firm certification is explained in more detail in Unit IV.D. Accordingly, EPA revised the existing fees in 40 CFR 745.238 for the Lead-based Paint Activities Regulations as follows:

- Accreditation for initial training course—$870
- Accreditation for refresher training course—$690
- Re-accreditation for initial training course—$620
- Re-accreditation for refresher training course—$580
- Initial firm certification—$550
- Initial Tribal firm certification—$20
- Firm re-certification—$550
- Combined lead-based paint activities and renovation firm certification—$550
- Combined lead-based paint activities and renovation firm certification for Tribal firms—$20
- Tribal firm re-certification—$20
- Individual certification (for all disciplines except worker)—$410
- Individual worker certification—$310
- Individual Tribal certification (all disciplines)—$10
- Individual re-certification (for all disciplines except worker)—$410
- Individual worker re-certification—$310
- Individual Tribal re-certification (all disciplines)—$10

This final rule also establishes the following fees for the Renovation, Repair, and Painting Rule:

- Accreditation for initial renovator or dust sampling technician course—$560
- Accreditation for refresher renovator or dust sampling technician course—$400
- Re-accreditation for initial renovator or dust sampling technician course—$340
- Re-accreditation for refresher renovator or dust sampling technician course—$310
- Initial renovation firm certification—$300
- Combined lead-based paint activities and renovation firm certification—$550
- Combined lead-based paint activities and renovation firm certification for Tribal firms—$20
- Initial Tribal renovation firm certification—$20
- Renovation firm re-certification—$300
- Tribal renovation firm re-certification—$20

IV. Summary of Public Comments and EPA Responses

The Agency received comments from eight commenters on the proposed rule. The comments are included in the docket for this rulemaking. The Agency's responses to these comments are also provided in the docket. Responses to the most significant comments are included in this unit. This unit addresses comments regarding the methods used to establish fee amounts as well as the fee amounts established by this final rule for:

- Certification of Tribal governments and their respective employees.
- Certification of State and local governments and their respective employees.
- Certification of very small firms.

A. Methods Used to Establish Fees

With respect to the overall fee schedules, one commenter stated that the Renovation, Repair, and Painting Rule fees should be based on cost data from accreditations and certifications under the Department of Housing and Urban Development's (HUD) Lead Safe Housing Rule. The commenter asserted that the HUD program is analogous to EPA's Renovation, Repair, and Painting Rule in terms of accrediting and certifying training providers and firms. Two other commenters stated that the fee amounts and methods used to establish the fees for the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule are reasonable.

EPA disagrees that data from HUD's Lead Safe Housing Rule should have been used to determine the costs of accreditations and certifications. HUD's Lead Safe Housing Rule establishes certain requirements for renovations performed in target housing; however, the rule does not require HUD to accredit and certify training providers and firms. Consequently, HUD would not have information about the cost of administering an accreditation and certification program.

B. Certification Fees for Tribal Governments and Their Employees

The proposed rule included a reduced fee for Tribal governments of $20 for Tribal firm certification and $10 for the

individual certification of a Tribal employee. EPA received two comments regarding the lower fees for Tribes. One commenter agreed that the individual fee was appropriate and that EPA should extend the lower fees to low-income workers and non-profit organizations. Another commenter stated that a lower fee should be based on need and that not all Tribes face the same financial constraints.

The Agency agrees that the lower certification fees for Tribal governments and their employees are appropriate. While some Tribal governments may have adequate funding to pay these fees, Tribal governments overall would benefit from lower fees. Therefore, the final rule includes a $20 fee for the firm certification of a Tribal government and $10 for the individual certification of an employee of a Tribal government. EPA estimates that only a small number of Tribal governments will seek certification. Thus the lower Tribal fees will have a negligible impact on fees for other firms and individuals. Moreover, establishing a need-based fee schedule would introduce additional administrative (verification) and enforcement costs, changing the cost analysis. In sum, while some Tribal governments may have ample resources, the increased costs of implementing a need-based system do not, on balance, justify doing so.

One commenter asked if a Federal agency whose primary focus is the support of Tribes would qualify for the reduced Tribal fee. Under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule, only a Tribal government and its employees are eligible for the lower fee. Federal agencies and other non-Tribal governments can not take advantage of the lower fee.

C. Certification Fees for State and Local Governments and Their Employees

EPA sought comment on whether the costs to State and local governments should be shifted to non-government firms and individuals in order to lower certification fees for State and local government firm and individual certifications. These governments are already exempt under TSCA section 402(a)(3) from paying Federal accreditation fees. As stated in the preamble to the proposal, EPA considered further reducing the financial impact of Federal fees on State and local governments. As an example of a potential fee, the Agency suggested a 50% reduction in the proposed certification fees. EPA did not make an estimate of how many State governments would be able to take advantage of this lower fee but instead requested comment on what the number would be.

The Agency received several comments on lowering the fee for States and local governments. One commenter was in support of a lower fee stating that a 50% fee reduction was appropriate. Three commenters opposed the lower fees. One of the commenters in opposition stated that there is no basis for a lower fee especially if the decreasing fees would be recovered by non-government firms and individuals. Another commenter objected on the basis that businesses will pay the fees for their employees and State and local governments should do the same.

After considering the issue, the Agency has decided not to shift costs to non-governmental firms and individuals in order to lower certification fees for State and local governments. The Agency did not receive any comments from State and local governments and therefore did not acquire any specific information on whether lower fees for these governments are necessary. More importantly, EPA did not receive any information concerning the number of government entities and employees that would take advantage of the lower fees making it difficult to even approximate the number of entities and employees that would be eligible for the lower fee and the amount of the costs that would have to be shifted to other firms and individuals in order to be recouped.

D. Certification Fees for Very Small Firms

In the proposed rule, EPA requested comment on whether firms with annual revenues below $25,000 seeking certification under the Renovation, Repair, and Painting Rule should pay a reduced firm certification fee of $100 in order to reduce the impact of the fees on small entities. Several commenters expressed support for the lower fee. One commenter stated that the lower fee makes sense but should be further gradated according to a firm's annual revenue. Another commenter claimed that the idea has merits but that any associated increase in fees should be borne solely by other firms and not training providers. One commenter opposed the lower fee claiming that the $300 fee is not burdensome. Another commenter was in favor of the reduced fee provided that the definition of annual revenues was included revenue from all work by the firm and not just lead abatement work.

After consideration of the comments and further analysis, the Agency decided not increase fees on other firms and training providers in order to lower fees for renovation firms earning below $25,000 of revenue per year. Establishing a lower fee or graduated fee schedule based upon gross receipts would introduce additional administrative and enforcement cost associated with verifying that firms were entitled to a lower fee. Thus, not only would the difference in fees need to be shifted to other entities, but the increased administrative and enforcement costs would also need to be recouped. Furthermore, the Agency generally agrees that a $300 fee for a 5–year certification, i.e., $60 per year, is not overly burdensome and that the difference in paying $100 or $200 as opposed to $300 would not have a significant impact. Thus, after weighing the equities of increasing fees on other firms to cover the cost associated with a fee reduction for very small businesses against the burden of a $300 fee amortized over 5 years, the Agency determined that such a reduced fee structure could not be justified.

One commenter claimed that EPA should not charge a firm two certification fees if it applies for certification under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule. The commenter believes it is unfair to charge two fees for a single firm.

In light of this comment, the Agency decided to assess a single fee of $550 for firms that apply for certification under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule on a single application. For Tribal government entities, the fee is $20. Firms that apply on separate applications will have to pay the appropriate fee for each. The lower fee would only apply when a single firm applies for both certifications on the same firm application in a State where EPA implements both programs. EPA is charging a lower fee because it is less costly to process a single application instead of separate applications for each program. The Agency agrees that it is appropriate to pass along this cost savings to firms. Moreover, the impact of doing so will be limited. The Agency does not expect many firms to take advantage of this due to difference in the length of certifications under each program. Certifications for the Renovation, Repair, and Painting Rule last for 3 years while certifications under the Renovation, Repair, and Painting Rule are good for 5 years. Therefore, it is unlikely that a firm already certified under the Lead-based Paint Activities Regulations will apply for recertification at the same time it applies for certification under the

Renovation, Repair, and Painting Rule. Compared to the large number of firms that will seek certification under the Renovation, Repair, and Painting Rule, there are very few firms certified under the Lead-based Paint Activities Regulations. Thus, this change will have a negligible impact on fees for other entities.

V. References

The following is a list of the documents that are specifically referenced in this final rule and placed in the docket that was established under docket ID number EPA–HQ–OPPT–2008–0382. For information on accessing the docket, refer to the **ADDRESSES** unit at the beginning of this document.

1. USEPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7).

2. USEPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities: Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL–5389–9).

3. USEPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors; Final Rule. **Federal Register** (64 FR 31092, June 9, 1999) (FRL–6058–6).

4. USEPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-Based Paint Activities and Renovation Contractors; Proposed Rule. **Federal Register** (73 FR 49378, August 21, 2008) (FRL–8372–4).

5. USEPA. Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Section 402 Lead-Based Paint Program Accreditation and Certification Fee Rule. January 27, 2009.

6. USEPA. OPPT. Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities. March 2008.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive order. EPA has prepared an analysis of the potential impact of this action, which is briefly summarized here. The impact of the fee amendments to the Lead-based Paint Activities Regulations is estimated to be $1.2 million per year, or $6.1 million over the next 5 years. The impact of the fees for the Renovation, Repair, and Painting Rule, which were addressed and accounted for during the development of that rule, is estimated to be $61 million in the first year, and $22 million in each of the following 4 years, or $150 million over the next 5 years. EPA's analysis is contained in two documents, entitled *Economic Analysis for the TSCA Section 402 Lead-Based Paint Program Accreditation and Certification Fee Rule* (Ref. 5) and *Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities* (Ref. 6). These documents are available in the docket for this final rule.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because this final rule merely established fees associated with previously promulgated accreditation and certification application requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR part 745, subpart E and subpart L, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0155 (EPA ICR number 1715). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined in accordance with section 601 of RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities that are potentially directly regulated by this final rule include: Small businesses (including abatement and renovation contractors, environmental testing firms, and property owners and managers); small non-profits (including child day care centers, private schools, and advocacy groups); and small governments (local governments, school districts).

This final rule would result in a slight overall decrease in the fees currently assessed under the Lead-based Paint Activities Regulations. Fees for training providers will decrease with the exception of the project designer course refresher. Individual fees will decrease for the certification and recertification of risk assessors, and the certification of supervisors and project designers. Consequently, EPA estimates that this portion of the final rule will have no adverse impact on small entities; in fact the small entities affected by the final rule will incur cost savings.

With respect to the fees for the Renovation, Repair and Painting Rule, EPA does not believe that the firm certification fee of $300 (which, over 5 years, is $60 per year) established in this final rule to implement the requirements of the Renovation, Repair, and Painting Rule would have a significant economic impact on a substantial number of small entities. Overall, EPA estimated that there are approximately 204,956 small entities that would be affected by the Renovation, Repair, and Painting Rule. Of these, there are an estimated 179,818 small businesses with an average impact from the fees ranging from 0.007% to 0.220%, 18,088 small non-profits with an average impact ranging from 0.006% to 0.097%, and 7,050 small governments with an average impact ranging from 0.0004% to 0.002%. The impact was measured by comparing the cost of the fees incurred by the entity to the entity's revenue.

Moreover, the impacts of the fees for the Renovation, Repair, and Painting Rule on small entities were also addressed and accounted for during the development of that rule. As provided for in section 605 of RFA, the fees established in this final rule to implement the Renovation, Repair and Painting Rule are so closely related to the Renovation, Repair, and Painting Rule that EPA considers it and the analysis EPA did pursuant to the Renovation, Repair, and Painting Rule to be one rule for the purposes of

sections 603 and 604 of RFA. Indeed, the economic analysis for the Renovation, Repair, and Painting Rule (Ref. 6) included projected fees that were slightly higher than those being established in this final rule. Accordingly, in order to avoid duplicative action, EPA is also relying on the analysis of that Renovation, Repair, and Painting Rule, as supplemented by the economic analysis accompanying this final rule, as satisfying EPA's obligations under RFA. Specifically, pursuant to section 603 of RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed Renovation, Repair, and Painting Rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities on a range of issues, including training and certification fees. As required by section 604 of RFA, the Agency also prepared a final regulatory flexibility analysis (FRFA) for the final Renovation, Repair, and Painting Rule which took into account the fees (albeit taking into account slightly higher projections) being established in this final rule. The FRFA also addressed the issues raised by public comments on IRFA, which was part of the proposed rule. Accordingly, the impacts of the fees for the Renovation, Repair, and Painting Rule on small entities have been adequately addressed for purposes of RFA.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final rule on small entities. In response to concerns about impacts on abatement workers and the firms that employ them, EPA reduced fees for worker certification. However, TSCA section 402(a)(3) requires EPA to recover the costs of administering its lead training course provider accreditation and contractor certification program through fees.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions to determine if such actions impose Federal mandates on State, local, and Tribal governments and the private sector. This rule does not contain a Federal mandate under UMRA 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 1 year. EPA has prepared an economic analysis of the potential impact of this action, which is estimated to be $156 million over the next 5 years which is an average of $31 million per year. The impact of the fees for the Lead-based Paint Activities Regulations is estimated to be $1.2 million per year, or $6.1 million over the next 5 years. The impact of the fees for the Renovation, Repair, and Painting Program, which were addressed and accounted for during the development of that rule, is estimated to be $61 million in the first year, and $22 million in each of the following 4 years, or $150 million over the next 5 years. Thus, this final rule is not subject to the requirements of sections 202 and 205 of UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments may perform lead-based paint inspections, risk assessments, or abatements, or operate schools that are child-occupied facilities. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any 1 year. As explained in Unit VI.C., the final rule is expected to result in small government impacts well under 1% of revenues. EPA has determined therefore that the final rule does not significantly affect small governments. Additionally, EPA has determined that the final rule does not uniquely affect small governments, as the final rule is not targeted at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that perform regulated activities.

E. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule merely establishes fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs. Thus, Executive Order 13132 does not apply to this final 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 solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). This final rule would only establish fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final rule merely establishes fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs.

H. Executive Order 13211

This final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–

113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely establishes fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Administrative practice and procedure, Children, Fees, Housing, Lead, Lead-based paint, Renovation.

Dated: March 12, 2009.

Lisa P. Jackson,

Administrator.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 745—[AMENDED]

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

■ 2. Section 745.92 is added to subpart E to read as follows:

§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

(a) *Persons who must pay fees.* Fees in accordance with paragraph (b) of this section must be paid by:

(1) *Training programs*—(i) *Non-exempt training programs.* All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: Renovator, dust sampling technician.

(ii) *Exemption.* No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or non-profit organization. This exemption does not apply to the certification of firms or individuals.

(2) *Firms.* All firms applying to EPA for certification and re-certification to conduct renovations.

(b) *Fee amounts*—(1) *Certification and accreditation fees.* Initial and renewal certification and accreditation fees are specified in the following table:

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Renovator or Dust Sampling Technician Course	$560	$340
Refresher Renovator or Dust Sampling Technician Course	$400	$310
Renovation Firm	Certification	Re-certification (every 5 years see 40 CFR 745.89(b))
Firm	$300	$300
Combined Renovation and Lead-based Paint Activities Firm Application	$550	$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	$20	$20
Tribal Firm	$20	$20

(2) *Lost certificate.* A $15 fee will be charged for the replacement of a firm certificate.

(c) *Certificate replacement.* Firms seeking certificate replacement must:

(1) Complete the applicable portions of the ''Application for Firms'' in accordance with the instructions provided.

(2) Submit the application and a payment of $15 in accordance with the instructions provided with the application package.

(d) *Failure to remit fees.* (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any firm or training program that does not remit fees described in paragraph (b) of this

section in accordance with the procedures specified in 40 CFR 745.89.

(2) EPA will not replace a certificate for any firm that does not remit the $15 fee in accordance with the procedures specified in paragraph (c) of this section.

■ 3. Section 745.238 of subpart L is amended as follows:

■ a. Revise the table in paragraph (c)(1).

■ b. Remove the phrase ''to Conduct Lead-based Paint Activities'' in paragraph (d)(1)(ii).

■ c. Remove the phrase ''to Conduct Lead-based Paint Activities'' in paragraph (e)(1)(ii).

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

* * * * *

(c) * * *

(1) * * *

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Course		
Inspector	$870	$620
Risk assessor	$870	$620
Supervisor	$870	$620
Worker	$870	$620
Project Designer	$870	$620
Refresher Course		
Inspector	$690	$580
Risk assessor	$690	$580
Supervisor	$690	$580
Worker	$690	$580
Project Designer	$690	$580
Lead-based Paint Activities—Individual	Certification	Re-certification (every 3 years, see 40 CFR 745.226(e)(1) for details)
Inspector	$410	$410
Risk assessor	$410	$410
Supervisor	$410	$410
Worker	$310	$310
Project designer	$410	$410
Tribal certification (each discipline)	$10	$10
Lead-based Paint Activities—Firm	Certification	Re-certification (every 3 years, see 40 CFR 745.226(f)(7) for details)
Firm	$550	$550
Combined Renovation and Lead-based Paint Activities Firm Application	$550	$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	$20	$20
Tribal Firm	$20	$20

* * * * *

[FR Doc. E9–6167 Filed 3–19–09; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–34

[FMR Amendment 2009–02; FMR Case 2006–102–1; Docket 2008–0001; Sequence 06]

RIN 3090–AH68

Federal Management Regulation; Motor Vehicle Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Management Regulation (FMR) by revising coverage of Motor Vehicle Management. This final rule is a result of comments received on an interim rule published in the **Federal Register** on May 12, 2006 (71 FR 27636), and from members of the Federal Fleet Policy Council (FEDFLEET). This final rule also incorporates other administrative changes.

DATES: *Effective Date:* This final rule is effective March 20, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VPR), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Jim Vogelsinger, Office of Governmentwide Policy, Asset Management Policy (MTA), Washington, DC 20405, telephone (202) 501–1764. Please cite FMR Amendment 2009–02, FMR case 2006–102–1.

SUPPLEMENTARY INFORMATION:

A. Background

An Interim Rule was published in the **Federal Register** on May 12, 2006 (71 FR 27636). This final rule revises the FMR's coverage on Motor Vehicle Management (41 CFR part 102–34) to reflect the policy and administrative changes suggested by comments received on the interim rule from members of FEDFLEET. Other administrative changes will make the regulation accurately reflect current motor vehicle management terminology, update references, and clarify requirements.

This part has been renumbered. Deletions of and changes to previous sections follow:

Deleted § 102–34.20—What types of motor vehicle fleets are there? (The definitions for ''Domestic fleet'' and ''Foreign fleet'' are moved to § 102–

34.35 of this regulation, and the definitions for ''Small fleet'' and ''Large fleet'' are deleted.)

Deleted § 102–34.25—What sources of supply are available for obtaining motor vehicles? (The definitions for ''Motor vehicle purchase'', ''Motor vehicle lease'', ''Motor vehicle rental'', ''GSA Fleet lease'', and ''Motor vehicles transferred from excess'' are moved to § 102–34.35 of this regulation.)

Deleted § 102–34.35—What are the procedures for purchasing and leasing motor vehicles? (This information may be found in 41 CFR subpart 101–26.5.)

Deleted § 102–34.55—What are the minimum fleet average fuel economy standards? (The standards for passenger automobiles are prescribed in 49 U.S.C. 32902(b), and the Department of Transportation publishes the standards for light trucks and amendments for passenger automobiles at *http://www.dot.gov.*)

Deleted § 102–34.70—How does GSA monitor the fuel economy of purchased and leased motor vehicles? (This is replaced with § 102–34.75 of this regulation.)

Deleted § 102–34.75—How must we report fuel economy data for passenger automobiles and light trucks we purchase or commercially lease? (This is replaced with § 102–34.75 of this regulation.)

Deleted § 102–34.80—Do we report fuel economy data for passenger automobiles and light trucks purchased for our agency by the GSA Automotive Division? (This is replaced with § 102–34.75 of this regulation.)

Deleted § 102–34.85—Do we have to submit a negative report if we don't purchase or lease any motor vehicles in a fiscal year? (This is replaced with § 102–34.75 of this regulation.)

Deleted § 102–34.90—Are any motor vehicles exempted from these reporting requirements? (This is replaced with § 102–34.75 of this regulation.)

Deleted § 102–34.95—Does fleet average fuel economy reporting affect our acquisition plan? (This is replaced with § 102–34.75 of this regulation.)

Deleted § 102–34.340—Do I have to use self-service fuel pumps? (This is removed because certain States do not have self-service pumps and the cost of self-service might not be higher than full-service.)

Deleted § 102–34.355—When and how do we report motor vehicle data? (This is replaced with § 102–34.335 of this regulation.)

The definition of motor vehicle identification is revised to remove the text referring to such identification usually consisting of a decal placed in the rear window or on the side of the motor vehicle. Placement of such identification is governed by § 102–34.100 of this regulation.

The definition of reportable motor vehicles is revised to include any commercial design motor vehicle (including ambulances and firetrucks) designed and operated principally for highway transportation of property or passengers. This change is made to improve the accuracy and visibility of motor vehicle assets.

This regulation requires executive agencies to establish and document a structured vehicle allocation methodology. This is a best practice of many fleet operators that is intended to help fleet managers determine the appropriate size and number of vehicles in a fleet.

Records maintenance for agency average fuel economy data is revised to follow the standard for motor vehicle report files established in General Records Schedule 10 by the National Archives and Records Administration. This will provide consistent data documentation for fuel economy data.

Lost or stolen license plates now must be reported to appropriate authorities. This requirement seeks to improve the accountability of license plates and also requires reporting to the Federal Government Motor Vehicle Registration System, when it becomes available, to improve internal Government control of lost or stolen plates.

The unlimited exemption from the requirement to display motor vehicle identification is revised to exempt motor vehicles used primarily for investigative, law enforcement, intelligence, or security duties. The limited exemption extends to a period not to exceed three years as opposed to the former regulation which had a one year limit. This change seeks to recognize the need for protecting agency missions and occupant safety and to reduce the administrative burden of processing exemptions while maintaining the objective that Federal motor vehicles are required to be conspicuously identified unless exempted (see 40 U.S.C. 609). The regulatory note containing the list of executive agencies with special exemptions from motor vehicle identification is removed, as this list can be found by referencing 5 U.S.C. 101. The Department of Defense (DOD) code and registration number assigned by the DOD component accountable for the motor vehicle previously was required identification but is removed from this regulation. This change provides flexibility for DOD to determine any other identification to display.

A new provision reflects the statutory provision in 31 U.S.C. 1344 authorizing the use of Government motor vehicles for transportation between places of employment and mass transit facilities. This provision implements the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), § 3049(b)(1)–(2) of Public Law No. 109–59, 31 U.S.C. 1344(g).

B. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553(a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

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

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Part 102–34

Energy conservation, Government property management, Motor vehicles, Reporting and recordkeeping requirements.

Dated: January 27, 2009.

Paul F. Prouty,

Acting Administrator of General Services.

■ For the reasons set out in the preamble, 41 CFR part 102–34 is revised to read as set forth below:

PART 102–34—MOTOR VEHICLE MANAGEMENT

Subpart A—General Provisions

Sec.

102–34.5 What does this part cover?
102–34.10 What are the governing authorities for this part?

102–34.15 Who must comply with these provisions?
102–34.20 What motor vehicles are not covered by this part?
102–34.25 To whom do ''we'', ''you'', and their variants refer?
102–34.30 How do we request a deviation from the provisions of this part?

Definitions

02–34.35 What definitions apply to this part?

Subpart B—Obtaining Fuel Efficient Motor Vehicles

102–34.40 Who must comply with motor vehicle fuel efficiency requirements?
102–34.45 How are passenger automobiles classified?
102–34.50 What size motor vehicles may we obtain?
102–34.55 Are there fleet average fuel economy standards we must meet?
102–34.60 How do we calculate the average fuel economy for Government motor vehicles?
102–34.65 How may we request an exemption from the fuel economy standards?
102–34.70 What do we do with completed calculations of our fleet vehicle acquisitions?
102–34.75 Who is responsible for monitoring our compliance with fuel economy standards for motor vehicles we obtain?
102–34.80 Where may we obtain help with our motor vehicle acquisition plans?

Subpart C—Identifying and Registering Motor Vehicles

Motor Vehicle Identification

102–34.85 What motor vehicles require motor vehicle identification?
102–34.90 What motor vehicle identification must we display on Government motor vehicles?
102–34.95 What motor vehicle identification must the Department of Defense (DOD) display on motor vehicles it owns, or leases commercially?
102–34.100 Where is motor vehicle identification displayed?
102–34.105 Before we sell a motor vehicle, what motor vehicle identification must we remove?

License Plates

102–34.110 Must Government motor vehicles use Government license plates?
102–34.115 Can official U.S. Government license plates be used on motor vehicles not owned or leased by the Government?
102–34.120 Do we need to register Government motor vehicles?
102–34.125 Where may we obtain U.S. Government license plates?
102–34.130 How do we display U.S. Government license plates on Government motor vehicles?
102–34.135 What do we do about a lost or stolen license plate?
102–34.140 What records do we need to keep on U.S. Government license plates?
102–34.145 How are U.S. Government license plates coded?
102–34.150 How can we get a new license plate code designation?

Identification Exemptions

102–34.155 What are the types of motor vehicle identification exemptions?
102–34.160 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?
102–34.165 What information must the limited exemption certification contain?
102–34.170 For how long is a limited exemption valid?
102–34.175 What motor vehicles have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?
102–34.180 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification on some of their vehicles?
102–34.185 What license plates do we use on motor vehicles that are exempt from motor vehicle identification requirements?
102–34.190 What special requirements apply to exempted motor vehicles using District of Columbia or State license plates?
102–34.195 Must we submit a report concerning motor vehicles exempted under this subpart?

Subpart D—Official Use of Government Motor Vehicles

102–34.200 What is official use of Government motor vehicles?
102–34.205 May I use a Government motor vehicle for transportation between my residence and place of employment?
102–34.210 May I use a Government motor vehicle for transportation between places of employment and mass transit facilities?
102–34.215 May Government contractors use Government motor vehicles?
102–34.220 What does GSA do if it learns of unofficial use of a Government motor vehicle?
102–34.225 How are Federal employees disciplined for misuse of Government motor vehicles?
102–34.230 How am I responsible for protecting Government motor vehicles?
102–34.235 Am I bound by State and local traffic laws?
102–34.240 Who pays for parking fees?
102–34.245 Who pays for parking fines?
102–34.250 Do Federal employees in Government motor vehicles have to use all safety devices and follow all safety guidelines?

Subpart E—Replacement of Motor Vehicles

102–34.255 What are motor vehicle replacement standards?
102–34.260 May we replace a Government-owned motor vehicle sooner?
102–34.265 May we keep a Government-owned motor vehicle even though the standard permits replacement?
102–34.270 How long must we keep a Government-owned motor vehicle?

Subpart F—Scheduled Maintenance of Motor Vehicles

102–34.275 What kind of maintenance programs must we have?
102–34.280 What State inspections must we have for Government motor vehicles?
102–34.285 Where can we obtain help in setting up a maintenance program?

Subpart G—Motor Vehicle Crash Reporting

102–34.290 What forms do I use to report a crash involving a domestic fleet motor vehicle?
102–34.295 To whom do we send crash reports?

Subpart H—Disposal of Motor Vehicles

102–34.300 How do we dispose of a domestic fleet motor vehicle?
102–34.305 What forms do we use to transfer ownership when selling a motor vehicle?
102–34.310 How do we distribute the completed Standard Form 97?

Subpart I—Motor Vehicle Fueling

102–34.315 How do we obtain fuel for Government motor vehicles?
102–34.320 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?
102–34.325 What type of fuel do I use in Government motor vehicles?

Subpart J—Federal Fleet Report

102–34.330 What is the Federal Fleet Report?
102–34.335 How do I submit information to the General Services Administration (GSA) for the Federal Fleet Report (FFR)?
102–34.340 Do we need a fleet management information system?
102–34.345 What records do we need to keep?

Subpart K—Forms

102–34.350 How do we obtain the forms prescribed in this part?

Authority: 40 U.S.C. 121(c); 40 U.S.C. 17503; 31 U.S.C. 1344; 49 U.S.C. 32917; E.O. 12375.

Subpart A—General Provisions

§ 102–34.5 What does this part cover?

This part governs the economical and efficient management and control of motor vehicles that the Government owns, leases commercially or leases through GSA Fleet. Agencies will incorporate appropriate provisions of this part into contracts offering Government-furnished equipment in order to ensure adequate control over the use of motor vehicles.

§ 102–34.10 What are the governing authorities for this part?

The authorities for the regulations in this part are 40 U.S.C. 121(c), 40 U.S.C. 17503, 31 U.S.C. 1344, 49 U.S.C. 32917, and E.O. 12375.

§ 102–34.15 Who must comply with these provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102–34.20 What motor vehicles are not covered by this part?

Motor vehicles not covered by this part are:

(a) Military design motor vehicles;

(b) Motor vehicles used for military field training, combat, or tactical purposes;

(c) Motor vehicles used principally within the confines of a regularly established military post, camp, or depot; and

(d) Motor vehicles regularly used by an agency to perform investigative, law enforcement, or intelligence duties, if the head of the agency determines that exclusive control of the vehicle is essential for effective performance of duties, although such vehicles are subject to subpart D and subpart J of this part.

§ 102–34.25 To whom do ''we'', ''you'', and their variants refer?

Unless otherwise indicated, use of pronouns ''we'', ''you'', and their variants throughout this part refer to you as an executive agency, as your agency's fleet manager, or as a motor vehicle user or operator, as appropriate.

§ 102–34.30 How do we request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

Definitions

§ 102–34.35 What definitions apply to this part?

The following definitions apply to this part:

Commercial design motor vehicle means a motor vehicle procurable from regular production lines and designed for use by the general public.

Commercial lease or lease commercially means obtaining a motor vehicle by contract or other arrangement from a commercial source for 60 continuous days or more. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101–26.5.)

Domestic fleet means all reportable motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

Foreign fleet means all reportable motor vehicles operated in areas outside any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

Government motor vehicle means any motor vehicle that the Government owns or leases. This includes motor vehicles obtained through purchase, excess, forfeiture, commercial lease, or GSA Fleet lease.

Government-owned motor vehicle means any motor vehicle that the Government has obtained through purchase, excess, forfeiture, or otherwise and for which the Government holds title.

GSA Fleet lease means obtaining a motor vehicle from the General Services Administration Fleet (GSA Fleet).

Law enforcement motor vehicle means a light duty motor vehicle that is specifically approved in an agency's appropriation act for use in apprehension, surveillance, police or other law enforcement work or specifically designed for use in law enforcement. If not identified in an agency's appropriation language, a motor vehicle qualifies as a law enforcement motor vehicle only in the following cases:

(1) A passenger automobile having heavy duty components for electrical, cooling and suspension systems and at least the next higher cubic inch displacement or more powerful engine than is standard for the automobile concerned;

(2) A light truck having emergency warning lights and identified with markings such as ''police;''

(3) An unmarked motor vehicle certified by the agency head as essential for the safe and efficient performance of intelligence, counterintelligence, protective, or other law enforcement duties; or

(4) A forfeited motor vehicle seized by a Federal agency that is subsequently used for the purpose of performing law enforcement activities.

Light duty motor vehicle means any motor vehicle with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Light truck means a motor vehicle on a truck chassis with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Military design motor vehicle means a motor vehicle (excluding commercial design motor vehicles) designed according to military specifications to directly support combat or tactical operations or training for such operations.

Motor vehicle means any vehicle, self propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers, but does not include a military design motor vehicle or vehicles not covered by this part (see § 102–34.20).

Motor vehicle identification (also referred to as ''motor vehicle markings'') means the legends ''For Official Use Only'' and ''U.S. Government'' placed on a motor vehicle plus other legends readily identifying the department, agency, establishment, corporation, or service by which the motor vehicle is used.

Motor vehicle markings (see definition of ''Motor vehicle identification'' in this section).

Motor vehicle purchase means buying a motor vehicle from a commercial source, usually a motor vehicle manufacturer or a motor vehicle manufacturer's dealership. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101–26.5.)

Motor vehicle rental means obtaining a motor vehicle by contract or other arrangement from a commercial source for less than 60 continuous days.

Motor vehicles transferred from excess means obtaining a motor vehicle reported as excess and transferred with or without cost.

Owning agency means the executive agency that holds the vehicle title, manufacturer's Certificate of Origin, or is the lessee of a commercial lease. This term does not apply to agencies that lease motor vehicles from the GSA Fleet.

Passenger automobile means a sedan or station wagon designed primarily to transport people.

Reportable motor vehicles are any Government motor vehicles used by an executive agency or activity, including those used by contractors. Also included are motor vehicles designed or acquired for a specific or unique purpose, including motor vehicles that serve as a platform or conveyance for special equipment, such as a trailer. Excluded are material handling equipment and construction equipment not designed and used primarily for highway operation (*e.g.*, if it must be trailered or towed to be transported).

Using agency means an executive agency that obtains motor vehicles from the GSA Fleet, commercial firms or another executive agency and does not hold the vehicle title or manufacturer's Certificate of Origin. However, this does not include an executive agency that obtains a motor vehicle by motor vehicle rental.

Subpart B—Obtaining Fuel Efficient Motor Vehicles

§ 102–34.40 Who must comply with motor vehicle fuel efficiency requirements?

(a) Executive agencies operating domestic fleets must comply with motor vehicle fuel efficiency requirements for such fleets.

(b) This subpart does not apply to motor vehicles exempted by law or other regulations, such as law enforcement or emergency rescue work and foreign fleets. Other Federal agencies are encouraged to comply so that maximum energy conservation benefits may be realized in obtaining, operating, and managing Government motor vehicles.

§ 102–34.45 How are passenger automobiles classified?

Passenger automobiles are classified in the following table:

Sedan class	Station wagon class	Descriptive name
I	I	Subcompact.
II	II	Compact.
III	III	Midsize.
IV	IV	Large.
V		Limousine.

§ 102–34.50 What size motor vehicles may we obtain?

(a) You may only obtain the minimum size of motor vehicle necessary to fulfill your agency's mission in accordance with the following considerations:

(1) You must obtain motor vehicles that achieve maximum fuel efficiency.

(2) Limit motor vehicle body size, engine size and optional equipment to what is essential to meet your agency's mission.

(3) With the exception of motor vehicles used by the President and Vice President and motor vehicles for security and highly essential needs, you must obtain midsize (class III) or smaller sedans.

(4) Obtain large (class IV) sedans only when such motor vehicles are essential to your agency's mission.

(b) Agencies must establish and document a structured vehicle allocation methodology to determine the appropriate size and number of motor vehicles (see FMR Bulletin B–9, located at *http://www.gsa.gov/bulletin*, for guidance).

§ 102–34.55 Are there fleet average fuel economy standards we must meet?

(a) Yes. 49 U.S.C. 32917 and Executive Order 12375 require that each executive agency meet the fleet average fuel economy standards in place as of January 1 of each fiscal year. The standards for passenger automobiles are prescribed in 49 U.S.C. 32902(b). The Department of Transportation publishes the standards for light trucks and amendments to the standards for passenger automobiles at *http://www.dot.gov*.

(b) These standards do not apply to military design motor vehicles, law enforcement motor vehicles, or motor vehicles intended for emergency rescue.

§ 102–34.60 How do we calculate the average fuel economy for Government motor vehicles?

You must calculate the average fuel economy for Government motor vehicles as follows:

(a) Because there are so many motor vehicle configurations, you must take an average of all light duty motor vehicles by category that your agency obtained and operated during the fiscal year.

(b) This calculation is the sum of such light duty motor vehicles divided by the sum of the fractions representing the number of motor vehicles of each category by model divided by the unadjusted city/highway mile-per-gallon ratings for that model. The unadjusted city/highway mile-per-gallon ratings for each make and model are published by the Environmental Protection Agency (EPA) for each model year and published at *http://www.fueleconomy.gov*.

(c) An example follows:

Light trucks:

(i) 600 light trucks acquired in a specific year. These are broken down into:

(A) 200 Six cylinder automatic transmission pick-up trucks, EPA rating: 24.3 mpg, plus

(B) 150 Six cylinder automatic transmission mini-vans, EPA rating: 24.8 mpg, plus

(C) 150 Eight cylinder automatic transmission pick-up trucks, EPA rating: 20.4 mpg, plus

(D) 100 Eight cylinder automatic transmission cargo vans, EPA rating: 22.2 mpg.

$$= \frac{600}{\frac{200}{24.3} + \frac{150}{24.8} + \frac{150}{20.4} + \frac{100}{22.2}}$$

$$= \frac{600}{8.2305 + 6.0484 + 7.3530 + 4.5045}$$

$$= \frac{600}{26.1364} = 22.9565 \text{ (Rounded to nearest 0.1 mpg.)}$$

(ii) Fleet average fuel economy for light trucks in this case is 23.0 mpg.

§ 102–34.65 How may we request an exemption from the fuel economy standards?

You must submit a written request for an exemption from the fuel economy standards to: Administrator, General Services Administration, ATTN: Deputy Associate Administrator, Office of Travel, Transportation and Asset Management (MT), Washington, DC 20405.

(a) Your request for an exemption must include all relevant information necessary to permit review of the

request that the vehicles be exempted based on energy conservation, economy, efficiency, or service. Exemptions may be sought for individual vehicles or categories of vehicles.

(b) GSA will review the request and advise you of the determination within 30 days of receipt. Light duty motor vehicles exempted under the provisions of this section must not be included in calculating your fleet average fuel economy.

§ 102–34.70 What do we do with completed calculations of our fleet vehicle acquisitions?

You must maintain the average fuel economy data for each year's vehicle acquisitions on file at your agency headquarters in accordance with the National Archives and Records Administration, General Records Schedule 10, Motor Vehicle and Aircraft Maintenance and Operations Records, Item 4, Motor Vehicle Report Files. Exemption requests and their disposition must also be maintained with the average fuel economy files.

§ 102–34.75 Who is responsible for monitoring our compliance with fuel economy standards for motor vehicles we obtain?

Executive agencies are responsible for monitoring their own compliance with fuel economy standards for motor vehicles they obtain.

§ 102–34.80 Where may we obtain help with our motor vehicle acquisition plans?

For help with your motor vehicle acquisition plans, contact the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov.*

Subpart C—Identifying and Registering Motor Vehicles

Motor Vehicle Identification

§ 102–34.85 What motor vehicles require motor vehicle identification?

All Government motor vehicles must display motor vehicle identification unless exempted under § 102–34.160, § 102–34.175 or § 102–34.180.

§ 102–34.90 What motor vehicle identification must we display on Government motor vehicles?

Unless exempted under § 102–34.160, § 102–34.175 or § 102–34.180, Government motor vehicles must display the following identification:

(a) ''For Official Use Only'';

(b) ''U.S. Government''; and

(c) Identification that readily identifies the agency owning the vehicle.

§ 102–34.95 What motor vehicle identification must the Department of Defense (DOD) display on motor vehicles it owns or leases commercially?

Unless exempted under § 102–34.160, § 102–34.175 or § 102–34.180, the following must appear on motor vehicles that the DOD owns or leases commercially:

(a) ''For Official Use Only''; and

(b) An appropriate title for the DOD component responsible for the vehicle.

§ 102–34.100 Where is motor vehicle identification displayed?

Motor vehicle identification is displayed as follows:

(a) *For most Government motor vehicles,* preferably on the official U.S. Government license plate. Some Government motor vehicles may display motor vehicle identification on a decal in the rear window, or centered on both front doors if the vehicle is without a rear window, or where identification on the rear window would not be easily seen.

(b) *For trailers,* on both sides of the front quarter of the trailer in a conspicuous location.

Note to § 102–34.100: Each agency or activity that uses decals to identify Government motor vehicles is responsible for acquiring its own decals and for replacing them when necessary due to damage or wear.

§ 102–34.105 Before we sell a motor vehicle, what motor vehicle identification must we remove?

You must remove all motor vehicle identification before you transfer the title or deliver the motor vehicle.

License Plates

§ 102–34.110 Must Government motor vehicles use Government license plates?

Yes, you must use Government license plates on Government motor vehicles, with the exception of motor vehicles exempted under § 102–34.160, § 102–34.175 or § 102–34.180.

§ 102–34.115 Can official U.S. Government license plates be used on motor vehicles not owned or leased by the Government?

No, official U.S. Government license plates may only be used on Government motor vehicles.

§ 102–34.120 Do we need to register Government motor vehicles?

If the Government motor vehicle displays U.S. Government license plates and motor vehicle identification, you do not need to register it in the jurisdiction where the vehicle is operated, however, you must register it in the Federal Government Motor Vehicle Registration System. GSA Fleet may register motor vehicles leased from GSA Fleet. Motor vehicles that have been exempted from the requirement to display official U.S. Government license plates under section § 102–34.160, § 102–34.175 or § 102–34.180 must be registered and inspected in accordance with the laws of the jurisdiction where the motor vehicle is regularly operated.

§ 102–34.125 Where may we obtain U.S. Government license plates?

You may obtain U.S. Government license plates for domestic fleets—

(a) By contacting: U.S. Department of Justice, UNICOR, Federal Prison Industries, Inc., 400 First Street, NW., Room 6010, Washington, DC 20534.

(b) For assistance with any issues involving license plates, contact the following office: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov.*

Note to § 102–34.125: GSA has established a Memorandum of Understanding (MOU) on behalf of all Federal agencies with Federal Prison Industries (UNICOR) for the procurement of official U.S. Government license plates. Each agency must execute an addendum to this MOU providing plate design and specific ordering and payment information before ordering license plates. Agency field activities should contact their national level Agency Fleet Manager for assistance.

§ 102–34.130 How do we display U.S. Government license plates on Government motor vehicles?

(a) Display official U.S. Government license plates on the front and rear of all Government motor vehicles. The exception is two-wheeled motor vehicles and trailers, which require rear license plates only.

(b) You must display U.S. Government license plates on the Government motor vehicle to which the license plates were assigned.

(c) Display the U.S. Government license plates until the Government motor vehicle is removed from Government service or is transferred outside the agency, or until the plates are damaged and require replacement. U.S. Government license plates shall only be used for one Government motor vehicle and shall not be reissued to another Government motor vehicle.

(d) For motor vehicles owned or commercially leased by DOD, also follow DOD regulations.

§ 102–34.135 What do we do about a lost or stolen license plate?

You must report the loss or theft of license plates as follows:

(a) *U.S. Government license plates.* Report to your local security office (or equivalent), local police, to GSA Fleet

when a GSA Fleet leased motor vehicle is involved, and to the Federal Government Motor Vehicle Registration System.

(b) *District of Columbia or State license plates.* Report to your local security office (or equivalent) and either the District of Columbia Department of Transportation, or the State Department of Motor Vehicles, as appropriate.

§ 102–34.140 What records do we need to keep on U.S. Government license plates?

You must keep a central record of all U.S. Government license plates for Government motor vehicles. The GSA Fleet must also keep such a record for GSA Fleet vehicles. The record must:

(a) Identify the motor vehicle to which each set of plates is assigned; and

(b) List lost, stolen, destroyed, and voided license plate numbers.

§ 102–34.145 How are U.S. Government license plates coded?

U.S. Government license plate numbers will be preceded by a letter code that designates the owning agency for the motor vehicle. The agency letter codes are listed in GSA Bulletin FMR Bulletin B–11. (FMR bulletins are located at *http://www.gsa.gov/bulletin.*)

§ 102–34.150 How can we get a new license plate code designation?

To obtain a new license plate code designation, write to the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov.*

Identification Exemptions

§ 102–34.155 What are the types of motor vehicle identification exemptions?

The types of motor vehicle identification exemptions are:

(a) Limited exemption.

(b) Unlimited exemption.

(c) Special exemption.

§ 102–34.160 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?

Yes. The head of your agency or designee may authorize a limited exemption to the display of U.S. Government license plates and motor vehicle identification upon written certification (see § 102–34.165). For motor vehicles leased from the GSA Fleet, send an information copy of this certification to the: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102–34.165 What information must the limited exemption certification contain?

The certification must state that identifying the motor vehicle would endanger the security of the vehicle occupants or otherwise compromise the agency mission.

§ 102–34.170 For how long is a limited exemption valid?

An exemption granted in accordance with § 102–34.160 may last from one day up to 3 years. If the requirement for exemption still exists beyond 3 years, your agency must re-certify the continued exemption. For a motor vehicle leased from the GSA Fleet, send a copy of the re-certification to the: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102–34.175 What motor vehicles have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?

Motor vehicles used primarily for investigative, law enforcement, intelligence, or security duties have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification when identifying these motor vehicles would interfere with those duties.

§ 102–34.180 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification on some of their vehicles?

Motor vehicles assigned for the use of the President and the heads of executive departments specified in 5 U.S.C. 101 are exempt from the requirement to display motor vehicle identification.

§ 102–34.185 What license plates do we use on motor vehicles that are exempt from motor vehicle identification requirements?

For motor vehicles that are exempt from motor vehicle identification requirements, display the regular license plates of the State, Commonwealth, territory or possession of the United States, or the District of Columbia, where the motor vehicle is principally operated (see § 102–34.120).

§ 102–34.190 What special requirements apply to exempted motor vehicles using District of Columbia or State license plates?

Your agency head must designate an official to authorize the District of Columbia (DC) or State motor vehicle department to issue DC license plates or State license plates for motor vehicles exempt from displaying U.S. Government license plates and motor vehicle identification. The agency head must provide the name and signature of that official to the DC Department of Transportation annually, or to the equivalent State vehicle motor vehicle department, as required. Agencies must pay DC and the States for these license plates in accordance with DC or State policy. Also, for motor vehicles leased from the GSA Fleet, send a list of the new plates to: General Services Administration, ATTN: GSA Fleet (QMDB), 2200 Crystal Drive, Arlington, VA 22202.

§ 102–34.195 Must we submit a report concerning motor vehicles exempted under this subpart?

Yes. If asked, the head of each executive agency must submit a report concerning motor vehicles exempted under this subpart. This report, which has been assigned interagency report control number 1537–GSA–AR, should be submitted to the: General Services Administration, ATTN: MT, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov.*

Subpart D—Official Use of Government Motor Vehicles

§ 102–34.200 What is official use of Government motor vehicles?

Official use of a Government motor vehicle is using a Government motor vehicle to perform your agency's mission(s), as authorized by your agency.

§ 102–34.205 May I use a Government motor vehicle for transportation between my residence and place of employment?

No, you may not use a Government motor vehicle for transportation between your residence and place of employment unless your agency authorizes such use after making the necessary determination under 31 U.S.C. 1344 and Part 102–5 of this title. Your agency must keep a copy of the written authorization within the agency and monitor the use of these motor vehicles.

§ 102–34.210 May I use a Government motor vehicle for transportation between places of employment and mass transit facilities?

Yes, you may use a Government motor vehicle for transportation between places of employment and mass transit facilities under the following conditions:

(a) The head of your agency must make a determination in writing, valid for one year, that such use is appropriate and consistent with sound budget policy, and the determination must be kept on file;

(b) There is no safe and reliable commercial or duplicative Federal mass transportation service that serves the same route on a regular basis;

(c) This transportation is made available, space provided, to other Federal employees;

(d) Alternative fuel vehicles should be used to the maximum extent practicable;

(e) This transportation should be provided in a manner that does not result in any additional gross income for Federal income tax purposes; and

(f) Motor vehicle ridership levels must be frequently monitored to ensure cost/benefit of providing and maintaining this transportation.

§ 102–34.215 May Government contractors use Government motor vehicles?

Yes, Government contractors may use Government motor vehicles when authorized in accordance with the Federal Acquisition Regulation (FAR), GSA Fleet procedures, and the following conditions:

(a) Government motor vehicles are used for official purposes only and solely in the performance of the contract;

(b) Government motor vehicles cannot be used for transportation between residence and place of employment, unless authorized in accordance with 31 U.S.C. 1344 and Part 102–5 of this chapter; and

(c) Contractors must:

(1) Establish and enforce suitable penalties against employees who use, or authorize the use of, Government motor vehicles for unofficial purposes or for other than in the performance of the contract; and

(2) Pay any expenses or cost, without Government reimbursement, for using Government motor vehicles other than in the performance of the contract.

§ 102–34.220 What does GSA do if it learns of unofficial use of a Government motor vehicle?

GSA reports the matter to the head of your agency. The agency investigates and may, if appropriate, take disciplinary action under 31 U.S.C. 1349 or may report the violation to the Attorney General for prosecution under 18 U.S.C. 641.

§ 102–34.225 How are Federal employees disciplined for misuse of Government motor vehicles?

If an employee willfully uses, or authorizes the use of, a Government motor vehicle for other than official purposes, the employee is subject to suspension of at least one month or, up to and including, removal by the head of the agency (31 U.S.C. 1349).

§ 102–34.230 How am I responsible for protecting Government motor vehicles?

When a Government motor vehicle is under your control, you must:

(a) Park or store the Government motor vehicle in a manner that reasonably protects it from theft or damage; and

(b) Lock the unattended Government motor vehicle. (The only exception to this requirement is when fire regulations or other directives prohibit locking motor vehicles in closed buildings or enclosures.)

§ 102–34.235 Am I bound by State and local traffic laws?

Yes. You must obey all motor vehicle traffic laws of the State and local jurisdiction, except when the duties of your position require otherwise. You are personally responsible if you violate State or local traffic laws. If you are fined or otherwise penalized for an offense you commit while performing your official duties, but which was not required as part of your official duties, payment is your personal responsibility.

§ 102–34.240 Who pays for parking fees?

You must pay parking fees while operating a Government motor vehicle. However, you can expect to be reimbursed for parking fees incurred while performing official duties.

§ 102–34.245 Who pays for parking fines?

If you are fined for a parking violation while operating a Government motor vehicle, you are responsible for paying the fine and will not be reimbursed.

§ 102–34.250 Do Federal employees in Government motor vehicles have to use all safety devices and follow all safety guidelines?

Yes, Federal employees in Government motor vehicles have to use all provided safety devices including safety belts and follow all appropriate motor vehicle manufacturer safety guidelines.

Subpart E—Replacement of Motor Vehicles

§ 102–34.255 What are motor vehicle replacement standards?

Motor vehicle replacement standards specify the minimum number of years in use or miles traveled at which an executive agency may replace a Government-owned motor vehicle (see § 102–34.270).

§ 102–34.260 May we replace a Government-owned motor vehicle sooner?

Yes. You may replace a Government-owned motor vehicle if it needs body or mechanical repairs that exceed the fair market value of the motor vehicle. Determine the fair market value by adding the current market value of the motor vehicle plus any capitalized motor vehicle additions (such as a utility body or liftgate) or repairs. Your agency head or designee must review the replacement in advance.

§ 102–34.265 May we keep a Government-owned motor vehicle even though the standard permits replacement?

Yes. The replacement standard is a minimum only, and therefore, you may keep a Government-owned motor vehicle longer than shown in § 102–34.270 if the motor vehicle can be operated without excessive maintenance costs or substantial reduction in resale value.

§ 102–34.270 How long must we keep a Government-owned motor vehicle?

You must keep a Government-owned motor vehicle for at least the years or miles shown in the following table, unless it is no longer needed and declared excess:

TABLE OF MINIMUM REPLACEMENT STANDARDS

Motor vehicle type	Years [1]	Or miles [1]
Sedans/Station Wagons	3	60,000
Ambulances	7	60,000
Buses:		
Intercity	n/a	280,000
City	n/a	150,000
School	n/a	80,000
Trucks:		
Less than 12,500 pounds GVWR	6	50,000
12,500–23,999 pounds GVWR	7	60,000
24,000 pounds GVWR and over	9	80,000

TABLE OF MINIMUM REPLACEMENT STANDARDS—Continued

Motor vehicle type	Years [1]	Or miles [1]
4- or 6-wheel drive motor vehicles	6	40,000

[1] Minimum standards are stated in both years and miles; use whichever occurs first.

Subpart F—Scheduled Maintenance of Motor Vehicles

§ 102–34.275 What kind of maintenance programs must we have?

You must have a scheduled maintenance program for each motor vehicle you own or lease commercially. This requirement applies to domestic fleets, and is recommended for foreign fleets. The GSA Fleet will develop maintenance programs for GSA Fleet vehicles. The scheduled maintenance program must:

(a) Meet Federal and State emissions and safety standards;

(b) Meet manufacturer warranty requirements;

(c) Ensure the safe and economical operating condition of the motor vehicle throughout its life; and

(d) Ensure that inspections and servicing occur as recommended by the manufacturer or more often if local operating conditions require.

§ 102–34.280 What State inspections must we have for Government motor vehicles?

You must have the following State inspections for Government motor vehicles:

(a) Federally-mandated emissions inspections when required by the relevant State motor vehicle administration or State environmental department. Your agency must pay for these inspections if the fee is not waived. GSA Fleet will pay the cost of these inspections for motor vehicles leased from GSA Fleet; or

(b) For motor vehicles that display license plates issued by a State, Commonwealth, territory, or possession of the United States, motor vehicle safety inspections required by the relevant motor vehicle administration. Your agency must pay for these inspections unless the fee is waived. Payment for these inspections for motor vehicles leased from GSA Fleet is the responsibility of the using agency. Government motor vehicles that display official U.S. Government license plates do not require motor vehicle safety inspections.

§ 102–34.285 Where can we obtain help in setting up a maintenance program?

For help in setting up a maintenance program, contact the: General Services Administration, Attn: Motor Vehicle Policy, Washington, DC 20405. E-mail: *vehicle.policy@gsa.gov.*

Subpart G—Motor Vehicle Crash Reporting

§ 102–34.290 What forms do I use to report a crash involving a domestic fleet motor vehicle?

Use the following forms to report a domestic fleet crash. The forms should be carried in any domestic fleet motor vehicle.

(a) *Standard Form (SF) 91, Motor Vehicle Accident Report.* The motor vehicle operator should complete this form at the time and scene of the crash if possible, even if damage to the motor vehicle is not noticeable.

(b) *SF 94, Statement of Witness.* This form should be completed by any witness to the crash.

§ 102–34.295 To whom do we send crash reports?

Send crash reports as follows:

(a) If the motor vehicle is owned or commercially leased by your agency, follow your internal agency directives.

(b) If the motor vehicle is leased from GSA Fleet, report the crash to GSA in accordance with subpart 101–39.4 of this Title.

Subpart H—Disposal of Motor Vehicles

§ 102–34.300 How do we dispose of a domestic fleet motor vehicle?

After meeting the replacement standards under subpart E of this part, you may dispose of a Government-owned domestic fleet motor vehicle. Detailed instructions for the transfer of an excess motor vehicle to another Federal agency can be found in part 102–36 of this subchapter B, information for the donation of surplus of motor vehicles can be found in part 102–37 of this subchapter B, information for the sale of motor vehicles can be found in part 102–38 of this subchapter B, and information on exchange/sale authority can be found in part 102–39 of this subchapter B.

§ 102–34.305 What forms do we use to transfer ownership when selling a motor vehicle?

Use the following forms to transfer ownership:

(a) SF 97, The United States Government Certificate to Obtain Title to a Motor Vehicle, if both of the following apply:

(1) The motor vehicle will be retitled by a State, Commonwealth, territory or possession of the United States or the District of Columbia; and

(2) The purchaser intends to operate the motor vehicle on highways.

Note to § 102–34.305(a)(2): Do not use SF 97 if the Government-owned motor vehicle is either not designed or not legal for operation on highways. Examples are construction equipment, farm machinery, and certain military-design motor vehicles and motor vehicles that are damaged beyond repair in crashes and intended to be sold as salvage only. Instead, use an appropriate bill of sale or award document. Examples are Optional Form 16, Sales Slip—Sale of Government Personal Property, and SF 114C, Sale of Government Property-Bid and Award.

(b) SF 97 is optional for foreign fleet motor vehicles because foreign governments may require the use of other forms.

Note to § 102–34.305: The original SF 97 is printed on secure paper to identify readily any attempt to alter the form. The form is also pre-numbered to prevent duplicates. State motor vehicle agencies may reject certificates showing erasures or strikeovers.

§ 102–34.310 How do we distribute the completed Standard Form 97?

SF 97 is a 4-part set printed on continuous-feed paper. Distribute the form as follows:

(a) Original SF 97 to the purchaser or donee;

(b) One copy to the owning agency;

(c) One copy to the contracting officer making the sale or transfer of the motor vehicle; and

(d) One copy under owning agency directives.

Subpart I—Motor Vehicle Fueling

§ 102–34.315 How do we obtain fuel for Government motor vehicles?

You may obtain fuel for Government motor vehicles by using:

(a) A Government-issued charge card;

(b) A Government agency fueling facility; or

(c) Personal funds and obtaining reimbursement from your agency, if permitted by your agency. You must use the method prescribed by GSA Fleet to obtain fuel for vehicles leased from GSA fleet.

§ 102–34.320 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?

(a) You may use a fleet charge card specifically issued for this purpose. These cards are designed to collect motor vehicle data at the time of purchase. Where appropriate, State sales and motor fuel taxes may be deducted from fuel purchases by the fleet charge card services contractor before your agency is billed; otherwise you may need to request reimbursement from each State to which taxes were paid. The GSA contractor issued fleet charge card is the only Government-issued charge card that may be used for GSA Fleet motor vehicles. For further information on acquiring these fleet charge cards and their use, contact the: General Services Administration, ATTN: GSA SmartPay® (QMB), 2200 Crystal Drive, Arlington, VA 22202.

(b) You may use a Government purchase card if you do not have a fleet charge card or if the use of such a Government purchase card is required by your agency mission. However, the Government purchase card does not collect motor vehicle data nor does it deduct State sales and motor fuel taxes.

Note to § 102–34.320: OMB Circular A–123, Appendix B, contains additional specific guidance on the management, issuance, and usage of Government charge cards. The Appendix B guidance consolidates and updates current Governmentwide charge card program requirements and guidance issued by the Office of Management and Budget, GSA, Department of the Treasury, and other Federal agencies. Appendix B provides a single document to incorporate changes, new guidance, or amendments to existing guidance, and establishes minimum requirements and suggested best practices for Government charge card programs that may be supplemented by individual agency policy procedures.

§ 102–34.325 What type of fuel do I use in Government motor vehicles?

(a) Use the minimum grade (octane rating) of fuel recommended by the motor vehicle manufacturer when fueling Government motor vehicles, unless a higher grade of fuel is all that is available locally.

(b) Use unleaded gasoline in all foreign fleet motor vehicles designed to operate on gasoline unless:

(1) Such use would be in conflict with country-to-country or multi-national logistics agreements; or

(2) Such gasoline is not available locally.

(c) You must use alternative fuels in alternative fuel motor vehicles to the fullest extent possible as directed by regulations issued by the Department of Energy implementing the Energy Policy Act and related Executive Orders.

Subpart J—Federal Fleet Report

§ 102–34.330 What is the Federal Fleet Report?

The Federal Fleet Report (FFR) is an annual summary of Federal fleet statistics based upon fleet composition at the end of each fiscal year and vehicle use and cost during the fiscal year. The FFR is compiled by GSA from information submitted by Federal agencies. The FFR is designed to provide essential statistical data for worldwide Federal motor vehicle fleet operations. Review of the report assists Government agencies, including GSA, in evaluating the effectiveness of the operation and management of individual fleets to determine whether vehicles are being utilized properly and to identify high cost areas where fleet expenses can be reduced. The FFR is posted on GSA's Motor Vehicle Management Policy Internet Web site (*http://www.gsa.gov/vehiclepolicy*).

§ 102–34.335 How do I submit information to the General Services Administration (GSA) for the Federal Fleet Report (FFR)?

(a) Annually, agencies must submit to GSA the information needed to produce the FFR through the Federal Automotive Statistical Tool (FAST), an Internet-based reporting tool. To find out how to submit motor vehicle data to GSA through FAST, consult the instructions from your agency fleet manager and read the documentation at *http://fastweb.inel.gov/*.

(b) Specific reporting categories, by agency, included in the FFR are—

(1) Inventory;

(2) Acquisitions;

(3) Operating costs;

(4) Miles traveled; and

(5) Fuel used.

Note to § 102–34.335: The FAST system is also used by agency Fleet Managers to provide the Department of Energy with information required by the Energy Policy Act and related Executive Orders. In addition, the Office of Management and Budget (OMB) requires agency Fleet Managers and budget officers to submit annual agency motor vehicle budgeting information to OMB through FAST (see OMB Circular A–11, Preparation, Submission, and Execution of the Budget).

§ 102–34.340 Do we need a fleet management information system?

Yes, you must have a fleet management information system at the department or agency level that —

(a) Identifies and collects accurate inventory, cost, and use data that covers the complete lifecycle of each motor vehicle (acquisition, operation, maintenance, and disposal); and

(b) Provides the information necessary to satisfy both internal and external reporting requirements, including:

(1) Cost per mile;

(2) Fuel costs for each motor vehicle; and

(3) Data required for FAST (see § 102–34.335).

§ 102–34.345 What records do we need to keep?

You are responsible for developing and keeping adequate accounting and reporting procedures for Government motor vehicles. These will ensure accurate recording of inventory, cost, and operational data needed to manage and control motor vehicles, and will satisfy reporting requirements. You must also comply with the General Records Schedules issued by the National Archives and Records Administration (*http://www.archives.gov*).

Subpart K—Forms

§ 102–34.350 How do we obtain the forms prescribed in this part?

See § 102–2.135 of this chapter for how to obtain forms prescribed in this part.

[FR Doc. E9–6152 Filed 3–19–09; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

45 CFR Parts 302, 303 and 307

RIN 0970–AC01

State Parent Locator Service; Safeguarding Child Support Information

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review,'' this action temporarily delays until May 22, 2009, the effective date of the final rule entitled ''State Parent Locator Service; Safeguarding Child Support Information,'' published in the **Federal**

Register on September 26, 2008 [73 FR 56422]. The temporary delay in effective date is necessary to give Department officials the opportunity for further review of the issues of law and policy raised by this rule.

DATES: The effective date of the rule amending 45 CFR parts 302, 303, and 307, published in the September 26, 2008 **Federal Register** [73 FR 56422] is delayed until May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Yvette Riddick, Office of Child Support Enforcement, Division of Policy, (202) 401–4885.

SUPPLEMENTARY INFORMATION:

I. Background

On September 26, 2008, we published a final rule following notice and comment period entitled ''State Parent Locator Service; Safeguarding Child Support Information'' in the **Federal Register** to address requirements for State Parent Locator Service responses to authorized location requests, State IV–D program safeguarding of confidential information, authorized disclosures of this information, and restrictions on the use of confidential data and information for child support purposes with exceptions for certain disclosures permitted by statute. The effective date given for the final rule was March 23, 2009.

In the March 3, 2009 **Federal Register** [74 FR 9171], we published a notice with comment period entitled, ''State Parent Locator Service; Safeguarding Child Support Information: Proposed Delay of Effective Date.'' That notice solicited public comments on a contemplated 60-day delay in the effective date of the September 26, 2008 final rule.

II. Provisions of This Action

This action delays the effective date of the September 26, 2008 final rule. The effective date of the September 26, 2008 final rule, which would have been March 23, 2009, is now May 22, 2009. The delay in the effective date is necessary to give Department officials the opportunity for further review of the issues of law and policy raised by the rule.

III. Comments Received in Response to the March 3, 2009 Notice

We received fifteen comments in response to the March 3, 2009 notice with comment period on the contemplated 60-day delay in effective date of the ''State Parent Locator Service; Safeguarding Child Support Information'' final rule. Although the March 3, 2009 notice invited comments generally on whether a delay in effective date was needed ''to allow Department officials the opportunity for further review and consideration,'' it also generated focused comments recommending changes to several particular substantive areas of the final rule. The commenters generally supported delaying the effective date, and as a result, we are delaying the effective date to May 22, 2009, to allow sufficient time for Department officials to review issues of law and policy raised by the rule.

A summary of the comments received follows.

Comments: Three commenters supported delaying the implementation date of the final rule. Two of the commenters stated that the delay was necessary to allow additional time to implement the new requirements and the other commenter supported a delay in the effective date of the rule to allow an additional 60 days for review. One State submitted a comment indicating that it did not need an extension of the effective date in order to implement the regulation.

Several comments addressed the substance of the rule rather than the effective date. One commenter indicated that the final rule appeared to prohibit the State IV–D agency from disclosing confidential information, such as child support payment records, to other State agencies, including the State food assistance (Food Stamps) program and the State revenue (Tax) program. Another commenter stated that a delay in the effective date would give the Administration an opportunity to conduct a review of the child welfare data exchange provisions of the rule to ensure that the provisions of the rule conform with The Fostering Connections to Success and Increasing Adoptions Act (Pub. L. 110–351), signed into law on October 7, 2008, after the rule was finalized.

Several commenters raised specific policy objections to the September 26, 2008 final rule. Two commenters raised concerns about the rules for disclosure of confidential location information. Another commenter stated that the regulations need to be reviewed and revised to assure significantly greater protection of that information from use for non-child support purposes.

Additionally, a number of commenters focused on the disclosure of information to an ''agent of a child'' and raised concerns that some private collection agencies may not actually serve the child's best interests and raised concerns that these private entities are not subject to ethics and confidentiality rules, such as those governing State agencies and attorneys, and there may be unintended adverse consequences of such disclosures.

Response: The Department believes that the comments received on the notice published in the **Federal Register** on March 3, 2009 [74 FR 9171] soliciting comments on the temporary delay in the effective date of the rule generally support a 60-day delay until May 22, 2009. Thus the Department is delaying the effective date of the final rule 60 days to allow sufficient time for Department officials to review issues of law and policy raised by the rule.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement)

Dated: March 17, 2009.

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–6165 Filed 3–19–09; 8:45 am]

BILLING CODE 4194–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 071003556–81194–02]

RIN 0648–AW08

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 15; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting a final regulation that appeared in the **Federal Register** on March 10, 2009. The document contained the final regulations for a vessel license limitation program for the non-tribal sectors of the Pacific whiting fishery. The document was published with some errors, including errors in the final date of the application period, the final date of appeals period, and the effective date for the Pacific whiting vessel license requirement. This document corrects those errors.

DATES: These corrections are effective on April 9, 2009.

FOR FURTHER INFORMATION CONTACT: Becky Renko, phone: 206–526–6110, fax: 206–526–6736, or e-mail: *becky.renko@noaa.gov*, or for permitting information, Kevin Ford, phone: 206–526–6115, fax: 206–526–6736, or e-mail: *kevin.ford@noaa.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–5066, appearing on page 10189 in the **Federal Register** on March 10, 2009, the following corrections are made:

Corrections to Preamble

1. On page 10190, in the second column, under the response to Comment 4, the application deadline is corrected to read May 11, 2009.

2. On page 10190, in the second column, under the response to Comment 5, the application deadline announced is corrected to read May 11, 2009.

Corrections to Regulatory Text

§ 660.306 [Corrected]

On page 10192, in the second column, in § 660.306 Prohibitions, in paragraph (f)(1), the date of April 9, 2009, is corrected to read May 11, 2009.

§ 660.333 [Corrected]

2. On page 10192, in the third column, in § 660.333 Limited entry fishery eligibility and registration, in paragraph (a) the date of April 9, 2009, is corrected to read May 11, 2009.

§ 660.336 [Corrected]

3. On page 10193, in the first column, in § 660.336 Pacific whiting vessel licenses, in paragraph (a)(1) introductory text, the date of April 9, 2009, is corrected to read May 11, 2009.

4. On page 10193, in the third column, in § 660.336 Pacific whiting vessel licenses, in paragraph (a)(3)(i), the date of April 9, 2009, is corrected to read May 11, 2009 wherever it appears.

5. On page 10194, in the first column, in § 660.336 Pacific whiting vessel licenses, in paragraph (a)(3)(ii), the date of April 9, 2009, is corrected to read May 11, 2009.

6. On page 10194, in the first column, in § 660.336 Pacific whiting vessel licenses, in paragraph (a)(3)(iii), the date of May 11, 2009, is corrected to read June 15, 2009.

§ 660.373 [Corrected]

7. On page 10194, in the third column, § 660.373 Pacific whiting (whiting) fishery management, paragraph (a) is revised to read as follows:

(a) *Sectors.* In order for a vessel to participate in a particular whiting fishery sector after May 11, 2009, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.336.

(1) The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year.

(2) The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year.

(3) The shore-based sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. Notwithstanding the other provisions of 50 CFR Part 660, subpart G, a vessel that is 75 feet or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish. Such a vessel is considered a participant in the shorebased whiting sector, and is subject to regulations and allocations for that sector.

* * * * *

Dated: March 16, 2009.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. E9–6139 Filed 3–18–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02 and 0810141351–9087–02]

RIN 0648–XN73

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 21, 2009, and will close 1200 hrs, A.l.t., November 15, 2009. This period is the same as the 2009 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures.

DATES: Effective 1200 hrs, A.l.t., March 21, 2009, until 1200 hrs, A.l.t., November 15, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in § 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson–Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hrs, A.l.t., March 21, 2009, and will close 1200 hrs, A.l.t., November 15, 2009. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery,

and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 13, 2009.

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

This action is required by § 679.23 and is exempt from review under Executive Order 12866.

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

Dated: March 16, 2009.

Alan D. Risenhoover

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

[FR Doc. E9–6190 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 53
Friday, March 20, 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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Guidelines and Requirements for Mandatory Recall Notices: Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 requires the United States Consumer Product Safety Commission (''Commission'') to establish by rule guidelines and requirements for recall notices ordered by the Commission or by a United States District Court under the Consumer Product Safety Act. This proposal would establish the guidelines and requirements to satisfy that requirement.

DATES: Written comments must be received by April 20, 2009.

ADDRESSES: Comments should be e-mailed to *mandatoryrecallnotices@cpsc.gov*. Comments also may be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504–7923. Comments may also be filed by facsimile to (301) 504–0127. Comments should be captioned ''Section 15(i) NPR.''

FOR FURTHER INFORMATION CONTACT: Marc Schoem, Deputy Director, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7520.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'', Pub. L. 110–314) was enacted on August 14, 2008. The CPSIA amends statutes that the U.S. Consumer Product Safety Commission (''Commission'') administers, adding requirements with broad applicability and some product-specific provisions as well.

B. CPSIA Requirements

Section 214 of the CPSIA amends section 15 of the Consumer Product Safety Act (''CPSA'') to add a new subsection (i). That section requires that, ''not later than 180 days after the date of enactment of the CPSIA, the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required by an order under'' sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)). Public Law 110–314, section 214(c), 122 Stat. 3016 (August 14, 2008). The guidelines must include information that would be helpful in identifying the product, hazard, and remedy associated with a recall. 15 U.S.C. 2064, as added by CPSIA § 214.

Section 214 of the CPSIA also requires that a recall notice include certain specific information, unless the Commission determines otherwise. This information includes, but is not limited to, descriptions of the product, hazard, injuries, deaths, action being taken, and remedy; identification of the manufacturer and retailers; identification of relevant dates; and any other information the Commission deems appropriate. *Id.*

C. Basis for Proposed Rule

The Commission and Commission staff have been using recall notifications since the Commission's inception. Under section 15(c) of the CPSA, if the Commission determines that notification is required to adequately protect the public from a substantial product hazard, the Commission may order a manufacturer, retailer, or distributor to provide notice to certain persons. 15 U.S.C. 2064(c). In addition, for many years, the Commission has made information concerning recall notices publicly available, including, for example, in the agency's Recall Handbook (*http://www.cpsc.gov/BUSINFO/8002.html*).

This proposed rule has been written based upon, and with the benefit of, the Commission and Commission staff's many years of experience with recalls and recall effectiveness. The proposal is also based on related agency expertise and on information contained in agency recall guidance materials, including, but not limited to, the Recall Handbook.

D. Description of the Proposed Rule

In general, the proposed rule would establish a new subpart C, titled, ''Guidelines and Requirements for Mandatory Recall Notices,'' in part 1115 of title 16 of the Code of Federal Regulations.

1. Proposed § 1115.23—Purpose

Proposed § 1115.23 would describe the purpose for a new subpart C, ''Guidelines and Requirements for Mandatory Recall Notices.'' In accordance with direction in the CPSIA, the proposed rule would set out guidelines and requirements for recall notices issued under section 15(c) and (d) or section 12 of the CPSA. The proposed guidelines would provide guidance concerning the content and form of such notices. As required by the CPSIA, the proposed rule also would specify the content required in such recall notices.

2. Proposed § 1115.24—Applicability

Consistent with section 15(i) of the CPSA, as added by section 214 of the CPSIA, the proposed rule would apply only to mandatory recall notices, i.e., recall notices issued pursuant to an order of the Commission under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or pursuant to an order of a U.S. district court under section 12 of the CPSA (15 U.S.C. 2061).

Proposed § 1115.24, therefore, would explain that the requirements in subpart C apply to manufacturers (including importers), retailers, and distributors of consumer products.

The proposed rule would not contain requirements for recalls and recall notices that are voluntary and result from corrective action settlement agreements with Commission staff. If the Commission decides to extend the requirements to voluntary recalls, it would proceed with a separate rulemaking initiated by a separate notice of proposed rulemaking. Unless and until the Commission issues a rule containing requirements for voluntary recall notices, the proposed rule would serve as a guide for voluntary recall notices.

3. Proposed § 1115.25—Definitions

Proposed § 1115.25 would define certain terms used in subpart C. For

example, proposed § 1115.25(a) would define ''recall'' as ''any one or more of the actions required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).'' The proposed definitions in this section are based on the staff's experience with recalls under section 15. Additionally, proposed § 1115.25 would state that the definitions in section 3 of the CPSA (15 U.S.C. 2052) apply.

4. Proposed § 1115.26—Guidelines and Policies

Proposed § 1115.26 would provide general guidance and describe the policies pertaining to recall notices. The proposed guidelines would restate the goals delineated in section 214 of the CPSIA. The CPSIA requires the guidelines to include information helpful to consumers. The Commission believes, however, that recall notices are intended to be of benefit and importance not only to consumers, but also to ''other persons,'' and proposed § 1115.26(a) would reflect this position. The latter broader category is intended to encompass the wide range of persons and broader public referenced in section 15(c) or (d) and in section 12 of the CPSA (15 U.S.C. 2061, 2064(c) or (d)). As used here, the term ''other persons'' would include, but would not be limited to, consumer safety advocacy organizations, public interest groups, trade associations, other State, local and federal government agencies, and the media. Historically, these persons have played significant roles in assisting with the dissemination of recall notice information. The Commission anticipates that these roles will continue.

In general, proposed § 1115.26(a) would state general principles that are important for recall notices to be effective. For example, proposed § 1115.26(a)(1) would state that a recall notice should provide information that enables consumers and other persons to identify the product and take a stated action. Proposed § 1115.26(a)(2) through (a)(4) would provide guidance on the form of the recall notice, recognizing the various forms of notice and providing guidance concerning direct recall notices and Web site recall notices.

Proposed § 1115.26(a)(4) would recognize that a direct recall notice is the most effective form of a recall notice, and proposed § 1115.26(b)(2) would state that when firms have contact information they should issue direct recall notices. By necessity due to lack of specific contact information, most recall notices are disseminated to broad or, on occasion, partially-targeted audiences. A direct recall notice, on the other hand, is sent directly to specific, identifiable consumers of the recalled product. In most instances, these consumers will be the purchasers of the recalled product. In other instances, the purchasers may have given the product to other consumers, for example, as a gift. In the latter case, if the purchaser received the recall notice, the purchaser will generally know to whom the purchaser gave the product and will likely be able to contact the recipient about the recall notice. In either case, the persons exposed to the product and its hazard will be more likely to receive the direct recall notice than to receive a broadly-disseminated recall notice.

Proposed § 1115.26(b)(1) would describe other possible forms of recall notices (such as letters, electronic mail, and video news releases), and proposed § 1115.26(b)(3) would discuss Web site recall notices.

Proposed § 1115.26(c) would provide that, where the Commission or a court deems it to be necessary or appropriate, the Commission may direct that the recall notice be in languages in addition to English.

5. Proposed § 1115.27—Recall Notice Content Requirements

In addition to requiring the Commission to issue guidelines for recall notices required under sections 12 and 15(c) and (d) of the CPSA, the CPSIA sets out specific content requirements. The CPSIA states that such recall notices shall include the specified information, including other information that the Commission or a court deems appropriate, unless the Commission or a court determines that including the information would not be appropriate in the particular recall notice. Thus, proposed § 1115.27 would set forth the recall notice content requirements specified in the CPSIA and would provide further details where appropriate.

For example, proposed § 1115.27(a) would require that a recall notice include the word ''recall'' in the heading and text. Although the CPSIA does not explicitly require use of the word ''recall,'' it does require a ''description of the action being taken.'' For many years, the Commission staff's Recall Handbook has directed that this term should be used. The objectives of a recall include locating the recalled products, removing the recalled products from the distribution chain and from consumers, and communicating information to the public about the recalled product and the remedy offered to consumers. A recall notice should motivate firms and media to widely publicize the recall information, and it should motivate consumers to act on the recall for the sake of safety. To those ends, the word ''recall'' draws media and consumer attention to the notice and to the information contained in the notice, and it does so more effectively than omitting the term or using an alternative term. A recall notice must be read to be effective, and drawing attention to the notice through the use of the word ''recall'' increases the likelihood that it will be read and, therefore, effectuates the purposes of the CPSA and CPSIA.

Proposed § 1115.27(b) would require the recall notice to contain the date of its release, issuance, posting, or publication.

The CPSIA requires that a recall notice include a description of the product, including the model number or SKU number, the names of the product, and a photograph. Proposed § 1115.27(c) would further flesh out information needed to describe the product by adding such items as the product's color, and identifying tags or labels.

Proposed § 1115.27(d) would require the recall notice to contain a clear and concise statement of the actions that a firm is taking concerning the product. This is required by the CPSIA.

Proposed § 1115.27(e) would require the recall notice to state the approximate number of units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce. This information is required by the CPSIA.

The statute requires that a recall notice include a description of the substantial product hazard. Proposed § 1115.27(f) would clarify this requirement by stating that the description must enable consumers to identify the risks of potential injury or death associated with the product, and it must identify the problem giving rise to the recall and the type of hazard or risk at issue (e.g., burn, laceration). Proposed § 1115.27(f)(1) through (f)(2) would provide greater detail as to what the description must include; for example, the description must include the product defect, fault, failure, flaw, and/or problem giving rise to the recall.

The statute requires identification of the manufacturers and significant retailers. Proposed § 1115.27(g) would state that the recall notice must identify the firm conducting the recall and also would clarify that, under the CPSA, the term ''manufacturer'' includes an importer. Proposed § 1115.27(h) would describe how the manufacturer must be identified (e.g., legal name, location of headquarters).

The statute does not define ''significant retailer.'' Identifying these

retailers will help consumers determine whether or not they shopped at the identified retailer, and, in turn, whether or not they might have the product. In the absence of a statutory definition, and based on its experience with recalls, the Commission believes that a significant retailer can be determined on the basis of several factors, and proposed § 1115.27(i) would describe those factors.

First, under proposed § 1115.27(i), a product's retailer is significant if it was the exclusive retailer of the product. Identifying an exclusive retailer is valuable because it can help consumers to conclude that, if they did not shop at that retailer, they are not likely to have the product, and, conversely, if they did shop at that retailer, they may have the product.

Second, a product's retailer is significant if it was an importer of the product. As an importer, a retailer will typically have greater information, and greater access to information, about a product, than a retailer that was not an importer.

Third, a product's retailer is significant if it is a nationwide or regionally-located retailer. Retailers that are located nationwide will be likely to have sold more units of the product, or to have sold the product to more consumers, than retailers that are not located nationwide. Therefore, nationwide retailers are likely to be more familiar to consumers than are retailers that are not nationwide. In addition, a regionally-located retailer, such as a retailer with a number of stores in several states, will be likely to be better known to consumers in those states or that region.

Fourth, a retailer that sold, or held for purposes of sale or distribution in commerce, a significant number of the total manufactured, imported, or distributed units of the product, will have sold the product to, and affected, more consumers, than a retailer that sold fewer units of the product.

Fifth, a product's retailer is significant if identification of the retailer is in the public interest. Recalls and products vary from one to the next, and there may be reasons other than those stated above that consumers will benefit from knowing the identities of certain retailers. Basing identification of a retailer on the public interest allows the Commission and firms flexibility to meet consumers' needs in a particular recall and to, in general, seek the best possible recall effectiveness.

Proposed § 1115.27(j) would require the recall notice to state the month and year in which the manufacture of the product began and ended and the month and year in which the retail sales began and ended. These dates would be included for each make and model of the product covered by the recall notice. This information is required by the CPSIA.

Although the statute does not list price of the product among the information required in a recall notice, proposed § 1115.27(k) would require the recall notice to state the approximate price of the product or a price range. Information about the price will help consumers to identify the product and be aware of the appropriate amount for a refund if that is the remedy.

Proposed § 1115.27(l) would require the recall notice to state the number and describe any injuries and deaths associated with the product, state the ages of any individuals injured or killed and the dates or range of dates on which the Commission received information about the injuries or deaths. Proposed § 1115.27(m) would require the recall notice to provide a description of any remedy available to the consumer, what actions the consumer must take to obtain a remedy, and any information the consumer needs in order to obtain a remedy. Proposed § 1115.27(n) would require the recall notice to contain any other information that the Commission or a court deems appropriate and orders. This information is all required by the CPSIA.

6. Proposed § 1115.28—Multiple Products or Models

Proposed § 1115.28 would require the notice for each product or model covered by a recall notice to meet the requirements of this subpart.

7. Proposed § 1115.29—Final Determination Regarding Form and Content

Proposed § 1115.29(a) would provide, in accordance with the statute, that the Commission (in the case of a recall notice under section 15(c) or (d)) or a court (in the case of a recall notice under section 12) makes the final determination regarding the form and content of a recall notice. Additionally, proposed § 1115.29(b) would allow the Commission to determine that one or more recall notice requirements set forth in subpart C is not required and will not be included in a recall notice. Proposed § 1115.29(c) would state that the Commission must review and agree, in writing, to all aspects of a recall notice before a firm may publish, broadcast, or otherwise disseminate a recall notice that is to be issued pursuant to an order under section 15(c) or (d) of the CPSA.

E. Effective Date

The Administrative Procedure Act (''APA'') generally requires that the effective date of a rule be at least 30 days after publication of the final rule. *Id.* 553(d). However, an earlier effective date is permitted for statements of policy and ''as otherwise provided by the agency for good cause found and published with the rule.'' *Id.* The guidelines are essentially a statement of policy. The requirements for the content of mandatory recall notices are largely dictated by the CPSIA with some further clarifications by the Commission. The statutory requirements for the content of mandatory recall notices are already in effect. Therefore, the Commission finds that good cause exists for the guidelines and requirements to become effective when published in final and proposes that the effective date be the date of publication of a final rule in the **Federal Register**.

F. Regulatory Flexibility Certification

The Regulatory Flexibility Act (''RFA'') generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. Section 603 of the RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. 5 U.S.C. 603. However, section 605(b) of the RFA states that this requirement does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, and the agency provides an explanation for that conclusion.

This rulemaking will have little or no effect on small businesses. This rulemaking consists of guidelines (which do not require a regulatory flexibility analysis) and recall notice content requirements that are largely dictated by the CPSIA. The requirement to issue a recall notice for recalls under section 12 or 15(c) or (d) of the CPSA does not come from this rulemaking, but from the existing provisions of section 15 and 12 of the CPSA. Moreover, the guidelines and requirements will only come into play in the context of an administratively adjudicated order to a specific party. Such mandatory recalls have occurred infrequently in the Commission's history. Therefore, the Commission concludes that the proposed guidelines and requirements will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

This proposed rule does not impose any information collection requirements. It sets out proposed guidelines and content requirements for recall notices that are required by statute to be imposed in individual enforcement actions under existing law pursuant to section 15(c) or (d) or section 12 of the CPSA. Accordingly, it is not subject to the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520.

H. Environmental Considerations

The Commission's regulations provide a categorical exemption for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement as they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This proposed rule falls within the categorical exemption.

List of Subjects in 16 CFR Part 1115

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

1. The authority for part 1115 continues to read as follows:

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2069, 2070, 2071, 2073, 2076, 2079, and 2080.

2. Add a new Subpart C to read as follows:

* * * * *

Subpart C—Guidelines and Requirements for Mandatory Recall Notices

Sec.

1115.23 Purpose.
1115.24 Applicability.
1115.25 Definitions.
1115.26 Guidelines and policies.
1115.27 Recall notice content requirements.
1115.28 Multiple products or models.
1115.29 Final determination regarding form and content.

* * * * *

Subpart C—Guidelines and Requirements for Mandatory Recall Notices

§ 1115.23 Purpose.

(a) The Commission establishes these guidelines and requirements for recall notices as required by section 15(i) of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C. 2064(i)). The guidelines and requirements set forth the information to be included in a notice required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)). Unless otherwise ordered by the Commission under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a U.S. district court under section 12 of the CPSA (15 U.S.C. 2061), the content information required in this subpart must be included in every such notice.

(b) The Commission establishes these guidelines and requirements to ensure that every recall notice effectively helps consumers and other persons to:

(1) Identify the specific product to which the recall notice pertains;

(2) Understand the product's actual or potential hazards to which the recall notice pertains, and information relating to such hazards; and

(3) Understand all remedies available to consumers concerning the product to which the recall notice pertains.

§ 1115.24 Applicability.

This subpart applies to manufacturers (including importers), retailers, and distributors of consumer products as those terms are defined herein and in the CPSA.

§ 1115.25 Definitions.

In addition to the definitions given in section 3 of the CPSA (15 U.S.C. 2052), the following definitions apply:

(a) *Recall* means any one or more of the actions required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(b) *Recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(c) *Direct recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)), that is sent directly to specifically-identified consumers.

(d) *Firm* means a manufacturer (including an importer), retailer, or distributor as those terms are defined in the CPSA.

§ 1115.26 Guidelines and policies.

(a) *General.* (1) A recall notice should provide sufficient information and motivation for consumers and other persons to identify the product and its actual or potential hazards, and to respond and take the stated action. A recall notice should clearly and concisely state the potential for injury or death.

(2) A recall notice should be written in language designed for, and readily understood by, the targeted consumers or other persons. The language should be simple and should avoid or minimize the use of highly technical or legal terminology.

(3) Firms should use recall notices targeted and tailored to the specific product and circumstances. In determining the form and content of a recall notice, firms should consider the manner in which the product was advertised and marketed.

(4) A direct recall notice is the most effective form of a recall notice.

(b) *Form of recall notice*—(1) *Possible forms.* A recall notice may be written, electronic, audio, visual, or in any other form ordered by the Commission in an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a U.S. district court under section 12 of the CPSA (15 U.S.C. 2061). The forms of, and means for communicating, recall notices include, but are not limited to:

(i) Letter, Web site posting, electronic mail, RSS feed, or text message;

(ii) Computer, radio, television, or other electronic transmission or medium;

(iii) Video news release, press release, recall alert, Web stream, or other form of news release;

(iv) Newspaper, magazine, catalog, or other publication; and

(v) Advertisement, newsletter, and service bulletin.

(2) *Direct recall notice.* A direct recall notice should be used for each consumer for whom a firm has direct contact information. Direct contact information includes, but is not limited to, name and address, and electronic mail address. Forms of direct recall notice include, but are not limited to, United States mail, electronic mail, and telephone calls. A direct recall notice should prominently show its importance over other consumer notices or mail by including ''Safety Recall'' or other appropriate terms in an electronic mail subject line, and, in large bold red typeface, on the front of an envelope and in the body of a recall notice.

(3) *Web site recall notice.* A Web site recall notice should be on a Web site's first entry point such as a home page, should be clear and prominent, and should be interactive by permitting consumers and other persons to obtain recall information and request a remedy directly on the Web site.

(c) *Languages.* Where the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a U.S. district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), determines that it is necessary or appropriate to adequately inform and

protect the public, a recall notice may be required to be in languages in addition to English.

§ 1115.27 Recall notice content requirements.

Except as provided in § 1115.29, every recall notice must include the information set forth below:

(a) *Terms.* A recall notice must include the word ''recall'' in the heading and text.

(b) *Date.* A recall notice must include its date of release, issuance, posting, or publication.

(c) *Description of product.* A recall notice must include a clear and concise statement of the information that will enable consumers and other persons to readily and accurately identify the specific product and distinguish it from similar products. The information must enable consumers to readily determine whether or not they have, or may be exposed to, the product. Description information includes but is not limited to:

(1) The product's names, including informal and abbreviated names, by which consumers and other persons should know or recognize the product;

(2) The product's intended or targeted use population (*e.g.*, infants, children, or adults);

(3) The product's colors and sizes;

(4) The product's model numbers, serial numbers, date codes, stock keeping unit (SKU) numbers, and tracking labels, including their exact locations on the product;

(5) Identification and exact locations of product tags, labels, and other identifying parts, and a statement of the specific identifying information found on each part; and

(6) Product photographs. A firm must provide photographs. Each photograph must be electronic or digital, in color, of high resolution and quality, and in a format readily transferable with high quality to a Web site or other appropriate medium. As needed for effective notification, multiple photographs and photograph angles may be required.

(d) *Description of action being taken.* A recall notice must contain a clear and concise statement of the actions that a firm is taking concerning the product. These actions may include, but are not limited to, one or more of the following: Stop sale and distribution in commerce; recall to the distributor, retailer, or consumer level; repair; request return and provide a replacement; and request return and provide a refund.

(e) *Statement of number of product units.* A recall notice must state the approximate number of product units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce.

(f) *Description of substantial product hazard.* A recall notice must contain a clear and concise description of the product's actual or potential hazards that result from the product condition or circumstances giving rise to the recall. The description must enable consumers and other persons to readily identify the reasons that a firm is conducting a recall. The description must also enable consumers and other persons to readily identify and understand the risks and potential injuries or deaths associated with the product conditions and circumstances giving rise to the recall. The description must include:

(1) The product defect, fault, failure, flaw, and/or problem giving rise to the recall; and

(2) The type of hazard or risk, including, by way of example only, burn, fall, choking, laceration, entrapment, and/or death.

(g) *Identification of recalling firm.* A recall notice must identify the firm conducting the recall by stating the firm's legal name and commonly known trade name, and the city and state of its headquarters. The notice must state whether the recalling firm is a manufacturer (including importer), retailer, or distributor.

(h) *Identification of manufacturers.* A recall notice must identify each manufacturer (including importer) of the product and the country of manufacture. Under the definition in section 3(a)(11) of the CPSA (15 U.S.C. 2052(a)(11)), a *manufacturer* means ''any person who manufactures or imports a consumer product.'' If a product has been manufactured outside of the U.S., a recall notice must identify the foreign manufacturer and the U.S. importer. A recall notice must identify the manufacturer by stating the manufacturer's legal name and the city and state of its headquarters, or, if a foreign manufacturer, the city and country of its headquarters.

(i) *Identification of significant retailers.* A recall notice must identify each significant retailer of the product. A recall notice must identify such a retailer by stating the retailer's commonly known trade name. Under the definition in section 3(a)(13) of the CPSA (15 U.S.C. 2052(a)(13)), a *retailer* means ''a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.'' A product's retailer is ''significant'' if, upon the Commission's information and belief, and in the sole discretion of the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or in the sole discretion of a U.S. district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), any one or more of the circumstances set forth below is present (the Commission may require manufacturers (including importers), retailers, and distributors to provide information relating to these circumstances):

(1) The retailer was the exclusive retailer of the product;

(2) The retailer was an importer of the product;

(3) The retailer has stores nationwide or regionally-located;

(4) The retailer sold, or held for purposes of sale or distribution in commerce, a significant number of the total manufactured, imported, or distributed units of the product; or

(5) Identification of the retailer is in the public interest.

(j) *Dates of manufacture and sale.* A recall notice must state the month and year in which the manufacture of the product began and ended, and the month and year in which the retail sales of the product began and ended. These dates must be included for each make and model of the product.

(k) *Price.* A recall notice must state the approximate retail price or price range of the product.

(l) *Description of incidents, injuries, and deaths.* A recall notice must contain a clear and concise summary description of all incidents (including, but not limited to, property damage), injuries, and deaths associated with the product conditions or circumstances giving rise to the recall, as well as a statement of the number of such incidents, injuries, and deaths. The description must enable consumers and other persons to readily understand the nature and extent of the incidents and injuries. A recall notice must state the ages of all persons injured and killed. A recall notice must state the dates or range of dates on which the Commission received information about injuries and deaths.

(m) *Description of remedy.* A recall notice must contain a clear and concise statement, readily understandable by consumers and other persons, of:

(1) Each remedy available to a consumer for the product conditions or circumstances giving rise to the recall. Remedies include, but are not limited to, refunds, product repairs, product replacements, rebates, coupons, gifts, premiums, and other incentives.

(2) All specific actions that a consumer must take to obtain each remedy, including, but not limited to, instructions on how to participate in the

recall. These actions may include, but are not limited to, contacting a firm, removing the product from use, discarding the product, returning part or all of the product, or removing or disabling part of the product.

(3) All specific information that a consumer needs in order to obtain each remedy and to obtain all information about each remedy. This information may include, but is not limited to, the following: Manufacturer, retailer, and distributor contact information (such as name, address, telephone and facsimile numbers, e-mail address, and Web site address); whether telephone calls will be toll-free or collect; and telephone number days and hours of operation including time zone.

(n) *Other information.* A recall notice must contain such other information as the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a U.S. district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), deems appropriate and orders.

§ 1115.28 Multiple products or models.

For each product or model covered by a recall notice, the notice must meet the requirements of this subpart.

§ 1115.29 Final determination regarding form and content.

(a) *Commission or court discretion.* The recall notice content required by this subpart must be included in a recall notice whether or not the firm admits the existence of a defect or of an actual or potential hazard, and whether or not the firm concedes the accuracy or applicability of all of the information contained in the recall notice. The Commission will make the final determination as to the form and content of the recall notice for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), and a U.S. district court will make the final determination as to the form and content of a recall notice for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061).

(b) *Recall notice exceptions.* The Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a U.S. district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), may determine that one or more of the recall notice requirements set forth in this subpart is not required, and will not be included, in a recall notice.

(c) *Commission approval.* Before a firm may publish, broadcast, or otherwise disseminate a recall notice to be issued pursuant to an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), the Commission must review and agree in writing to all aspects of the notice.

Dated: March 13, 2009.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–6021 Filed 3–19–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150066–08]

RIN 1545–BI45

Guidance Regarding Foreign Base Company Sales Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing; correction.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79421), relating to foreign base company sales income.

FOR FURTHER INFORMATION CONTACT: Jeffery Mitchell, (202) 622–7034 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is subject to these corrections are under section 954 of the Internal Revenue Code.

Need for Correction

As published the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–150066–08), which was the subject of FR Doc. E8–30729, is corrected as follows:

1. On page 79422, column 1, in the preamble under the heading Background and Explanation of Provision, the last sentence, the language ''The preamble to the temporary regulations explains these proposed regulations.'' is corrected to read ''The preamble to the temporary regulations explains the amendments.''

2. On page 79422, column 2, in the preamble under the heading Comments and Public Hearing, the first paragraph, line 3, the language ''consideration will be give to any written'' is corrected to read ''consideration will be given to any written''.

3. On page 79422, column 3, in the preamble under the heading Part 1—Income Taxes, instructional paragraph 2, lines 5 and 6, the language ''(b)(2)(ii)(e), (b)(4) *Example (3)*, (c), and (d), and adding *Examples 8* and *9* to'' is corrected to read ''(b)(2)(ii)(e) and (b)(4) *Example (3)*, and adding *Examples 8* and *9* to''.

4. On page 79423, column 1, § 1.954–3, the third sentence of *Example 8*, the language ''8 is the same as the text of § 1.954–3T'' is corrected to read ''8 is the same as the text of § 1.954–3T(b)(4)''.

5. On page 79423, column 1, § 1.954–3, the third sentence of *Example 9*, the language ''9 is the same as the text of § 1.954–3T'' is corrected to read ''9 is the same as the text of § 1.954–3T(b)(4)''.

Guy R. Traynor,

Federal Register Liaison, Procedure & Administration, Associate Chief Counsel, Publications & Regulations.

[FR Doc. E9–5892 Filed 3–19–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0026; FRL–8780–4]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Permits by Rule and Regulations for Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on July 22, 1998, October 4, 2002, and September 25, 2003; these revisions amend existing sections and create new sections in Title 30 of the Texas Administrative Code (TAC), Chapter 106—Permits by Rule and Chapter

116—Control of Air Pollution by Permits for New Construction or Modification. The July 22, 1998, revision repeals and replaces the Renewal Application Fees section with a new section. The October 4, 2002, revision increases the determination of fees for NSR permits, corrects addresses, and makes other administrative changes. The September 25, 2003, revision clarifies that an emission reduction credit must be certified and banked to be creditable as an offset in the NSR permitting program, repeals and replaces the section that addresses the use of emission reductions as offsets for NSR permitting and the definition of ''offset ratio,'' and makes administrative changes. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: Comments must be received on or before April 20, 2009.

ADDRESSES: Comments may be mailed to Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Ms. Melanie Magee (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7161. Ms. Magee can also be reached via electronic mail at *magee.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 26, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–5836 Filed 3–19–09; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 523 and 552

[GSAR Case 2006–G506; Docket 2009–0005; Sequence 1]

RIN 3090–AI82

General Services Acquisition Regulation; GSAR Case 2006–G506; Rewrite of Part 523, Environment, Conservation, Occupational Safety and Drug-Free Workplace

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The GSA is proposing to amend the General Services Acquisition Regulation (GSAR) to update the text addressing environment, conservation, occupational safety and drug-free workplace.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before May 19, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2006–G506 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2006–G506'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2006–G506. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2006–G506'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2006–G506 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Clark at (202) 219–1813, or by e-mail at *william.clark@gsa.gov*. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2006–G506.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSAR to update the text addressing GSAR Part 523, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace. This rule is a result of the GSA Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy. The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This proposed rule changes the title of Part 523 to ''Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace,'' to correspond to the title in FAR Part 23. The title for Subpart 523.3 is changed to ''Hazardous Material Identification and Material Safety Data'' to be consistent with the corresponding FAR subpart.

In addition, this proposed rule amends the GSAR to delete clause 552.223–70, Hazardous Substances, in its entirety because it does not contain all of the required statutes for shipping hazardous materials. It is replaced with two new hazardous materials clauses.

Clause 552.223–70, Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials

(HAZMAT) for Export Shipment, is added to require compliance by contractors with the International Maritime Dangerous Goods (IMDG) Code, the Occupational Safety and Health Regulation, and the applicable Modal Regulation, which are mandated in the new GSAR clause as they pertain to export shipping. This clause also contains a requirement for compliance by contractors with the Air Force Inter-Service Manual (AFIM) 24–204 for military aircraft shipments.

Clause 552.223–73, Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Domestic Shipment, is added to require compliance by contractors with the U.S. Department of Transportation Hazardous Material Regulation and the Occupational Safety and Health Administration Regulation.

In addition, the provision at 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items, is updated to include the new hazardous material clauses.

The GSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 71 FR 7910 on February 15, 2006, with request for comments on the GSAM rewrite initiative. The GSA did not receive any comments pertaining to GSAR Part 523.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there are no substantive changes. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The GSA will consider comments from small entities concerning the affected GSAR Part 523 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2006–G506), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for reinstatement with changes to the information collection requirement concerning Environment, Conservation, Occupational Safety and Drug-free Workplace, to the Office of Management and Budget under 44 U.S.C. 35, *et seq.*

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .658 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 563.

Responses per respondent: 3.

Total annual responses: 1689.

Preparation hours per response: .658.

Total response burden hours: 1111.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than May 19, 2009 to: GSAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the GSAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control Number 3090–0205, GSAR Case 2006–G506, Environment, Conservation, Occupational Safety and Drug-Free Workplace, in all correspondence.

List of Subjects in 48 CFR Parts 523 and 552

Government procurement.

Dated: January 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 523 and 552 as set forth below:

1. The authority citation for 48 CFR parts 523 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 523—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY AND DRUG-FREE WORKPLACE

2. Revise the heading of part 523 as set forth above.

3. Amend section 523.303 by revising the section heading, and paragraph (a); and adding new paragraph (c) to read as follows:

523.303 Contract clauses.

(a) Insert 552.223–70, Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Export Shipment in solicitations and contracts for packaged items subject to the Occupational Safety and Health Act and the Hazardous Materials Transportation Act.

* * * * *

(c) Insert 552.223–73, Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) For Domestic Shipment, in solicitations and contracts for packaged items subject to the Occupational Safety and Health Act and the Hazardous Materials Transportation Act.

PART 552—SOLICITATION PROVISION AND CONTRACT CLAUSES

4. Amend section 552.212–72 by revising the date of the clause and paragraph (b) to read as follows:

552.212–72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (DATE)

* * * * *

(b) *Clauses.*

_____552.223–70 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Export Shipment

_____552.223–71 Nonconforming Hazardous Material

_____552.223–73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (Hazmat) For Domestic Shipment

_____552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped

_____ 552.238–72 Identification of Products that have Environmental Attributes

(End of clause)

5. Amend section 552.223–70 by revising the section heading, date of the clause, and clause to read as follows:

552.223–70 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Export Shipment.

* * * * *

PRESERVATION, PACKAGING, PACKING, MARKING AND LABELING OF HAZARDOUS MATERIALS (HAZMAT) FOR EXPORT SHIPMENT (DATE)

(a) Preservation, packaging, packing, marking and labeling of hazardous materials for shipment overseas (includes Hawaii, Puerto Rico and U.S. territories) shall comply with all requirements of the following:

(1) International Maritime Dangerous Goods (IMDG) Code as established by the International Maritime Organization.

(2) Items which qualify for U.S. Department of Transportation Consumer Commodity classifications shall be packaged in accordance with the IMDG Code and dual marked with both Consumer Commodity and IMDG marking and labeling.

(3) Occupational Safety and Health Administration (OSHA) Regulation 29 (CFR) part 1910.1200.

(4) Any preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation.

(b) Preservation, packaging, packing, marking and labeling of overseas hazardous materials via commercial aircraft shall comply with the International Air Transport Association, Dangerous Goods Regulation (IATA).

(c) Preservation, packaging, packing, marking and labeling of HAZMAT military aircraft shipments shall comply with the requirement of AFIM 24–204, Air Force Inter-Service Manual 24–204, Preparing Hazardous Materials For Military Air Shipments.

(d) The test certification data showing compliance with performance-oriented packaging requirements shall be made available to GSA contract administration/ management representatives or regulatory inspectors upon request.

(End of clause)

6. Add section 552.223–73 to read as follows:

552.223–73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (Hazmat) For Domestic Shipment.

As prescribed in 523.303(c), insert the following clause:

PRESERVATION, PACKAGING, PACKING, MARKING AND LABELING OF HAZARDOUS MATERIALS (HAZMAT) FOR DOMESTIC SHIPMENT (DATE)

(a) Preservation, packaging, packing, marking and labeling of hazardous materials within the continental United States shall comply with all requirements of the following:

(1) U.S. Department of Transportation (DOT) Hazardous Material Regulation 49, CFR parts 171 through 180.

(2) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.

(3) All preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation.

(b) Hazardous Material Packages designated for overseas destinations through the GSA Distribution Centers shall comply with the International Maritime Dangerous Goods (IMDG) Code.

(End of clause)

[FR Doc. E9–5876 Filed 3–19–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 090218189–9251–01]

RIN 0648–AX29

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Target and Missile Launch Activities at San Nicolas Island, CA

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization for the take of marine mammals, by harassment, incidental to vehicle launch operations from San Nicolas Island (SNI), California. By this document, NMFS is proposing regulations to govern that take. In order to issue a Letter of Authorization (LOA) and to issue final regulations governing the take, NMFS must determine that the taking will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses. NMFS must also prescribe the means of effecting the least practicable adverse impact on such species or stock and their habitats.

DATES: Comments and information must be received no later than April 20, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX29, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: All comments received are a part of the public record and will generally be 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.

NMFS 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.

A copy of the application containing a list of references used in this document and the Draft Environmental Assessment (EA) may be obtained by writing to the above address, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at the above address. To help NMFS process and review comments more efficiently, please use only one method to submit comments.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext. 156, or Monica DeAngelis, Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations

are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On September 3, 2008, NMFS received an application from the Navy requesting authorization for the take of three species of marine mammals incidental to vehicle launches conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) from the western part of SNI, which would impact pinnipeds hauled out on the island. Aircraft and helicopter flights between the Point Mugu airfield on the mainland, the airfield on SNI, and the target sites in the Point Mugu Sea Range will be a routine part of a planned launch operation. NMFS proposes regulations to govern these activities, to be effective from April, 2009, through April, 2014. These regulations, if implemented, would allow NMFS to issue annual LOAs to the Navy. These activities are classified as military readiness activities. The Navy states that these activities may have both acoustic and non-acoustic effects on pinnipeds. The Navy requests authorization to take three pinniped species by Level B Harassment.

Measurement of Airborne Sound Levels

The following section is provided to facilitate understanding of airborne and impulsive noise characteristics. In its application, the Navy references both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re μPa, and for energy, the sound exposure level (SEL) is described in terms of dB re $\mu Pa^2 \bullet s$. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 Pa, which is 26 dB above the underwater sound pressure reference of 1 μPa. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html.* Also, airborne sounds are often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting corresponds to the relative response to the human ear to sound levels above 85 dB. C-weight scaling is useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms.

Description of the Specified Activity

The NAWCWD is the Navy's full-spectrum research, development, test, and evaluation center of excellence for weapons systems associated with air warfare, aircraft weapons integration, missiles and missile subsystems, and assigned airborne electronic warfare systems. NAWCWD is a multi-site organization that includes the Point Mugu Sea Range (Sea Range) and is responsible for environmental compliance for this Sea Range and SNI. NAWCWD plans to continue a launch program for missiles and targets from several launch sites on SNI. The purpose of these launches is to support test and training activities associated with operations on the Sea Range. Figure 1 in the Navy's application provides a regional site map of the Range and SNI. A more detailed description of the island and proposed launch activities are provided later in the Point Mugu Sea Range Final EIS/OEIS (NAWCWD 2002) and in reports on previous vehicle launch monitoring periods (e.g., Holst *et al.*, 2005a, 2008). The Sea Range is used by the U.S. and allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the SNI launches are used for practicing defensive drills against the types of weapons simulated by these vehicles. Some launches may be conducted for the related purpose of testing new types of targets, to verify that they are suitable for use as operational targets.

The vehicles are launched from one of several fixed locations on the western end of SNI and fly generally westward through the Sea Range. Launches are expected to involve supersonic and subsonic vehicles. Some vehicles are launched from the Alpha Launch Complex located 190 m (623.4 ft) above sea level on the west-central part of SNI (see Figure 2 in the Navy's application). The Building 807 Launch Complex, used for most launches of smaller vehicles, as well as some large ones, is at the western end of SNI at approximately 11 m (36 ft) above sea level.

The Navy may launch as many as 200 vehicles from SNI over a 5–yr operations program, with up to 40 launches per year, but this number can vary depending on operational requirements. Launch timing will be determined by operational, meteorological, and logistical factors. Up to 10 launches per year may occur at night. Nighttime launches will only take place when required by the test objectives, e.g., when testing the Airborne Laser system (ABL). For this system, missiles must be launched at night when the laser is visible. Some launch events involve a single vehicle, while others involve the launch of multiple vehicles either in quick succession or at intervals of a few hours.

The Coyote Supersonic Sea-skimming Target (SSST) is anticipated to be the primary launch vehicle. However, the Navy states that it may become necessary to substitute similar vehicles or different equipment in some cases. While other vehicles may be launched in the future, the largest contemplated in the Navy's application and this **Federal Register** notice is 23,000 kg

(50,706 lbs). These larger vehicles would be launched up to 3 times per year. Details on the types of vehicles to be launched are provided in the following subsections.

Coyote

The Coyote, designated GQM–163A, is an expendable SSST powered by a ducted-rocket ramjet. It has replaced the Vandal, which was used as the primary vehicle during launches from 2001–2005. The Coyote is similar in size and performance to the Vandal.

The Coyote is capable of flying at low altitudes (4 m [13 ft] cruise altitude) and supersonic speeds (Mach 2.5) over a flight range of 83 km (51.6 mi). This vehicle is designed to provide a ground launched aerial target system to simulate a supersonic, sea-skimming Anti-Ship Cruise Missile threat. The SSST assembly consists of two primary subsystems: MK 70 solid propellant booster and the GQM–163A target vehicle. The solid-rocket booster is approximately 46 cm (18 in) in diameter and is of the type used to launch the Navy's ''Standard'' surface-to-air missile. The GQM–163A target vehicle is 5.5 m (18 ft) long and 36 cm (14 in) in diameter, exclusive of its air intakes. It consists of a solid-fuel Ducted Rocket (DR) ramjet subsystem, Control and Fairing Subassemblies, and the Front End Subsystem (FES). Included in the FES is an explosive destruct system to terminate flight if required.

The Coyote utilizes the Vandal launcher, currently installed at the Alpha Launch Complex on SNI with a Launcher Interface Kit. A modified AQM–37C Aerial Target Test Set is utilized for target checkout, mission programming, verification of the vehicle's ability to perform the entire mission, and homing updates while the vehicle is in flight.

During a typical launch, booster separation occurs approximately 5.5 s after launch and approximately 2.6 km (1.6 mi) downrange, at which time the vehicle has a speed of approximately Mach 2.35 (Orbital Sciences Corp; *www.orbital.com*). Following booster separation, the GQM–163A's DR ramjet ignites, the vehicle reaches its apogee, and then dives to 5 m (16.4 ft) altitude while maintaining a speed of Mach 2.5. During launches from SNI, the low-altitude phase occurs over water west of the island. The target performs pre-programmed maneuvers during the cruise and terminal phases, as dictated by the loaded mission profile, associated waypoints, and mission requirements. During the terminal phase, the Coyote settles down to an altitude of 4 m (13 ft) and Mach 2.3 until DR burnout.

During 2003–2007, Coyotes were launched from SNI at azimuths of 270–300° and elevation angles of 14–22° (Holst *et al.*, 2005a, 2008). Coyotes produced flat-weighted SPLs (SPL-f) of 125–134 decibels reference 20 μPa (dB re 20 μPa) at distances of 0.8–1.7 km (0.5–1.1 mi) from the three-dimensional (3–D) closest point of approach (CPA) of the vehicle, and 82–93 dB at CPAs of 2.4–3.2 km (1.5–2 mi) (Holst *et al.*, 2005a, 2008). Flat-weighted SELs (SEL-f) ranged from 87 to 119 dB re 20 $\mu Pa^2 \bullet s$. SELs M-weighted for pinnipeds in air (Mpa) ranged from 60 to 114 dB re 20 $\mu Pa^2 \bullet s$, and peak pressures ranged from 100 to 144 dB re 20 μPa. The reference sound pressure (20 μPa) used here and throughout the document, is standard for airborne sounds.

Advanced Gun System (AGS)

At SNI, a howitzer has been used to launch test missiles, as the AGS is still being developed. The AGS is a gun designed for a new class of Destroyer; it will be used to launch both small missiles and ballistic shells. It is to be a fully integrated gun weapon system, including a 155–mm (2.2–in) gun, integrated control, an automated magazine, and a family of advanced guided and ballistic projectiles, propelling charges, and auxiliary equipment. The operational AGS will have a magazine capacity of 600 to 750 projectiles and associated propelling charges. The regular charge for the gun will replace the booster that is usually associated with a surface-launched missile. The gun gets the missile up to speed, at which point the missile's propulsion takes over. The missile itself is relatively quiet, as it does not have a booster and is fairly small. However, the gun blast is rather strong. Each missile launch is preceded by one (sometimes two) howitzer firings using a slug. The slug is used to verify that the gun barrel is properly seated and aligned.

During 2002–2006, AGS missiles and test slugs were launched from SNI at azimuths of 235–305° and elevation angles of 50–65° (Holst *et al.*, 2005a, 2008). AGS vehicles resulted in SPL-f values of 97–117 dB re 20 μPa, at nearshore sites located 0.75–2 km (0.5–1.2 mi) from the CPA and 125–127 dB at sites located less than 462 m (1,516 ft) from the CPA. SEL-f levels ranged from 90 to 113 dB re 20 $\mu Pa^2 \bullet s$, and Mpa-weighted SELs ranged from 64 to 103 dB re 20 $\mu Pa^2 \bullet s$. The peak pressure ranged from 107 to 135 dB re 20 μPa. AGS slugs produced SPL-f values of 100–133 dB re 20 μPa nearshore. SEL-f ranged from 88 to 120 dB re 20 $\mu Pa^2 \bullet s$, Mpa-weighted SELs ranged from 62 to 103 dB re 20 $\mu Pa^2 \bullet s$, and the peak pressures were 104 to 139 dB re 20 μPa.

Rolling Airframe Missile (RAM)

The Navy/Raytheon RAM is a supersonic, lightweight, quick-reaction missile. This relatively small missile, designated RIM 116, uses the infrared seeker of the Stinger missile and the warhead, rocket motor, and fuse from the Sidewinder missile. It has a high-tech radio-to-infrared frequency guidance system. The RAM is a solid-propellant rocket 12.7 cm (5 in) in diameter and 2.8 m (9.2 ft) long. Its launch weight is 73.5 kg (162 lbs), and operational versions have warheads that weigh 11.4 kg (25 lbs).

At SNI, RAMs are launched from the Building 807 Launch Complex. During 2001–2007, RAMs were launched at an azimuth of 240° and elevation angles of 8–10° (Holst *et al.*, 2005a, 2008). The RAMs resulted in SPL-f up to 126 dB near the launcher and 99 dB at a nearshore site located 1.6 km (1 mi) from the CPA (Holst *et al.*, 2005a, 2008). SEL-f ranged from 84 to 97 dB re 20 $\mu Pa^2 \bullet s$, and μpa-weighted SELs were 76 to 96 dB re 20 $\mu Pa^2 \bullet s$. Peak pressure ranged from 104 to 117 dB re 20 μPa.

Arrow Self-defense Missile

The Arrow is a theater missile defense weapon or anti-ballistic missile. It was developed in Israel and is designed to intercept tactical ballistic missiles. It is approximately 6.8 m (22.3 ft) long and 60 cm (23.6 ft) in diameter. It travels at hypersonic speed and has high and low altitude interception capabilities. The Arrow consists of three main components: a phased array radar (known as Green Pine), a fire control center (called Citron Tree), and a high-altitude interceptor missile that contains a powerful fragmentation warhead. It also has two solid propellant stages, including a booster and sustainer. The array radar is capable of detecting incoming missiles at a distance of 500 km (310.7 mi). Once a missile is detected, the fire control center launches the interceptor missile. The interceptor travels at nine times the speed of sound and reaches an altitude of 50 km (31.7 mi) in less than 3 min.

The first test of an Arrow in the U.S. took place at SNI on July 29, 2004. At SNI, Arrows have been launched vertically, near the Alpha Launch Complex from the Miscellaneous Launch Pad (see Figure 2 in the Navy's application), at an azimuth of 285°, crossing the beach at an altitude of 2,134 m (7,001 ft). During these launches, Arrows produced SPL-f of 84–90 dB re 20 μPa at distances of 1.8–2.7

km (1.1–1.7 mi) from the CPA. SEL-f ranged from 96 to 102 dB re µ20 µPa²•s, and Mpa-weighted SELs ranged from 92 to 99 dB re 20 µPa²•s. Peak pressures ranged from 100 to 107 dB re µ20 µPa (Holst *et al.*, 2005a, 2008).

Terrier-Black Brant

The Terrier-Black Brant consists of the Terrier Mark 70 booster and the Black Brant rocket. The solid-rocket booster is approximately 46 cm (18 in) in diameter, 394 cm (155 in) long, and weighs 1,038 kg (2,288 lbs). The Black Brant has a diameter of 44 cm (17 in), is 533 cm (209.8 in) long, and weighs 1,265 kg (2,789 lbs). This vehicle reaches an altitude of 203 km (126 mi) and has a range of 264 km (164 mi). Terrier burnout occurs after 6.2 s at an altitude of 3 km (1.9 mi), and Black Brant burnout occurs after 44.5 s at an altitude of 37.7 km (23.4 mi). On SNI, this target will typically be launched vertically from the Building 807 Launch Complex. The Terrier-Black Brant will be launched at night to test the ABL and may be used to support other testing after its initial use for ABL.

Terrier-Lynx

The Terrier-Lynx is a two-stage unguided, fin-stabilized rocket. The first stage consists of the Terrier Mark 70 booster, and the second stage is the Lynx rocket motor. The Lynx is 36 cm (14 in) in diameter and 279 cm (109.8 in) long. This vehicle reaches an altitude of 84 km (52.2 mi) and has a range of 99 km (61.5 mi). Terrier burnout occurs after 6.2 s at an altitude of 2.3 km (1.4 mi), and Lynx burnout occurs after 58.5 s at 43.5 km (27 mi). On SNI, this target will typically be launched vertically from the Building 807 Launch Complex using the 50k (approximately 23,000 kg or 50,000 lbs) launcher. Terrier-Lynx targets will be launched at night to test the ABL. Both the Terrier-Lynx and Terrier-Black Brant will use the same Terrier Mk 70 booster as the Coyote, so launch sound levels should be similar to those from that vehicle.

Other Vehicle Launches

The Navy may also launch other vehicles to simulate various types of threat missiles and aircraft, and to test the ABL. For example, on August 23, 2002, a Tactical Tomahawk was launched from Building 807 Launch Complex, and on September 20, 2001, a Terrier-Orion was launched from the Alpha Launch Complex. The Tomahawk produced an SPL-f of 93 dB re 20 µPa, an SEL-f of 107 dB re 20 Pa²•s, and an Mpa-weighted SEL of 105 dB re 20 µPa²•s at a distance of 539 m (1,768.4 ft) from the CPA; the peak pressure was 111 dB re 20 µPa. The Terrier-Orion resulted in an SPL-f of 91 dB re 20 µPa, an SEL-f of 96 dB re 20 µPa²•s, and an Mpa-weighted SEL of 92 dB re 20 µPa²•s at a distance of 2.4 km (1.5 mi) from the CPA; the peak pressure was 104 dB re 20 µPa. A Falcon was launched from the Alpha Launch Complex on April 6, 2006; it produced an SPL-f of 84 dB re 20 µPa, an SEL-f of 88 dB re 20 µPa, and an Mpa-weighted SEL of 82 dB re 20 µPa at a beach located north of the launch azimuth. Near the launcher, the SPL-f was 128 dB re 20 µPa, SEL-f was 126 dB re 20 µPa, and Mpa-weighted SEL was 125 dB re 20 µPa.

Vehicles of the BQM–34 or BQM–74 type could also be launched. These are small, unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles; they then continue offshore powered by small turbojet engines. The larger of these, the BQM–34, is 7 m (23 ft) long and has a mass of 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM–74 is up to 420 cm (165.4 in) long and has a mass of 250 kg (551 lbs) plus the solid propellant JATO bottles. Burgess and Greene (1998) reported that A weighted SPLs (SPL-A) ranged from 92 dBA re 20 Pa at a CPA of 370 m to 145 dB at 15 m (49.2 ft) for a launch that occurred on November 18, 1997.

If launches of other vehicle types occur, they would be included within the total of 40 launches anticipated per year. It is possible that launch trajectories could include a wider range of angles than shown on Figure 2 in the Navy's application.

General Launch Operations

Aircraft and helicopter flights between the Point Mugu airfield on the mainland, the airfield on SNI, and the target sites in the Sea Range will be a routine part of a planned launch operation. These flights generally do not pass at low level over the beaches where pinnipeds are expected to be hauled out.

Movements of personnel are restricted near the launch sites at least several hours prior to a launch for safety reasons. No personnel are allowed on the western end of SNI during launches. Movements of personnel or vehicles near the island's beaches are also restricted at other times of the year for purposes of environmental protection and preservation of cultural resource sites.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for several species of pinnipeds including: northern elephant seals (Mirounga angustirostris), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year.

Northern fur seals, Guadalupe fur seals, and Steller sea lions are far less common on SNI. The northern fur seal is occasionally sighted on SNI in small numbers (Stewart and Yochem, 2000); a single female with a pup was sighted on the island in July 2007 (NAWCWD, 2008). It is also possible that individual Guadalupe fur seals may be sighted on the beaches. The Guadalupe fur seal is an occasional visitor to the Channel Islands, but breeds mainly on Guadalupe Island, Mexico, which is approximately 463 km (288 mi) south of the Sea Range. The last sighting was of a lone individual seen ashore in the summer of 2007 (NAWCWD, 2008). The Steller sea lion was once abundant in these waters, but numbers have declined since 1938. No adult Steller sea lions have been sighted on land in the Channel Islands since 1983 (Stewart *et al.*, 1993c in NMFS 2008). Thus, it is very unlikely that Steller sea lions will be seen on or near SNI beaches.

Additional information on the biology, distribution, and abundance of the marine mammal species likely to be affected by the launch activities on SNI can be found in the Navy's application (see **ADDRESSES**) and the NMFS Stock Assessment Reports, which can be found at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2007.pdf*. Please refer to those documents for information on those species.

Comments and Responses

On September 16, 2008, NMFS published a notice of receipt of application for an LOA in the **Federal Register** (73 FR 53408) and requested comments and information from the public for 30 days. NMFS received comments from the Marine Mammal

Commission (Commission). The Commission supports NMFS' decision to publish proposed regulations for the specified activities provided that appropriate and effective mitigation and monitoring activities are incorporated into the regulations. NMFS has included mitigation and monitoring measures into this proposed rule and has preliminarily determined that these measures will ensure the least practicable adverse impact on the species or stocks and their habitats.

Potential Effects of Specified Activities on Marine Mammals

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions, such as stampedes into the sea from terrestrial haul-out sites;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Potential impacts of the planned vehicle launch operations at SNI on marine mammals involve both acoustic and non-acoustic effects. Acoustic effects relate to sound produced by the engines of all launch vehicles, and, in some cases, their booster rockets. Potential non-acoustic effects could result from the physical presence of personnel during placement of video and acoustical monitoring equipment. However, careful deployment of monitoring equipment is not expected to result in any disturbance to pinnipeds hauled out nearby. Any visual disturbance caused by passage of a vehicle overhead is likely to be minor and brief as the launch vehicles are relatively small and move at great speed.

Behavioral Reactions of Pinnipeds to Vehicle Launches

Noises with sudden onset or high amplitude relative to the ambient noise level may elicit a behavioral response from pinnipeds resting on shore. Some pinnipeds tolerate high sound levels without reacting strongly, whereas others may react strongly when sound levels are lower. Available literature describing behavioral responses of pinnipeds to the types of sound recorded near haul-out sites on SNI indicates variability in the responses (see Figure 25 in the Navy's application). Responses can range from momentary startle reactions to animals fleeing into the water or otherwise away from their resting sites (i.e., stampede). Studies of pinnipeds during vehicle launch events have demonstrated that different pinniped species, and even different individuals in the same haul-out group, can exhibit a range of response from alert to stampede. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a looming visual stimulus (Hayes and Saif, 1967), which can be especially effective in eliciting flight or other responses (Berrens *et al.*, 1988). Vehicle launches are unlike many other forms of disturbance because of their sudden sound onsets, high peak levels in some cases, and short durations (Cummings, 1993). Strong launch sounds are typically detectable near the beaches at western SNI for no more than a few seconds per launch (Holst *et al.*, 2005a, 2008).

Holst *et al.* (2005a, 2008) summarize the systematic monitoring results from SNI from mid–2001 through 2007. In particular, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981b; Holst *et al.*, 2008). In contrast, harbor seals are more easily disturbed. Based on SNI launch monitoring results from 2001 to 2007, most pinnipeds, especially northern elephant seals, would be expected to exhibit no more than short-term alert or startle responses (Holst *et al.*, 2005a, 2008). Any localized displacement would be of short duration; although some harbor seals may leave their haul-out site until the following low tide. However, Holst and Lawson (2002) noted that numbers occupying haul-out sites on the next day were similar to pre-launch numbers.

The most common type of reaction to vehicle launches at SNI is expected to be a momentary ''alert'' response. Previous observations indicate that elephant seals, in particular, will rarely if ever show more than a momentary alert reaction (Stewart, 1981b; Stewart *et al.*, 1994b; Holst *et al.*, 2005a, b; 2008) even when exposed to noise levels or types that caused nearby harbor seals and California sea lions to flee the haul-out sites.

Video recordings of pinnipeds around the periphery of western SNI during launches on SNI in 2001–2007 have shown that some pinnipeds react to a nearby launch by moving into the water or along the shoreline (Holst *et al.*, 2005a, b; 2008). Pinniped behavioral responses to launch sounds were usually brief and of low magnitude, especially for northern elephant seals. California sea lions (especially pups and juveniles) exhibited more reaction than elephant seals. Harbor seals were the most responsive of the three species.

Northern elephant seals exhibited little reaction to launch sounds (Holst *et al.*, 2005a, b; 2008). Most individuals merely raised their heads briefly upon hearing the launch sounds and then quickly returned to their previous activity pattern (usually sleeping). During some launches, a small proportion of northern elephant seals moved a short distance on the beach, away from their resting site, but settled within minutes.

Responses of California sea lions to the launches varied by individual and age group (Holst *et al.*, 2005a, b; 2008). Some exhibited brief startle responses and increased vigilance for a short period after each launch. Others, particularly pups that were previously

playing in groups along the margin of the haul-outs, appeared to react more vigorously. A greater proportion of hauled-out sea lions typically responded and/or entered the water when launch sounds were louder (Holst *et al.*, 2005a, b; 2008). Adult sea lions already hauled out would mill about on the beach for a short period before settling, whereas those in the shallow water near the beach did not come ashore like the aforementioned pups.

During the majority of launches at SNI, most harbor seals left their haul-out sites on rocky ledges to enter the water and did not return during the duration of the video-recording period (which sometimes extended up to several hours after the launch ended) (Holst *et al.*, 2005a, b; 2008). During monitoring the day following a launch, harbor seals were usually hauled out again at these sites (Holst and Lawson, 2002).

The type of vehicle being launched is also important in determining the nature and extent of pinniped reactions to launch sounds. Holst *et al.* (2008) showed that significantly more California sea lions responded during Coyote launches than during other vehicle launches. AGS launches caused the fewest reactions. Elephant seals showed significantly less reaction during launches involving vehicles other than Vandals (Holst *et al.*, 2008). The BQM–34 and especially the BQM–74 subsonic drone vehicles that may be launched from SNI are smaller and less noisy than Coyotes. Launches of BQM–34 drones from Point Mugu have not normally resulted in harbor seals leaving their haul out area at the mouth of Mugu Lagoon approximately 3.2 km (2 mi) to the side of the launch track (Lawson *et al.*, 1998).

In addition to noise, the night launches will also emit light. Haul-out beaches near Building 807 Launch Complex in particular may be affected by light during ABL launches. No additional responses to the light, above and beyond those that are elicited by the launch sounds are anticipated. Continuation of the proposed launch monitoring program (see the ''Monitoring'' section later in this document) will enable further documentation of pinniped responses to various launch vehicles with different acoustic characteristics and to nighttime launches.

Since the launches are relatively infrequent, and of such brief duration, it is unlikely that pinnipeds near the launch sites will become habituated to the sounds. Additionally, the infrequent launches (up to 40 per year, of which some will be of small vehicles) will cause masking for no more than a very small fraction of the time during any single day (i.e., usually less than 2 s and rarely more than 5 s during a single launch). NMFS believes that these occasional brief episodes of masking will have minimal effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

It is possible that launch-induced stampedes could have adverse impacts on individual pinnipeds on the west end of SNI. However, during vehicle launches in 2001–2007, there was no evidence of launch-related injuries or deaths (Holst *et al.*, 2005a, b; 2008). On several occasions, harbor seals and California sea lion adults moved over pups as the animals moved in response to the launches, but the pups did not appear to be injured (Holst *et al.*, 2005a, 2008). Given the large numbers of pinnipeds giving birth on SNI, it is expected that injuries and deaths will occur as a result of natural causes. For example, during the 1997–98 El Nino event, pup mortality reached almost 90 percent for northern fur seals at nearby San Miguel Island, and some adults may have died as well (Melin *et al.*, 2005). Pup mortality also increased during this period for California sea lions.

Indirect evidence that launches have not caused significant, if any, mortality comes from the fact that populations of northern elephant seals and especially California sea lions on SNI are growing rapidly despite similar launches for many years. Harbor seal numbers have remained stable, but new harbor seal haul-out sites have been established at locations directly under and near the launch tracks of vehicles (see Figure 9 in the Navy's application).

Hearing Impairment of Pinnipeds from Vehicle Launches

Although it is possible that some pinnipeds (particularly harbor seals) may incur TTS (and possibly, although highly unlikely, even slight permanent threshold shift (PTS)) during launches from SNI, hearing impairment has not been shown for pinniped species exposed to launch sounds. Thorson *et al.* (1998, 1999) used measurements of auditory brainstem response to demonstrate that harbor seals did not exhibit loss in hearing sensitivity following launches of large vehicles at Vandenberg Air Force Base (VAFB), California.

There are few published data on TTS thresholds for pinnipeds in air exposed to impulsive or brief non-impulsive sounds. J. Francine, quoted in 66 FR 41837 (August 9, 2001), has mentioned evidence of mild TTS in captive California sea lions exposed to a 0.3–s transient sound with an SEL of 135 dBA re 20 $\mu Pa^2 \bullet s$ (see also Bowles *et al.*, 1999). However, mild TTS may occur in harbor seals exposed to SELs lower than 135 dB SEL (A. Bowles, pers. comm., 2003 in NAWCWD, 2008). Data indicate that the TTS threshold on an SEL basis may actually be around 129–131 dB re 20 $\mu Pa^2 \bullet s$ for harbor seals, within their frequency range of good hearing (Kastak *et al.*, 2004; Southall *et al.*, 2007). The same research teams have found that the TTS thresholds of California sea lions and elephant seals exposed to strong sounds are higher as compared to the harbor seal (Kastak *et al.*, 2005; see Table 5 in the Navy's application). Based on these studies and other available data, Southall *et al.* (2007) propose that single impulsive sounds, such as those from a sonic boom, may induce mild TTS if the received peak pressure is approximately 143 dB re 20 µPa (peak) or if received frequency weighting appropriate for pinnipeds in air (Mpa-weighted) SEL is approximately 129 dB re 20 $\mu Pa^2 \bullet s$. Those levels apply specifically to harbor seals; those levels are not expected to elicit TTS in elephant seals or California sea lions (Southall *et al.*, 2007). Less is known about levels that may cause PTS, but in order to elicit PTS, a single sound pulse would probably need to exceed the TTS threshold by at least 15 dB or more, on an SEL basis (Southall *et al.*, 2007; see Table 5 in the application).

Available evidence from launch monitoring at SNI in 2001–2007 suggests that only a small minority (if any) of the pinnipeds at SNI are exposed to levels of launch sounds that could elicit TTS or even PTS (see Holst *et al.*, 2008). The assumed TTS threshold for the species with the most sensitive hearing (harbor seal) is 129–131 dB re 20 $\mu Pa^2 \bullet s$ (Mpa-weighted), with higher values applying to other species (see Table 5 in the application). The measured SEL values near pinniped beaches during vehicle launches at SNI during 2001–2007 were less than 129 dB re 20 $\mu Pa^2 \bullet s$ (A- or Mpa-weighted). In fact, few if any pinnipeds were exposed to SELs greater than 122 dB re 20 $\mu Pa^2 \bullet s$ on an Mpa-weighted basis and greater than 118 dBA, even on beaches near Building 807 Launch Complex (Holst *et al.*, 2008). Sounds at these levels are not expected to cause TTS or PTS. However, small numbers of northern elephant seals and California sea lions may have been exposed to peak pressures as high as 150 dB re 20 µPa when Vandals flying over the beach created a sonic boom. That peak-pressure level would not be expected to elicit PTS in elephant

seals or California sea lions, but might be near the minimum level that could elicit PTS in harbor seals if any harbor seals at SNI had been exposed to such high levels (which apparently did not occur; see Holst *et al.*, 2008). Harbor seals were not hauled out on beaches where such high sound levels were measured, and they do not haul out near the Building 807 Launch Complex. However, it is possible that some harbor seals, and perhaps elephant seals and California sea lions, did incur TTS during launches at SNI, as peak-pressure levels at haul-out sites sometimes reached greater than or equal to 143 dB re 20 µPa when a sonic boom occurred. In the event that TTS did occur, it would typically be mild and reversible.

Non-auditory Physiological Responses to Vehicle Launches

Wolski (1999) examined the physiological responses of pinnipeds to simulated sonic booms. He noted that harbor seals responded with bradycardia, reduced movement, and brief apneas (indicative of an orienting response). Northern elephant seals responded similarly, and the response of California sea lions was variable. Perry *et al.* (2002) examined the effects of sonic booms from Concorde aircraft on harbor seals and gray seals (*Halichoerus grypus*). The authors noted that observed effects on heart rate were generally minor and not statistically significant; gray seal heart rates showed no change in response to booms, whereas harbor seals showed slightly elevated heart rates.

Humans and terrestrial mammals subjected to prolonged exposure to noise can sometimes show physiological stress. However, even in well-studied human and terrestrial mammal populations, noise-induced stress is not easily demonstrated. There have been no studies to determine whether noise-induced stress occurs in pinnipeds. If noise-induced stress does occur in marine mammals, it is expected to occur primarily in those exposed to chronic or frequent noise. It is very unlikely that it would occur in animals exposed to only a few, very brief noise events over the course of a year, as would be the case with these proposed activities.

Summary of Potential Effects on Marine Mammals

Vehicle launches are characterized by sudden sound onsets, moderate to high peak sound levels (depending on the type of vehicle and distance), and short sound duration. Effects of vehicle launches on some pinnipeds in the Channel Islands have been studied. In most cases, where pinnipeds have been exposed to the sounds of large vehicle launches (such as the Titan IV from VAFB), animals did not flush into the sea unless the sound level to which they were exposed was relatively high or of an unusual duration or quality (e.g., the explosion of a Titan IV). Similarly, at SNI, the proportion of responding California sea lions and elephant seals to vehicle launches are significantly higher with increasing SELs; harbor seal reactions to launch sounds are more variable.

Thus, responses of pinnipeds on beaches to acoustic disturbance arising from launches are highly variable. In addition, some species (such as harbor seals) are more reactive when hauled out than are other species (e.g., northern elephant seals). Responsiveness also varies with time of year and age class, with juvenile pinnipeds being more likely to react strongly and leave the haul-out site. While the reactions are variable and can involve occasional stampedes or other abrupt movements by some individuals, biological impacts of these responses appear to be limited. The responses are not likely to result in significant injury or mortality or long-term negative consequences to individuals or pinniped populations on SNI.

Based on measurements of received sound levels during previous launches at SNI (e.g., Holst *et al.*, 2005a,b; 2008), the Navy and NMFS expect that there may be some effects on hearing sensitivity (TTS) for a few of the pinnipeds present, but these effects are expected to be mild and reversible. Although it is possible that some launch sounds as measured close to the launchers may exceed the PTS criteria, it is unlikely that any pinnipeds would be close enough to the launchers to be exposed to sounds strong enough to cause PTS. Therefore, NMFS anticipates that pinnipeds hauled out during launches on SNI will only incur short-term, minimal Level B harassment.

Numbers of Marine Mammals Estimated to be Taken by Harassment

The marine mammal species NMFS believes likely to be taken by Level B harassment incidental to vehicle launch operations from SNI are harbor seals, California sea lions, and northern elephant seals. All of these species are protected under the MMPA, and none are listed under the Endangered Species Act (ESA). Any takes are most likely to result from operational noise as launch vehicles pass near haul-out sites and/or associated visual cues. As noted earlier, sightings of northern fur seals, Steller sea lions, and Guadalupe fur seals have been extremely rare or low on SNI. Therefore, no takes by harassment are anticipated for these three species incidental to the proposed activities.

The Navy provisionally estimates that the following numbers of pinnipeds may be taken by Level B harassment annually: 474 elephant seals; 467 harbor seals; and 1,606 California sea lions. The animals affected may be the same individual animals or may be different individuals, depending on site fidelity. Based on the results of the marine mammal monitoring conducted by the Navy during the 2001–2007 launch program, the estimated number of potential Level B harassment takes would actually be less than estimated or previously authorized. The criteria used by the Navy to estimate take numbers for the 2009–2014 program were developed specifically for the launches identified in the specified activity and are based on monitoring data collected during the 2001–2007 launch program at the same location and involving the same rocket types. Section 7.7 of the Navy's application contains a full description of how they developed their take numbers (see **ADDRESSES**).

With the incorporation of mitigation measures proposed later in this document, the Navy and NMFS expect that only Level B incidental harassment may occur as a result of the proposed activities and that these events will result in no detectable impact on marine mammal species or stocks or on their habitats.

Potential Effects of Specified Activities on Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. Harbor seals, California sea lions, and northern elephant seals use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Reef), and rocky cobble (e.g., Vizcaino Beach). Pinnipeds continue to use beaches around the western end of SNI, and indeed are expanding their use of some beaches despite ongoing launch activities for many years. Thus, periodic launches do not prevent pinnipeds from using beaches.

Pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will not persist in the water near the island for more than a few seconds. Therefore, it is not expected that the launch activities will

have any impact on the food or feeding success of these pinnipeds.

Boosters from vehicles (e.g., JATO bottles for BQM drone vehicles) may be jettisoned shortly after launch and fall on the island but not on the beaches. Fuel contained in these boosters is consumed rapidly and completely, so there would be no risk of contamination even in the very unlikely event that a booster did land on a beach. Overall, the proposed vehicle launch activity is not expected to cause significant impacts on habitats used by pinnipeds on SNI or on the food sources that these pinnipeds utilize.

Potential Effects of Specified Activities on Subsistence Needs

NMFS has preliminarily determined that the issuance of an LOA for Navy target and missile launch activities on SNI would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses since there are no such uses for these pinniped species in California.

Mitigation

To avoid additional harassment to the pinnipeds on beach haul-out sites and to avoid any possible sensitizing and/or predisposing pinnipeds to greater responsiveness to the sights and sounds of a launch, the Navy will limit activities near the beaches in advance of launches. Existing safety rules for vehicle launches provide a built-in mitigation measure of this type: personnel are not normally allowed near any of the pinniped haul-out beaches that are located close to the flight track on the western end of SNI within several hours prior to launch. Also, because of the presence of colonies of sensitive seabirds (as well as pinniped haul-out sites) on western SNI, there are already special restrictions on personnel movements near beaches on which pinnipeds haul out. Furthermore, most of these beaches are closed to personnel year-round.

The following mitigation measures have been incorporated into the proposed regulations: (1) The Navy must avoid, whenever possible, launch activities during harbor seal pupping season (February to April), unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives; (2) the Navy must limit, whenever possible, launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives; (3) the Navy must not launch vehicles from the Alpha Complex at low elevation (less than 305 m [1,000 ft]) on launch azimuths that pass close to pinniped haul-out site(s) when occupied; (4) the Navy must avoid, where practicable, multiple vehicle launches in quick succession over haul-out sites when occupied, especially when young pups are present; and (5) the Navy must limit launch activities during nighttime hours, except when required by the test objectives (e.g., up to 10 nighttime launches for ABL testing per year).

Additionally, during and for some time following each launch, personnel are not allowed near any of the pinniped haul-out beaches that are close to the flight track on the western end of SNI. Lastly, prior to and after launch operations, associated fixed-wing and rotary aircraft will maintain an altitude of at least 305 m (1,000 ft) when traveling near beaches on which pinnipeds are hauled out, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 305 m (1,000 ft).

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

Monitoring

As part of its application, the Navy provided a proposed monitoring plan, similar to that adopted for previous Incidental Harassment Authorizations and regulations (see 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002; 68 FR 52132, September 2, 2003), for assessing impacts to marine mammals from target and missile launch activities from SNI. This monitoring plan is described in detail in the Navy's application (see **ADDRESSES**).

The Navy proposes to conduct the following monitoring during the first year under an LOA and regulations.

Land-based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring will occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring would be via autonomous video cameras. Pinniped behavior on the beach will be documented prior to, during, and following the launch. Additionally, new video equipment capable of obtaining video during night launches will be acquired for the ABL program.

During the day of each missile launch, the observer would place three digital video cameras overlooking chosen haul-out sites. Each camera would be set to record a focal subgroup within the haul-out aggregation for a maximum of 4 hr or as permitted by the videotape capacity. Following a launch, video records will be made for up to 1 hr. Observers will return to the observing sites as soon as it is safe to record the numbers and types of pinnipeds that are on the haul-out(s).

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Additional details of the field methods and video and data analysis can be found in the Navy's application.

Acoustical Measurements

During each launch, the Navy would obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data would be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape recorders should there be prolonged launch delays. To the extent possible, acoustic recording locations would correspond with the sites where video monitoring is taking place. The collection of acoustic data would provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be sent to the acoustical contractor for sound analysis. Additional details regarding the installation and calibration of the acoustic instruments

and analysis methods are provided in the Navy's application.

Reporting

An interim technical report is proposed to be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with a request for a follow-on annual LOA. This interim technical report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information would be available to be included for any launches during the 60–day period immediately preceding submission of the interim report to NMFS.

If a freshly dead or seriously injured pinniped is found during post-launch monitoring, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

The proposed 2009–2010 launch monitoring activities will constitute the eighth year of formal, concurrent pinniped and acoustical monitoring during launches from SNI. Following submission in 2010 of the interim report on the first phase of monitoring under an LOA, the Navy believes that it would be appropriate for the Navy and NMFS to discuss the scope for any additional launch monitoring work on SNI subsequent to the first LOA issued under these regulations. In particular, some biological or acoustic parameters may be documented adequately prior to or during the first LOA (2009–2010), and it may not be necessary to continue all aspects of the monitoring work after that period.

In addition to annual LOA reports, NMFS proposes to require the Navy to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of the regulations. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOAs, plus preliminary information for launches during the first 6 months of the final LOA. A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of the regulations.

ESA

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required. It should be noted however that SNI is the location to which southern sea otters have been translocated in an attempt to establish a population separate from that in central California. This experimental population may be affected by the target and missile launch activities at SNI. Sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). Under Public Law 99–625, this experimental population of sea otters is treated as a proposed species for purposes of Section 7 when the action (as here) is defense related. Proposed species require an action agency to confer with NMFS or the USFWS under Section 7 of the ESA when the action is likely to jeopardize the continued existence of the species. The information available for the Navy's proposed activities described in this document or for NMFS' proposed action of promulgating 5–yr regulations and the subsequent issuance of LOAs to the Navy for those activities does not indicate that sea otters are likely to be jeopardized. Therefore, a consultation is not required.

National Environmental Policy Act

NMFS has prepared a Draft EA analyzing the potential issuance of regulations and annual LOAs to the Navy for these proposed activities. The Draft EA will be made available for public comment concurrently with these proposed regulations (see **ADDRESSES**). NMFS will either finalize the EA and prepare a Finding of No Significant Impact or prepare an Environmental Impact Statement prior to issuance of the final rule.

Coastal Zone Management Act Consistency

On February 14, 2001, by a unanimous vote, the California Coastal Commission (CCC) concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing CCC staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat, and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act (CCA). Since the activities described in these proposed regulations are analogous to those reviewed by the CCC in 2001, NMFS has determined that the activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the CCA.

National Marine Sanctuaries Act

According to the Navy, except for aircraft and vessel traffic transiting the area, none of the Navy's proposed activities would take place within the Channel Islands National Marine Sanctuary. On December 8, 2008, NMFS contacted the National Ocean Service's Office of National Marine Sanctuaries (ONMS) regarding NMFS' action of promulgating regulations and issuing LOAs for the Navy activities described in the Navy's application and this document to determine whether or not NMFS' action is likely to destroy, cause the loss of, or injure any sanctuary resources. On December 12, 2008, the ONMS determined that no further consultation with NMFS was required on its proposed action as this action is not likely to destroy, cause the loss of, or injure any national marine sanctuary resources.

Preliminary Determinations

NMFS has preliminarily determined that target and missile launch activities and aircraft and helicopter operations from SNI, as described in this document and in the application for regulations and subsequent LOAs, will result in no more than Level B harassment of Pacific harbor seals, California sea lions, and northern elephant seals. The effects of these military readiness activities from SNI will be limited to short term and localized changes in behavior, including temporarily vacating haul-outs, and possible TTS in the hearing of any pinnipeds that are in close proximity to a launch pad at the time of a launch. NMFS has also preliminarily determined that any takes will have no more than a negligible impact on the affected species and stocks. No take by injury and/or death is anticipated, and the potential for permanent hearing impairment is unlikely. Harassment takes will be at the lowest level practicable due to incorporation of the proposed mitigation measures mentioned previously in this document. NMFS has proposed regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking. Additionally, the vehicle launch activities and aircraft and helicopter operations will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses of these three pinniped species in California waters.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to authorize the taking (see **ADDRESSES**). Prior to submitting comments, NMFS recommends readers review NMFS' responses to comments made previously (see 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002; 68 FR 24905, May 9, 2003; 68 FR 52132, September 2, 2003) for this action.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The NAWCWD, U.S. Navy, is the only entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. As a result, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 16, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart N is added to part 216 to read as follows:

Subpart N—Taking Of Marine Mammals Incidental To Target and Missile Launch Activities from San Nicolas Island, CA

Sec.

216.150 Specified activity and specified geographical region.
216.151 Effective dates.
216.152 Permissible methods of taking.
216.153 Prohibitions.
216.154 Mitigation.
216.155 Requirements for monitoring and reporting.
216.156 Applications for Letters of Authorization.
216.157 Letters of Authorization.
216.158 Renewal of Letters of Authorization.
216.159 Modifications of Letters of Authorization.

Subpart N—Taking Of Marine Mammals Incidental To Target and Missile Launch Activities from San Nicolas Island, CA

§ 216.150 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in target missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Coyote (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

§ 216.151 Effective dates.

Regulations in this subpart become effective upon issuance of the final rule.

§ 216.152 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § § 216.106 and 216.157, the U.S. Navy, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.150, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in § 216.150(b) and is limited to Level B Harassment.

§ 216.153 Prohibitions.

Notwithstanding takings contemplated in § 216.150 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.157, no person in connection with the activities described in § 216.150 may:

(a) Take any marine mammal not specified in § 216.150(b);

(b) Take any marine mammal specified in § 216.150(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.150(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.157.

§ 216.154 Mitigation.

(a) The activity identified in § 216.150 must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.150(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.157 must be implemented. These mitigation measures include (but are not limited to):

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid, whenever possible, launch activities during harbor seal pupping season (February to April), unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives.

(3) The holder of the Letter of Authorization must limit, whenever possible, launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for vehicle launch trajectory necessary to meet mission objectives.

(4) The holder of the Letter of Authorization must not launch vehicles from the Alpha Complex at low elevation (less than 1,000 feet (305 m)) on launch azimuths that pass close to pinniped haul-out sites when occupied.

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-

out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours, except when required by the test objectives.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (305 m) from pinniped haul-outs and rookeries, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 feet (305 m).

(8) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

(9) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 216.155 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.157 for activities described in § 216.150 are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 216.150 is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 216.150(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), and the Administrator, Southwest Region, NMFS, or designee, by telephone (562–980–3232), within 48 hours of the discovery of the injured or dead animal.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for no less than 1 hour immediately following the launch of Coyote and similar types of target missiles.

(iii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to launch, during launch, and for no less than 1 hour after the launch of the BQM–34, BQM–74, Tomahawk, RAM target and similar types of missiles.

(iv) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;

(H) Substratum type;

(I) Substratum slope;

(J) Weather condition;

(K) Horizontal visibility; and

(L) Tide state.

(2) *Acoustic Monitoring.* (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to the National Marine Fisheries Service, Southwest Regional Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of the regulations in this subpart, providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of the regulations in this subpart.

(5) Both the 60–day and final reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to

acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under §§ 216.106 and 216.157, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§ 216.156 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations contained in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.150 (Naval Air Warfare Center Weapons Division, U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.157 or a renewal under § 216.158.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

§ 216.157 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.158.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.158 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.157 for the activity identified in § 216.150 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.155 (e), and the Letter of Authorization issued under § 216.157, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.154 and 216.155 and the Letter of Authorization issued under §§ 216.106 and 216.157, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.158 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 216.159 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.157 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.158, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.150(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.157 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–6141 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 53
Friday, March 20, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 17, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Application for Authorization to Use the 4–H Name and/or Emblem.

OMB Control Number: 0524–0034.

Summary of Collection: Use of the 4–H Club Name and/or Emblem is authorized by an Act of Congress, (Pub. L. 772, 80th Congress, 645, 2nd Session). Use of the 4–H Club Name and/or Emblem by anyone other than the 4–H Clubs and those duly authorized by them, representatives of the Department of Agriculture, the Land-Grant colleges and universities, and person authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary has delegated authority to the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) to authorize others to use the 4–H Name and Emblem. Therefore, anyone requesting, authorization from the Administrator to use the 4–H Name and Emblem is asked to describe the proposed use in a formal application. CSREES will collect information using form CSREES–01 ''Application for Authorization to Use the 4–H Club Name or Emblem.''

Need and Use of the Information: CSREES will collect information on the name of individual, partnership, corporation, or association; organizational address, name of authorized representative; telephone number; proposed use of the 4–H Name or Emblem, and plan for sale or distribution of product. The information collected by CSREES will be used to determine if those applying to use the 4–H name and emblem are meeting the requirements and quality of materials, products and/or services provided to the public. If the information were not collected, it would not be possible to ensure that the products, services, and materials meet the high standards of 4–H, its educational goals and objectives.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 60.

Frequency of Responses: Reporting: Other (every 3 years).

Total Burden Hours: 30.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–6121 Filed 3–19–09; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 17, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Rural Utilities Service

Title: Advance of Loan Funds and Budgetary Control and Related Burdens.

OMB Control Number: 0572–0015.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by the Rural Electrification Act (RE Act) of 1936, as amended, ''to make loans in several States and territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems.'' Borrowers will provide the agency with information that supports the use of the funds as well as identify the type of projects for which they will use the funds.

Need and Use of the Information: RUS electric borrowers will submit RUS form 595 and 219. Form 595, Financial Requirement & Expenditure Statement, to request an advance of loan funds remaining for an existing approved loan and to report on the expenditure of previously advanced loan funds. Form 219, Inventory of Work Orders, serves as a connecting line and provides an audit trail that verifies the evidence supporting the propriety of expenditures for construction of retirement projects that supports the advance of funds. The information collected will ensure that loans funds are expended and advanced for RUS approved budget process and amounts. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 670.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,215.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–6124 Filed 3–19–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–TM–09–0014; TM–09–03]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are Monday, May 4, 2009, 9 a.m. to 5 p.m.; Tuesday, May 5, 2009, 8 a.m. to 5 p.m.; and Wednesday, May 6, 2009, 8:30 a.m. to 5 p.m. Requests from individuals and organizations wishing to make oral presentations at the meeting are due by the close of business on April 20, 2009.

ADDRESSES: The meeting will take place at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

- Requests for copies of the NOSB meeting agenda, may be sent to Ms. Valerie Frances, Executive Director, NOSB, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4004–So., Ag Stop 0268, Washington, DC 20250–0268. The NOSB meeting agenda and proposed recommendations may also be viewed at *http://www.ams.usda.gov/nop*.
- Comments on proposed NOSB recommendations may be submitted by the close of business on April 20, 2009, in writing to Ms. Valerie Frances at either the postal address above or via the Internet at *http://www.regulations.gov* only. The comments should identify Docket No. AMS–TM–09–0014. It is our intention to have all comments to this notice whether they are submitted by mail or the Internet available for viewing on the *http://www.regulations.gov* Web site.
- Requests to make an oral presentation at the meeting may also be sent by April 20, 2009, to Ms. Valerie Frances at the postal address above, by e-mail at *valerie.frances@ams.usda.gov*, via facsimile at (202) 205–7808, or phone at (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Valerie Frances, Executive Director, NOSB, National Organic Program (NOP), (202) 720–3252, or visit the NOP Web site at: *http://www.ams.usda.gov/nop*.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC in March 1992, and currently has six subcommittees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the NOP to the Secretary of Agriculture. Since that time, the NOSB has submitted 166 addenda to its recommendations and reviewed more than 342 substances for inclusion on the National List of Allowed and Prohibited Substances. The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000, (65 FR 80548). The rule became effective April 21, 2001.

In addition, the OFPA authorizes the National List of Allowed and Prohibited Substances and provides that no allowed or prohibited substance would remain on the National List for a period exceeding five years unless the exemption or prohibition is reviewed and recommended for renewal by the NOSB and adopted by the Secretary of Agriculture. This expiration is commonly referred to as sunset of the National List. The National List appears at 7 CFR part 205, subpart G.

The principal purposes of the NOSB meeting are to provide an opportunity for the NOSB to receive an update from the USDA/NOP and hear progress reports from NOSB committees regarding work plan items and proposed action items. The last NOSB meeting was held on November 17–20, 2008, in Washington, DC.

At its last meeting, the Board recommended the addition of two materials with one on the National List section 205.601 for use in crops, and with one on section 205.606 for use in handling. The Board also recommended an expiration date of October 21, 2012, for all forms of Tetracycline used in organic crop production on section 205.601.

At this meeting, the NOSB will begin its review of the 11 materials scheduled

to expire after September 12, 2011. There are two synthetic substances: Hydrogen chloride (CAS # 7647–01–0) and Ferric phosphate (CAS # 10045–86–0), currently allowed for use in organic crop production, that will no longer be allowed for use after September 12, 2011. There are nine materials: Egg white lysozyme (CAS # 9001–63–2), L-Malic acid (CAS # 97–67–6), Microorganisms, Activated charcoal (CAS #s 7440–44–0; 64365–11–3), Cyclohexylamine (CAS # 108–91–8), Diethylaminoethanol (CAS # 100–37–8), Octadecylamine (CAS # 124–30–1), Peracetic acid/Peroxyacetic acid (CAS # 79–21–0), Sodium acid pyrophosphate (CAS # 7758–16–9), and Tetrasodium pyrophosphate (CAS # 7722–88–5), currently allowed for use in organic handling, that will no longer be allowed for use after September 12, 2011. The sunset review process must be concluded no later than September 12, 2011. If renewal is not concluded by those dates, the use or prohibition of these 11 materials will no longer be in compliance with the NOP.

At this meeting, the Policy Development Committee will present recommendations regarding revisions to the NOSB Policy and Procedures Manual and the Guide for new NOSB members as well as discuss their on-going collaboration with the NOP to review the NOP responses to prior NOSB recommendations.

The Compliance, Accreditation, and Certification Committee will present their recommendations for use as guidance by accredited certifying agents for the labeling of products certified as 100 percent organic and their recommendation for use as guidance by the NOP to meet the requirements of Sec. 2117 (7 U.S.C. 6516) and section 205.509 in regard to Peer Review.

The Compliance, Accreditation, and Certification and the Crops Committees will jointly present their recommendation offering guidance for accredited certifying agents and the NOP to strengthen the implementation of the principles of biodiversity and conservation throughout the organic standards.

The Crops Committee will present recommendations on the materials: Isoparrafinic hydrocarbon and the on-farm manufacture of Sulfurous Acid petitioned for use on section 205.601. The Committee will begin their review on the continued use or prohibition of the material exemptions for Hydrogen chloride (CAS # 7647–01–0) and Ferric phosphate (CAS # 10045–86–0), with their respective annotations and limitations, currently allowed for use in organic crop production, that will no longer be allowed for use after September 12, 2011.

The Livestock Committee will present their recommendations on the materials: Propionic Acid and Injectable vitamins and minerals for use as supplements, petitioned for inclusion in 205.603 for use in organic livestock production. The Committee will also present their recommendation in regard to the development of organic aquaculture standards for bivalves.

The Materials and Handling Committees will jointly present their recommendation on the definition of a nonagricultural substance in section 205.2.

The Handling Committee will present their recommendations on the materials: Propionic acid, Sodium chlorite, acidified, and Propane as a processing aid, petitioned for inclusion in section 205.605 for use in organic products. The Committee will present their recommendations on the materials: Chickory Root Extract, Red Corn Color, Myrrh Essential Oil, and Wheat Germ, petitioned for inclusion in section 205.606 for use in organic products depending on final commercial availability determinations performed by accredited certifying agents. The Committee will present their recommendations on the material: Lecithin, bleached, petitioned for removal from use from section 205.605 (b) in organic products and on the material Lecithin, unbleached, fluid, petitioned for removal from section 205.606 for use in organic products.

The Handling Committee will also begin their review on the continued use or prohibition of the material exemptions for nine materials: Egg White Lysozyme (CAS # 9001–63–2), L-Malic acid (CAS # 97–67–6), Microorganisms, Activated charcoal (CAS #s 7440–44–0; 64365–11–3), Cyclohexylamine (CAS # 108–91–8), Diethylaminoethanol (CAS # 100–37–8), Octadecylamine (CAS # 124–30–1), Peracetic acid/Peroxyacetic acid (CAS # 79–21–0), Sodium acid pyrophosphate (CAS # 7758–16–9), and Tetrasodium pyrophosphate (CAS # 7722–88–5), with their respective annotations and limitations currently allowed for use in organic handling on section 205.605, that will no longer be allowed for use after September 12, 2011.

The meeting is open to the public. The NOSB has scheduled time for public input for Monday, May 4, 2009, from 10:45 a.m. to 5 p.m. and Tuesday, May 5, 2009, from 3:30 p.m. to 5 p.m. Individuals and organizations wishing to make oral presentations at the meeting may forward their requests by mail, facsimile, e-mail, or phone to Ms. Valerie Frances as listed in **ADDRESSES** above. Individuals or organizations will be given approximately five minutes to present their views. All persons making oral presentations are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation. Anyone may submit written comments at the meeting. Persons submitting written comments are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site at *http://www.ams.usda.gov/nop* to view available meeting documents prior to the meeting, or visit *http://www.regulations.gov* to submit and view comments as provided for in **ADDRESSES** above. Documents presented at the meeting will be posted for review on the NOP Web site approximately six weeks following the meeting.

Dated: March 16, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–6056 Filed 3–19–09; 8:45 am]

BILLING CODE 3410–02–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition And Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletions From Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: 4/20/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each product will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7520–01–441–9130—Kit, Fingerprint.
NPA: The Arbor School, Houston, TX.
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS OFC SUP CTR—OFFICE EQUIPMENT, NEW YORK, NEW YORK.
COVERAGE: B-List for the broad Government requirement as aggregated by the General Services Administration.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

NSN: 7520–01–557–3151—Antimicrobial, Black Ink.
NSN: 7520–01–557–3154—Antimicrobial, Blue Ink.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.
NSN: 7045–01–483–7833—CD Access File.
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, WI.
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.
NSN: 7510–01–537–7841—DAYMAX, IE/LE Month at a View, 2008, 3-hole.
NSN: 7510–01–537–7847—DAYMAX, IE/LE Week at a View, 2008, 3-hole.
NSN: 7510–01–537–7850—DAYMAX, IE/LE Day at a View, 2008, 3-hole.
NSN: 7510–01–537–7853—DAYMAX, GLE Day at a View, 2008, 7-hole.
NSN: 7510–01–537–7856—DAYMAX, GLE Month at a View, 2008, 7-hole.
NSN: 7510–01–537–7859—DAYMAX, GLE Week at a View, 2008, 7-hole.
NSN: 7510–01–537–7863—DAYMAX, Tabbed Monthly, 2008, 3-hole.
NSN: 7510–01–537–7868—DAYMAX, Tabbed Monthly, 2008, 7-hole.
NSN: 7530–01–537–7837—DAYMAX System, LE, 2008, Black.
NSN: 7530–01–537–7837L—DAYMAX System, LE, 2008, Black w/Logo.
NSN: 7530–01–537–7838—DAYMAX System, IE, 2008, Black.
NSN: 7530–01–537–7838L—DAYMAX System, IE, 2008, Black w/Logo.
NSN: 7530–01–537–7839—DAYMAX System, LE, 2008, Navy.
NSN: 7530–01–537–7839L—DAYMAX System, LE, 2008, Navy w/Logo.
NSN: 7530–01–537–7840—DAYMAX System, LE, 2008, Burgundy.
NSN: 7530–01–537–7840L—DAYMAX System, LE, 2008, Burgundy w/Logo.
NSN: 7530–01–537–7842—DAYMAX System, Desert, Camouflage Planner, 2008.
NSN: 7530–01–537–7842L—DAYMAX System, Desert, Camouflage Planner, 2008 w/Logo.
NSN: 7530–01–537–7843—DAYMAX System, IE, 2008, Navy.
NSN: 7530–01–537–7843L—DAYMAX System, IE, 2008, Navy w/Logo.
NSN: 7530–01–537–7844—DAYMAX System, GLE, 2008, Black.
NSN: 7530–01–537–7844L—DAYMAX System, GLE, 2008, Black w/Logo.
NSN: 7530–01–537–7845—DAYMAX System, JR Version, 2008, Black.
NSN: 7530–01–537–7845L—DAYMAX System, JR Version, 2008, Black w/Logo.
NSN: 7530–01–537–7846—DAYMAX System, IE, 2008, Burgundy.
NSN: 7530–01–537–7846L—DAYMAX System, IE, 2008, Burgundy w/Logo.
NSN: 7530–01–537–7848—DAYMAX System, GLE, 2008, Navy.
NSN: 7530–01–537–7848L—DAYMAX System, GLE, 2008, Navy w/Logo.
NSN: 7530–01–537–7849—DAYMAX System, JR Version, 2008, Navy.
NSN: 7530–01–537–7849L—DAYMAX System, JR Version, 2008, Navy w/Logo.
NSN: 7530–01–537–7852—DAYMAX System, GLE, 2008, Burgundy.
NSN: 7530–01–537–7852L—DAYMAX System, GLE, 2008, Burgundy w/Logo.
NSN: 7530–01–537–7854—DAYMAX System, JR Version, 2008, Burgundy.
NSN: 7530–01–537–7854L—DAYMAX System, JR Version, 2008, Burgundy w/Logo.
NSN: 7530–01–537–7857—DAYMAX System, DOD Planner, 2008.
NSN: 7530–01–537–7857L—DAYMAX System, DOD Planner, 2008 w/Logo.
NSN: 7530–01–537–7864—DAYMAX System, Woodland, Camouflage Planner, 2008.
NSN: 7530–01–537–7864L—DAYMAX System, Woodland Camouflage Planner, 2008 w/Logo.
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA.
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS,

NEW YORK, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–6117 Filed 3–19–09; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Monday, March 30, 2009; 11:30 a.m. EDT.

PLACE: Via Teleconference, Public Dial In—1–800–597–7623, Conference ID # 91116969.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.

II. Staff Director's Report.

- Update on FY09 Appropriation.
- Update on Statutory Report Status.

III. Program Planning.

- Motion to Respond to EEOC's February 6, 2009 Letter Regarding English-in-the-Workplace Document Request.
- Motion to Collect & Make Public Data on Federal Government's Civil Rights Enforcement Efforts.

IV. State Advisory Committee Issues.

- Georgia SAC.

V. Adjourn.

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: March 18, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–6321 Filed 3–18–09; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations (CACPAs). The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs. The Committee also will discuss several economic initiatives, demographic program topics, as well as issues pertaining to 2010 Census communications. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: April 16–17, 2009. On April 16, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 5 p.m. On April 17, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233 telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: CACPAs is composed of 36 members, appointed by the presidents of the American Economic Association, the American Statistical Association, and the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee addresses Census Bureau programs and activities related to each respective association's area of expertise. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: March 13, 2009.

Thomas L. Mesenbourg,

Acting Director, Bureau of the Census.

[FR Doc. E9–6130 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11–2009]

Foreign-Trade Zone 31—Granite City, IL: Expansion of Manufacturing Authority—Subzone 31B; WRB Refining LLC; (Oil Refinery Complex) Madison County, IL

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Tri-City Regional Port District, grantee of FTZ 31, requesting authority on behalf of WRB Refining LLC (WRB), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 31B at the oil refinery complex of WRB located at sites in Madison County, Illinois. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 12, 2009. Subzone 31B (2,100 employees) was approved by the Board on March 10, 1997 for the manufacture of fuel products and certain petrochemical feedstocks (Board Order 878, 62 FR 13593–13594, 3/21/1997). The subzone refinery complex currently consists of 5 sites (totaling approx. 2,075 acres, 290,000 BPD capacity) located near Hwy 111 in Wood River Township, Madison County, Illinois. The refinery is undergoing an expansion that will add units and upgrade existing units within the subzone boundaries that is expected to expand crude production capacity up to 380,000 barrels per day. No additional feedstocks or products have been requested.

Zone procedures would exempt the increased production from customs duty payments on the foreign products used in its exports. On domestic sales of the increased production, the company would be able to choose the duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The duty rates on crude oil range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the additional savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 19, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 3, 2009).

A copy of the request will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Diane Finver at *Diane_Finver@ita.doc.gov*, or (202) 482–1367.

Dated: March 12, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–6162 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 090129078–9079–01]

Request for Public Comments on the Utilization Rate of Export Licenses Issued by the Bureau of Industry and Security

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: A significant percentage of the export licenses issued by the Bureau of Industry and Security (BIS) appear to be unused or used for less than the quantity or value limits authorized by the license. BIS seeks public comment to help it ascertain the reasons for such lack of use or under use. BIS is particularly interested in whether characteristics of the export license application review process induce applicants to apply for greater authorizations than they need and, if such is the case, any costs associated with such applications.

DATES: Comments must be received no later than May 4, 2009.

ADDRESSES: Comments may be submitted via e-mail to *publiccomments@bis.doc.gov.* Please refer to ''Utilization Rate of Export Licenses Issued'' in the subject line. Comments may also be sent to Utilization Rate Study, Office of Technology Evaluation, Room 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Watts, Office of Technology Evaluation, Bureau of Industry and Security, telephone: 202–482–8343; fax: 202–482–5361; e-mail *jwatts@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

BIS, among its other activities, issues licenses for export of items that are subject to the Export Administration Regulations. Most such licenses are valid for two years. A recent BIS review of export data from the Automated Export System (AES), which is used to record actual exports from the United States, indicated that by the end of calendar year 2007, forty-eight percent of the licenses issued in calendar year 2005 for the export of commodities had not been used at all. In addition, some licenses may have been used for less than the full quantity or value authorized. Finally, BIS has no basis for estimating whether similar lack of use or under utilization exists with respect to licenses for the export of software or technology because such exports are often intangible and, therefore, not reported in AES. BIS is seeking information that would help it determine:

- Whether software and technology export licenses also are not used or are underused;
- The reasons that export licenses sometimes are not used or are underused; and
- Whether characteristics of the export licensing process (*e.g.*, ease or difficulty of use, processing times, degree of communication between the government and the applicant, license conditions, etc.) contribute to the practice of not using or under-using export licenses.

The scope of this inquiry is limited to export licenses. It does not encompass reexports, deemed exports or deemed reexports.

The following kinds of information would be useful to BIS's assessment:

- Whether exporters seek an export license prior to receipt of a purchase order or letter of intent, and examples of typical business cases for seeking a license absent such documentation;
- Detailed information concerning instances when exporters have obtained an export license from BIS but then did not use it or used it for less than the quantity or value authorized, including information on whether the export licensing process impacted the transaction, whether sales were lost due to the licensing process and the dollar amount of any such lost sales that are directly attributable to the licensing process;
- Specific information about whether licenses for the export of software or technology are not used or are under used;
- Whether an extension of the validity period of export licenses issued by BIS would increase the probability of the utilization of licenses; and
- Process improvements that BIS could make to enhance the utilization of export licenses (*e.g.*, expedited treatment for applications under specific circumstances).

In the future BIS may seek a more systematic approach (*e.g.*, surveys) to contact exporters and document the reasons impacting licensing utilization rates to further facilitate the utilization of export licenses.

How To Comment

All comments must be in writing and submitted to one of the addresses indicated above. Comments must be received by BIS no later than May 4, 2009. BIS may consider comments received after that date if feasible to do so, but such consideration can not be assured. All comments submitted in response to this notice will be made a matter of public record, and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. BIS will seek to protect business confidential information from public disclosure to the extent permitted by law.

Dated: March 16, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–6164 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–909

Certain Steel Nails from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: March 20, 2009.

SUMMARY: The Department of Commerce (''Department'') has determined that a request for a new shipper review (''NSR'') of the antidumping duty order on certain steel nails (''steel nails'') from the People's Republic of China (''PRC''), received on February 25, 2009, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for this NSR is January 23, 2008, through January 31, 2009.[1]

FOR FURTHER INFORMATION CONTACT: Tim Lord, 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: 202–482–7425.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on certain steel nails from the PRC was published in the **Federal Register** on August 1, 2008. *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961 (August 1, 2008) (''*Antidumping Duty Order*''). On February 25, 2009, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.214(c), the Department received a NSR request from Qingdao Denarius. Qingdao Denarius' request was properly made during February 2009, which is the semi–annual anniversary of the *Antidumping Duty Order*. Qingdao Denarius certified that it is a producer and exporter of the subject merchandise upon which the request was based. Qingdao Denarius also submitted a public version, which adequately summarized proprietary information and provided explanations as to why certain proprietary information is not capable of summarization.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Qingdao Denarius certified that it did not export steel nails to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Qingdao Denarius certified that, since the initiation of the investigation, it has never been affiliated with any Chinese exporter or producer who exported steel nails to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Qingdao Denarius also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Qingdao Denarius submitted documentation establishing the following: (1) the date on which Qingdao Denarius first shipped steel nails for export to the United States and the date on which the steel nails were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection (''CBP'') database queries in an attempt to confirm that Qingdao Denarius's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR. The information we examined was consistent with that provided by Qingdao Denarius.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214, the Department finds that Qingdao Denarius meets the threshold requirements for initiation of a NSR for the shipments of steel nails from the PRC that it produced and exported. *See* ''Memorandum to the File from Tim Lord, Case Analyst, Initiation of AD New Shipper Review: Certain Steel Nails from the People's Republic of China (A–570–909)'' (March 16, 2009).

The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period of April 1, 2006, through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of steel nails from the PRC manufactured and/or exported by Qingdao Denarius must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise at the current PRC–wide entity rate of 118.04 percent. *See Antidumping Duty Order*.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: March 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6155 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] The POR of February 1, 2008, through January 31, 2009, listed in the NSR request submitted by Qingdao Denarius Manufacture Co., Ltd (''Qingdao Denarius'') on February 25, 2009, was incorrect. The correct POR is January 23, 2008, through January 31, 2009, because the suspension of liquidation began on January 23, 2008. *See* 19 CFR 351.214(g)(ii)(B).

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the International Trade Administration's Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews in Certain Softwood Lumber Products from Canada (Secretariat File Number: USA–CDA–2005–1904–01).

SUMMARY: Pursuant to the Order of the Binational Panel dated February 10, 2009, the determination described above was completed on February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Marsha Iyomasa, Deputy United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On February 10, 2009, the Binational Panel issued a memorandum opinion and order, which granted the International Trade Administration's Motion to Dismiss the Complaints, concerning Certain Softwood Lumber Products from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists were discharged from their duties effective February 10, 2009.

Dated: March 13, 2009.

Marsha Iyomasa,

Deputy United States Secretary, NAFTA Secretariat.

[FR Doc. E9–6034 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–819, C–580–862]

Ni-Resist Piston Inserts From Argentina and the Republic of Korea: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigations

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

DATES: *Effective Date:* March 20, 2009.

FOR FURTHER INFORMATION CONTACT: John Conniff (Republic of Korea) or Kristen Johnson (Argentina), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone 202–482–1009 and (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2009, the Department of Commerce (the Department) initiated the countervailing duty investigations of ni-resist piston inserts from Argentina and the Republic of Korea. *See Ni-Resist Piston Inserts from Argentina and the Republic of Korea: Initiation of Countervailing Duty Investigations,* 74 FR 8054, and (February 23, 2009).

Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation if, pursuant to section 703(c)(1)(B)(i) of the Act, the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated or, pursuant to 703(c)(1)(B)(ii) of the Act, the Department finds that ''additional time is necessary to the make the preliminary determination.''

In the Korean investigation, the Department is currently investigating a number of complex alleged subsidy programs including loans from state-owned banks and lending programs where state-owned banks are using commercial banks as a means of financing Korean manufacturers and exporters. In the Argentine investigation, on March 5, 2009, petitioner submitted to the Department timely new subsidy allegations.[1] In that submission, currently under review by the Department, petitioner alleges that Clorindo Appo SRL (Clorindo), the mandatory respondent, received various energy rate subsidies, technical business assistance from an enterprise development center, government financing subsidies in the form of pre-export and post-export loans, import financing, investment financing for small and medium-sized enterprises, and working capital credit from government banks.

Due to the number and complexity of the alleged subsidy programs at issue in the Korean investigation and in light of the new subsidy allegations at issue in the Argentine investigation, we find that we require additional time to complete the preliminary determinations in the respective investigations. Therefore, in accordance with section 703(c)(1)(B)(ii) of the Act, we are fully extending the due date for the preliminary determinations to no later than 130 days after the day on which the investigations were initiated. The deadline for completion of the preliminary determinations is now June 29, 2009.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: March 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6150 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–DS–P

[1] Petitioner is Korff Holdings, LLC d/b/a Quaker City Castings.

DEPARTMENT OF COMMERCE

International Trade Administration

A–823–808

Certain Cut–to-Length Carbon Steel Plate from Ukraine; Final Results of Full Sunset Review of the Suspension Agreement

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

ACTION: Notice of Final Results of the Full Sunset Review of the Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate from Ukraine

SUMMARY:

On November 25, 2008, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the suspended antidumping duty investigation on certain cut–to-length carbon steel plate (''CTL plate'') from Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Certain Cut–to-Length Carbon Steel Plate from Ukraine; Preliminary Results of Full Sunset Review of the Suspension Agreement*, 73 FR 71603 (November 25, 2008) (''*Preliminary Results*''). We provided interested parties an opportunity to comment on our *Preliminary Results*. The Department did not receive comments from either domestic or respondent interested parties. As a result of this review, the Department continues to find that termination of the suspended antidumping duty investigation on CTL plate from Ukraine would likely lead to a continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: March 20, 2009.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Jay Carreiro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W.,

Washington, DC 20230, telephone: (202) 482–0192 or (202) 482–3674.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2008, the Department published in the **Federal Register** a notice of preliminary results of the full sunset review of the suspended antidumping duty investigation on CTL plate from Ukraine, pursuant to section 751(c) of the Act. *See Preliminary Results*, 73 FR 71603. In our *Preliminary Results*, we found that the termination of the suspended antidumping duty investigation on CTL plate from Ukraine would be likely to lead to a continuation or recurrence of dumping at the margins determined in the final determination of the original investigation. *Id.* We provided interested parties an opportunity to comment on our *Preliminary Results. Id.* We did not receive comments from either domestic or respondent interested parties.

Scope of Review

The products covered by the Agreement include hot–rolled iron and non–alloy steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non–alloy steel flat–rolled products not in coils, of rectangular shape, hot–rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the Agreement are flat–rolled products of nonrectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

Final Results of Review

We have made no changes to our *Preliminary Results*, 73 FR 71603. We continue to find that termination of the suspended antidumping duty investigation on CTL plate from Ukraine would likely lead to a continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturer/producer/ exporter	Weighted-average margin percentage
Azovstal	81.43
Ilyich	155.00
Ukraine–wide	237.91

In accordance with section 752(c)(3) of the Act, we will notify the International Trade Commission of the final results of this full sunset review.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Tariff Act.

Dated: March 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–6160 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of the 2007 Administrative Review and Partial Rescission

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

SUMMARY: The Department of Commerce (the Department) is currently conducting the 2007 administrative review of the antidumping duty order on brake rotors from the People's Republic of China (PRC). We preliminarily determine that sales have not been made below normal value (NV) with respect to those exporters who participated fully and are entitled to a separate rate in the administrative review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties, entries of subject merchandise during the period of review (POR) from these exporters.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 20, 2009.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton Stefanova, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

Case History

On April 17, 1997, the Department published in the **Federal Register** the antidumping duty order on brake rotors from the PRC. *See Notice of Antidumping Duty Order: Brake Rotors from the People's Republic of China*, 62 FR 18740 (April 17, 1997) (*the Order*).

On April 1, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on brake rotors from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 17317 (April 1, 2008).

On April 23 and 30, 2008, the Department received timely requests for an administrative review of this antidumping duty order in accordance with 19 CFR 351.213 from the following companies: Longkou Orient Autoparts Co., Ltd. (Longkou Orient), Qingdao Meita Automotive Industry Co., Ltd. (Meita), Yantai Winhere Auto-Part Manufacturing Co., Ltd. (Winhere), Laizhou Auto Brake Equipment Factory (LABEC), Laizhou City Luqi Machinery Co., Ltd. (Luqi), Longkou Haimeng Machinery Co., Ltd. (Haimeng), Laizhou Hongda Auto Replacement Parts Co., Ltd. (Hongda), Dixion Brake System

(Longkou) Ltd. (Dixion), and Laizhou Wally Automobile Co., Ltd. (Wally). On April 30, 2008, the Department also received timely requests from the petitioner [1] for an administrative review of 12 companies (or producer/exporter combinations).[2]

On June 4, 2008, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on brake rotors from the PRC for 19 individually named firms covering the period April 1, 2007, through March 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 31813 (June 4, 2008). On June 25, 2008, the Department published a notice of revocation of the antidumping duty order on brake rotors from the PRC (*see Brake Rotors From the People's Republic of China: Revocation of Antidumping Duty Order Pursuant to Second Five-Year (Sunset) Review*, 73 FR 36039 (June 25, 2008)). As a result of the revocation of the order, effective August 14, 2007, the period of this review was changed from April 1, 2007, through March 31, 2008, to April 1, 2007, through August 13, 2007 (*see* June 27, 2008, Memorandum to The File entitled ''Change in the Period of Review'').

On July 1, 2008, the Department placed on the record a memorandum containing CBP data for U.S. imports of subject merchandise from the PRC made during the POR. The Department also stated in that memorandum that it intended to select respondents for individual review based on the CBP import data. The Department provided parties with an opportunity to comment on the CBP import data and respondent selection (*see* July 1, 2008, Memorandum to The File entitled ''Release of POR Entry Data from U.S. Customs and Border Protection''). On July 11, 2008, eight respondent companies submitted comments to the Department on the respondent selection process. Also, Dixion and Wally withdrew their requests for an administrative review.

On July 29, 2008, because it was not feasible to examine all 19 companies for which an administrative review was initiated, the Department selected the two largest companies based on CBP import data, Haimeng and Winhere, as mandatory respondents in accordance with section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act). The remaining 17 respondents were not selected for individual review. *See* Memorandum from Irene Darzenta Tzafolias to James P. Maeder, Jr., ''2007 Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China: Selection of Respondents for Individual Review,'' dated July 29, 2008 (Respondent Selection Memo); and ''Separate rates'' section below.

On August 1, 2008, we issued Haimeng and Winhere the antidumping duty questionnaire.

On August 7, 2008, we requested that the Import Administration's Office of Policy (the Office of Policy) issue a surrogate-country memorandum for the selection of the appropriate surrogate countries for this review.[3] On the same date, the Office of Policy provided us with a list of five countries at a level of economic development comparable to that of the PRC.[4]

Between August 11 and August 26, 2008, the Department issued letters to the respondents not selected for individual review requesting (1) a separate-rate certification or application or (2) a no-shipment statement if applicable. Also during this time period, the Department invited interested parties participating in this administrative review to submit comments on surrogate country selection and to submit publicly available information as surrogate values (SVs) for purposes of calculating NV.[5] No parties submitted surrogate country comments or publicly available SV information in this administrative review.

During July, August and September 2008, the Department received timely submissions from several companies for which the review was initiated: Three companies [6] certified that they had no shipments of subject merchandise during the POR; seven companies withdrew their review requests, including Haimeng (*i.e.*, one of the selected mandatory respondents); [7] eight companies [8] submitted their separate-rate certifications in response to the Department's request; and Winhere submitted its responses to the antidumping duty questionnaire.

On September 9, 2008, the Department rescinded this review with respect to Dixion, Haimeng, Longkou Orient, Luqi, and Wally. *See Brake Rotors from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 53193 (September 15, 2008).

On October 10, 2008, we requested entry documentation from CBP for certain entries of brake rotors exported by CAIEC and/or Laizhou CAPCO during the POR.[9]

The Department issued a supplemental questionnaire to Winhere on November 14, 2008, and received Winhere's supplemental questionnaire response on November 28, 2008.

On December 5, 2008, the Department placed on the record copies of CBP documents pertaining to certain entries of brake rotors from the PRC exported by CAIEC and/or Laizhou CAPCO to the United States during the POR.[10]

On December 11, 2008, the Department postponed the preliminary results of this review until March 2, 2009. *See Brake Rotors From the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 77004 (December 18, 2008).

On December 16, 2008, the Department placed on the record a

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The names of these companies or producer/exporter combinations are as follows: (1) Meita; (2) Winhere; (3) Zibo Golden Harvest Machinery Limited Company (ZGOLD); (4) Longkou TLC Machinery Co., Ltd. (Longkou TLC); (5) Longkou Jinzheng Machinery Co. (Jinzheng); (6) Qingdao Gren Co. (Gren); (7) Xianghe Zichen Casting Company, Ltd. (Xianghe Zichen); (8) Laizhou Luda Sedan Fittings Company, Ltd. (Luda); (9) Zibo Botai Manufacturing Co., Ltd. (Zibo Botai); (10) Laizhou Sanli (Sanli); (11) China National Automotive Industry Import & Export Corporation (CAIEC) or National Automotive Industry Import & Export Corporation, excluding entries manufactured by Shandong Laizhou CAPCO Industry (Laizhou CAPCO); and (12) Laizhou CAPCO, excluding entries manufactured by Laizhou CAPCO.

[3] *See* the Department's memorandum entitled, ''Request for Surrogate Country Selection,'' dated August 7, 2008.

[4] *See* the Department's memorandum entitled, ''Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated August 7, 2008 (Policy Memorandum).

[5] *See* the Department's letter entitled, ''2007 Antidumping Duty Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China,'' requesting parties to provide comments on surrogate-country selection and provide surrogate factors of production values from the potential surrogate countries (*i.e.*, India, Indonesia, the Philippines, Colombia and Thailand).

[6] These three companies are CAIEC, Laizhou CAPCO, and Longkou Orient.

[7] These seven companies are CAIEC, Dixion, Haimeng, Laizhou CAPCO, Longkou Orient, Luqi, and Wally.

[8] These eight companies are Gren, Longkou Jinzheng, LABEC, Laizhou Hongda, Longkou TLC, Meita, Xianghe Zichen, and Zibo Botai.

[9] *See* the Department's memorandum entitled, ''Request for U.S. Entry Documents—Brake Rotors from the People's Republic of China (A–570–846),'' dated October 10, 2008.

[10] *See* the Department's memorandum entitled, ''2007 Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China, Results of Request for Assistance from U.S. Customs and Border Protection on U.S. Entry Documents,'' dated December 5, 2008.

memorandum regarding the three companies (*i.e.*, Luda, Sanli and ZGOLD) that did not submit a separate-rates application or certification in this administrative review. *See* Memorandum to the File entitled ''Efforts to Provide Companies'' with the Department's August 26, 2008, Separate Rates Questionnaire, Separate Rates Certification Questionnaire, and No Shipments Instructions'' (December 16, 2008 Memorandum to the File).

On March 2, 2009, the Department further postponed the preliminary results of this review until March 16, 2009. *See Brake Rotors From the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 9787 (March 6, 2009).

Period of Review

The POR is April 1, 2007, through August 13, 2007.

Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: Automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States, (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (HTSUS).[11] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See*, *e.g.*, *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74766 (December 16, 2005) (unchanged in the final results).

For the administrative review, in order to demonstrate separate-rate status eligibility, the Department normally requires entities, for which a review was requested, and which were assigned a separate-rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate. For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility for such, the Department requires a separate-rate application. In this administrative review, eight entities not selected for individual review (*i.e.*, separate-rate respondents) submitted separate-rate certifications. The mandatory respondent, Winhere, and the eight separate-rate respondents[12] provided company-specific information and each stated that it meets the criteria for the assignment of a separate rate.

We considered whether the mandatory and eight separate-rate respondents were eligible for a separate rate. The Department's separate-rate status test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level.[13]

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

A. 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 and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20589. Winhere and the eight separate-rate respondents each placed on the administrative record documents to demonstrate an absence of *de jure* control (*e.g.*, the 1994 ''Foreign Trade Law of the People's Republic of China,'' and the 1999 ''Company Law of the People's Republic of China''). As in prior cases, we analyzed the laws presented to us and found them to establish sufficiently an absence of *de jure* control. *See*, *e.g.*, *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative*

[11] As of January 1, 2005, the HTSUS classification for brake rotors (discs) changed from 8708.39.5010 to 8708.39.5030. As of January 1, 2007, the HTSUS classification for brake rotors (discs) changed from 8708.39.5030 to 8708.30.5030. *See Harmonized Tariff Schedule of the United States (2007) (Rev. 2)*, available at *http://www.usitc.gov*.

[12] The non-mandatory respondents which submitted separate-rate certifications are as follows: Gren, Jinzheng, LABEC, Laizhou Hongda, Longkou TLC, Meita, Xianghe Zichen, and Zibo Botai.

[13] *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).

Review, 72 FR 102, 105 (January 3, 2007), and *Hand Trucks and Certain Parts Thereof from the People's Republic of China; Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review*, 72 FR 937, 944 (January 9, 2007). We have no new information in this review which would cause us to reconsider this determination with regard to Winhere. Therefore, we believe that evidence on the record supports a preliminary finding of an absence of *de jure* government control with regard to Winhere.

The eight separate-rate respondents (Gren, Jinzheng, LABEC, Laizhou Hongda, Longkou TLC, Meita, Xianghe Zichen, and Zibo Botai) and Winhere each certified that as in the previous period where it was granted a separate rate, there is an absence of *de jure* government control. Each separate-rate respondent's certification stated, where applicable, that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information that would cause us to reconsider the previous period's *de jure* control determination with regard to these companies.

B. Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 59 FR at 22586, 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government authority; (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 the disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also 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).

In this review, Gren, Jinzheng, LABEC, Laizhou Hongda, Longkou TLC, Meita, Xianghe Zichen, Zibo Botai, and Winhere each asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' separate-rates certifications or questionnaire responses indicate that its pricing during the POR does not involve coordination among exporters.

Thus, we preliminarily determine that Gren, Jinzheng, LABEC, Laizhou Hongda, Longkou TLC, Meita, Xianghe Zichen, Zibo Botai, and Winhere have each met the criteria for the application of a separate rate based on the documentation each of these respondents has submitted on the record of this review.

PRC-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data. *See* Respondent Selection Memo. In this case, we sent the separate-rates application and certification to the companies which were not selected as mandatory respondents. *See* August 26, 2008, letters to Luda, Sanli and ZGOLD. Luda, Sanli and ZGOLD did not apply for a separate rate or provide a separate-rate certification, as appropriate, nor did they indicate that they did not make shipments of the subject merchandise to the United States during the POR. *See* December 16, 2008, Memorandum to the File. Therefore, Luda, Sanli, and ZGOLD are considered to be a part of the PRC-wide entity. Because the Department determines preliminarily that there were exports of merchandise under review from PRC producers/exporters that did not demonstrate their eligibility for separate-rate status, the PRC-wide entity is now under review.

Preliminary Partial Rescission of 2007 Administrative Review

With respect to CAIEC and Laizhou CAPCO, each company informed the Department that it did not export the subject merchandise to the United States during the POR. Specifically, CAIEC stated that it did not export brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO and Laizhou CAPCO stated that it did not export brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO. In order to corroborate their submissions, we reviewed PRC brake rotor shipment data maintained by CBP.[14] In reviewing the CBP import data and entry documentation for certain brake rotor entries made by CAIEC and/or Laizhou CAPCO, we found no evidence contradicting CAIEC's and Laizhou CAPCO's claims of no shipments of subject merchandise to the United States during the POR.

Based on the record of this review, we conclude that CAIEC and Laizhou CAPCO did not export subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this administrative review for CAIEC and Laizhou CAPCO.

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to 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. *See*, *e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006). None of the parties in this administrative review has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV 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 use, to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below. *See also* the Department's

[14] *See* December 5, 2008, Memorandum to the File entitled ''Results of Request for Assistance from U.S. Customs and Border Protection on U.S. Entry Documents.''

memorandum entitled, ''Preliminary Results of the 2007 Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Surrogate Value Memorandum,'' dated March 16, 2009 (Surrogate Value Memorandum).

The Department determined that India, Indonesia, the Philippines, Colombia and Thailand are countries comparable to the PRC in terms of economic development. *See* Policy Memorandum. Customarily, we select an appropriate surrogate country from the policy memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a comparable level of economic development to the PRC; is a significant producer of the subject merchandise (*i.e.*, brake rotors); and has publicly available and reliable data. *See* March 16, 2009, Memorandum to the File entitled, ''2007 Antidumping Duty Administrative Review on Brake Rotors from the People's Republic of China: Selection of a Surrogate Country'' (Surrogate Country Memorandum).

Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection. *See* Surrogate Country Memorandum. We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in antidumping administrative reviews, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Winhere to the United States were made at prices below NV, we compared Winhere's export prices (EPs) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below, pursuant to section 773 of the Act.

Export Price

Because Winhere sold subject merchandise to an unaffiliated purchaser in the United States prior to importation into the United States and use of a constructed-export-price methodology was not otherwise indicated, we used EP in accordance with section 772(a) of the Act.

We calculated EP based on the reported method of delivery to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC pursuant to section 772(c)(2)(A) of the Act.[15] Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India. *See* ''Factor Valuation'' section below for further discussion of surrogate rates.

In determining the most appropriate SVs to use in a given case, the Department's stated practice is to use review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly available data. *See*, *e.g.*, *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying *Issues and Decision Memorandum* at Comment 1. The data we used for brokerage and handling expenses fulfill all of the foregoing criteria except that they are not specific to the subject merchandise. There is no information of that type on the record of this review. The Department used three sources to calculate an SV for domestic brokerage expenses: (1) Data from Kejriwal Paper Ltd. (Kejriwal) for the period of investigation July 1, 2004, to June 30, 2005 (*see 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 final determination)); (2) data from Essar Steel Limited (Essar) for the period of investigation July 1, 2004, through June 30, 2005 (*see 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 final results)); and (3) data from Agro Dutch Industries Ltd. for the POR February 1, 2004, through January 31, 2005 (*see Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (unchanged in final results)). Because these values were not concurrent with the POR of this administrative review, we adjusted these rates for inflation using the Wholesale Price Index (WPI) for India as published in the International Monetary Fund's *International Financial Statistics*, available at *http://ifs.apdi.net/imf*, and then calculated a simple average of the three companies' brokerage expense data.

The Department valued inland truck freight expenses using a deflated per-unit average rate calculated from data on the following 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. Because this value is not contemporaneous with the POR, we deflated the rate using WPI data. *See* Surrogate Value Memorandum.

Winhere reported that its U.S. customers purchased ball bearing cup and lug nuts from PRC producers that were delivered to Winhere in specific quantities free-of-charge, and that the components were then incorporated into certain brake rotor models shipped to U.S. customers during the POR. Section 773(c)(3) of the Act states that ''factors of production utilized in producing merchandise include, but are not limited to the quantities of raw materials employed.''*See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304, 66305 (November 14, 2006), and accompanying Issues and Decisions Memorandum at Comment 9; *see also Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review,* 70 FR 54361 (September 14, 2005), and accompanying Issues and Decisions Memorandum at Comment 13. Therefore, to reflect the U.S. customers' expenditures for these items, we added the Indian SV for each component (*i.e.*, the ball bearing cups and lug nuts) used to the U.S. price of the applicable brake rotor models. For further information, *see* Winhere Calculation Memo.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an 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

[15] *See* the Department's memorandum entitled, ''2007 Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Yantai Winhere Auto-Part Manufacturing Co., Ltd.,'' dated March 16, 2009 (*Winhere Calculation Memo*).

constructed value under section 773(a) of the Act. The Department will base NV on FOP because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

For purposes of calculating NV, we valued the PRC FOPs in accordance with section 773(c)(1) of the Act. The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by Winhere for materials, energy, labor, and packing. *See* section 773(c)(3) of the Act.

In examining SVs, we selected, where possible, the publicly available value, which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China,* 69 FR 75294, 75300 (December 16, 2004) (*Chlorinated Isocyanurates*) (unchanged in final determination). For a detailed explanation of the methodology used to calculate SVs, *see* Surrogate Value Memorandum.

Regarding the components supplied free of charge to Winhere noted above, section 773(c)(3) of the Act states that the ''factors of production include but are not limited to the quantities of raw materials employed.'' Therefore, consistent with the corresponding adjustment to U.S. price discussed above, we valued the ball bearing cups and lug nuts usage amounts reported by Winhere for specific brake rotor models by using an Indian SV for each input. *See* Winhere Calculation Memo and Surrogate Value Memorandum.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Winhere for the POR. We relied on the factor-specific data submitted by Winhere for the above-mentioned inputs in its questionnaire and supplemental questionnaire responses, where applicable, for purposes of selecting SVs.

To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly available Indian SVs. In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs 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 decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). *See Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Where necessary, we adjusted the SVs for inflation/deflation using the WPI as published in the International Monetary Fund's *International Financial Statistics,* available at *http://ifs.apdi.net/imf.*

We valued the raw materials (including ball bearing cups and lug nuts), packing materials, coke input and firewood input using April 2007 through July 2007,[16] weighted-average unit import values derived from the *Monthly Statistics of the Foreign Trade of India* (*MSFTI*), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India and compiled by the World Trade Atlas (WTA), available at *http://www.gtis.com/wta.htm.* The Indian WTA import data is reported in rupees and is contemporaneous with the POR.[17] Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. *See http://www.ia.ita.doc.gov/exchange/index.html.* Where appropriate, we converted the units of measure to kilograms. *See* Surrogate Value Memorandum.

Furthermore, with regard to the WTA Indian import-based SVs, we have disregarded prices from NME countries[18] and those we have reason to believe or suspect may be subsidized, because we have found in other proceedings that these exporting countries maintain broadly available, non-industry-specific export subsidies and, therefore, there is reason to believe or suspect that all exports to all markets from such countries may be subsidized.[19] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. No. 576 100th Cong., 2. Sess. 590–91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we excluded export prices from Indonesia, South Korea, Thailand, and India when calculating the Indian import-based SVs. *See* Surrogate Value Memorandum. Finally, we excluded imports that were labeled as originating from an ''unspecified'' country from the average value, because we could not be certain that they were not from either an NME or a country with general export subsidies.

As discussed above, the Department valued surrogate freight cost by using a deflated per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm. See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 52282, 52286 (September 9, 2008) (unchanged in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 6857 (February 11, 2009); and Surrogate Value Memorandum at Attachment 8.

To value electricity, the Department used July 2006 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* published by the Central Electricity Authority of the Government of India. Because this data was not

[16] Because the POR ends on the 13th day of August 2007, we obtained the monthly totals for April 2007 through July 2007 for all WTA data (including the packing materials and energy inputs as discussed below).

[17] *See* Surrogate Value Memorandum at Attachment 1.

[18] The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

[19] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part,* 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part,* 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and *China National Machinery Imp. & Exp. Corp.* v. *United States,* 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

contemporaneous with the POR, we adjusted the average value for inflation using WPI. *See* Surrogate Value Memorandum at Attachment 5.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rates reflective of the observed relationship between wages and national income in market-economy countries as reported on Import Administration's Web site. *See* ''Expected Wages of Selected NME Countries'' (revised January 2007) (available at *http://www.trade.gov/ia/*). For further details on the labor calculation, *see* Surrogate Value Memorandum at Attachment 7. Because the regression-based wage rates do not separate the labor rates into different skill levels or types of labor, we applied the same wage rate to all skill levels and types of labor reported by Winhere.

Winhere reported that during the manufacturing process, its subject merchandise was transported from its casting facility to its finishing workshop. Using Winhere's reported distance and the reported cast weight of its rotors, we valued the other PRC distance (*i.e.*, domestic inland freight cost of transporting unfinished castings from the casting facility to Winhere's finishing workshop facility) with the surrogate truck rate discussed above. This additional freight value was added to the cost of manufacture (COM). *See* Winhere Calculation Memorandum.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, consistent with 19 CFR 351.408(c)(4), we used the public information from the 2007 annual report of Bosch Chassis Systems India Ltd. (Bosch) and 2007–2008 annual report of Rico Auto Industries Limited (Rico).[20] From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, COM); and the profit rate as a percentage of the COM plus SG&A. Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. For a full discussion of the calculation of these ratios, *see* Surrogate Value Memorandum and its accompanying calculation worksheets at Attachment 6.

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. *See http://www.ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Reviews

As a result of our review, we preliminarily determine that the following margins exist for the period April 1, 2007, through August 13, 2007:

BRAKE ROTORS FROM THE PRC

Individually reviewed exporter 2007 administrative review	Weighted-average percent margin (percent)
Yantai Winhere Auto-Part Manufacturing Co., Ltd	0.04 (*de minimis*).
Separate-rate applicant exporters 2007 administrative review	**Weighted-average percent margin (percent)**
Laizhou Auto Brake Equipment Co., Ltd	0.04 (*de minimis*).
Laizhou Hongda Auto Replacement Parts Co., Ltd	0.04 (*de minimis*).
Longkou Jinzheng Machinery Co., Ltd	0.04 (*de minimis*).
Longkou TLC Machinery Co., Ltd	0.04 (*de minimis*).
Qingdao Gren (Group) Co	0.04 (*de minimis*).
Qingdao Meita Automotive Industry Co., Ltd	0.04 (*de minimis*).
Xianghe Zichen Casting Company, Ltd	0.04 (*de minimis*).
Zibo Botai Manufacturing Co., Ltd	0.04 (*de minimis*).
PRC-Wide Rate	**Margin (percent)**
PRC-wide rate (including Laizhou Luda Sedan Fittings Company, Ltd., Laizhou Sanli and Zibo Golden Harvest Machinery Limited Company).	43.32

Rate for Non-Selected Respondents

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's practice in this regard, in reviews involving limited selection based on exporters accounting for the largest volumes of trade, has been to average the rates for the selected companies excluding zero and *de minimis* rates and rates based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents, including ''averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

The Department has available in administrative reviews information that would not be available in an investigation, namely rates from prior administrative and new shipper reviews. Accordingly, since the final results of the last review, the Department has determined that in cases where we have found dumping margins in previous segments of a proceeding, a reasonable method for determining the rate for non-selected companies is to use the most recent rate calculated for the non-selected company in question, unless we calculated in a more recent review a rate for any

[20] *See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review,* 72 FR 42386, 42389 (August 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2 (*2005–2006 Brake Rotors*).

company that was not zero, *de minimis* or based entirely on facts available. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273, 52275 (September 9, 2008), and accompanying Issues and Decision Memorandum at Comment 6; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16; *see also Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review,* 73 FR 52015 (Sept. 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above *de minimis*).

While we intend to continue to apply the policy articulated in the above-cited cases in future reviews, where appropriate, we do not believe that any change in this late stage of the brake rotors proceeding is warranted.[21] For purposes of consistency and equity to the parties, the Department does not believe that it is appropriate to reexamine the issue in this final segment of the brake rotors proceeding, in light of more recent decisions in other administrative reviews. Thus, we are assigning the non-selected separate rate companies the *de minimis* rate calculated for the sole mandatory respondent. With respect to the PRC-wide entity (including Luda, Sanli and ZGOLD), we have assigned the entity's current rate and only rate ever determined for the entity in this proceeding.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.*, Microsoft Word, pdf, etc.). 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 within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for Winhere, we calculated an importer (or customer)-specific assessment rate for the merchandise subject to this review. Because we do not have entered values on the record for Winhere's sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

For the companies receiving a separate-rate that were not selected for individual review (*i.e.*, Gren, Jinzheng, LABEC, Laizhou Hongda, Longkou TLC, Meita, Xianghe Zichen, and Zibo Botai), we will calculate an assessment rate based on the weighted-average margins calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act. As Winhere is the only mandatory respondent in this review and its margin is *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties with respect to the eight separate-rate respondents. *See* 19 CFR 351.106(c)(2).

With respect to the PRC-wide entity (including Luda, Sanli and ZGOLD), we will instruct CBP to liquidate appropriate entries at the PRC-wide rate of 43.32 percent.

Cash Deposit Requirements

The antidumping duty order on brake rotors from the PRC was revoked effective August 14, 2007 (*see Brake Rotors From the People's Republic of China: Revocation of Antidumping Duty Order Pursuant to Second Five-Year (Sunset) Review,* 73 FR 36039 (June 25, 2008)). As a result, we instructed CBP to terminate the suspension of liquidation of entries of the subject merchandise. Therefore, the collection of cash deposits of antidumping duties on entries of the subject merchandise is no longer required.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.221.

Dated: March 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6174 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–DS–P

[21] Because the brake rotors order was revoked effective August 14, 2007, this is the last administrative review that the Department will conduct.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) gives notice of a proposed new system of records entitled ''COMMERCE/PAT–TM–23 User Access for Web Portals and Information Requests.'' We invite the public to comment on the system announced in this publication.

DATES: Written comments must be received no later than April 20, 2009. The proposed system of records will be effective on April 20, 2009, unless the USPTO receives comments that would result in a contrary determination.

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

- *E-mail: Susan.Fawcett@uspto.gov.*
- *Fax:* (571) 273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Administrative Management Group, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

All comments received will be available for public inspection at the Federal rulemaking portal located at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Administrative Management Group, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–5429.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of a new system of records that is subject to the Privacy Act of 1974. The information in this system of records is used to disseminate information to customers who have made online information requests, registered for access to information available through web portals provided by the USPTO, subscribed to news updates, or have otherwise provided contact information in order to access or receive information from the USPTO.

The proposed new system of records, ''COMMERCE/PAT–TM–23 User Access for Web Portals and Information Requests,'' is published in its entirety below.

COMMERCE/PAT–TM–23

SYSTEM NAME:

User Access for Web Portals and Information Requests.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314. Records may be located within several business units, including but not limited to the offices under the Commissioner for Patents, Commissioner for Trademarks, General Counsel, Chief Administrative Officer, Chief Financial Officer, and the Chief Information Officer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information from the USPTO, including requests related to access to electronic portals, records, subscription services, and collaborative tools designed to disseminate information to the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled to respond to requests for information, including the name of the requester or subscriber, nature of request, deposit account number or other account tracking number, name of organization, physical mailing address, telephone number, and electronic mail address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5 U.S.C. 552, 35 U.S.C. 2, 35 U.S.C. 41, and 44 U.S.C. 3101.

PURPOSE(S):

The information in this system of records is used to disseminate information to customers who have registered for access to information available through electronic means, such as web portals, subscribed to news updates or other information alerts, or have otherwise provided contact information in order to access or receive information from the USPTO.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See Prefatory Statement of General Routine Uses Nos. 4–5, 9–10, and 13, as found at 46 FR 63501–63502 (December 31, 1981). The USPTO may use the information contained in this system of records to disseminate patent and trademark business information to customers or to provide customers with access to patent and trademark business information at their request.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records in a computer database stored on magnetic storage media, or paper records.

RETRIEVABILITY:

Records may be retrieved by specific data elements, including the account or tracking number, name of the requester, name of organization, subject or type of request, and address.

SAFEGUARDS:

Databases are password-protected and can only be accessed by authorized personnel. Records are maintained in areas accessible only to authorized personnel in buildings protected by security guards.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Each business unit within the USPTO is responsible for the data maintained for their business needs related to communication with individuals. Business units include but are not limited to the offices under the Commissioner for Patents, Commissioner for Trademarks, General Counsel, Chief Administrative Officer, Chief Financial Officer, and the Chief Information Officer. Inquiries may be addressed to: System Manager, (Name of business unit), United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

NOTIFICATION PROCEDURE:

Information about the records contained in this system may be obtained by sending a request in writing, signed, to the appropriate System Manager at the address above. When requesting notification of or access to records covered by this notice, requesters should provide their name and electronic mail address in accordance with the inquiry provisions appearing in 37 CFR part 102 subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The general provisions for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR part 102 subpart B. Requests from individuals should be addressed as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individuals and those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Administrative Management Group.

[FR Doc. E9–6128 Filed 3–19–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Proposed Regional Watershed Supply Project in Wyoming and Colorado

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE) is preparing an Environmental Impact Statement (EIS) to analyze the direct, indirect, and cumulative effects of a proposed water supply project in Wyoming and Colorado, referred to as the Regional Watershed Supply Project (RWSP). Construction of the proposed RWSP is expected to require a Clean Water Act Section 404 permit. The Project is proposed by Million Conservation Resource Group (MCRG), which is a private water development group. The RWSP proposes to provide approximately 250,000 acre-feet per year of new annual firm yield to meet a portion of the projected water supply needs of southeastern Wyoming and the Front Range of Colorado on a perpetual basis through 2030 and beyond. The water would be obtained from the Green River Basin as part of the unused portion of water allocated to the States of Wyoming and Colorado under the Upper Colorado River Compact. The RWSP would be a non-Federal project constructed, owned, and operated by MCRG.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Questions and comments regarding the proposed action and EIS should be addressed to Ms. Rena Brand, Project Manager, U.S. Army Corps of Engineers, Denver Regulatory Office, 9307 S. Wadsworth Blvd., Littleton, CO 80128–6901; (303) 979–4120; *mcrg.eis@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The COE will be conducting public scoping meetings at six locations to describe the Project, preliminary alternatives, the NEPA compliance process, and to solicit input on the issues and alternatives to be evaluated and other related matters. Written comments for scoping will be accepted until May 19, 2009. The COE has prepared a scoping announcement to familiarize agencies, the public and interested organizations regarding the proposed RWSP and potential environmental issues that may be involved. Copies of the scoping announcement will be made available at the public scoping meetings or can be requested by mail.

Scoping meetings will be held on:

1. April 14, 2009, 6:30 to 9 p.m., Green River High School, 1615 Hitching Post Drive, Green River, WY.

2. April 15, 2009, 6:30 to 9 p.m., Uintah High School, 1880 West 500 North, Vernal, UT.

3. April 16, 2009, 6:30 to 9 p.m., Laramie High School, 1257 North 11th Street, Laramie, WY.

4. April 20, 2009, 6:30 to 9 p.m., Fossil Ridge High School, 5400 Ziegler Road, Fort Collins, CO.

5. April 21, 2009, 6:30 to 9 p.m. West High School, 951 Elati Street, Denver, CO.

6. April 22, 2009, 6:30 to 9 p.m. Risley Middle School, 625 N. Monument Ave., Pueblo, CO.

The proponent of the project, MCRG, proposes the following configuration of the RWSP: Two water withdrawal facilities, one on the east side of Flaming Gorge Reservoir in Wyoming and the other on the east bank of the Green River in Wyoming approximately 200 feet downstream of the Seedskadee National Wildlife Refuge; one water treatment storage reservoir located near the Green River intake system; water pipeline system (approximately 560 miles in length and a diameter of 72 to 120 inches) from the two withdrawal points to southeastern Wyoming and the Front Range of Colorado (Wyoming-Colorado State Line to Pueblo); one regulating reservoir located along the western end of the pipeline system; approximately sixteen natural gas-powered pump stations located along the pipeline route; temporary (construction phase) and permanent (operation and maintenance phase) access roads; three water storage/flow-regulation reservoirs (Lake Hattie in Wyoming [available volume of approximately 40,000 acre feet]; proposed Cactus Hill Reservoir near Fort Collins, CO [185,000 acre-foot capacity]; and the proposed T-Cross Reservoir to be constructed near Pueblo, CO [25,000 acre-foot capacity]); outlet structures at each reservoir consisting of water treatment facilities; on-site transformers and overhead power lines from local electrical grids for the water withdrawal and storage reservoir facilities; and water delivery systems from the storage reservoirs to water users.

The potential water users for the proposed project would include agriculture, municipalities, and industries in southeastern Wyoming and the Front Range of Colorado. In Wyoming, approximately 25,000 acre-feet of water would be delivered annually to users in the Platte River Basin. The remaining 225,000 acre-feet of water would be delivered annually to the South Platte River and Arkansas River basins in Colorado.

The EIS will be prepared according to the COE's procedures for implementing the NEPA of 1969, as amended, 42 U.S.C. 4232(2)(c), and consistent with the COE's policy to facilitate public understanding and review of agency proposals. As part of the EIS process, a full range of reasonable alternatives, including the Proposed Action and No Action, will be evaluated. Additional alternatives defined at this time by the applicant include four alternative withdrawal points that would involve withdrawal only from the Green River (two separate points) or Flaming Gorge Reservoir (two separate points). A different pipeline segment would connect each alternative withdrawal point to the mainstem pipeline route. Alternative storage reservoirs in the Front Range of Colorado also may be considered for the Project.

The COE has invited the U.S. Bureau of Reclamation, U.S. Bureau of Land Management, the U.S. Forest Service, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service to be cooperating agencies in the preparation of the EIS. Other Federal and State agencies will participate in the EIS review process to ensure

compliance with relevant laws and regulations.

Timothy T. Carey,

Chief, Denver Regulatory Office.

[FR Doc. E9–6170 Filed 3–19–09; 8:45 am]

BILLING CODE 3720–58–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 20, 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: March 16, 2009.

Angela C. Arrington,

Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Protection and Advocacy for Assistive Technology (PAAT) Program Performance Report, Form RSA 661.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 912.

Abstract: The Annual PAAT Program Performance Report will be used to analyze and evaluate the PAAT Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to assist in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services. The Rehabilitation Services Administration (RSA) uses the form to meet specific data collection requirements of Section 5 of the Assistive Technology Act of 1998, as amended (AT Act). PAAT programs must report annually using the form, which is due on or before December 30 of each year. The Annual PAAT Performance Report has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. Data from the form have been used to evaluate the effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These data also have been used to indicate trends in the provision of services from year to year.

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 3920. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6118 Filed 3–19–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before April 20, 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: March 17, 2009.

Angela C. Arrington,

Director, IC Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Feasibility and Conduct of an Impact Evaluation of Title I Supplemental Education Services.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 5,593.

Burden Hours: 806.

Abstract: The No Child Left Behind Act (NCLB) requires districts with Title I schools that fall short of state standards for three years or more to offer supplemental educational services (SES) to their students from low-income families who attend these schools. SES are tutoring or other academic support services offered outside the regular school day by state-approved providers free of charge to eligible students. Parents can choose the specific SES provider from among a list approved to serve their area. The U.S. Department of Education has commissioned Mathematica Policy Research to evaluate the impact of SES on student achievement in up to nine school districts across the country. Findings of the study will not only inform national policy discussions about SES, but will also provide direct feedback to participating districts about the effectiveness of the SES offered to their students.

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 3927. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6120 Filed 3–19–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before April 20, 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: March 16, 2009.

Angela C. Arrington,

Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan Program (Direct Loan) Program: Internship/Residency and Loan Debt Burden Forbearance Request Forms.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 5,115.

Burden Hours: 1,023.

Abstract: These forms serve as the means by which a borrower may request forbearance of repayment on his or her Direct Loan Program loans based on participation in an eligible internship/residency program or based on having federal education loan debt burden that equals or exceeds 20% of the borrower's monthly gross income. The U.S. Department of Education uses the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific forbearance type that the borrower has requested.

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 3930. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6122 Filed 3–19–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 8, 2009, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be on the DOE Transuranic (TRU) Waste Processing Center.

Public Participation: The EM SSAB, Oak Ridge, 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 Pat Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on March 16, 2009.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. E9–6135 Filed 3–19–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Request for Expressions of Interest in Hosting a Facility or Facilities for the Long-Term Management and Storage of Elemental Mercury

AGENCY: Department of Energy.

ACTION: Notice of request for expressions of interest.

SUMMARY: The U.S. Department of Energy (DOE) is seeking Expressions of Interest from Federal agencies and from the private sector regarding potential locations for a facility or facilities where DOE can store and manage elemental mercury pursuant to the Mercury Export Ban Act of 2008 (the Act). The Act directs DOE to designate by January 1, 2010, a facility or facilities of DOE for the long-term management and storage of elemental mercury. At least one such facility must be operational by January 1, 2013.

DOE intends to initiate an Environmental Impact Statement in early 2009 and seeks to identify facilities to consider as potential alternatives. Accordingly, respondents to this Request for Expressions of Interest may have the facilities they identify considered during the environmental review scoping process. This is a request for expressions of interest. No proposals are allowed.

DATES: Federal agencies and commercial entities wishing to make an Expression of Interest should do so in writing no later than 30 days from the date this notice is published. Questions may be submitted in writing by letter or e-mail. DOE may ask vendors to clarify information provided in their Expressions of Interest or submit additional information.

ADDRESSES: Please submit hard copies of Expressions of Interest to Mr. David Levenstein, Mail Stop: EM–11/Cloverleaf 2128, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–2040. Electronic versions of Expressions of Interest may be submitted in portable document format (pdf) by e-mail to *david.levenstein@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Mercury Export Ban Act of 2008 prohibits the export of elemental mercury from the United States effective January 1, 2013. To ensure that elemental mercury is managed and stored safely, the Act directs DOE to take a number of actions. By October 1, 2009, DOE must issue guidance establishing standards and procedures for the receipt, management and long-term storage of elemental mercury generated within the United States at a facility or facilities of DOE. DOE must designate such facilities by January 1, 2010, but is prohibited by the Act from locating such a facility at DOE's Oak Ridge Reservation. At least one such facility must be operational by January 1, 2013. In addition to the standards and procedures referenced above, elemental mercury managed and stored at a designated facility will be subject to the requirements of the Solid Waste Disposal Act, as amended (Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. 6901 *et seq.* A designated facility in existence on or before January 1, 2013, is authorized to operate under interim status pursuant to RCRA section 3005(e), 42 U.S.C. 6925(e), until a final decision on a permit application is made pursuant to RCRA section 3005(c), 42 U.S.C. 6925(c). The U.S. Environmental Protection Agency (EPA), or an authorized State, shall issue a final decision on the permit application by January 1, 2015.

Currently elemental mercury in the United States comes from several sources, including mercury used in the chlorine and caustic soda manufacturing process, mercury reclaimed from recycling and waste recovery activities, and mercury generated as a byproduct of the gold mining process. In a November 2007 ''Mercury Storage Costs Estimates'' report, EPA assumed the total amount of excess mercury supply from commercial sources that would require storage to be between 7,500 and 10,000 metric tons over 40 years. The 7,500 metric ton scenario assumes that approximately 1,200 metric tons would come from mercury cell chlor-alkali plants, approximately 2,050 metric tons would come from product recycling and waste recovery, and approximately 4,250 metric tons would be a byproduct of

gold mining. The 10,000 metric ton scenario assumes that an additional 2,500 metric tons would result from imports. There are uncertainties associated with these estimates, and DOE anticipates updating these estimates in conjunction with its activities to comply with the National Environmental Policy Act (NEPA).

In addition, DOE currently stores approximately 1,200 metric tons of elemental mercury at its Oak Ridge Reservation in Tennessee. Also, the Department of Defense (DOD) stores approximately 4,400 metric tons at various locations. At this time, no decision has been made as to how much elemental mercury from DOE or DOD would be stored in the DOE-designated facilities required by the Act.

As required by Council on Environmental Quality and DOE NEPA regulations, DOE's designation of facilities for the purpose of long-term management and storage of elemental mercury generated in the United States must include consideration of the range of reasonable management and storage alternatives and the environmental impacts of those alternatives. The purpose of this Request is to determine if there is interest on the part of Federal agencies or commercial entities in proposing locations for long-term DOE management and storage facilities. Identification of such facilities will enable DOE to consider them for potential inclusion in its NEPA review.

Consideration of a facility in the environmental review process is not a guarantee of its selection. Proposed sites and facilities will be reviewed against a series of technical screening criteria to consider their suitability for a long-term elemental mercury management and storage mission. In addition, in accordance with NEPA implementing regulations, DOE will conduct public outreach, such as a scoping meeting or meetings, for those sites and facilities considered to be reasonable alternatives, to allow the public to comment.

Request for Expressions of Interest: This is a request for expressions of interest. No proposals are allowed.

DOE intends to consider a range of reasonable alternatives, including existing and new DOE facilities, in its selection process. DOE is in the process of conducting an inventory of its national complex to determine potential alternative facilities. Likewise, DOE is also seeking by this action expressions of interest from Federal agencies and from commercial entities on locations and facilities for the long-term management and storage of elemental mercury. Because the Act states that this mercury would be stored at a ''facility or facilities of [DOE]'', DOE would work, as necessary, with the Federal agency or commercial entity on acquiring an appropriate interest in the facility prior to site designation.

DOE plans to review each submission to determine if it should be included as a reasonable alternative in DOE's NEPA analysis, which will assess the environmental impacts of each alternative, including existing and new DOE facilities, as they relate to the long-term storage and management of elemental mercury.

The size requirements for long-term storage and management facilities will depend on a number of factors, including the amount of elemental mercury ultimately received and the storage configuration of the elemental mercury containers. Based on currently available information, for planning purposes DOE is looking for locations with one or more existing facilities with a total of approximately 20,000 to 100,000 square feet of storage space, or locations where such facilities could be constructed. DOE anticipates refining the estimate of required storage space during the environmental review process. DOE also requires that the facilities be in compliance with all current building codes and construction standards, be located in a geologically stable area (*e.g.*, not in a flood plain or seismically-active zone), and be operated and maintained with appropriate security measures in place. In addition, the Act requires that the facilities obtain and operate in accordance with a RCRA hazardous waste facility permit.

Content of Expressions of Interest: DOE requires the following information for each potential storage location and facility:

1. Name of the Federal agency or private company making the Expression of Interest, including a contact person's name, telephone number, and e-mail address;

2. Agency or company address;

3. If a private company, company size (please specify as either Large, Small, Small Disadvantaged, Woman Owned Small Business, Veteran Owned Small Business, Service-Disabled Veteran Owned Small Business, 8(a), Hubzone Small Business or other);

4. Name of the city and state in which each potential facility is or would be located;

5. A site map showing the location of the potential storage building or buildings on the site, as well as nearby (within 10 miles) political (*e.g.*, city, county) boundaries, communities (especially minority, low income or Native American), roads, railroads, airports, and water bodies, wetlands, floodplains, parkland, known fault lines, or other environmentally sensitive areas;

6. A description of the potential site, including ownership, current activities, access control system, hazardous materials handling experience, mercury handling experience, current tenants, existing permits, previous regulatory compliance problems, and existing environmental contamination; and

7. A description of the potential storage building, if pre-existing, including date and type of construction, floor condition, any special features that provide protection against leaks and external environmental hazards, fire suppression system, heating, ventilation and air-conditioning system, access control system, current activities and materials in storage, current tenants, and existing environmental contamination.

If available, Expressions of Interest should also identify equipment, materials, and labor required to upgrade or construct the potential facility to accept elemental mercury for long-term management and storage, as well as any environmental, health and safety approvals that will be required by Federal, State or local law.

Expression of Interest Format: The length of the Expression of Interest should be no more than 20 pages using 12-point font. Although each respondent may determine how best to organize the Expression of Interest, DOE recommends the following format: Section 1—Summary; and Section 2—Description of Location with specific reference to the items requested by DOE above.

DOE reserves the right to use any and all information submitted by, or obtained from, an interested party in any manner DOE determines is appropriate. An interested party should avoid including any business confidential and/or proprietary information in its Expression of Interest. However, if an interested party must submit such information, the information must be clearly marked accordingly, and the interested party must provide sufficient justification as to why such information is business confidential and/or proprietary. DOE will review said information and handle it in accordance with the Freedom of Information Act (5 U.S.C. 552) and all applicable Federal law.

This Request for Expressions of Interest is not a formal solicitation requesting proposals and does not represent a commitment by DOE to award a contract. This Request for Expressions of Interest does not confer

any commitment or obligation from DOE. Under no circumstances does this Request for Expressions of Interest seek to award a contract for services under the Federal Acquisition Regulations or a financial assistance agreement under Part 600 of Title 10 of the Code of Federal Regulations.

DOE does not intend to formally respond to information submitted in response to this Request for Expressions of Interest.

The cost for the preparation and submittal of a response to the Request for Expressions of Interest is the sole responsibility of the interested party.

Issued in Washington, DC, on March 11, 2009.

Inos R. Triay,

Acting Assistant Secretary for Environmental Management.

[FR Doc. E9–6136 Filed 3–19–09; 8:45 am]

BILLING CODE 6540–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13–023]

Green Island Power Authority; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

March 12, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 13–023.

c. *Date Filed:* March 2, 2009.

d. *Applicant:* Green Island Power Authority.

e. *Name of Project:* Green Island Hydroelectric Project.

f. *Location:* The existing project is located on the Hudson River in Albany County, New York. The project would occupy Federal land managed by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Agent Contact:* James A. Besha, President, Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205; (518) 456–7712.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The existing Green Island Project utilizes the U.S. Army Corps of Engineers (Corps) Green Island-Troy lock and dam that consists of: (1) A dam with a main spillway with a fixed crest elevation of 14.33 feet mean sea level (msl); and (2) an auxiliary spillway with a crest elevation of 16.33 feet msl.

The Green Island Project consists of: (1) 2-foot-high pneumatic flashboards along the top of the main spillway with a crest elevation of 16.33 feet msl; (2) a 700-acre impoundment with a normal water surface elevation of 16.33 feet msl; (3) a bulkhead and forebay structure located downstream and at the west end of the Corps dam; (4) a powerhouse containing four 1.5 megawatt (MW) generating units with a total installed capacity of 6.0 MW; (5) a 34.5 kilovolt underground transmission cable; and (6) appurtenant facilities.

Green Island Power Authority proposes to: (1) Lower the existing main spillway to a crest elevation of 12.5 feet msl, and install new hydraulically operated crest gates with a maximum crest gate elevation of 18.5 feet msl; (2) install a new trash boom extending across and upstream of the forebay; (3) construct a new bulkhead structure equipped with a new 300-foot-wide, 300-foot-long fish protection system screen; and (4) expand the existing powerhouse to the east and west and install four new 6.0 MW generating units, and replace the four existing generating units with four new 6.0 MW generating units with a total installed capacity of 48 MW.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance and Ready for Environmental Analysis	May 1, 2009.
Filing interventions, comments, recommendations, preliminary terms and conditions, and fishway prescriptions	June 30, 2009.
Notice of availability of the EA	October 28, 2009.
Filing comments on EA	November 27, 2009.
Filing modified terms and conditions	January 26, 2010.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6071 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13387–000]

Liberty University, Inc., Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

March 12, 2009.

On March 6, 2009, Liberty University, Inc., filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Scott's Mill Project No. 13387 to be located on the James River in Amherst and Bedford Counties, Virginia.

The proposed project would consist of: (1) The existing 15-foot-high, 925-foot-long Scott's Mill dam; (2) an existing 316-acre reservoir with a normal water surface elevation of 511 feet mean sea level; (3) a new powerhouse containing 4 generating units with a total installed capacity of 4.8 MW; (4) a new 70 to 500-foot-long underground transmission cable; and (5) appurtenant facilities. The estimated annual generation is 10,500 MWh.

Applicant Contact: Lee Beaumont, Assistant to the Chancellor, 1971 University Blvd., Lynchburg, VA 24502 (434) 592–3315.

FERC Contact: Tom Dean (202) 502–6041.

Competing Application: This application competes with Project No. 13302–000 filed October 14, 2008. The deadline to file a competing application or notice of intent ended February 6, 2009.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene 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 ''eFiling'' 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.* Click-on general search and enter the docket number (P–13387) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6072 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP09–76–000; PF06–34–000]

Questar Overthrust Pipeline Company; Notice of Application

March 12, 2009.

Take notice that on March 5, 2009, Questar Overthrust Pipeline Company (Overthrust), 180 East 100 South, Salt Lake City, Utah 84111, filed an application to section 7(c) of the Natural Gas Act (NGA) seeking authority to expand its interstate natural-gas transmission system by constructing and operating two new compressor packages. One compressor package will be located at a new Compressor Station called Point of Rocks and the other compressor package will be installed in a vacant bay in an existing building at the existing Rock Springs Compressor Station. The proposed Point of Rocks station and the Rock Springs station are both located within Sweetwater County, Wyoming, all as more fully set forth in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Overthrust explains that the proposed new pipeline facilities, known as the Overthrust Compression Expansion Project (Compression Expansion), will enable it to transport an additional 300,000 Dth/d of natural gas from receipt points at Opal, Wyoming, to the existing interconnect with REX near Wamsutter, Wyoming. It is further explained that Overthrust has negotiated a Transportation Service Agreement with Encana Marketing (USA) Inc. that has subscribed for the entire 300,000 Dth/d of incremental capacity created by the project.

Overthrust states that by letter dated October 9, 2008, in Docket No. PF06–34–000, the Commission's Office of Energy Projects granted Overthrust's September 26, 2008, request to utilize the Commission's Pre-Filing Process for the planned Compression Expansion. Overthrust has also submitted an applicant-prepared Draft Environmental Assessment that was prepared during the Pre-Filing Process that was included with this application.

Any questions regarding Overthrust's proposal in this application should be Directed to L. Bradley Burton, Manager, Federal Regulatory Affairs, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145, telephone: (801) 324–2459 or e-mail: *brad.burton@questar.com* or Tad M. Taylor, Division Counsel, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145, telephone: (801) 324–5531.

On October 9, 2008, the Commission staff granted Overthrust's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–34–000 to staff activities involving the project. Now, as of the filing of this application on March 5, 2009, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP09–76–000, as noted in the caption of this notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all

Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 2, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6066 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–33–005]

Wyckoff Gas Storage Company LLC; Notice of Application

March 12, 2009.

On March 2, 2009, Wyckoff Gas Storage Company, LLC, (''Wyckoff''), 6733 South Yale, Tulsa, OK 74136, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, filed an abbreviated application to amend its certificates of public convenience and necessity issued in CP03–33–000 *et al.* for authority to enter into a payment in lieu of taxes transaction with the Steuben County Industrial Development Agency. This transaction would provide Wyckoff with property, sales, and use tax exemptions for the facilities at its certificated storage field in Steuben County, New York. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to John A. Boone, Wyckoff Gas Storage Company, LLC, 6733 South Yale, Tulsa, OK 74136, (918) 491–4440, (918) 491–4422 (fax), or *johnbo@kfoc.net.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in

determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6073 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 13, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–236–001.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer submits Substitute First Revised Sheet 192 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 2/22/09.

Filed Date: 03/09/2009.

Accession Number: 20090310–0065.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–243–001.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Kinder Morgan Illinois Pipeline LLC submits First Revised Sheet 181 *et al.* to its FERC Gas Tariff Original Volume 1, to be effective 2/22/09.

Filed Date: 03/09/2009.

Accession Number: 20090310–0080.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–136–001.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits First Revised Sheet 29 *et al.* of its FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.

Filed Date: 03/10/2009.

Accession Number: 20090310–0081.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–385–001.

Applicants: Caledonia Energy Partners, L.L.C.

Description: Caledonia Energy Partners, LLC submits FERC Gas Tariff, First Revised Volume 1 and Substitute First Revised Sheet 46.

Filed Date: 03/10/2009.

Accession Number: 20090311–0053.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–289–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits First Revised Sheet 116 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 4/10/09.

Filed Date: 03/11/2009.

Accession Number: 20090312–0348.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–448–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Revised Sheet 2502 to FERC Gas Tariff, Third Revised Volume 1, to be effective 4/11/09.

Filed Date: 03/11/2009.

Accession Number: 20090312–0346.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–449–000.

Applicants: Gulf States Transmission Corporation.

Description: Gulf States Transmission Corporation submits Fourth Revised Sheet 3 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.

Filed Date: 03/11/2009.

Accession Number: 20090312–0347.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–450–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Fourth Revised Sheet No 28 *et al.* to FERC Gas Tariff, Third Revised Volume No 1, to be effective 4/1/09.

Filed Date: 03/12/2009.

Accession Number: 20090313–0115.

Comment Date: 5 p.m. Eastern Time on Friday, March 20, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-

mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6082 Filed 3–19–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Thursday, March 12, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–391–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Second Revised Sheet 25 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 4/1/09.

Filed Date: 03/09/2009.

Accession Number: 20090310–0068.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–393–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits First Revised Sheet 37 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 03/09/2009.

Accession Number: 20090310–0067.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009

Docket Numbers: RP09–397–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Third Revised Sheet 25 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 4/1/09.

Filed Date: 03/09/2009.

Accession Number: 20090310–0066.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–399–001.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits Twelfth Revised Sheet 10 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.

Filed Date: 03/05/2009.

Accession Number: 20090306–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–442–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits non-conforming FSS Service Agreements 6890 *et al.* with City of Charlottesville, Virginia.

Filed Date: 03/09/2009.

Accession Number: 20090310–0069.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–443–000.

Applicants: Empire Pipeline, Inc.

Description: Empire Pipeline, Inc. submits its initial Deferred State Income Tax Balance Report pursuant to Section 21.5(a) of the GT&C of its FERC Gas Tariff in RP09–443.

Filed Date: 03/10/2009.

Accession Number: 20090310–5061.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–444–000.

Applicants: Wyckoff Gas Storage Company, LLC.

Description: Wyckoff Gas Storage Company, LLC submits Original Sheet 1 *et al.* to FERC Gas Tariff, Original Volume 1 in compliance with the Commission's Order 712.

Filed Date: 02/20/2009.

Accession Number: 20090223–0028.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 18, 2009.

Docket Numbers: RP09–445–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits First Revised Sheet 172B to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 03/10/2009.

Accession Number: 20090311–0051.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–446–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission, LLC submits First Revised Sheet 223 to FERC Gas Tariff, First Revised Volume 1, to be effective 4/1/09.

Filed Date: 03/10/2009.

Accession Number: 20090311–0052.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–447–000.

Applicants: Monroe Gas Storage Company, LLC.

Description: Monroe Gas Storage Company, LLC submits Sheet 1 through 346, plus Title Sheet to FERC Gas Tariff, Original Volume 1 and Non Conforming Service Agreements to comply with the Commission's 12/21/07 Order.

Filed Date: 03/10/2009.

Accession Number: 20090311–0065.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6083 Filed 3–19–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 13, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–752–003.

Applicants: Solaro Energy Marketing Corporation.

Description: Solaro Energy Marketing Corp submits supplement to Substitute First Revised Sheet 1 to FERC Electric Tariff, Original 1, in compliance with Order 697 under ER03–752.

Filed Date: 03/11/2009.

Accession Number: 20090312–0350.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER04–805–009.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc submits a supplemental filing to their 12/29/09 Updated Market Power Analysis under ER04–805.

Filed Date: 03/11/2009.

Accession Number: 20090312–0352.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER06–1399–006.

Applicants: Sunbury Generation LP.

Description: Sunbury Generation, LP submits an amendment to the June 2008 Compliance Filing under ER06–1399.

Filed Date: 03/11/2009.

Accession Number: 20090312–0351.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–405–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc.'s Report on Waiver Request under ER09–405.

Filed Date: 03/11/2009.

Accession Number: 20090311–5229.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–674–001.

Applicants: ZZ Corporation.

Description: ZZ Corporation submits a notice of cancellation of its FERC Electric Tariff, Original Volume 1 under ER09–674.

Filed Date: 03/11/2009.

Accession Number: 20090312–0281.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER09–827–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an executed amended and restated large generator interconnection agreement with Green Lake Wind, LLC under ER09–827.

Filed Date: 03/10/2009.

Accession Number: 20090311–0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: ER09–828–000.

Applicants: Public Service Electric & Gas Company.

Description: Public Service Electric and Gas Company et al. request for waivers of affiliate standards and authorizations for sales, as well as a CD containing a Notice of Filing under ER09–828.

Filed Date: 03/10/2009.

Accession Number: 20090311–0057.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: ER09–829–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets to the AES Huntington Beach Interconnection Service and Facilities Agreement between SCE and AES Huntington Beach LLC under ER09–829.

Filed Date: 03/10/2009.

Accession Number: 20090311–0064.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: ER09–830–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits First Revised Sheet 52 et al. to FERC Electric Tariff, First Revised Rate Schedule 96: Pasny Delivery Service under ER09–830.

Filed Date: 03/10/2009.

Accession Number: 20090311–0063.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: ER09–831–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits an executed standard large generator interconnection agreement with Long Island Lighting Company, d/b/a LIPA under ER09–831.

Filed Date: 03/10/2009.

Accession Number: 20090311–0055.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6081 Filed 3–19–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–75–003, CP03–75–004, CP05–361–001, and CP05–361–002]

Freeport LNG Development, LP; Notice of Availability of the Environmental Assessment for the Proposed Freeport LNG Export Project and Bog/Truck Project

March 13, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Department of Energy (DOE), Office of Fossil Fuels, have prepared an environmental assessment (EA) on the liquefied natural gas (LNG) facilities proposed by Freeport LNG Development, LP (Freeport LNG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The DOE is a cooperating agency for the development of the EA. A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal and is involved in the NEPA analysis. The FERC staff concludes that approval of the proposed projects, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

In order to operate its facility for the LNG Export Project, Freeport LNG proposes equipment modification at the Phase I unloading dock to allow shore to ship LNG transfer. This would include converting one [1] of the four existing unloading arms on the Phase I unloading dock to a loading line to transfer export-bound LNG from the terminal's storage tanks to awaiting ships. The conversion would involve minor changes involving a check valve and a control valve. The check valve would be replaced with a short spool. At any given time, the terminal would operate either in the export mode or the currently authorized import mode, but not in both modes simultaneously, such that ships visiting the terminal to load LNG for export would operate instead of, not in addition to, ships delivering LNG for domestic use only.

Freeport LNG also applied to DOE on August 1, 2008 in Docket No. FE–08–70–LNG to export on a short-term or spot market basis up to 24 Bcf of previously imported LNG cumulatively over a two-year period from the United States (U.S.) to the United Kingdom, Belgium, Spain, France, Italy, Japan, South Korea, India, China, and/or Taiwan.

Freeport LNG also proposes to construct and operate a boil-off gas (BOG) liquefaction system and a LNG truck delivery system at the company's existing import terminal.[2] These facilities would allow Freeport LNG to (1) liquefy about 5 million cubic feet per day of BOG and return it to the LNG storage tanks and (2) receive the delivery of LNG by truck in order to keep the tanks in the necessary cryogenic state. The BOG liquefaction plant would also act as a back-up to the existing BOG takeaway pipeline compression. The location of BOG liquefaction facilities would consist of:

- One BOG liquefaction heat exchanger;
- One BOG liquefaction expander-compressor;
- Two BOG liquefaction compression lube oil filters;
- Three BOG refrigeration compressor units (approximately 1,380 horsepower (hp) each);
- Natural gas piping, 4, 6, 8, and 12-inch-diameter aboveground piping; and
- LNG piping, 4-inch-diameter aboveground piping.

Freeport LNG is proposing certain facility modifications to enable it to undertake LNG truck unloading activities in the event that the BOG liquefaction facilities are not available. The truck unloading facilities would require the installation of a single 4-inch-diameter inlet connection and valves on one of the existing LNG transfer lines and a 25 hp portable electric pump, if needed. The LNG truck would be connected to the valve via a 3-inch-diameter hose during unloading of the LNG. Freeport LNG would use these facilities to transfer the LNG from the trucks to the existing tanks. Freeport LNG anticipates that it would receive 5 to 6 truck deliveries per day, totaling 66,000 gallons or 4.96 million standard cubic feet (MMscf) of LNG during the periods when delivery by truck would be required. The proposed LNG truck delivery system is expected to operate for about 60–90 days, generating traffic of about 540 trucks annually.

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 and affected landowners; Native American Tribes; newspapers and libraries; 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.

You can make a difference by providing us with your specific comments or concerns about the Sabine Export Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before April 13, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket numbers CP03–75–003, CP03–75–004, CP05–361–001, and CP05–361–002 with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or

[1] Freeport LNG's LNG Transfer System Startup/Operation Procedure (Document No. FLNG–REC–101XXX [Revision 1–09–04–08]) identifies the arm as LA–1A.

[2] During routine terminal operations, ambient heat in the LNG storage tanks and piping causes small amount of LNG to evaporate. The vaporizing LNG is referred to as BOG or boil-off gas. The BOG increases the storage tank pressure until a point where it must be transferred, flared, or re-liquefied.

''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

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).[3] 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* 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. E9–6075 Filed 3–19–09; 8:45 am]

BILLING CODE

[3] 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

[Project No 77–222]

Pacific Gas and Electric Company; Notice of Availability of Environmental Assessment

March 12, 2009.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Commission has reviewed an application, filed March 6, 2008, requesting approval to temporarily amend article 52 of the Potter Valley Project license. The project is located on the Eel River and the East Branch Russian River in Lake and Mendocino Counties, California.

Pacific Gas and Electric Company (licensee for the Potter Valley Project) requested approval to divert additional water from the Eel River to the East Branch Russian River in the same manner as authorized previously by the Commission in an order titled, Order Granting Temporary Amendment of License Article 52, issued March 13, 2008. The request, if granted, would provide frost protection from March 15–April 14, 2009 while the Commission continues its review of the licensee's long-term frost protection plan.

The attached environmental assessment (EA), prepared by Commission staff in the Office of Energy Projects, analyzed the probable environmental effects of the proposed temporary amendment and has concluded that approval would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *ferconlinesupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6064 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–379–002]

Pine Prairie Energy Center, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Pine Prairie Energy Center Supplemental Expansion Project and Request for Comments on Environmental Issues

March 13, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Pine Prairie Energy Center Supplemental Expansion Project (Expansion Project, or Project) involving construction and operation of facilities by Pine Prairie Energy Center, LLC (Pine Prairie) in Evangeline and Acadia Parishes, Louisiana.[1] This EA will be used by the Commission in its decision-making process to determine whether the Expansion Project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the Expansion Project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on April 13, 2009.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Pine Prairie representative about survey permission and/or the acquisition of an easement to construct, operate, and

[1] Pine Prairie submitted an amendment application on February 6, 2009 under Section 7 of the Natural Gas Act.

maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the natural gas company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Pine Prairie proposes to expand the existing capacity at the existing Pine Prairie Energy Center. Pine Prairie proposes to:

- Construct two new natural gas salt-dome storage caverns with a capacity of 12.8 billion cubic feet (bcf);
- Increase the working gas capacity of two of the three authorized natural gas storage caverns from 8 Bcf to 10 Bcf;
- Construct one additional raw water withdrawal well and one additional saltwater disposal well;
- Construct 5.3 miles of 24-inch diameter natural gas pipeline loop;
- Install six compression units totaling 34,800 horsepower at the Gas Handling Facility, expand the Gas Handling Facility to accommodate the additional compressors;
- Install pipeline facilities related to the two additional caverns; and
- Expand the previously authorized brine disposal well injection intervals to conform to the intervals approved by the Louisiana Department of Natural Resources.

The general location of the project facilities is shown in Appendix 1.[2]

If approved, Pine Prairie proposes to commence construction of the proposed Expansion Project in September 2009.

Land Requirements for Construction

Construction of the pipeline would temporarily impact about 75.6 acres and approximately 38.2 acres of additional right-of-way would be permanently affected by the Expansion Project. Pine Prairie would use existing access roads, contractor yards, and utilize the existing Pine Prairie Energy Center to minimize land impacts.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Pine Prairie. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts on air quality;
- Potential increase in noise emissions may occur, and
- Potential impacts to wetlands.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Expansion Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before April 13, 2009.

For your convenience, there are three methods that you can use to submit your comments to the Commission. In all instances please reference the project docket number CP04–379–002 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ11.3.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field and enter ''002'' in the Sub-Docket field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support toll free at 1–866–208–3676, for TTY contact 1–202–502–8659 or e-mail at *FercOnlineSupport@ferc.gov*. 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 *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6076 Filed 3–19–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12551–001–CT]

Salvatore and Michelle Shifrin; Notice of Availability of Environmental Assessment

March 12, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a small hydro (less than 5 megawatt) exemption from licensing for the Mansfield Hollow Hydro Power Project, to be located on the Natchaug River, in Tolland County, Connecticut, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of the project and conclude that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

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* 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 affix ''Mansfield Hollow Hydro Project No. 12551'' to all comments. Comments may be filed electronically via 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 Tom Dean at (202) 502–6041.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6070 Filed 3–19–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2085–014—California; 67–113; 120–020]

Southern California Edison; Notice of Availability of the Final Environmental Impact Statement for the Big Creek Projects

March 13, 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 47897), the Office of Energy Projects has reviewed the applications for relicensing four Southern California Edison (SCE) projects, which are part of the Big Creek System: Mammoth Pool Project (FERC No. 2085); Big Creek Nos. 2A, 8 and Eastwood (FERC No. 67); Big Creek Nos. 1 and 2 (FERC No. 2175);

and Big Creek No. 3 (FERC No. 120), located in Fresno and Madera Counties, California, and has prepared a final Environmental Impact Statement (final EIS) for the projects.

SCE's existing 865-megawatt Big Creek System includes the integrated operation of nine major powerhouses, six major reservoirs, numerous small diversions, various conveyance facilities, and electrical transmission lines, authorized under seven Commission licenses. The four projects evaluated in the draft EIS occupy about 6,870 acres of federal land administered by the U.S. Department of Agriculture, Forest Service, in the Sierra National Forest.

In the final EIS, staff evaluates the applicant's proposal and alternatives for relicensing the projects. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

Copies of the final EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Internet at *http://www.ferc.gov* under the eLibrary link. Enter the docket number (P–067, P–2175, P–2085, or P–120) to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

CD versions of the final EIS have been mailed to everyone on the mailing list for the projects. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

For further information, contact James Fargo at (202) 502–6095 or at *james.fargo@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6074 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–68–000]

Texas Eastern Transmission, LP; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Proposed TEMAX and TIME III Projects and Alternative and Request for Comments on Environmental Issues

March 13, 2009.

As previously noticed on November 18, 2008, and supplemented herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts that could result from the construction and operation of the Texas Eastern Market Area Crossing Project (TEMAX) and Texas Eastern Incremental Market Area Expansion III Project (TIME III) proposed by Texas Eastern Transmission, LP (Texas Eastern). The projects are proposed by Texas Eastern to expand the natural gas transportation capacity of its existing pipeline system in southern Pennsylvania. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This Supplemental Notice of Intent (NOI) announces the opening of a limited scoping period the Commission will use to gather input from the public and interested agencies on the proposed projects, and specifically, the Chambersburg Alternative consisting of about 12.5 miles of additional pipeline replacement in Franklin and Adams Counties, Pennsylvania. Your input will help determine which issues need to be evaluated in the EA regarding the Chambersburg Alternative in the event that Texas Eastern is unable to install the proposed compressor unit at the Heidlersburg Compressor Station. Please note that the limited scoping period for the Chambersburg Alternative will close on April 13, 2009.

This notice is being sent to landowners affected by the Chambersburg Alternative; Federal, State, and local government representatives and agencies; environmental and public interest groups; elected officials; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of the planned project and to encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Texas Eastern representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with Federal or State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Projects

Texas Eastern's existing natural gas pipeline system consists of over 9,000 miles of pipeline from the Gulf Coast to the Northeastern United States, and includes its Main Line 1 and Main Line 2.

To expand its system in southern Pennsylvania Texas Eastern is requesting authorization to replace 25.9 miles of various diameter pipeline, construct 9.6 miles of loop,[1] use of 0.8 mile of existing pipeline, and construct 26.5 miles of new pipeline lateral.[2] In addition, Texas Eastern requests authorization to add 85,633 horsepower (hp) of compression at four existing compressor stations and abandon 9,500 hp of compression at one compressor station, resulting in a net increase of 76,133 hp of compression for the projects. Texas Eastern also requests authorization to uprate the maximum allowable operating pressure of its existing Lines 1 and 2 from 1,000 to

[1] A pipeline ''loop'' is a segment of pipe installed adjacent and parallel to an existing pipeline system that is connected to the system at both ends. A loop allows more gas to be moved through that portion of the pipeline system or functions as a backup system.

[2] On February 27, 2009, Texas Eastern filed its application with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations. Prior to the formal application filing, Commission staff initiated its review of the TEMAX and TIME III Projects under the Commission's Pre-filing Process on July 25, 2008, in Docket No. PF08–27–000. As indicated in the Notice of Application issued by the Commission on March 11, 2009, the Pre-filing Process for these projects has ended and this proceeding will be conducted in Docket No. CP09–68–000.

1,112 pounds per square inch gauge for 268 miles between its Uniontown and Marietta Compressor Stations. The proposed facilities are located in Greene, Bedford, Franklin, Adams, Lancaster and York Counties, Pennsylvania.

The purpose of the TEMAX Project is to provide additional natural gas transportation capacity of 395,000 dekatherms per day (Dth/d) from a receipt point with the Rockies Express Pipeline LLC in Clarington, Ohio, to an interconnect with Transcontinental Gas Pipeline Company, LLC (Transco) in York County, Pennsylvania. The TIME III Project would provide additional transportation capacity of 60,000 Dth/d from a receipt point in Oakford, Pennsylvania to the same interconnect with Transco.

More specifically, Texas Eastern plans the following:

The Holbrook Discharge

- Construct 0.5 mile of 36-inch-diameter loop as an addition onto the existing Line 30;
- Replace 9.2 miles of the existing 20-inch-diameter Line 2 and 24-inch-diameter Line 1 with 36-inch-diameter pipeline; and
- Construct 9.1 miles of 36-inch-diameter loop.

The Uniontown Discharge

- Replace 3.7 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline.

The Bedford Discharge

- Replace 6.8 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline.

The Chambersburg Discharge

- Replace 2.1 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline, and the Chambersburg Alternative would consist of about 12.5 miles of additional pipeline replacement with 36-inch-diameter pipeline.

The Heidlersburg Discharge

- Replace 2.4 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline.

The Marietta Extension

- Replace 1.7 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline;
- Utilize 0.8 mile of existing 36-inch-diameter pipeline crossing the Susquehanna River; and
- Construct 26.5 miles of new 30-inch-diameter pipeline lateral to the interconnect with Transco.

The Holbrook Compressor Station

- Abandon one 2,000-horsepower (hp) reciprocating gas-powered compressor unit; and
- Install a 13,333-hp turbine-driven centrifugal compressor.

The Uniontown Compressor Station

- Install a 20,000-hp electric-powered compressor unit.

The Bedford Compressor Station

- Install pressure regulators on Line 1 and 2.

The Chambersburg Compressor

- Abandon three reciprocating gas-powered compressor units totaling 7,500 hp;
- Install a new 27,000-hp electric-powered compressor unit; and
- Add 3,330 hp to the existing electric-powered compressor unit.

The Heidlersburg Compressor Station

- Install a 22,000-hp electric-powered compressor unit.

The Chambersburg Alternative was filed in the event that electricity is not available to support the proposed horsepower modifications at the proposed Heidlersburg Compressor Station in Adams County. Specifically, the Chambersburg Alternative consists of adding an additional 12.5 miles of 36-inch-diameter pipeline replacement to the Chambersburg Discharge. The power company supplying the electric power to the proposed additional compression at the Heidlersburg Compressor Station is conducting a study to determine if the electricity is available to support the station modification. To ensure the projects can supply the proposed natural gas volume on schedule, this alternative was developed in the event the electricity for the compressor station is not available.

The general location of the planned facilities and the Chambersburg Alternative is shown in appendix A.[3]

Land Requirement for Construction

Construction of the TEMAX/TIME III Projects would require about 602.1 acres of land including pipeline, aboveground facilities, appurtenant facilities, and pipe storage and contractor yards. Following construction, about 543.2 acres would be used for operation of the proposed facilities. If constructed, the Chambersburg Alternative would require an additional 184.0 acres for construction. The area disturbed during construction but not required for operation and would generally be allowed to revert to pre-construction condition.

The planned pipeline loops would be located within and directly adjacent to Texas Eastern's existing pipeline facilities to the extent practicable. Construction and operation of the modifications to existing compressor stations would occur within the existing facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impact that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Supplemental NOI, the Commission staff requests public comments on the scope of the issues to address in the EA, and specifically for comments on the Chambersburg Alternative.[5] All comments received will be considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the Projects under these general headings:

- Geology and soils;
- Land use and visual quality;
- Water quality and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Threatened and endangered species;
- Air quality and noise; and
- Reliability and safety.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Texas Eastern.

[4] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[5] The original NOI for the TEMAX and TIME III Projects was issued on November 18, 2008, and the scoping period closed on December 19, 2008. The original NOI was sent to affected landowners; Federal, State, and local government agencies; elected officials; Native American groups; other interested parties; and local libraries and newspapers.

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies; public interest groups; Native American Tribes; interested individuals; affected landowners; newspapers; libraries; and the Commission's official service list for this proceeding. A comment period will be allotted for review when the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

Currently Identified Environmental Issues

Based on our review of Texas Eastern's recently filed Chambersburg Alternative and preliminary consultations with other agencies, we have already identified several environmental issues that we think deserve attention. This preliminary list of issues for the Chambersburg Alternative may be changed based on your comments and our analysis:

- Location near the Michaux State Forest;
- Crosses the Caledonia State Park; and
- Crosses the Appalachian National Scenic Trail.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the TEMAX/TIME III Projects. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before April 13, 2009.

For your convenience, there are three methods you can use to submit your written comments to the Commission. In all instances, please reference the project docket number CP09–68–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may become an ''intervenor,'' which is an official party to the proceeding now that Texas Eastern has formally filed its application with the Commission. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''eFiling'' link on the Commission's Internet Web site.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix B). If you do not return the Information Request, you will be taken off the mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, to request additional information on the project or to provide comments directly to the project sponsor, you can contact Texas Eastern directly by calling toll free at 1–800–831–0043. Also, Texas Eastern has established an Internet Web site at *http://www.spectraenergy.com/what_we_do/projects/temax_timeiii/* with additional information about the projects.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6077 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2284–009, etc.]

AEE 2, L.L.C, et al.; Notice of Filing

March 12, 2009.

	Docket Nos.
AEE 2, L.L.C	ER99–2284–009
AES Creative Resources, L.P	ER99–1773–009
AES Eastern Energy, L.P	ER99–1761–005
Indianapolis Power & Light Company	ER00–1026–016
AES Ironwood, L.L.C	ER01–1315–005
AES Red Oak, L.L.C	ER01–2401–011
AES Huntington Beach, L.L.C	ER98–2184–014
AES Redondo Beach, L.L.C	ER98–2186–015
AES Placerita, Inc	ER00–33–011
Condon Wind Power, LLC	ER05–442–003
AES Alamitos, Inc	ER98–2185–014
Storm Lake Power Partners II, LLC	ER99–1228–007
Lake Benton Power Partners, LLC	ER97–2904–008
Mountain View Power Partners, LLC	ER01–751–010 ER01–751–012

Notice of Filing

Take notice that on February 25, 2009, AEE 2, L.L.C., AES Creative Resources, L.P., AES Eastern Energy, L.P., Indianapolis Power & Light Company, AES Ironwood, L.L.C., AES Red Oak, L.L.C., AES Huntington Beach, L.L.C., AES Redondo Beach, L.L.C., AES Placerita, Inc., Condon Wind Power, LLC, AES Alamitos, Inc., Storm Lake Power Partners II, LLC, Lake Benton Power Partners, LLC, and Mountain View Power Partners, LLC, filed supplemental information to their compliance filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible On-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6068 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–241–001]

California Independent System Operator Corporation; Notice of Filing

March 12, 2009.

Take notice that on March 2, 2009, The California Independent System Operator Corporation submitted an instant filing in compliance with the Commission's January 30, 2009 Order, *126 FERC ¶61, 082,* (Price Cap Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6067 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1206–000; ER08–1206–001; ER09–342–000]

Southwest Power Pool, Inc.; Notice of Filing

March 13, 2009.

Take notice that on February 23, 2009, Southwest Power Pool, Inc. tendered for filing additional information concerning its filings submitted on December 17, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 20, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6080 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Guidance Notice Clarifying Procedures for Submitting Non-Public Materials

March 12, 2009.

Take notice that the Commission is hereby clarifying and explaining the importance of the procedures for submitting Non-Public material to the Commission via paper, (DVD/CD), or electronic filing. The procedures are designed to ensure that Non-Public information is properly designated, identified, and processed in order to minimize the risk of Public disclosure of sensitive information. Explained below are the categories of materials that are considered Non-Public and the applicable regulation that can be found in Title 18 of the Code of Federal Regulations.

Non-public materials include:

1. *Privileged Material:* Material for which Privileged Treatment is requested under 18 CFR 388.112 because of the confidential nature of the information.

2. *Critical Energy Infrastructure Information (CEII):* Maps, drawings, and other information for which CEII treatment is requested under 18 CFR 388.112 because the information may be sensitive to the security of the nation's hydroelectric and natural gas pipeline infrastructure.

3. *Protected Material:* Material filed under a Protective Order issued by an FERC Administrative Law Judge or the Commission, or material for which such treatment is requested along with a draft protective order. Protected material must be filed under seal. The material is indexed in eLibrary; however, the actual Protected material is not added to eLibrary because of the requirement to sign a non-disclosure agreement for access.

Because of the instantaneous nature of the Commission eFiling system, it is essential that every document be processed into eLibrary with the correct security designation. The security process for submissions begins with the filer of non-public materials. It is critical that documents submitted to the Commission be properly identified and patently and conspicuously marked when such documents are non-public materials. This helps ensure that Commission staff identify and correctly process each category of non-public material into eLibrary, and do so accurately and efficiently.

In order to ensure that non-public material is processed into eLibrary correctly, the filer must observe the following procedures for paper filings information submitted via the Commission's electronic filing system and information included on DVD/CD(s).

Paper Filings

Paper filings containing non-public material must include a cover letter identifying the filer, all applicable docket or project numbers (unless it's a new application), a description of the filing, and a clear indication on the first page of the cover letter that the filing contains Public, Privileged, CEII, and/or Protected versions, as applicable.

Copies of a cover letter must be attached to each version, with the security designation in bold print in the top right portion of the first page. Use the applicable security designations ''PUBLIC VERSION,'' ''PRIVILEGED VERSION,'' or ''CEII MATERIAL.'' The first page of the underlying material should also contain the same designation. Ensure that Protected Material is filed ''under seal,'' with a copy of the cover letter attached to the sealed enclosure and ''PROTECTED MATERIAL'' in bold print in the upper right area of the cover letter.

Large filings should be collated according to security. Where multiple binders are involved, the cover letter should list and clearly identify the security of each volume.

Failure to comply with these guidelines may result in a document not being considered ''filed'' until issues pertaining to document security are resolved with the submitter.

eFILING

The Commission's electronic filing system accepts Public, Privileged and CEII material. Protected material may not be efiled at this time. Every electronic submission must have at least one Public file (which may be a redacted version of the filing, or only be a cover letter, depending on the nature of the content of the document).

The security of efiled documents must be clear to everyone involved in document preparation, submission, and processing of the filing. For example, the person submitting an efiling (*e.g.*, a paralegal) is often someone other than the document preparer (*e.g.*, an attorney) and could possibly be unaware of the security designation. Moreover, submissions may include files provided to the document preparer or submitter by other entities. All of these individuals should be aware of what security designation applies to the document that is being efiled. Persons preparing documents with non-public material are advised to organize files in folders by security level and/or with file names beginning with PUBLIC, PRIV, or CEII. This will help to ensure that when efiling the document submitter correctly uploads files under the appropriate security tab on the File Upload screen. Again, the designation of security begins with the filing party.

Failure to comply with these guidelines may result in a document not being considered ''filed'' until issues pertaining to document security are resolved with the submitter.

DVD/CD Submissions

The Commission receives numerous filings containing one or more DVDs or CDs. The Commission, in fact, allows a reduced number of paper copies of large filings to be submitted if the filer includes the entire filing on DVD/CD. In other cases, the information on DVD/CD supplements information in a paper filing, or contains only a portion of the material on paper.

Each paper submission that includes information on DVD/CD must include a cover letter describing the content and security status of each DVD/CD and indicating whether the electronic media contains the entire filing, part of the filing, or is a supplement containing information not submitted on paper.

The security for all files on each DVD/CD must be clear. For all filings, Public, Privileged, and CEII, files should be submitted on separate, clearly-labeled DVD/CDs (*i.e.*, should be labeled PUBLIC, PRIVILEGED, or CEII in bold). Protected material included on electronic media must always be on a

separately labeled DVD/CD and included with the paper material ''under seal.''

Failure to comply with these guidelines may result in a document not being considered ''filed'' until issues pertaining to document security are resolved with the submitter.

In addition to security concerns, persons submitting information on DVD/CD must observe the following restrictions:

1. The acceptable file formats for information on DVD/CD are included in the Submission Guidelines posted at: *http://www.ferc.gov/help/submission-guide/user-guide.pdf.*

2. The file size limit is 50 Mb per file. Submit maps in individual files if necessary to comply with this limit.

3. The file name, including the extension, cannot exceed 60 characters.

It is important that such restrictions be strictly followed, as a failure to comply could prohibit the Commission's access to the contents of that submission. Accordingly, the Commission reserves the right to not accept such submissions.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6069 Filed 3–19–09; 8:45 am]

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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; Post-Technical Conference Notice

March 13, 2009.

The Commission Staff convened an informal technical conference in the above-referenced proceedings on Thursday, March 12, 2009, at 1 p.m. (EDT), at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Notice of the technical conference was issued on February 25, 2009, and a supplemental notice of technical conference was issued on March 5, 2009.

Post-technical conference information and comments will be filed as follows. Petitioners [1] will make a filing on or before March 27, 2009 supplementing the Petitions for Declaratory Order in the referenced proceedings addressing the topics and questions discussed at the conference. Thereafter, interested persons, regardless of whether they attended the technical conference, may file comments to respond to the Petitioners' supplemental filing on or before April 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6078 Filed 3–19–09; 8:45 am]

BILLING CODE

[1] Petitioners are NorthWestern Corporation, and Mountain States Transmission Intertie, LLC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–69–000]

Viking Gas Transmission Company; Notice of Request Under Blanket Authorization

March 12, 2009.

Take notice that on February 26, 2009, Viking Gas Transmission Company (Viking), 100 West 5th Street, Tulsa, Oklahoma 74103, filed a prior notice request pursuant to part 157 of the Commission's regulations under the Natural Gas Act (NGA) and Viking's blanket certificate issued in Docket No. CP82–414, for authorization to construct, own, and operate an expansion to an existing lateral terminating at the Fargo, North Dakota city gate (Fargo Lateral) and to abandon the existing Fargo Lateral pipeline facilities that are to be replaced, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Viking proposes to expand its Fargo Lateral pipeline facilities by constructing and operating, in two segments, approximately 9.98 miles of a 12-inch diameter natural gas pipeline to replace 9.98 miles of 8-inch diameter natural gas pipeline to be abandoned in place, all in Clay County, Minnesota and Cass County, North Dakota. Viking states that, when fully operational, the new pipeline facilities will be capable of transporting up to 91,000 dekatherms per day (Dth/d) of natural gas from the existing Viking mainline pipeline to the existing Fargo, Dilworth, and Moorhead interconnects. Viking asserts that the existing Fargo Lateral facilities are capable of transporting only 53,332 Dth/d. Viking states that, as a part of the subject project, it proposes the abandonment in place of certain pipeline and auxiliary facilities on its Fargo Lateral, which include approximately 9.98 miles of 8-inch pipeline, as well as short segments of aboveground pipeline that connect directly to tie-in valves which are also to be replaced. Viking states that it has entered into a precedent agreement with Northern States Power Company, a Minnesota corporation (NSP–MN), which provides for a minimum firm transportation capacity of 37,688 Dth/d. Viking asserts that the estimated cost of the proposed project is $14.6 million.

Any questions regarding the application should be directed to Brenda Storbeck, General Manager, Rates & Regulatory Affairs, ONEOK Partners GP, L.L.C., ONEOK Plaza, Tulsa, Oklahoma 74103, at (918) 588–7707.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6065 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–1–010]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice of Technical Conference

March 13, 2009.

In an order issued on October 8, 2004, the Commission set forth an annual deadline for Other Federal Agencies (OFAs) to submit their costs related to Administering part I of the Federal Power Act. *Order on Rehearing Consolidating Administrative Annual Charges Bill Appeals and Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order). The Commission required OFAs to submit their costs by December 31st of each fiscal year using the OFA Cost Submission Form. The October 8 Order also announced that a technical conference would be held for the purpose of reviewing the submitted cost forms and detailed supporting documentation.

The Commission will hold a technical conference for reviewing the submitted OFAs cost. The purpose of the conference will be for OFAs and licensees to discuss costs reported in the forms and any other supporting documentation or analyses.

The technical conference will be held on March 31, 2009, in Room 3M–3 at the Commission's headquarters, 888 First Street, NE., Washington, DC. The technical conference will begin at 2 p.m. (EST).

The technical conference will also be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact the Ace-Federal Reporters, Inc., at 202–347–3700, or 1–800–336–6646. Two weeks after the post-forum meeting, the transcript will be available for free on the Commission's e-library system. Anyone without access to the Commission's Web site or who has questions about the technical conference should contact W. Doug Foster at (202) 502–6118 or via e-mail at *annualcharges@ferc.gov.*

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice), (202) 208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6125 Filed 3–19–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8785–1]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program and their enrollees access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted on or before March 25, 2009.

ADDRESSES: Comments should be submitted to: Susan Street, National Program Manager, Senior Environmental Employment Program (MC 3605A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Street at (202) 564–0410.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator of the Environmental Protection Agency may ''make grants to, or enter into cooperative agreements with,'' specified private nonprofit organizations for the purpose of ''providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control.'' Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Resource Conservation and Recovery Act (RCRA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Emergency Planning & Community Right-to-Know Act (EPCRA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to the extent that these statutes allow disclosure of confidential information to ''authorized representatives of the United States'' or to ''contractors.'' Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement No.	Organization
National Association for Hispanic Elderly	
Q–833410	NAHE
Q–833436	NAHE
Q–833757	NAHE
National Asian Pacific Center on Aging	
QS–833692	NAPCA
Q–834156	NAPCA
Q2–834198	NAPCA
National Caucus and Center on Black Aged, Inc.	
Q–833567	NCBA
Q–833568	NCBA
Q–833569	NCBA
Q–833570	NCBA
Q–833571	NCBA
Q–833572	NCBA
Q–833598	NCBA
Q–833599	NCBA
Q–833600	NCBA
National Council On the Aging, Inc.	
Q–833413	NCOA
Q–833439	NCOA
QS–833832	NCOA
Q–834129	NCOA
Q–834130	NCOA
QS–834157	NCOA
National Older Workers Career Center	
Q–833890	NOWCC
Q–833982	NOWCC
Q–833987	NOWCC
Q–834011	NOWCC
Q–834038	NOWCC
Q–834039	NOWCC
Q–834095	NOWCC
Q–834096	NOWCC

Cooperative agreement No.	Organization
Q–834112	NOWCC
Q–834119	NOWCC
Q–834122	NOWCC
Q–834124	NOWCC
Senior Service America, Inc.	
Q–833403	SSAI
Q–833808	SSAI
Q–833880	SSAI
Q–833883	SSAI
Q–833884	SSAI
Q–834162	SSAI

Among the procedures established by EPA confidentiality regulations for granting access to confidential business information is notification to the submitters of CBI that SEE-grantee organizations and their enrollees will have access to this information. See 40 CFR 2.301(h)(2)(iii) for information submitted under the CAA, 40 CFR 350.23 for EPCRA, and corresponding provisions of 40 CFR 2.302–2.311, for other statutes listed above. This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: March 10, 2009.

Susan Street,

SEE Program Manager.

[FR Doc. E9–6161 Filed 3–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8591–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080469, ERP No. D–FTA–K40270–HI, Honolulu High-Capacity Transit Corridor Project, Provide High-Capacity Transit Service on O'ahu from Kapolei to the University of Hawaii at Manoa and Waikiki, City and County of Honolulu, O'ahu, Hawaii.

Summary: EPA expressed environmental concerns about the proposed project's impacts to wetlands and water quality.

EPA also has concerns about environmental justice and noise impacts, and recommends that various resource agency consultation processes be completed and documented in the FEIS. Rating EC2.

EIS No. 20080474, ERP No. D–NPS–D61061–VA, Cedar Creek and Bella Grove National Historical Park, General Management Plan, Implementation, Frederick, Shenandoah, Warren Counties, VA.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20080477, ERP No. D–FTA–B40100–MA, Urban Ring Corridor—Phase 2 Project, Circumferential Transportation Improvements, Proposed Major New Bus Rapid Transit, Funding and Right-of-Way Permit, Located in the Municipalities of Boston, Brookline, Cambridge, Chelsea, Everett, Medford and Somerville, MA.

Summary: EPA expressed environmental concerns about air quality, indirect and cumulative impacts, and environmental justice. Rating EC2.

EIS No. 20080479, ERP No. D–FHW–J40187–UT, Geneva Road, Center Street/1600 West (Provo) to Geneva Road/SR–89 (Pleasant Grove), Improvements, US Army COE 404 Permit, Utah County, UT.

Summary: EPA expressed environmental concerns about air quality, and recommended that a compliance air quality analysis be included in the FEIS. Rating EC1.

EIS No. 20080502, ERP No. D–FTA–L54005–WA, East Link Rail Transit Project, Proposes to Construct and Operate an Extension of the Light Rail System from downtown Seattle to Mercer Island, Bellevue, and Redmond via Interstate 90, Funding and US Army COE Section 404 and 10 Permits, Seattle, WA.

Summary: EPA does not object to proposed project. Rating LO.

EIS No. 20080516, ERP No. D–NPS–L65563–AK, Legislative—Glacier Bay National Park Project, Authorize Harvest of Glaucous-Winged Gull Eggs by the Huna Tlingit, Implementation, AK.

Summary: EPA does not object to the action as proposed. Rating LO.

EIS No. 20080524, ERP No. D–STB–L59004–AK, Northern Rail Extension Project, Construct and Operate a Rail Line between Northern Pole, AK and Delta Junction, AK.

Summary: EPA expressed environmental concerns about the potential impacts to water quality, open water habitats, wetlands, stream channels, riparian areas, and ecological connectivity. Rating EC2.

EIS No. 20080529, ERP No. D–FHW–B40101–CT, North Hillside Road Extension on the University of Connecticut Storrs Campus, Hunting Lodge Road, US Army COE Section 404 Permit, in the town Mansfield, CT.

Summary: EPA expressed environmental concerns about the potential impacts to wetlands, air quality, and secondary/cumulative impacts. Rating EC2.

EIS No. 20080531, ERP No. D–USN–L11040–WA, Naval Base Kitsap—Bangor, Construct and Operate a Swimmer Interdiction Security System (SISS), Silverdale Kitsap County, WA.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20080532, ERP No. D–AFS–J61114–CO, Vail Ski Area's 2007 Improvement Project, Addressing Issues Related to the Lift and Terrain Network, Skier Circulation, Snowmaking Coverage, Guest Services Facilities, Special-Use-Permit, Eagle/Holy Cross Ranger District, White River National Forest, Eagle County, CO.

Summary: EPA expressed environmental concerns about direct and indirect impacts to Waters of the U.S., impacts of snowmaking on aquatic resources, cumulative impacts from growth and redevelopment, lack of analysis of energy use and greenhouse gas emissions, and the lack of consideration of climate change impacts on aquatic resources and Vail's ski area operations in general. Rating EC2.

EIS No. 20080540, ERP No. D–AFS–L65564–ID, Nez Perce National Forest (NPNF), Proposed Designated Routes and Areas for Motor Vehicle Use (DRMVU), Implementation, Idaho County, ID.

Summary: EPA expressed environmental concerns about potential impacts to water quality, fish, wildlife, soils and native vegetation from continued motorized use of roads and trails and motorized access to dispersed

camping near streams, lakes and wetlands. Rating EC2.

EIS No. 20090002, ERP No. D–USN–D35063–VA, Norfolk Harbor Channel, Proposed Dredging to Deepen Five Miles of the Federal Navigation Channel in the Elizabeth River from Lamberts Bend to the Norfolk Naval Shipyard (NNSY), Norfolk and Portsmouth, VA.

Summary: EPA expressed environmental concerns about impacts to aquatic populations from the dredging of contaminated sediment. Rating EC1.

EIS No. 20090013, ERP No. D–CGD–A11083–00, Programmatic—Future of the U.S. Coast Guard Long Range Aids to Navigation (LORAN–C) Program, Implementation.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090024, ERP No. D–FHW–H40397–MO, Interstate 70 Corridor Improvements, Kansas City to St. Louis, Updated Information, Evaluates if a Truck-Only Lane Strategy is Viable, Kansas City to St. Louis, MO.

Summary: EPA does not object to the proposed action. Rating LO.

Final EISs

EIS No. 20080470, ERP No. F–FHW–B40098–VT, Middlebury Spur Project, Improvements to the Freight Transportation System in the Town of Middlebury in Addison County to the Town of Pittsford in Rutland County, VT.

Summary: EPA has no objections to the proposed project.

EIS No. 20090003, ERP No. F–FHW–C40170–NY, Fort Drum Connector Route Project, Proposed Link between I–81 and U.S. Route 11 at the Fort Drum North Gate, Town of Le Ray and Pamelia, Jefferson County, NY.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20090020, ERP No. F–AFS–D65039–WV, Lower Williams Project Area (LWPA), Alternative 6 is the Preferred Alternative, Proposed to Perform Vegetation Management and Wildlife Habitat Improvements, Implementation, Gauley Ranger District, Monongahela National Forest, Webster County, WV.

Summary: EPA does not object to the proposed project.

EIS No. 20090027, ERP No. F–FHW–G40192–TX, Grand Parkway/State Highway 99 Improvement Project, Segment G, from Interstate Highway (IH) 45 to US 59, Funding, Right-of-Way Grant, U.S. Army COE Section 404 Permit, Harris and Montgomery Counties, TX.

Summary: EPA does not object to the proposed action.

EIS No. 20090029, ERP No. F–NSA–D11045–MD, Fort George G. Meade Utilities Upgrade Project, Proposes to Construct and Operate (1) North Utility Plant (2) South Generator Facility and (3) Central Boiler Plant, Fort George M. Meade, MD.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20090030, ERP No. F–COE–J11025–CO, Fort Carson Grow the Army Stationing Decision, Constructing New Facilities to Support Additional Soldiers and their Families, Portions of El Paso, Pueblo and Fremont Counties, CO.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090033, ERP No. FS–COE–G36072–AR, Fourche Bayou Basin Project, 1,750 Acre Bottomland Acquisition with Nature Appreciation Facilities, Development, Funding, City of Little Rock, Pulaski County, AR.

Summary: EPA does not object to the proposed action.

Dated: March 17, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–6149 Filed 3–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8591–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements Filed 03/09/2009 through 03/13/2009.

Pursuant to 40 CFR 1506.9.

EIS No. 20090066, Draft EIS, AFS, OR, Tracy Placer Mining Project, Proposing Mine Development on a Portion of the Unpatented Cedar Gulch Group Placer Claim, Plan-of-Operations, Wild Rivers Ranger District, Rogue River-Siskiyou National Forest, Josephine County, OR, Comment Period Ends: 05/04/2009, Contact: John Wells, 541–951–5932.

EIS No. 20090067, Draft Supplement, FHW, TX, Trinity Parkway Project, New and Additional Information, Construction of a Six-Lane Controlled Access Toll Facility from IH–35 E/TX–183 to US–175/TX–310, U.S. Army COE Section 10 and 404 Permits, Dallas County, TX, Comment Period Ends: 05/04/2009, Contact: Salvador Deocampo 512–536–5950.

EIS No. 20090068, Final EIS, AFS, AK, Angoon Hydroelectric Project, Construction and Operation, Special-Use-Authorization, Thayer Creek, Admiralty Island National Monument, Tongass National Forest, AK, Wait Period Ends: 04/20/2009, Contact: Pete Griffin, 907–789–6244.

EIS No. 20090069, Draft EIS, AFS, 00, Black Hills National Forest Travel Management Plan, Proposes to Designate Certain Roads and Trails Open to Motorized Travel, Custer, Fall River, Lawrence, Meade, Pennington Counties, SD and Crook and Weston Counties, WY, Comment Period Ends: 05/04/2009, Contact: Ed Fischer, 605–673–9207.

EIS No. 20090070, Draft Supplement, AFS, CA, Pilgrim Vegetation Management Project, Updated Information to Address and Respond to the Specific Issues Identified in the Court Ruling. Implementation, Shasta-Trinity National Forest, Siskiyou County, CA, Comment Period Ends: 05/04/2009, Contact: Dennis Poehlmann, 530–926–9656.

EIS No. 20090071, Draft EIS, FHW, OH, Cleveland Innerbelt Project, Proposing Major Rehabilitation and Reconstruction between I–71 and I–90, Cleveland Central Business District, Funding, City of Cleveland, Cuyahoga County, OH, Comment Period Ends: 05/21/2009, Contact: Craig K. Hebebrand, 216–584–2113.

EIS No. 20090072, Final EIS, USN, 00, Jacksonville Range Complex Project, To Support and Conduct Current and Emerging Training and RDT&E Operations, NC, SC, GA and FL, Wait Period Ends: 04/20/2009, Contact: Karen Foskey, 703–602–2859.

EIS No. 20090073, Final EIS, USN, 00, Virginia Capes (VACAPES) Range Complex, Proposed action is to Support and Conduct Current and Emerging Training and RDT & E Operations, Chesapeake Bay, DE, MD, VA and NC, Wait Period Ends: 04/20/2009, Contact: Karen Foskey, 703–602–2859.

EIS No. 20090074, Final EIS, FAA, OH, Port Columbus International Airport/

(CMH) Project, Replacement of Runway 10R/28L, Development of a New Passenger Terminal and other Associated Airport Projects, Funding, City of Columbus, OH, Wait Period Ends: 04/20/2009, Contact: Katherine Delaney, 734–229–2958.

EIS No. 20090075, Final EIS, NPS, CA, Golden Gate National Recreation Area, Proposed Marin Headlands and Fort Baker Transportation Infrastructure and Management Plan, Implementation, Marin County, CA, Wait Period Ends: 04/20/2009, Contact: Steve Ortega, 415–561–4841.

EIS No. 20090076, Draft EIS, SFW, CA, Paiute Cutthroat Trout Restoration Project, Eradication of Non-Native Trout Species from 11 Stream Miles of Silver King Creek, Alpine County, CA, Comment Period Ends: 05/04/2009, Contact: Chad Mellison, 775–861–6300.

EIS No. 20090077, Final EIS, FRC, CA, Big Creek Hydro Project (FERC Nos. 67, 120, 2085, and 2175) Proposes to Relicenses, Big Creek Nos.2A,8 and Eastwood—FERC No. 67; Big Creek Nos. 1 and 2—FERC No. 2175; Mammoth Pool—FERC No. 2085 and Big Creek No. 3 FERC No. 120, Fresno and Madera Counties, CA, Wait Period Ends: 04/20/2009, Contact: Patricia Schaub, 1–866–208–3372.

EIS No. 20090078, Final EIS, NIH, MT, Rocky Mountain Laboratories (RML) Master Plan, Implementation, Hamilton, Ravalli County, MT, Wait Period Ends: 04/20/2009, Contact: Mark Radtke, 301–451–6467.

Amended Notices

EIS No. 20080406, Final EIS, BIA, MT, Absaloka Mine Crow Reservation South Extension Coal Lease Approval, Proposed Mine Development Plan, and Related Federal and State Permitting Actions, Crow Indian Reservation, Crow Tribe, Bighorn County, MT.

The U.S. Environmental Protection Agency's (EPA) has ADOPTED the U.S. Department of Interior's, Bureau of Indian Affairs (DOI/BIA) FEIS #20080406 filed 10/02/2008. EPA was a Cooperating Agency for the above project. Recirculation of the FEIS is not necessary under 40CFR 1506.3(c). If you have any questions, please contact Greg Davis at *davis.gregory@epa.gov* or 303–312–6314.

EIS No. 20080528, Draft EIS, USN, 00, Northwest Training Range Complex (NWTRC), To Support and Conduct Current, Emerging, and Future Training and Research, Development, Test and Evaluation (RDT&E) Activities, WA, OR and CA, Comment Period Ends: 04/13/2009, Contact: Kimberly Kler, 360–396–0927.

Revision to FR Notice Published 12/29/2008: Extending the Comment Period from 03/11/2009 to 04/13/2009.

EIS No. 20080530, Draft EIS, MMS, AK, Beaufort Sea and Chukchi Sea Planning Areas, Proposals for Oil and Gas Lease Sales 209, 212, 217, and 221, Offshore Marine Environment, Beaufort Sea Outer Continental Shelf, and North Slope Borough of Alaska, Comment Period Ends: 03/30/2009, Contact: Keith Gordon 907–334–5265.

Revision of the FR Published 12/29/2008: Extending Comment Period from 03/16/2009 to 03/30/2009.

EIS No. 20080540, Draft EIS, AFS, ID, Nez Perce National Forest (NPNF), Proposed Designated Routes and Areas for Motor Vehicle Use (DRMVU), Implementation, Idaho County, ID, Comment Period Ends: 04/20/2009, Contact: Alexandra Botello, 208–983–1950.

Revision to FR Notice Published 01/02/2009: Extending Comment Period from 02/25/2009 to 04/20/2009.

EIS No. 20090062, Draft EIS, FRC, 00, Catawba-Wateree Hydroelectric Project (FERC No. 2232), Application for Hydroelectric License, Catawba and Wateree Rivers in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln and Gaston Counties, NC and York, Lancaster, Chester, Fairfield and Kershaw Counties, SC, Comment Period Ends: 05/08/2009, Contact: Patricia Schaub, 1–866–208–3372.

Revision to FR Notice Published 03/13/2009: Correction to Comment Period from 04/27/09 to 05/08/09.

Dated: March 17, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–6158 Filed 3–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0416; FRL–8383–5]

Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, Organic Esters of Phosphoric Acid Reregistration Eligibility Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticides Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid, and opens a public comment period on these documents. The Agency's risk assessments and other related documents also are available in the Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid Dockets. Diiodomethyl p-tolyl sulfone is used as an algaecide, bactericide, and fungicide for materials and wood preservation. Busan 77 is used to control of algae in swimming pools, hot tubs, whirlpools and fountains without fish. It is also registered to control growth of algae, bacteria, and fungi in recirculating cooling towers, industrial air washing systems, and as a materials preservative in metal cutting fluids. Organic Esters of Phosphoric Acid is used primarily as a fungicide and bacteriostat, with the main use site being a material preservative for carpet backings. Some other use sites include paint, textiles, vinyl products, polymeric laminates, and epoxy flooring and tile. EPA has reviewed Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before May 19, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number for Diiodomethyl p-tolyl sulfone, EPA–HQ–OPP–2007–1151; for Busan 77, EPA–HQ–OPP–2007–0834; and for Organic Esters of Phosphoric Acid, EPA–HQ–OPP–2007–1166 by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The

Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number for Diiodomethyl p-tolyl sulfone, EPA–HQ–OPP–2007–1151; for Busan 77, EPA–HQ–OPP–2007–0834; and for Organic Esters of Phosphoric Acid, EPA–HQ–OPP–2007–1166. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For Diiodomethyl p-tolyl sulfone (Amical 48)*, contact: Kathryn Avivah Jakob, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–8481; e-mail address: *jakob.kathryn@epa.gov*.

For Busan 77, contact: ShaRon Carlisle, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address: *carlisle.sharon@epa.gov*.

For Organic Esters of Phosphoric Acid, contact: Heather Garvie, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; fax number: (703) 308–8481; e-mail address: *garvie.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a REDs for the pesticides, Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid under section 4(g)(2)(A) of FIFRA. Diiodomethyl p-tolyl sulfone (Amical 48) is used as a materials preservative. The following materials contain Diiodomethyl p-tolyl sulfone (Amical 48) as a materials preservative: Paints, air duct coatings, fire-retardant coatings, pigment dispersions, inks, emulsions and extender slurries, adhesives, caulks, sealants, rubbers and plastics, textiles, leather, pulp and paper slurries, paper/paperboard, and wetlap. Diiodomethyl p-tolyl sulfone (Amical 48) is also used for the preservation of wood. Busan 77 is used to control of algae in swimming

pools, hot tubs, whirlpools and fountains without fish. It is also registered to control growth of algae, bacteria, and fungi in recirculating cooling towers, industrial air washing systems, and as a materials preservative in metal cutting fluids. Organic Esters of Phosphoric Acid is used primarily as a fungicide and bacteriostat, with the main use site being a material preservative for carpet backings. Some other use sites include paint, textiles, vinyl products, polymeric laminates, and epoxy flooring and tile. EPA has determined that the data base to support reregistration is substantially complete and that products containing Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid are eligible for reregistration, provided the risks are mitigated either in the manner described in the REDs or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the REDs or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid were reviewed through the modified 4–Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid REDs for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Dockets for Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, and Organic Esters of Phosphoric Acid REDs will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Diiodomethyl p-tolyl sulfone (Amical 48), Busan 77, Organic Esters of Phosphoric Acid.

Dated: January 5, 2009.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–6140 Filed 3–19–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

March 16, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 20, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas__A.__Fraser@omb.eop.gov* and to *Judith-B. Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the

list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0763.

Title: ARMIS Customer Satisfaction Report.

Report Number: ARMIS Report 43–06.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 7 respondents; 7 responses.

Estimated Time per Response: 720 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. sections 11, 161, 219, and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,040 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: Ordinarily, questions of a sensitive nature are not involved in the ARMIS Customer Satisfaction Report. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, the respondent is instructed on the appropriate procedures to follow to safeguard sensitive data. Any respondent who submits information to the Commission that they believe is confidential, may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection is being submitted to the Office of Management and Budget (OMB) to extend the approval for an additional three years. In the Commission's Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08–203, released September 6, 2008, the Commission granted in significant part AT&T's petition for forbearance from the ARMIS service quality and infrastructure reporting requirements, subject to certain conditions. In addition, the Commission determined that its conclusions underlying its forbearance decision for AT&T also hold true for the other carriers required to file ARMIS Reports 43–05, 43–06, 43–07, and 43–08. Subject to certain conditions, the Commission found that the criteria of section 10(a)(1) and (a)(2) are satisfied. Given the burdens associated with the data reporting, and in light of the commitments of the reporting carriers, and other continuing regulatory requirements, the Commission determined that forbearance to be in the public interest.

The Commission noted that the reporting carriers have committed to continue gathering customer satisfaction data and to file those data publicly, through ARMIS Report 43–06 filings for 24 months from the effective date of the Commission's order. Further, the Commission noted that this will ensure continuity with regard to the customer satisfaction data that the Commission has collected up to this point, and affords the Commission a reasonable period of time to consider whether to adopt industry-wide reporting requirements. The Commission therefore adopted that commitment as a condition of its forbearance. Finally, the Commission granted the same forbearance relief to any similarly situated carriers who made the same commitment, and made clear that the relief that the Commission granted is not otherwise conditional.

In the Notice of Proposed Rulemaking (NPRM) portion of the Commission's September 6, 2008 Order published in the **Federal Register** on October 15, 2008 (73 FR 60997), the Commission recognized the possibility that customer satisfaction data contained in ARMIS Report 43–06 might be useful to help them make informed choices in a competitive market, but only if available from the entire relevant industry. The Commission tentatively concluded that it should collect this type of information, and seek comments on specific information that the Commission could collect. The Commission also asked for comments on the appropriate mechanism for such data collection.

The information contained in the ARMIS Report 43–06 provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data that are needed to administer its rules. Automating and organizing data submitted to the Commission facilitate the timely and efficient analysis of revenue requirements, rate of return and price caps, and provide an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–6123 Filed 3–19–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

March 17, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before April 20, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–

5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0986.

Title: Competitive Carrier Line Count Report, WC Docket No. 05–337, CC Docket No. 96–45.

Form Number: FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit and not-for-profit institutions.

Number of Respondents and Responses: 1,923 respondents; 5,458 responses.

Estimated Time per Response: .5–6 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 27,328 hours.

Annual Cost Burden: $1,093,120.00.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection is being submitted as a revision to a currently approved collection. In April 2008, the Commission adopted an order that capped total annual competitive eligible telecommunications carrier (ETC) universal service high-cost support for each state at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. The Commission also adopted two limited exceptions from the application of the interim cap. First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier. The Commission plans to submit an additional revision to OMB at a later date seeking approval to collect competitive ETCs' cost data. Second, the Commission also created a limited exception for competitive ETCs serving tribal lands or Alaska Native regions (covered location). High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket No. 05–337, CC Docket No. 96–45, FCC 08–122. Competitive ETCs opting into the exception for Tribal lands or Alaska Native regions would have to file line counts on FCC Form 525 separately for covered and non-covered locations. Most competitive ETCs that serve these locations already have separate study area codes for the covered location, and this requirement will not increase their burden. A small number of competitive ETCs, however, may need to make a one time request for additional study area codes. Thereafter, these carriers will have to file an additional Form 525 for each additional study area code. Additionally, each competitive ETC opting into this exception will be required to file, each time it files line count data, a certification that the lines reflected in a particular filing are within a covered location. The competitive ETCs also will be required to maintain records showing how they determined that the lines were in a covered location. The Commission will not amend FCC Form 525 to incorporate the information requests related to this limited exception to the interim cap on high-cost support. The Commission has reviewed the information collection and has revised the estimates that are detailed in the supporting statement. Additionally, the Commission is revising the collection to incorporate the reporting requirements of OMB 3060–0793 for the self-certification as a rural carrier requirement into this collection under OMB Control Number 3060–0986. The self-certification for rural carriers is rarely filed with the Commission, therefore, its incorporation into OMB 3060–0986 will ease the Commission's administrative burden for complying with information collection requirements. Upon OMB approval of this revision, the Commission will voluntarily discontinue OMB Control Number 3060–0793 and retain this one for OMB's inventory.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9–6132 Filed 3–19–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act; Notice of Meeting

TIME AND DATE: March 25, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Docket No. 02–15 Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.
2. FY 2008 Buy American Report to Congress.

Closed Session

1. Docket No. 04–09—*American Warehousing of New York, Inc.* v. *The Port Authority of New York and New Jersey;* Docket No. 05–03—*American Warehousing of New York, Inc.* v. *The Port Authority of New York and New Jersey.*
2. Docket No. 07–01—*APM Terminals North America, Inc.* v. *The Port Authority of New York and New Jersey* v. *Maher Terminals, LLC.*
3. Termination of RiverBarge Excursion Lines, Inc. Escrow Agreement.
4. Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–6268 Filed 3–18–09; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor Management Cooperation Act of 1978 (Pub. L. 95–524)

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for Public Comment on *Draft* Fiscal Year 2009, Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing a *draft* Fiscal Year 2009 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This solicitation contains a change in the deadline for accepting applications.

DATES: Written comments must be submitted to the office listed in the address section below within *30* days from the date of this publication in the **Federal Register**.

ADDRESSES: Michael Bartlett Federal Register Liaison, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Comments may be submitted by fax at (202) 606–5345 or electronic mail (e-mail) to *mbartlett@fmcs.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Stubbs, Grants Management Specialist, FMCS 2100 K Street, NW., Washington, DC 20427. Telephone number 202–606–8181, e-mail to *lstubbs@fmcs.gov* or fax at (202) 606–3434.

Federal Mediation Conciliation Service Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY2009

A. Introduction

The following is the draft Solicitation for the Fiscal Year (FY) 2009 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978, which was initially implemented in FY1981. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their working lives, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at the plant (company), area, industry, or public sector levels.

A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction.

An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY2009, competition will be open to company/plant, area, private industry, and public sector committees. Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail

WHAT the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.,* members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board; noting, that grant funds may not be used to *pay for existing employees*; an assurance that grant funds will not be used to pay for existing employees;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using ''month one'' as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

Applicants must prepare their budget narrative and milestone chart using a start date of ''month one'' and an end date of ''month twelve'' or ''month eighteen'', as appropriate. Thus, if applicant is seeking a twelve month grant, use figures reflecting month one through twelve. If applicant is seeking an eighteen month grant, use figures reflecting month one through eighteen. If the grant application is funded; FMCS will identify the start and end date of the grant on the Application for Federal Assistance (SF–424) form.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants *support* the application and *will* attend all scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative that *clearly identifies* each line item and the estimated cost (a complete breakdown of each line item) based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements;

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS; and

(f) An assurance that the maximum rate for an individual consultant paid from grant project can be no more than *$950* for an eight-hour-day. The day includes preparation, evaluation and travel time. Also, time and effort records must be maintained.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-

management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Successful grantees *will* be bound by OMB Circular 110 i.e. ''contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals shall be *excluded* (emphasis added from competing for such procurements).

Applicants who received funding under this program in the last 6 years for committee operations are not eligible to re-apply. The only exception will be made for grantees that seek funds on behalf of an entirely different committee whose efforts are totally outside of the scope of the original grant.

D. Allocations

The FY2009 appropriation for this program is $650,000. The Grant Review Board will review submissions and make recommendations for awards based on merit without regard to category.

In addition, to the competitive process identified in the preceding paragraph, FMCS will subject to funds availability, set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E. All funds returned to FMCS from a competitive grant award may be awarded on a non-competitive basis in accordance with budgetary requirements.

E. Dollar Range and Length of Grants

Awards to expand existing or establish new labor-management committees will be for a period of up to 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within the specified period, these grants may, at the discretion of FMCS, be extended for up to six months.

The dollar range of awards is as follows:

—Up to $65,000 over a period of up to 18 months for company/plant committees or single department public sector applicants;

—Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Additionally, FMCS reserves the right under special conditions to award supplemental (continuation) grants subject to funds availability. If awarded the additional amount is added to the current grant amount.

Applicants are reminded that these figures *represent maximum Federal funds only*. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers may be obtained from the FMCS Web site (*http://www.fmcs.gov*) under ''Who We Are''.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs in cash. Matching funds may come from state or local government sources or private sector contributions, but may not include other Federal funds. Funds generated by grant-supported efforts are considered ''project income,'' and may not be used for matching purposes.

It is the policy of this program to reject all requests for *indirect or overhead* costs as well as *''in-kind''* match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2009 FMCS Financial and Administrative Grants Manual, which will be included in the application kit.

G. Application Submission and Review Process

The Application for Federal Assistance (SF–424) form must be signed by *both* a labor and management representative. In lieu of signing the SF–424 form, representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. The individual listed as contact person in block 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available once the application has been submitted. Additionally, it is the applicant's responsibility to notify FMCS in writing of any changes (e.g. if the address or contact person has changed).

We will accept applications beginning May 1, 2009, and continue to do so until August 15, 2009, or until all FY2009 grant funds are obligated. Awards will be made by September 30, 2009. Proposals may be accepted at any time between April 1, 2009 and August 15, 2009 but proposals received late in the cycle have a greater risk of not being funded due to unavailability of funds. Once your application has been received and acknowledged by FMCS, no applications or supplementary materials will be accepted thereafter. Applicants are highly advised to contact the FMCS Grants Program prior to committing any resources to the preparation of a proposal.

An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions. FMCS will

confirm receipt of all applications within 10 days thereof.

All eligible applications will be reviewed and scored by a Grant Review Board. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director or his/her designee will finalize the scoring and selection process. All FY2009 grant applicants will be notified of results and *all* grant awards will be made by September 30, 2009. Applications that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director or his/her designee.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS Web site (*http://www.fmcs.gov*) to download forms and information. These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC 20427, Linda Stubbs at (202) 606–8181 (*lstubbs@fmcs.gov*). Please consult the FMCS Web site (*http://www.fmcs.gov*) to download forms and information.

Fran Leonard,

Chief Financial Officer, Federal Mediation and Conciliation Service.

[FR Doc. E9–6042 Filed 3–19–09; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through May 31, 2012, the current PRA clearance for information collection requirements contained in its Telemarketing Sales Rule (''TSR'' or ''Rule''). On November 26, 2008, OMB granted the FTC's request for a short-term extension of this clearance to May 31, 2009, which focused on recent amendments to the Rule.

DATES: Comments must be received on or before May 19, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Telemarketing Sales Rule: FTC File No. P994414'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-TSRPRA*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-TSRPRA*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Telemarketing Sales Rule: FTC File No. P994414'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room H-238, Washington, D.C. 20580, (202) 326-2970.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

clearance for the regulations noted herein.

The FTC invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before May 19, 2009.

The TSR, 16 CFR 310, implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108 (''Telemarketing Act''), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terroism Act (''USA PATRIOT Act''), Pub. L. 107056 (Oct. 25, 2001). The Act seeks to prevent deceptive or abusive telemarketing practices in telemarketing, which, pursuant to the USA PATRIOT Act, includes calls made to solicit charitable contributions by third-party telemarketers. The Telemarketing Act mandated certain disclosures by telemarketers, and directed the Commission to include recordkeeping requirements in promulgating a rule to prohibit such practices. As required by the Telemarketing Act, the TSR mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

In 2003, the Commission amended the TSR to include certain new disclosure requirements and to expand the Rule in other ways. *See* 68 FR 4580 (Jan. 29, 2003). Specifically, the Rule was amended to cover upsells[2] (not only in outbound calls, but also in inbound calls) and additional transactions were included under the Rule's purview. For example, the Rule was extended to the solicitation by telephone of charitable donations by third-party telemarketers in response to the mandate of the USA PATRIOT Act. Finally, the amendments established the National Do Not Call Registry (''Registry''), permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls.[3] Accordingly, under the TSR, most sellers and telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.[4] Moreover, sellers and telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.[5]

In 2008, the Commission promulgated amendments to the TSR regarding pre-recorded calls, 16 CFR 310.4(b)(1)(v), and call abandonment rate calculations, 16 CFR 310.4(b)(4)(i).[6] The amendment regarding prerecorded calls added certain information collection requirements.[7] Specifically, the amendment expressly authorized sellers and telemarketers to place outbound prerecorded telemarketing calls to consumers if: (1) the seller has obtained written agreements from those consumers to receive prerecorded telemarketing calls after a clear and conspicuous disclosure of the purpose of the agreement; and (2) the call discloses and provides an automated telephone keypress or voice-activated opt-out mechanism at the outset of the call.[8] Although the opt-out mechanism requirement took effect on December 1, 2008, the Commission deferred the compliance date for the written agreement requirement until September 1, 2009, one year from its promulgation, to afford time for an orderly phase-in.[9] Thus affected entities may still be taking steps toward compliance. Accordingly, with implementation of the opt-out mechanism presumably now satisfied by affected entities, the relevant focus going forward in estimating PRA burden centers on: (1) the establishment of recordkeeping and disclosure systems for the express agreement requirement of the prerecorded call amendment; and (2) the remaining provisions of the TSR that impose recordkeeping and disclosure obligations.

Burden Statement:

Estimated Annual Hours Burden: 1,655,455 hours

The estimated burden for recordkeeping is 22,772 hours for all industry members affected by the Rule. The estimated burden for the disclosures that the Rule requires for both the live telemarketing call provisions of the TSR and the prerecorded call amendments is 1,632,683 hours (rounded to the nearest thousand) for all affected industry members. Thus, the total PRA burden is 1,655,455 hours. These estimates are explained below.

Number of Respondents: As a preliminary matter, only telemarketers and sellers, not telefunders (third-party telemarketers soliciting contributions on behalf of charities), are subject to the

[2] An ''upsell'' is the solicitation in a single telephone call of the purchase of goods or services after an initial transaction occurs. The solicitation may be made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer (''external upsell''). Or, it may be made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer (''internal upsell'').

[3] 68 FR 4580 (Jan. 29, 2003). The Registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls. This includes telemarketers who solicit consumers, often on behalf of third party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It does not limit calls by political organizations, charities, or telephone surveyors.

[4] 16 CFR § 310.4(b)(1)(iii)(B).

[5] 16 CFR § 310.4(b)(3)(iv). Effective January 1, 2005, the TSR was amended to require telemarketers to access the Registry at least once every 31 days. *See* 69 Fed. Reg. 16368 (Mar. 29, 2004).

[6] *See* 73 FR 51164 (Aug. 29, 2008).

[7] By contrast, the revised standard for measuring the call abandonment rate does not impose any new or affect any existing reporting, recordkeeping or third-party disclosure requirements within the meaning of the PRA. That amendment relaxes the prior requirement that the abandonment rate be calculated on a ''per day per campaign'' basis by permitting, but not requiring, its calculation over a 30-day period, as industry requested. Sellers and telemarketers already had established automated recordkeeping systems to document their compliance with the prior standard. The amendment likely reduces their overall compliance burden. The prior ''per day'' requirement effectively forced telemarketers to turn off their predictive dialers on the many occasions when spikes in call abandonment rates occur late in the day, thereby preventing realization of the cost savings that predictive dialers provide.

[8] The prerecorded call amendment provides the first ever explicit authorization in the TSR for sellers and telemarketers to place prerecorded telemarketing calls to consumers. The pre-amended call abandonment prohibition of the TSR implicitly barred such calls by requiring that all telemarketing calls be connected to a sales representative, rather than a recording, within two seconds of the completed greeting of the person who answers. The amendment applies not only to prerecorded calls that are answered by a consumer, but also to prerecorded messages left on consumers' answering machines or voicemail services.

[9] *See* 73 FR 51164, 51166.

Registry provisions of the Rule, and only sellers, not telemarketers or telefunders, are subject to the new express agreement obligations attributable to the prerecorded call amendments.[10] The Registry data does not separately account for telefunders; they are a subset of the overall number of telemarketing entities known to access the Registry for any given year. Thus, past FTC estimates that separately accounted for telefunders over-counted them.[11] The following estimates have been adjusted accordingly.

In calendar year 2008, 50,245 telemarketing entities accessed the Registry. Of these entities, 1,158 were ''exempt'' entities obtaining access to data.[12] By definition, none of the exempt entities are subject to the TSR. In addition, 38,815 sellers and 10,272 telemarketers accessed the Registry. Of those, however, 25,574 sellers and 7,178 telemarketing entities with independent access to the Registry obtained data for just one state. Staff assumes that these entities are operating solely intrastate, and thus would not be subject to the TSR.[13] Applying this Registry data, staff estimates that 14,335 telemarketing entities (50,245 - 1,158 - 34,752) are currently subject to the TSR, of which 11,241 (38,815 - 27,574) are sellers and 3,094 (10,272 - 7,178) are telemarketers.[14]

Absent information to the contrary, staff retains its prior estimate that 25 new-entrant telefunders per year would need to set up recordkeeping systems that comply with the TSR.

Recordkeeping Hours:

A. Live Telemarketing Call Provisions of the TSR

Staff estimates that the above-noted 14,335 telemarketing entities subject to the Rule each require approximately 1 hour per year to file and store records required by the TSR for an annual total of 14,335 burden hours. The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours. These figures, based on prior estimates, are consistent with staff's current knowledge of the industry. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities, including the effects of the prerecorded call amendment, is 21,835 hours.

B. Prerecorded Call Amendment

As noted above, after September 1, 2009, no prerecorded call may be placed by or on behalf of a seller unless the seller has obtained a written agreement from the person called to receive such calls. Thus, the recordkeeping obligations of the prerecorded call amendment fall on sellers rather than telemarketers.[15]

In view of its phase-in and the prerecorded call amendment's clarification allowing written agreements to be created and maintained electronically pursuant to the Electronic Signatures In Global and National Commerce Act (commonly, ''E-SIGN''), any initial burden caused by the transition from the previously required records of an established business relationship to the newly required records of a written agreement should not be material. Once the necessary systems and procedures are in place, any ongoing incremental burden to create and retain electronic records of agreements by new customers to receive prerecorded calls should be minimal.[16] Accordingly, staff estimates that existing sellers subject to the prerecorded call amendment will require approximately 1 hour to prepare and maintain records required by the amendment, and an estimated 75 new entrant-telemarketers (including telefunders) per year would require the same. This reflects a one-time modification of existing customer databases to include an additional field to record consumer agreements.

Most of the 11,241 existing sellers, however, in anticipation of the September 1, 2009 compliance deadline, presumably will have set up already the necessary systems and procedures by or before the May 31, 2009 expiration of the PRA clearance for the TSR. At that point, sellers will have had 9 months' advance notice, with just 3 months remaining between the expiring clearance and the compliance deadline. Allowing for this apportionment, 2,810 remaining existing sellers (*i.e.*, 3/12 of the 11,241 existing sellers) would still be setting up compliant systems between May 31,2009 and the September 1, 2009 compliance deadline, with no further set-up burden thereafter.[17] Thus, annualized for an ''average'' year over the prospective 3-year PRA clearance (May 31, 2009 - May 31, 2012), this amounts to 937 hours per year.

Disclosure Hours

A. Live Telemarketing Call Provisions of the TSR

Staff believes that in the ordinary course of business a substantial majority of sellers and telemarketers make the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute ''burden.'' 16 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought 3-year OMB clearance for this Rule, staff estimates that most of the disclosures the Rule requires would be made in at least 75 percent of telemarketing calls even absent the Rule. Accordingly, staff has continued to estimate that the hours burden for most of the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires.

Based on previous assumptions, staff estimates that of the 14,335

[10] Telemarketers and telefunders must comply, however, with the abandoned call provisions of the TSR, and the opt out provisions of the 2008 amendments.

[11] For the sake of simplicity and to err conservatively, FTC staff's burden estimates for provisions less likely to be applicable to telefunders (*e.g.*, prize promotion disclosure obligations for outbound live calls, under 16 CFR 310.4(d)), will not be reduced by a separate estimate for the subset of telemarketers that are telefunders. Conversely, estimates of the number of new-entrant telemarketers will incorporate new-entrant telefunders.

[12] An exempt entity is one that, although not subject to the TSR, chooses to voluntarily scrub its calling lists against the data in the Registry.

[13] These entities would nonetheless likely be subject to the Federal Communications Commission's (''FCC'') Telephone Consumer Protection Act regulations (''FCC regulations''), including the requirement that entities engaged in intrastate telephone solicitations access the Registry.

[14] Staff assumes, for purposes of these calculations, that those telemarketers that make prerecorded calls download telephone numbers listed on the Registry, rather than conduct online searches, as the latter may consume considerably more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

[15] Although telemarketers that place prerecorded telemarketing calls on behalf of sellers must capture and transmit to the seller any requests they receive to place a consumer's telephone number on the seller's entity-specific do-not-call list, this *de minimis* obligation extends both to live and prerecorded telemarketing calls, and is subsumed within the PRA estimates shown above.

[16] If it is not feasible to obtain a written agreement at the point of sale after the written agreement requirement takes effect, sellers could, for example, obtain a customer's email address and request an agreement via email to receive prerecorded calls.

[17] Staff has already attributed 100 hours for each new-entrant seller to develop a recordkeeping system compliant with the TSR, which would also factor in the time to create and retain electronic records of agreements by customers to receive prerecorded calls.

telemarketing entities noted above, 7,342 conduct inbound telemarketing.[18] Inbound calls from consumers in response to direct mail solicitations that make certain required disclosures are exempt from the TSR.[19] Although such calls are exempt from the Rule, the Commission believes it is likely that industry members who choose to make the requisite disclosures in direct mail solicitation may do so in an effort to qualify for the exemption. Thus, Commission staff believes it is appropriate to include in the relevant burden hour calculation both the burden for compliance with the Rule's oral disclosures and the burden incurred by entities who make written disclosures in order to qualify for the inbound direct mail exemption. Accordingly, staff estimates that, of the 7,342 entities that conduct inbound telemarketing, approximately one-third (2,447) will choose to incorporate disclosures in their direct mail solicitations that exempt them from complying with the Rule.

Staff necessarily has made additional assumptions in estimating burden. From the total volume of outbound and inbound calls, staff first calculated disclosure burden for initial transactions that resulted in sales, derived from external data and/or estimates drawn from a range of calendar years (2001-2008). Staff recognizes that disclosure burdens may still be incurred regardless of whether or not a call results in a sale. Conversely, a substantial percentage of outbound calls result in consumers hanging up before the seller or telemarketer makes the required disclosure(s). However, because the requirements in § 310.3(a)(1) for certain disclosures before a consumer pays for a telemarketing purchase apply only to sales, early call cessation (*i.e.*, consumers hanging up pre-disclosure or before full disclosure) is excluded from staff's burden estimates for § 310.3(a)(1).

For transactions in which a sale is not a precursor to a required disclosure, *i.e.*, the upfront disclosures required in all outbound telemarketing calls and outbound or inbound ''upsell'' calls by § 310.4(d) , staff has calculated burden for initial transactions based on estimates of the total volumes of outbound and inbound calls, discounted for anticipated early hang-ups. For transactions in which a sale is a precursor to required disclosure, *i.e.*, § 310.3(a)(1), the calculation is based on the volume of direct sales.

Based on the most recently available applicable industry data and further FTC extrapolations, staff estimates that 2.9 billion outbound calls are subject to FTC jurisdiction and attributable to direct orders, that 570 million of these calls result in direct sales,[20] and that there are 2.8 billion inbound calls. Staff retains its longstanding estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds[21] for telemarketers to disclose the required outbound call information orally plus 3 additional seconds[22] to disclose the information required in the case of an upsell. Staff also retains its longstanding estimates that at least 60 percent of sales calls result in ''hang-ups'' before the telemarketer can make all the required disclosures and that ''hang-up'' calls consume only 2 seconds.[23]

Staff bases all ensuing upsell calculations on the volume of additional sales after an initial sale, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial offer—whether through an outbound or an inbound call. Using industry information, staff assumes an upsell conversion rate of 40% for inbound calls as well as outbound calls.[24] Moreover, staff assumes that consumers who agree to an upsell will not terminate an upsell before the seller or telemarketer makes the full required disclosures.

Based on the above inputs and assumptions, staff estimates that the total time associated with these disclosure requirements is approximately 1.10 million hours per year [(2.9 billion outbound calls x 40% lasting the duration x 7 seconds of full disclosures = 2,255,556) + (2.9 billion outbound calls x 60% terminated after 2 seconds of disclosures = 966,667) + (570 million outbound calls resulting in direct sales x 40% upsell conversions x 3 seconds of related disclosures = 190,000) + (2.8 billion inbound calls x 40% upsell conversions x 3 seconds = 933,333) x an estimated 25% of affected entities not already making such disclosures independent of the TSR = 1,086,389 hours].

The TSR also requires further disclosures in telemarketing sales calls before the customer pays for goods or services. These disclosures include the total costs of the offered goods or services; all material restrictions; and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer). Additional specific disclosures are required if the call involves a prize promotion, the sale of credit card loss protection products or an offer with a negative option feature.

Staff estimates that the general sales disclosures require 472,562 hours annually. This figure includes the burden for written disclosures [(2,447 inbound telemarketing entities estimated to use direct mail[25] x 10 hours[26] per year x 25% burden) = 6,118 hours], as well as the figure for oral disclosures [(570 million calls x 8 seconds x 25% burden = 316,667 hours) + (570 million outbound calls x 40% (upsell conversion) x 20% sales conversion x 25% burden x 8 seconds = 25,333 hours) + (2.8 billion inbound calls x 40% upsell conversion x 20% sales conversion x 25% burden x 8 seconds) = 124,444 hours].[27]

Staff also estimates that the specific sales disclosures require 48,162 hours annually [(570 million calls x 5% [estimate for outbound calls involving

[18] While staff does not have information directly stating the number of inbound telemarketers, it notes that, according to the DMA 21% of all direct marketing in 2007 was by inbound telemarketing and 20% was by outbound telemarketing. *See DMA Statistical Fact Book* (30th ed. 2008) at p. 17. Accordingly, based on such relative weighting, staff estimates that the number of inbound telemarketers is approximately 7,342 (14,335 x 21 ÷ (20 + 21)).

[19] Some exceptions to this broad exemption exist, including solicitations regarding prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, advertisements involving goods or services described in § 310.3(a)(1)(vi), advertisements involving goods or services described in § 310.4(a)(2)-(5); and any instances of upselling included in such telephone calls.

[20] For staff's PRA burden calculations, only direct orders by telephone are relevant. That is, sales generated through leads or customer traffic are excluded from these calculations because such sales are not subject to the TSR's recordkeeping and disclosure provisions. The direct sales total of 570 million is based on an estimated 1.9 billion sales transactions from outbound calls being subject to FTC jurisdiction reduced by an estimated 30 percent attributable to direct orders. This percentage estimate is drawn from DMA published data last appearing in the DMA Statistical Fact Book (2001), at p. 301.

[21] *See, e.g.*, 60 FR 32682, 32683 (June 23, 1995); 63 FR 40713, 40714 (July 30, 1998); 66 FR 33701, 33702 (June 25, 2001); 71 FR 28698, 28700 (May 17, 2006).

[22] 71 FR 3302, 3304 (Jan. 20, 2006); 71 FR 28698, 28700.

[23] *See, e.g.*, 60 FR at 32683.

[24] This assumption originated with industry response to the Commission's 2003 Final Amended TSR. *See* 68 FR 4580, 4597 n.183 (Jan. 29, 2003). Although it was posited specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, barring the receipt of any information to the contrary.

[25] *See* the discussion in the text immediately following note 19.

[26] FTC staff believes a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule; this, too, has been stated in prior FTC notices inviting comment on PRA estimates. No comments were received, and staff continues to believe this estimate remains reasonable.

[27] The percentage and unit of time measurements are FTC staff's estimates.

prize promotions] x 3 seconds x 25% burden = 5,937 hours) + (570 million calls x .1% [estimate for outbound calls involving credit card loss protection (''CCLP'')] x 4 seconds x 25% burden = 158 hours) + (570 million calls x 40% upsell conversions x 20% sales conversions x .1% [estimate for outbound calls involving CCLP upsells] x 4 seconds x 25% burden = 13 hours) + (2.8 billion inbound calls x 40% upsell conversion x 20% sales conversion x .1% [estimate for inbound calls involving CCLP] x 4 seconds x 25% burden = 62 hours) + (570 million calls x 10% [estimate for outbound calls involving negative options] x 4 seconds x 25% burden = 15,833 hours) + (570 outbound million calls x 40% upsell conversion x 20% sales conversions x 10% [estimate for outbound calls involving negative option upsells] x 4 seconds x 25% burden = 1,267 hours) + (2.8 billion inbound calls x 40% upsell conversions x 20% sales conversions x 10% [estimate for inbound calls involving negative option upsells] x 4 seconds x 25% burden) = 6,222 hours] + (2.8 billion inbound calls x .3% [estimate for inbound calls involving business opportunities] x 8 seconds = 18,667 hours).[28]

The total annual burden for all of the sales disclosures is 520,724 hours (472,562 general + 48,162 specific sales disclosures) or, by rough approximation (allowing that some entities conducting inbound telemarketing will be exempt from oral disclosure if making certain written disclosures), 36 hours annually per firm (520,724 hours ÷ 14,335).

Finally, any entity that accesses the Registry, regardless whether it is paying for access, must submit minimal identifying information to the operator of the Registry. This basic information includes the name, address, and telephone number of the entity; a contact person for the organization; and information about the manner of payment. The entity also must submit a list of the area codes for which it requests information and certify that it is accessing the Registry solely to comply with the provisions of the TSR. If the entity is accessing the Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes for which it requests information on their behalf, and a certification that the clients are accessing the Registry solely to comply with the TSR.

As it has since the Commission's initial proposal to implement user fees under the TSR, FTC staff estimates that affected entities will require no more than two minutes for each entity to submit this basic information, and anticipates that each entity will have to submit the information annually.[29] Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 479 burden hours (14,355 entities x 2 minutes per entity). In addition, FTC staff continues to estimate that up to one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. Thus, this would result in an additional 240 burden hours. Accordingly, accessing the Registry will impose a total burden of approximately 719 hours per year.

Cumulative of the above components, disclosure burden for the live telemarketing call provisions of the TSR is 1,621,443 hours (1,100,000 + 472,562 + 48,162 + 719).

B. Prerecorded Call Amendment

Staff estimates that the 2,810 sellers[30] will require, on average, 4 hours each—11,240 hours—to implement the incremental disclosure requirements mandated by the 2008 TSR amendments. Those amendments require the following tasks: (1) one-time creation, recording, and implementation of a brief telephone script requesting a consumer's agreement via a telephone keypad response;[31] (2) one-time modification of or newly created electronic forms to obtain agreements to receive prerecorded calls for use in emails to consumers or on a website[32] (3) one-time revision of any existing paper forms (*e.g.*, credit card or loyalty club forms, or printed consumer contracts) to include a request for the consumer's agreement to receive prerecorded calls;[33] and (4) related legal consultation, if needed, regarding compliance.

The required opt-out disclosure for all prerecorded calls mandated by the 2008 amendments would not require any greater time increment, and arguably less, than the pre-existing FCC disclosure provision.[34] In any event, because the ''opt-out'' disclosure applies only to prerecorded calls, which are fully automated, no additional manpower hours would be expended in its electronic delivery.

Estimated Annual Labor Cost: $22,014,913

Estimated Annual Non-Labor Cost: $5,837,195

Recordkeeping Labor and Non-Labor Costs:

A. Live Telemarketing Call Provisions of the TSR

1. Labor Costs

Assuming a cumulative burden of 7,500 hours/year to set up compliant recordkeeping systems for new telemarketing entities (75 new entrants/year x 100 hours each), and applying to that a skilled labor rate of $25/hour,[35] labor costs would approximate $187,500 yearly for all new telemarketing entities. As indicated above, staff estimates that existing telemarketing entities require 14,335 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a

[28] The estimate for § 310.3(a)(1) disclosures in outbound calls involving business opportunities is subsumed in the overall figure for outbound telemarketing call disclosures in the prior paragraph, and the estimate for outbound business opportunity call upsells is subsumed in the figures in this paragraph for outbound calls involving CCLP upsells.

[29] *See* 67 FR 37366 (May 29, 2002). The two minute estimate likely is conservative. The OMB regulation defining ''information'' under the PRA generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.*, the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

[30] *See* note 18, *supra*. As noted above, only sellers, not telemarketers, will have compliance obligations attributable to the 2008 TSR amendments.

[31] During the initial three months of overall PRA clearance sought that will overlap with the remaining phase-in period (May 31 - August 31, 2009) before the written agreement requirement takes effect, the Commission will permit sellers to use prerecorded message calls made to existing customers to secure their agreements to receive prerecorded calls by pressing a key on their telephone keypad. Once a script is written and recorded, it can be used in all calls made by or on behalf of the seller to obtain the required agreements. Sellers will be able to include the request for the agreement in their regular prerecorded calls, thus making the time necessary to request the required agreements, and the cost of doing so, *de minimis* during the year-long phase-in that will partly overlap with the final year of the current PRA clearance.

[32] This figure includes both the minimal time required to create the electronic form and the time to encode it in HTML for the seller's website.

[33] The Commission has provided suggested language for this purpose that should minimize the time required to modify any paper disclosures. 73 FR at 51181.

[34] The FCC has required a similar disclosure for all prerecorded calls to consumers since 1993. 47 CFR 64.1200(b)(2) (requiring disclosure of a telephone number ''[d]uring or after the message'' that consumers who receive a prerecorded message call can use to assert a company-specific do-not-call request).

[35] This rounded figure is derived from the mean hourly earnings shown for computer support specialists found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See http://www.bls.gov/ncs/ncswage2007.htm*.

clerical wage rate of $14/hour, recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately $200,690.

Thus, estimated labor cost for recordkeeping associated with the TSR for both new and existing entities, including the prerecorded call amendment, is $388,190.

2. Non-Labor Costs

Staff believes that the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records, but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life. The Rule's disclosure requirements require no capital expenditures.

Affected entities need some storage media such as file folders, computer diskettes, or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimates that the approximately 14,335 telemarketers subject to the Rule spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $716,750.

B. Prerecorded Call Amendment

1. Labor Costs

As noted above, staff estimates that 2,810 existing sellers that make use of prerecorded calls will require 937 hours, cumulatively, on an annualized basis projected over the anticipated future term of PRA clearance, to comply with the amendment's recordkeeping requirements. Staff assumes that the aforementioned tasks will be performed by managerial and/or professional technical personnel, at an hourly rate of $42.[36] Accordingly, incremental labor cost on an annualized basis would total $39,354.

2. Non-Labor Costs

Other than the initial recordkeeping costs, the amendment's written agreement requirement will impose *de minimis* costs, as discussed above. The one possible exception that might arise involves credit card or loyalty program agreements that retailers revise to request agreements from consumers to receive prerecorded calls. Retailers might have to replace any existing supplies of such agreements. Staff believes, however, that the one-year phase-in of the written agreement requirement will allow retailers to exhaust existing supplies of any such preprinted forms, so that no material additional cost would be incurred to print revised forms.

Disclosure Burden Labor & Non-labor Costs

A. Live Telemarketing Call Provisions of the TSR

1. Labor Costs

The estimated annual labor cost for disclosures for all telemarketing entities is $21,078,759. This total is the product of applying an assumed hourly wage rate of $13[37] to the earlier stated estimate of 1,621,443 hours pertaining to general and specific disclosures in initial calls, upsells, and supplying basic identifying information to the Registry operator.

2. Non-Labor Costs

Oral disclosure estimates, discussed above, and totaling 1,621,443 hours, applied to a retained estimated commercial calling rate of 6 cents per minute ($3.60 per hour), amounts to $5,837,195 in phone-related costs.[38]

Staff believes that the estimated 2,447 inbound telemarketing entities choosing to comply with the Rule through written disclosures incur no additional capital or operating expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business. Adding the required disclosures to that written information likely requires no supplemental non-labor expenditures.

B. Prerecorded call amendment

1. Labor Costs

Staff estimates that approximately 75% of the disclosure-related tasks previously noted would be performed by managerial and/or professional technical personnel, again, at an hourly rate of $42, with 25% allocable to legal staff, at an hourly rate of $55.[39]

Thus, of the 11,240 total estimated disclosure burden hours, 8,430 hours would be attributable to managerial and/or professional technical personnel, with the remaining 2,810 hours attributable to legal staff. This yields $354,060 and $154,550, respectively, in labor costs—in total, $508,610.

2. Non-Labor Costs

Other than the initial recordkeeping costs, the amendment's written agreement requirement will impose *de minimis* costs, as discussed above. The one possible exception that might arise involves credit card or loyalty program agreements that retailers revise to request agreements from consumers to receive prerecorded calls. Retailers might have to replace any existing supplies of such agreements. Staff believes, however, that the one-year phase-in of the written agreement requirement will allow retailers to exhaust existing supplies of any such preprinted forms, so that no material additional cost would be incurred to print revised forms.

Similarly, staff has no reason to believe that the amendment's requirement of an automated interactive opt-out mechanism will impose other than *de minimis* costs, for the reasons discussed above. The industry comments on the amendment uniformly support the view that automated interactive keypress technologies are now affordable, cost-effective, and widely available.[40] Moreover, most, if not all of the industry telemarketers who commented, including many small business telemarketers, said they are currently using interactive keypress mechanisms. Thus, it does not appear that this requirement will impose any

[36] This hourly wage is based on (*http://www.bls.gov/ncs/ncswage2007.htm*) (National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages), and reflects a blending of mean hourly earnings for various managerial subcategories (operations, advertising, marketing, sales) and computer systems analysts.

[37] This rounded figure is derived from the mean hourly earnings shown for telemarketers found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See* (*http://www.bls.gov/ncs/ncswage2007.htm*).

[38] Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally be above such costs.

[39] This rounded figure is derived from the mean hourly earnings shown for lawyers found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See* (*http://www.bls.gov/ncs/ncswage2007.htm*).

[40] *See, e.g.*, Comment by IAC/InterActiveCorp & HSN LLC (December 18,2006), at 3, *available at* (*http://www.ftc.gov/os/comments/tsrrevisedcallabandon/525547-00600.pdf.*)

material capital or other non-labor costs on telemarketers.

Thus, cumulatively for the live telemarketing call provisions of the TSR and the prerecorded call amendment, total labor costs are $22,014,913 ($388,190 + $39,354 + $21,078,759 + $508,610); total capital and other non-labor costs are $5,837,195 (phone-related costs).

David C. Shonka,

Acting General Counsel.

[FR Doc. E9–6035 Filed 3–19–09: 8:45 am]

[BILLING CODE 6750–01–S]

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation (FTR); Maximum Per Diem Rates for the States of Idaho, Maryland, and South Carolina

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 09–05, revised continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration (GSA) has reviewed the per diem rates for certain locations in the States of Idaho and Maryland and determined that they are inadequate. GSA has also reviewed and is amending the county boundaries of Columbia, South Carolina.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Cy Greenidge, Office of Governmentwide Policy, Travel Management Policy, at (202) 219–2349. Please cite FTR Per Diem Bulletin 09–05.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of the per diem rates established for FY 2009 (see the **Federal Register** notice at 73 FR 46271, August 8, 2008), the per diem rate is being changed in the following locations:

State of Idaho

- Boundary County.
- Bonner County.
- Teton County.
- Bonneville County.
- Fremont County.

State of Maryland

- Frederick County.

State of South Carolina

- Lexington County.

Per diem rates are published on the Internet at *http://www.gsa.gov/perdiem* as FTR per diem bulletins. This process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: March 17, 2009.

Becky Rhodes,

Deputy Associate Administrator, Office of Travel, Transportation and Asset Management.

[FR Doc. E9–6261 Filed 3–19–09; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response (BSC, COTPER)

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 committee:

Times and Dates:

9 a.m.–5:15 p.m., April 27, 2009.

9 a.m.–3:15 p.m., April 28, 2009.

Place: CDC, 1600 Clifton Road, NE., Global Communications Center, Building 19, Auditorium B3, Atlanta, Georgia 30333.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 50 people. Visitors to the CDC campus must be processed in accordance with established federal policies and procedures and should pre-register for the meeting as described in Additional Information for visitors. Public comment periods are planned for both meeting days.

Purpose: This Board is charged with advising the Secretary of HHS and Director of CDC concerning strategies and goals for the programs and research within COTPER, monitoring the strategic direction and focus of the Divisions, and conducting peer review of scientific programs. For additional information about the COTPER BSC, please visit: *http://emergency.cdc.gov/cotper/science/counselors.asp*.

Matters To Be Discussed: A briefing on the findings of the workgroup for external peer review of COTPER's fiscal allocation process; status updates on other external peer reviews of COTPER programs and funded projects; updates from COTPER activities and programs; and a discussion of external peer review topics for fiscal year 2010.

Agenda items are subject to change as priorities dictate.

Additional Information for Visitors: All visitors are required to present a valid form of picture identification issued by a state, federal or international government. To expedite the security clearance process for visitors to the CDC Roybal campus, all visitors must pre-register by submitting the following information by e-mail or phone (see Contact Person for More Information) no later than 12 noon (EST) on Wednesday, April 1, 2009:

- Full Name,
- Organizational Affiliation,
- Complete Mailing Address,
- Citizenship, and
- Phone Number or E-mail Address.

For foreign nationals or non-U.S. citizens, pre-approval is required. Please contact the BSC Coordinator (see Contact Person for More Information) in advance of the posted pre-registration deadline for additional security requirements that must be met.

Contact Person for More Information: Matthew Jennings, BSC Coordinator, COTPER, CDC, 1600 Clifton Rd., NE., Mailstop D–44, Atlanta, GA 30333, Telephone: (404) 639–7357; Facsimile: (404) 639–7977; E-mail: *COTPER.BSC.Questions@cdc.gov*.

The Director, Management Analysis and Service 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 Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. E9–6099 Filed 3–19–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10133, CMS–250–254, CMS–R–5, CMS–10157 and CMS–10279]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper

performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Competitive Acquisition Program (CAP) for Medicare Part B Drugs: Vendor Application and Bid Form; *Use:* Section 303 (d) of the Medicare Modernization Act (MMA) requires the implementation of a competitive acquisition program for Medicare Part B drugs and biologicals not paid on a cost or prospective payment system basis. The CAP is an alternative to the Average Sales Price (ASP or ''buy and bill'') method of acquiring many Part B drugs and biologicals administered incident to a physician's services. The CAP Vendor Application and Bid Form, is used by bidders to provide a response to CMS' solicitation for approved CAP vendor bids and to submit their bid prices for CAP drugs. Though the program is currently on hold and a timeline for the resumption of the CAP has not been established, the CAP Vendor Application and Bid Form will be required to conduct the next round of vendor bidding. *Form Number:* CMS–10133 (OMB#: 0938–0955); *Frequency:* Reporting—Occasionally; *Affected Public:* Private Sector; Business or other for-profits; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 1. (For policy questions regarding this collection contact Bonny Dahm at 410–786–4006. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 411.25, 489.2, and 489.20; *Form Number:* CMS 250–254 (OMB#: 0938–0214); *Use:* Medicare Secondary Payer Information (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. Medicare Fiscal Intermediaries, Carriers, and now Part D plans, need information about primary payers in order to perform various tasks to detect and process MSP cases and make recoveries. MSP information is collected at various times and from numerous parties during a beneficiary's membership in the Medicare Program. Collecting MSP information in a timely manner means that claims are processed correctly the first time, decreasing the costs associated with adjusting claims and recovering mistaken payments.; *Frequency:* Reporting—On Occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 143,070,217; *Total Annual Responses:* 143,070,217; *Total Annual Hours:* 1,788,057. (For policy questions regarding this collection contact John Albert at 410–786–7457. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Certification/Recertification in Skilled Nursing Facilities (SNFs) Manual Instructions and Supporting Regulation in 42 CFR 424.20; *Use:* The Medicare program requires, as a condition for Medicare Part A payment for posthospital skilled nursing facility (SNF) services that a physician must certify and periodically recertify that a beneficiary requires an SNF level of care. The physician certification and recertification is intended to ensure that the beneficiary's need for services has been established and then reviewed and updated at appropriate intervals. *Form Number:* CMS–R–5 (OMB#: 0938–0454); *Frequency:* Recordkeeping—Occasionally; *Affected Public:* Private Sector; Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 5,167,993; *Total Annual Responses:* 5,167,993; *Total Annual Hours:* 661,265. (For policy questions regarding this collection contact Kia Sidbury at 410–786–7816. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS Real-time Eligibility Agreement and Access Request; *Form Number:* CMS–10157 (OMB#: 0938–0960); *Use:* Federal law requires that CMS take precautions to minimize the security risk to Federal information systems. Accordingly, CMS is requiring that trading partners who wish to conduct the eligibility transaction on a real-time basis to access Medicare beneficiary information provide certain assurances as a condition of receiving access to the Medicare database for the purpose of conducting eligibility verification. Health care providers, clearinghouses, and health plans that wish access to the Medicare database are required to complete this form. The information will be used to assure that those entities that access the Medicare database are aware of applicable provisions and penalties. *Frequency:* Recordkeeping and Reporting—One time; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 2000; *Total Annual Responses:* 500; *Total Annual Hours:* 500. (For policy questions regarding this collection contact Vivian Rogers at 410–786–8142. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Ambulatory Surgical Center Conditions for Coverage; *Form Number:* CMS–10279 (OMB#: 0938–New); *Use:* The Ambulatory Surgical Center (ASC) Conditions for Coverage (CfCs) focus on a patient-centered, outcome-oriented, and transparent processes that promote quality patient care. The CfCs are designed to ensure that each facility has properly trained staff to provide the appropriate type and level of care for that facility and provide a safe physical environment for patients. The CfCs are used by Federal or State surveyors as a basis for determining whether an ASC qualifies for approval or re-approval under Medicare. CMS and the healthcare industry believe that the availability to the facility of the type of records and general content of records, which this regulation specifies, is standard medical practice and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. *Frequency:* Recordkeeping and Reporting—One time; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,100; *Total Annual Responses:* 5,100; *Total Annual Hours:* 193,800. (For policy questions regarding this collection contact Jacqueline Morgan at 410–786–4282. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must

be submitted in one of the following ways by *May 19, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____ Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March, 13, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–6038 Filed 3–19–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Notice To Award Non-Competitive Successor Award to the State Information Technology Consortium (SITC)

AGENCY: Office of Child Support Enforcement, ACF, DHHS.

ACTION: Notice to award Non-Competitive Successor Award to the State Information Technology Consortium (SITC).

CFDA#: 93.601.

Legislative Authority: Legislative Authority: Section 452(j) of the Social Security Act, 42 U.S.C. 652(j), provides Federal funds for information dissemination and technical assistance to States, training of Federal and State staff to improve CSE programs, and research, demonstration, and special projects of regional or national significance relating to the operation of State child support enforcement programs.

Amount of Award: $124,474.

Project Period: 07/1/2008–06/30/2011.

SUMMARY: This notice announces that the Office of Child Support Enforcement (OCSE), will award a Non-Competitive Successor Award to the State Information Technology Consortium (SITC) in Raleigh, North Carolina. The award will enable the SITC to educate judges on effective problem-solving court strategies to deal with parents who do not make their child support payments.

FOR FURTHER INFORMATION CONTACT: *Contact for Further Information:* Larry R. Holtz, Program Specialist, Division of State, Tribal and Local Assistance, Office of Child Support Enforcement, 370 L'Enfant Promenade SW., Washington, DC 20447. Telephone: 202–401–5376. E-mail: *Larry.Holtz@acf.hhs.gov*.

Dated: March 16, 2009.

Donna J. Bonar,

Acting Commissioner, Office of Child Support Enforcement.

[FR Doc. E9–6119 Filed 3–19–09; 8:45 am]

BILLING CODE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Biannual Aggregate Report ACF–800.

OMB No.: 0970–0150.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit annual aggregate data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Annual aggregate reports include data elements represented in the ACF–800 reflecting the scope, type, and methods of child care delivery. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–800. With this extension, ACF is proposing several changes and clarifications to the reporting requirements and instructions.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	40	2,240
Estimated Total Annual Burden Hours				2,240

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 16, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–6031 Filed 3–19–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0641]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Voluntary Hazard Analysis and Critical Control Point Manuals for Operators and Regulators of Retail and Food Service Establishments

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 20, 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*. All comments should be identified with the OMB control number 0910–0578. 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.

Voluntary Hazard Analysis and Critical Control Point Manuals for Operators and Regulators of Retail and Food Service Establishments—(OMB Control Number 0910–0578—Extension)

The Operator's Manual contains information and recommendations for operators of retail and foodservice establishments who wish to develop and implement a voluntary food safety management system based on Hazard Analysis and Critical Control Point (HACCP) principles. Operators may decide to incorporate some or all of the principles presented in the manual into their existing food safety management systems. The recordkeeping practices discussed in the manual are voluntary and may include documenting certain activities, such as monitoring and verification, which the operator may or may not deem necessary to ensure food safety. The manual includes optional worksheets to assist operators in developing and validating a voluntary food safety management system.

The Regulator's Manual contains recommendations for State, local, and tribal regulators on conducting risk-based inspections of retail and foodservice establishments, including recommendations about recordkeeping practices that can assist operators in preventing foodborne illness. These recommendations may lead to voluntary actions by operators based on consultation with regulators. For example, an operator may develop a risk control plan as an intervention strategy for controlling specific out-of-control foodborne illness risk factors identified during an inspection. Further, the manual contains recommendations to assist regulators when evaluating voluntary food safety management systems in retail and foodservice establishments. Such evaluations typically consist of the following two components: (1) Validation (assessing whether the establishment's voluntary food safety management system is adequate to control food safety hazards) and (2) verification (assessing whether the establishment is following its voluntary food safety management system). The manual includes a sample entitled ''Verification Inspection Checklist'' to assist regulators when conducting verification inspections of establishments with voluntary food safety management systems.

Types of operator records discussed in the manuals and listed in the following burden estimates include: (1) Food safety management systems (plans that delineate the formal procedures to follow to control all food safety hazards in an operation); (2) risk control plans (HACCP-based, goal-oriented plans for achieving active managerial control over specific out-of-control foodborne illness risk factors); (3) hazard analysis (written assessment of the significant food safety hazards associated with foods prepared in the establishment); (4) prerequisite programs (written policies or procedures, including but not limited to, standard operating procedures, training protocols, and buyer specifications that address maintenance of basic operational and sanitation conditions); (5) monitoring (records showing the observations or measurements that are made to help determine if critical limits are being met and maintained); (6) corrective action (records indicating the activities that are completed whenever a critical limit is not met); (7) ongoing verification (records showing the procedures that are followed to ensure that monitoring and other functions of the food safety management system are being implemented properly); and (8) validation (records indicating that scientific and technical information is collected and evaluated to determine if the food safety management system, when properly implemented, effectively controls the hazards).

All recommendations in both manuals are voluntary. For simplicity and to avoid duplicate estimates for operator recordkeeping practices that are discussed in both manuals, the burden for all collection of information recommendations for retail and foodservice operators are estimated together in table 1 of this document, regardless of the manual in which they appear. Collection of information recommendations for regulators in the Regulator's Manual are listed separately in table 2 of this document.

Description of Respondents: The likely respondents to this collection of information are operators and regulators of retail and foodservice establishments.

In the **Federal Register** of December 19, 2008 (73 FR 77721), 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 RECORDKEEPING BURDEN FOR OPERATORS[1]

Types of Records	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Prerequisite Program Records	100,000[2]	365	36,500,000	0.1	3,650,000
Monitoring Records	100,000[2]	365	36,500,000	0.3	10,950,000
Corrective Action Records	100,000[2]	365	36,500,000	0.1	3,650,000
Ongoing Verification Records (includes calibration records)	100,000[2]	365	36,500,000	0.1	3,650,000
Validation Records	50,000[2]	1	50,000	4	200,000
Annual Burden[3]:					22,100,000
Risk Control Plan	50,000	1	50,000	2	100,000
Monitoring Records	100,000	90	9,000,000	0.3	2,700,000
Corrective Action Records	100,000	90	9,000,000	0.1	900,000
Ongoing Verification Records (includes calibration records)	100,000	90	9,000,000	0.1	900,000
Annual Burden[4]					4,600,000
Total Annual Burden for Operators					26,700,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Annual burden.
[3] Burden for developing and implementing a food safety management system based on the Operator's Manual.
[4] Annual burden for developing and implementing a risk control plan based on the Regulator's Manual.

The burden for these activities may vary among retail and foodservice operators depending on the type and number of products involved, the complexity of an establishment's operation, the nature of the equipment or instruments required to monitor critical control points, and the extent to which an operator uses the Operator's Manual and/or the Regulator's Manual. The estimate does not include collections of information that are a usual and customary part of an operator's normal activities. FDA has established as a goal to have 50,000 (0.05 percent) of the approximately 1 million U.S. retail and foodservice operators implement the recommendations outlined in the 2 manuals. This target figure is used in calculating the burden in tables 1 and 2 of this document because the agency lacks data on how to base an estimate of how many retail and foodservice establishments are likely to use one or more of the manuals to voluntarily implement a comprehensive food safety management system based on HACCP principles or a risk control plan for out-of-control processes identified during an inspection. FDA's estimate of the total number of retail and foodservice establishments is based on numbers obtained from the two major trade organizations representing these industries, the Food Marketing Institute, and the National Restaurant Association, respectively.

The hour burden estimates in table 1 of this document for operators who follow the HACCP-based recommendations in the Operator's Manual are based on the estimated average annual information collection burden for mandatory HACCP rules, including seafood HACCP (60 FR 65096 at 65178; December 18, 1995) and juice HACCP (66 FR 6138 at 6202; January 19, 2001). FDA estimates that once the system is in place, the annual frequency of records is based on 365 operating days per year. Assuming there is one recordkeeper per shift of operation, the agency estimates that two recordkeepers per day would be needed to conduct monitoring, corrective action, recordkeeping, and verification outlined in the system. The agency further estimates that validation will be conducted once per year, based on menu or food list changes, changes in distributors, or changes in food preparation processes used. The validation will require a total of 4 labor hours.

The second set of estimates in table 1 of this document shows the annual burden for developing and implementing a risk control plan to control specific out-of-control foodborne illness risk factors identified during an inspection by a State, local, or tribal regulatory authority. If an operator decides to use a risk control plan as recommended in the Regulator's Manual, one person from the establishment is needed to work with the regulator to develop the written plan. FDA estimates that two recordkeepers per day (one recordkeeper for each shift) would be needed to conduct monitoring, corrective action, recordkeeping, and verification outlined in the risk control plan. The estimated duration of implementation for a risk control plan is 90 days, which is the minimum recommended time to achieve long-term behavior change.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR REGULATORS[1]

Types of Records	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Voluntary Food Safety Management System Evaluation (includes validation, verification, and completion of verification inspection checklist)	50,000	1	50,000	16	800,000
Total Annual Burden for Regulators					800,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

It is difficult to predict the number of State, local, and tribal regulatory jurisdictions that will use the Regulator's Manual. But, FDA anticipates that retail and foodservice establishments which voluntarily develop and implement a food safety management system based on the Operator's Manual will request their regulatory authorities to conduct an evaluation of their system. The estimates in table 2 of this document for the annual burden to State, local, and tribal regulators that follow the recommendations in the Regulator's Manual were calculated based on the usual time needed for one person to evaluate a voluntarily-implemented food safety management system and record the findings. The number of times an inspector may be asked by an operator to evaluate a voluntarily-implemented system is not expected to exceed once per year.

Dated: March 11, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6168 Filed 3–19–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0136]

Draft Guidance for Industry on Community-Acquired Bacterial Pneumonia: Developing Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Community-Acquired Bacterial Pneumonia: Developing Drugs for Treatment.'' This draft guidance informs industry of FDA's current thinking regarding the overall development program and clinical trial designs for drugs to support an indication for treatment of community-acquired bacterial pneumonia (CABP). This draft guidance does not address the development of drugs for other purposes or populations, such as treatment of patients with hospital-acquired pneumonia or ventilator-associated pneumonia. This draft guidance revises the draft guidance for industry entitled ''Community-Acquired Pneumonia-Developing Antimicrobial Drugs for Treatment'' published July 1998.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by June 18, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:
Sumathi Nambiar, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6232, Silver Spring, MD 20993–0002, 301–796–1400; or
Edward Cox, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 22, rm. 6212, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Community-Acquired Bacterial Pneumonia: Developing Drugs for Treatment.'' Since FDA published the draft guidance on the development of antimicrobial drugs for the treatment of community-acquired pneumonia in 1998, there have been public discussions regarding clinical trial designs to study CABP, including an FDA–Infectious Disease Society of America (IDSA) workshop and a meeting of the Anti-Infective Drugs Advisory Committee. These discussions have focused on clinical trial designs for CABP and other important issues such as the following:

- Noninferiority versus superiority design
- Justification of an appropriate noninferiority margin
- Classification of severity of illness
- Classification of CABP based on hospitalization (inpatient versus outpatient)
- Enrollment criteria
- Application of appropriate diagnostic criteria, including microbiologic diagnosis
- Use of appropriate definitions of clinical outcomes, including mortality
- Timing of outcome assessments
- Use of prior antibacterial drugs

Important changes from the 1998 draft guidance that are based on these discussions have been incorporated into this revised draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the development of antibacterial drugs for CABP including appropriate clinical trial designs to evaluate drugs for the treatment of CABP. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach

satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control no. 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control no. 0910–0001; and the collections of information referred to in the guidance ''Establishment and Operation of Clinical Trial Data Monitoring Committees'' have been approved under OMB control no. 0910–0581.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: March 13, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6145 Filed 3–19–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research, Special Emphasis Panel, NINR Loan Repayment Program Review (L30/L40).

Date: April 16, 2009.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yujing Liu, PhD, MD, Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste 710, Bethesda, MD 20892. (301) 451–5152. *yujing_liu@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: March 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5995 Filed 3–19–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: Security Program Training Feedback for Hazardous Materials Motor Carriers & Shippers

AGENCY: Transportation Security Administration, DHS.

ACTION: 30 Day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 20, 2008, 73 FR 70359. TSA will provide a voluntary security-related training course to the Hazardous Materials (Hazmat) motor carrier and shipper industry, to include an evaluation for respondents to complete. TSA will use this data to measure the program's effectiveness at achieving its goal of heightened security awareness levels throughout the hazmat motor carrier and shipper industry.

DATES: Send your comments by April 20, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay, 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*.

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

Title: Security Program for Hazardous Materials Motor Carriers & Shippers.

Type of Request: New collection.

OMB Control Number: Not yet assigned .

Form(s): NA.

Affected Public: Hazmat Motor Carriers and Shippers.

Abstract: TSA's Highway & Motor Carrier Division will be producing a voluntary security-related training course for the Hazmat motor carrier and shipper industry. Participants will be able to choose to attend instructor-led training sessions that TSA will conduct at multiple sites in the United States and provide information to the industry through trade associations, conferences, and stakeholder meetings. Hazmat motor carriers and shippers that are registered with the U.S. Department of Transportation (DOT) will automatically receive the training via CD–ROM and DVD. Companies may also complete the training on-line at the TSA Web site, *http://www.tsa.gov.* After completion of the training program, participants will have the option to complete a course evaluation form to comment on the effectiveness of the training program. The participants who choose to complete the training evaluation form will submit the form via e-mail to a secure Web surveyor tool that is managed at TSA. Participants who attend the classroom training sessions will also be asked to complete an evaluation form on site, which will later be entered into the Web surveyor tool by TSA personnel. TSA will use this data to measure the program's effectiveness at achieving its goal of heightened security awareness levels throughout the hazmat motor carrier and shipper industry.

Number of Respondents: 50,000.

Estimated Annual Burden Hours: An estimated 16,667 hours annually.

Issued in Arlington, Virginia, on March 16, 2009.

Ginger LeMay,

Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E9–6156 Filed 3–19–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–10]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 20, 2009.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 12, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–5762 Filed 3–19–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–2009–N0051; 1112–0000–80221–F2]

Paiute Cutthroat Trout Restoration Project Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR)

AGENCY: Fish and Wildlife Service, Interior (Lead Agency); Forest Service, Agriculture (Cooperating Agency).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Paiute Cutthroat Trout Restoration Project Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for public review and comment. We, the Fish and Wildlife Service (Service), along with the USDA Forest Service, Humboldt-Toiyabe National Forest (Cooperating Agency), and the California Department of Fish and Game (CDFG, California Environmental Quality Act lead agency) (collectively, the Agencies), are proposing to restore Paiute cutthroat trout to their historical range within the Silver King Creek watershed, Alpine County, California. To accomplish this, the Agencies must first eradicate the non-native and hybrid trout which currently occupy the habitat.

DATES: Written comments must be received by 5 p.m. on May 4, 2009.

ADDRESSES: Written comments should be addressed to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502; fax number (775) 861–6301 (for further information and instructions on the reviewing and commenting process, see Public Comments section below).

FOR FURTHER INFORMATION CONTACT: Chad Mellison, Fish and Wildlife Biologist, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502; telephone (775) 861–6300.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of this draft EIS/EIR should contact the Service by telephone (see **FOR FURTHER INFORMATION CONTACT**). Copies of the subject document are also available for public inspection during regular business hours at the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**), and may be downloaded from the Nevada Fish and Wildlife Office Web site at: *http://www.fws.gov/nevada/.*

Background Information

The Paiute cutthroat trout was listed as endangered by the Service under the Endangered Species Preservation Act of 1966 (32 FR 4001, March 11, 1967) and reclassified to threatened under the Endangered Species Act of 1973 (40 FR 29863, July 16, 1975). Silver King Creek, from Llewellyn Falls downstream to Silver King Canyon, and its associated tributaries in Alpine County, California, comprise the native historical range of the Paiute cutthroat trout (*Oncorhynchus clarkii seleniris*) (Service 2004).

The fish now present in the Silver King Creek watershed between Llewellyn Falls and Silver King Canyon are a genetic mixture of introduced rainbow trout (*O. mykiss*), Lahontan cutthroat trout (*O. c. henshawi*), golden trout (*O. aquabonita ssp.*), and Paiute cutthroat trout. Hybridization with non-native trout species is the primary threat to Paiute cutthroat trout within its historical range (Service 2004). Fishery restoration efforts involving Paiute cutthroat trout span from 1950 to the present and include prior removals of non-native and hybridized fish, as well as establishing and maintaining introduced populations of genetically-pure (unhybridized) Paiute cutthroat trout. Populations of Paiute cutthroat trout have been established in several California streams outside the Silver King Creek watershed including the North Fork of Cottonwood Creek and Cabin Creek in the Inyo National Forest (Mono County), Sharktooth Creek (Fresno County), and Stairway Creek (Madera County) on the Sierra National Forest.

Genetically pure Paiute cutthroat trout are currently found in Silver King Creek upstream of Llewellyn Falls, where a previously-introduced population was restored by CDFG in the early 1990's, and in other tributaries where populations have been established within the watershed (*e.g.*, Four Mile Creek, Fly Valley Creek, Coyote Creek and Corral Valley Creek).

The project would implement the first and second recovery actions listed in the Paiute Cutthroat Trout Revised Recovery Plan (Service 2004) which lists actions to restore, recover, and ultimately delist the species. The objective of the proposed project is to return Paiute cutthroat trout back to its historical range and establish them as the only salmonid fish species in Silver King Creek to prevent hybridization with other trout. This is an important and necessary step in preventing Paiute cutthroat trout from going extinct and also in conserving the species and restoring it to a level that would allow it to be removed from the Federal threatened species list. Under current conditions, easy public access between stream reaches downstream and upstream of Llewellyn Falls may result in a future unauthorized transplant of non-native and/or hybridized fish to areas above the falls.

Under the proposed project, the Agencies would: (1) Use chemical treatment (rotenone) to eradicate non-native trout from Silver King Creek and its tributaries between Llewellyn Falls and Silver King Canyon, as well as Tamarack Lake at the headwaters of Tamarack Lake Creek, a tributary of Silver King Creek (if fish are present); (2) Neutralize the rotenone downstream of Silver King Canyon to the 30-minute travel time mark near the confluence with Snodgrass Creek using potassium permanganate; and (3) Restock the project area with pure Paiute cutthroat trout from established donor streams in the upper Silver King Creek watershed (*i.e.*, Fly Valley, Four Mile, Silver King Creek, or possibly Coyote Creek).

The proposed stocking of pure Paiute cutthroat trout will expand the current population size and distribution downstream from Llewellyn Falls to a series of six impassible fish barriers in Silver King Canyon and associated tributaries. These barriers, the two highest being 8 and 10 feet high, would prevent any reinvasion of non-native trout from areas downstream of the project area and greatly reduce the likelihood of and impacts from any future illegal non-native species introduction. By expanding the populations and range of the species, the project would also increase the probability of long-term viability and reduce threats from genetic bottlenecking and stochastic events.

The proposed project also includes pre-treatment removal of fish by seeking California Fish and Game Commission approval for an increased daily bag limit (harvest) that would allow anglers increased access to fishing in the project area in an attempt to reduce existing non-native trout populations; pre-treatment biological surveys and monitoring for amphibians and benthic macroinvertebrates; placement of signs to inform the public; water quality monitoring (during and post treatment); and post-treatment biological monitoring. The Agencies would apply rotenone to the project area in the summers of 2009 and 2010 (and 2011 if needed). Additional treatments would be scheduled as necessary to ensure complete removal of non-native trout from the project area.

National Environmental Policy Act Compliance

The proposed project triggers the need for compliance with the National Environmental Policy Act (NEPA). Accordingly, the Service has prepared a draft EIS/EIR that evaluates the impacts of the proposed project (Alternative 2) and also evaluates the impacts of a reasonable range of alternatives.

The draft EIS/EIR analyzes two alternatives in addition to the proposed project described above. The Service has identified the proposed project as the Preferred Alternative. Additional alternatives are described below.

Alternative 1-No Action Alternative: Under the No Action Alternative, the Service would not implement the proposed action. Instead, current stream and fishery management practices would continue into the foreseeable future. This alternative would include the continued protection of pure (unhybridized) Paiute cutthroat trout populations in Upper Fish Valley by maintaining restriction of recreational fishing on a small portion Silver King Creek downstream of Llewellyn Falls.

Alternative 3—Combined Physical Removal Alternative: This non-chemical alternative would include a combination of electrofishing, gill netting, seining, detonation cord, and other physical methods to treat Silver King Creek and its tributaries, springs, and Tamarack Lake (if fish are present). Because this alternative could have low efficiency in the rocky stream environment, it would be implemented over multiple years (*i.e.*, until no fish are found using physical removal techniques).

Public Comments

If you wish to comment on the draft EIS/EIR you may submit your comments to the address listed in the **ADDRESSES** section of this document. 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Service will evaluate the application, associate documents, and comments submitted to them to prepare a final EIS/EIR. Project implementation will be made no sooner than 30 days after the publication of the final EIS/EIR and completion of the Record of Decision.

This notice is provided pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: March 10, 2009.

Margaret Kolar,

Acting Deputy Regional Director, Region 8, Sacramento, California.

[FR Doc. E9–6098 Filed 3–19–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative, Science Technical Advisory Panel, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI) Science Technical Advisory Panel (STAP) will meet as indicated below:

DATES: The meeting will be held April 14 and 15, in Fairbanks, Alaska. On April 14, 2009, the meeting will begin at 9 a.m. at the University of Alaska Fairbanks, International Arctic Research Center, Room 401. Public comments will begin at 3 p.m. On April 15, 2009, the meeting will begin at 9 a.m. at the same location and will be a joint meeting with the North Slope Science Initiative Oversight Group.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative, c/o Bureau of Land Management, AK–910, 222 W. Seventh Avenue, #13, Anchorage, AK 99513; phone 907–271–3431 or e-mail *john_f_payne@blm.gov*.

SUPPLEMENTARY INFORMATION: The NSSI, STAP provides advice and recommendations to the NSSI Oversight Group regarding priority needs for management decisions across the North Slope of Alaska. These priority needs may include recommendations on inventory, monitoring, and research activities that lead to informed land management decisions. The topics to be discussed at the meeting include:

- Emerging issues summary from the STAP.
- Update on the project tracking system.
- Update on the project database.
- NSSI priority issues and projects.
- Other topics the Oversight Group or STAP may raise.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative.

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: March 16, 2009.

Julia Dougan,

Acting State Director.

[FR Doc. E9–6097 Filed 3–19–09; 8:45 am]

BILLING CODE 1310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–432 and 731–TA–1024–1028 (Review) and AA1921–188 (Third Review)]

Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, Korea, Mexico, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty order on prestressed concrete steel wire strand (''PC strand'') from India and the antidumping duty orders on PC strand from Brazil, India, Japan, Korea, Mexico, and Thailand.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on PC strand from India and the antidumping duty orders on PC strand from Brazil, India, Japan, Korea, Mexico, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On March 6, 2009, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (73 FR 72834, December 1, 2008) was adequate and that the respondent interested party group responses with respect to Korea and Mexico were adequate [1] and decided to conduct full reviews with respect to the antidumping duty orders concerning PC strand from Korea and Mexico. The Commission found that the respondent interested party group responses with respect to Brazil, India, Japan, and Thailand were inadequate. However, the Commission determined to conduct full reviews concerning the countervailing duty order on PC strand from India and the antidumping duty orders on PC strand from Brazil, India, Japan, and Thailand to promote administrative efficiency in light of its decision to conduct full reviews with respect to the antidumping duty orders concerning PC strand from Korea and Mexico. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

[1] Commissioners Charlotte R. Lane and Dean A. Pinkert found that the respondent interested party group response with respect to Korea was inadequate.

By order of the Commission.

Issued: March 16, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–6129 Filed 3–19–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0037]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review.

Prescription Drug Monitoring Program Questionnaire

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 8, page 1709, on, January 13, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 20, 2009. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of Information Collection 1117–0037:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Prescription Drug Monitoring Program Questionnaire.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: States.

Other: None.

Abstract: This questionnaire permits the Drug Enforcement Administration to compile and evaluate information regarding the design, implementation and operation of State prescription monitoring programs. Such information allows DEA to assist states in the development of new programs designed to enhance the ability of both DEA and State authorities to prevent, detect, and investigate the diversion and abuse of controlled substances.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* It is estimated that 51 persons complete the Prescription Monitoring Program Questionnaire electronically, at 5 hours per form, for an annual burden of 255 hours.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* It is estimated that there are 255 burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 11, 2009.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E9–6054 Filed 3–19–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Direct Supervision: Curriculum Development

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections, Jails Division, is seeking applications for the development of two training-program curricula: one that focuses on the role of the housing-unit officer and shift supervisor in a direct supervision jail and another that focuses on the role of the administrator in a direct supervision jail. The project will be for an eighteen-month period, and will be carried out in conjunction with the NIC Jails Division. NIC Jails Division staff will direct the project and will participate in curriculum design, lesson plan development, and the creation of related training materials.

DATES: Applications must be received by 4 p.m. (EDT) on Friday, April 10, 2009.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or a similar service to ensure delivery by the due date, as mail at NIC is sometimes delayed due to security screening.

Applicants who wish to hand-deliver their applications should bring them to 500 First Street, NW., Washington, DC 20534 and dial (202) 307–3106, ext. 0 at the front desk for pickup.

Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC Web page at *http://www.nicic.gov*.

All technical or programmatic questions concerning this announcement should be directed to Robbye Braxton-Mintz, Correctional Program Specialist, National Institute of Corrections. She can reached by calling 1–800–995–6423 ext. 4–4562 or by e-mail at *rbraxtonmintz@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background

Direct supervision jails combine a physical plant design, interior fixtures and furnishings, and an inmate management philosophy to significantly reduce the problems commonly associated with jails, such as violence, vandalism, inmate rule violations, and unsanitary conditions. Direct supervision is based on eight principles: (1) Effective control, (2) effective supervision, (3) competent staff, (4) safety of staff and inmates, (5) manageable and cost-effective operations, (6) effective communication, (7) classification and orientation, and (8) justice and fairness. Although all staff in a direct supervision jail must understand the principles and their operational implications, there are three staff positions that are key in the implementation of direct supervision: the jail administrator, the shift supervisors, and the housing-unit staff. NIC intends to develop training programs to better prepare staff in each of these positions to carry out their duties in support of direct supervision. Two curricula will be developed to support this.

Curriculum #1: ''The Role of the Housing Officer and Supervisor in a Direct Supervision Jail'' and *Curriculum #2:* ''The Role of the Administrator in a Direct Supervision Jail—Commitment, Leadership, and Support''

The first curriculum will focus on the role of the housing-unit officer and the shift supervisor in a direct supervision jail. It will be based on the NIC program titled ''How to Run a Direct Supervision Housing Unit: Training for Trainers''. This program is currently designed to familiarize staff trainers in jails with ''How to Run a Direct Supervision Housing Unit'', and prepare them to conduct this program for staff in their own jail.

Under this cooperative agreement project, NIC intends to update ''How to Run a Direct Supervision Housing Unit'', which will be attended by a team of two trainers and two shift supervisors from each participating jail. This program will last up to five days. Immediately after completing this program, the trainers and shift supervisors will receive separate instruction for up to four days. The trainers will receive instruction (developed under this project) on conducting the program for staff in their own jail. The supervisors will receive training (developed under this project) on their role in supporting the officer in effective housing-unit management, based on what they learned in the first week. On the final day of training, the two groups will meet together to discuss what they have learned and how they can implement this in their jail. They will also develop an action plan to conduct ''How to Run a Direct Supervision Housing Unit'' for their housing-unit staff.

The second curriculum must be newly developed. It will focus on the role of the administrator in a direct supervision jail and will include, at a minimum: a discussion of the direct supervision principles; the jail administrator's leadership role related specifically to direct supervision; recruiting, hiring, promoting, and training staff in support of direct supervision; common challenges in implementing and sustaining direct supervision operations; decision making within the context of direct supervision; and assessing operations and operational outcomes within the framework of direct supervision. This program will be attended by administrators only. We anticipate this program will be no more than five days long.

Objectives: The National Institute of Corrections (NIC) wishes to develop two training curricula. The first will focus on the role of the housing-unit officer and the shift supervisor in implementing and supporting direct supervision. The second will focus on the role of the jail administrator in providing leadership and support for direct supervision.

Use of Curricula: NIC will use these curricula as the basis for its training programs on the role of the housing unit officer, shift supervisor, and administrator in a direct supervision jail.

The curricula will become the sole property of NIC, and will not be published for general distribution; however, curricula materials will be made available to training participants.

Scope of Work: The work will involve the production of two complete curricula, each of which will include: program description (overview); detailed narrative lesson plans; presentation slides for each lesson plan, and; participant manual that follows the lesson plans.

The curricula will be designed for adult learners and will take into account the need to accommodate a variety of learning styles. Lesson plans will be in a format that NIC provides.

The schedule for project completion should include, at a minimum, the following activities (for the development of both curricula): meet with NIC project manager for project overview and initial planning; review materials provided by NIC; meet with NIC staff to draft a framework for each curriculum, including content topics, sequencing, and time frames; meet with NIC staff to outline content for each module and assign writers (including one NIC staff); write lesson plans; exchange lesson plans among the writers for review; revise lesson plans; send lesson plans to advisory committee for review and comment (committee is composed of five members identified by NIC and paid by the awardee); meet with NIC staff to review comments and agree on revisions; revise lesson plans; develop participant manual, presentation slides, and program overview; submit final draft of all materials to NIC for review; revise as directed by NIC; and submit final curricula in camera-ready hard copy and on disk in Word format.

Curriculum #1 will be developed first. Because of the length and complexity of this curricula, lesson plans should be grouped into thirds for development. Also, this curriculum will be piloted in the Washington, DC area. To conduct the pilot, the awardee will hire four instructors for this nine-day program and pay for their fees, travel, lodging, meals, and any other related expenses. NIC will secure training space and equipment, select participants, and pay for all costs related to participant materials and participant travel, lodging, and meals, where necessary. The pilot will be conducted after all lesson plans, presentation slides, and the participant manual are drafted.

Curriculum #2 will be developed second and will be informed, at least in part, by curriculum #1. This curriculum will not be piloted under this cooperative agreement.

Application Requirements: An application package must include OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); and an outline of projected costs. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*). Applications should be concisely written, typed

double-spaced and reference the NIC Application Number and Title provided in this announcement.

If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and curricula). Curricula may be submitted in hard copy or on disk in Word or WordPerfect format. The original should have the applicant's signature in blue ink. Electronic submissions will only be accepted via *http://www.grants.gov*.

The narrative portion of the application should include, at a minimum: brief paragraph indicating the applicant's understanding of the project's purpose; brief paragraph that summarizes the project goals and objectives; clear description of the methodology that will be used to complete the project and achieve its goals; statement or chart of measurable project milestones and time lines for the completion of each milestone; description of the qualifications of the applicant organization and a resume for the principle and each staff member assigned to the project that documents relevant knowledge, skills and ability to carry out the project; budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the proposed budget; two curricula developed by the applicant or primary project-team members.

The curricula must include lesson plans, presentation slides, and a participant manual. The application must also include a description of the role of the applicant or project-team member in the development of the sample curricula. The curricula submitted DO NOT have to be related to direct supervision.

Authority: Public Law 93–415.

Funds Available: NIC is seeking applicants' best ideas regarding accomplishments of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for the activities that are linked to the desired outcome of the project.

Eligibility of Applicants: An eligible applicant is any State or general unit of local government, private agency, educational institution, organization, individual or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications will be reviewed by a team of three to five persons. Evaluation will be based on criteria such as: clarity of applicant's understanding of project requirements; background, experience, and expertise of the proposed project staff, including subcontractors; specific level of experience with, and expertise on jails generally, and direct supervision jails in particular; experience with curriculum design based on Instructional Theory into Practice (ITIP); experience in designing, managing, facilitating, or delivering training on direct supervision to jail practitioners who are moving from a traditional jail to a direct supervision jail; clarity of the description of all project elements and tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to Federal financial guidelines and processes; sufficiently detailed budget that shows consideration of all contingencies for this project and a commitment to work within the budget proposal; indication of availability to meet with NIC staff at various points during the project; and design and quality of sample curricula.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, dial 1–866–705–5711 and select option 1).

Applicants may register in the CCR online at the CCR Web site: *http://www.ccr.gov*. A CCR handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

Applicant's Conference: An applicant's conference will be held on Friday, April 3, 2009 from 1 p.m.–3 p.m. (EDT) at the NIC office, 500 1st Street, NW., 7th Floor, Washington, DC. The Conference will give applicants the opportunity to meet with NIC project staff to ask questions about the project and the application procedures. Attendance at the conference is optional, and those who will be unable to attend in person may request a telephone conference instead. In addition, if you have access to a computer, provisions can be made to conduct a WebEx session. Applicants who plan to attend or who would like to participate via telephone or WebEx should call Robbye Braxton-Mintz, NIC Jails Division, Correctional Program Specialist, at 1–800–995–6423 ext. 4–4562 by 4:30 p.m. (EDT) on Wednesday April 1, 2009 to confirm attendance and receive further instructions.

NIC Opportunity Number: 09J69. This number should appear as a reference line in the cover letter, in box 12 of Standard Form 424 (where it asks for Funding Opportunity Number), and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provision of Executive Order 12372.

Thomas J. Beauclair,

Deputy Director, National Institute of Corrections.

[FR Doc. E9–6113 Filed 3–19–09; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 16, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each 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*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Blasting Operations and the Use of Explosives (29 CFR part 1926, Subpart U).

OMB Control Number: 1218–0217.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 160.

Estimated Total Annual Burden Hours: 1,294.

Estimated Total Annual Costs Burden (does not include wage/hour costs): $800,000.

Description: The information collection requirements provide protection to employees who work with and around blasting operations. In addition, inventories of explosives must be maintained to assure employer and blaster accountability for explosives. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 73 FR 74525 on December 8, 2008. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA–2008–0045.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: OSHA Strategic Partnership for Worker Safety and Health Program (OSPP).

OMB Control Number: 1218–0244.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 24,272.

Estimated Total Annual Burden Hours: 361,416.

Estimated Total Annual Costs Burden (does not include wage/hour costs): $0.

Description: The OSPP allows OSHA to enter into an extended, voluntary, cooperative relationship with groups of employers, employees, and representatives to encourage, assist and recognize their efforts to eliminate serious hazards and to achieve a high level of employee safety and health that goes beyond what historically has been achieved through traditional enforcement methods. Each OSHA Strategic Partnership (OSP) determines which information will be needed, selects the best collection method, and specifies how the information will be used. At a minimum each OSP must identify baseline illness and injury data corresponding to all summary line items on the OSHA 300 logs, and must track changes at either the worksite level or participant-aggregate level. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 73 FR 67546 on November 14, 2008. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA–2008–0041.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–6033 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Publication of Model Notices for Health Care Continuation Coverage Provided Pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and Other Health Care Continuation Coverage, as Required by the American Recovery and Reinvestment Act of 2009, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of the Availability of the Model Health Care Continuation Coverage Notices Required by ARRA.

SUMMARY: On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111–5). ARRA includes a requirement that the Secretary of Labor (the Secretary), in consultation with the Secretaries of the Treasury and Health and Human Services, develop model notices. These models are for use by group health plans and other entities that, pursuant to ARRA, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. This document announces the availability of the model health care continuation coverage notices required by ARRA.

FOR FURTHER INFORMATION CONTACT: Kevin Horahan or Amy Turner, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, (202) 693–8335. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) created the health care continuation coverage provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code (Code), and the Public Health Service Act (PHS Act). These provisions are commonly referred to as the COBRA continuation provisions, and the continuation coverage that they mandate is commonly referred to as COBRA continuation coverage. Group health plans subject to the COBRA continuation provisions are subject to ARRA's premium reduction provisions, notice requirements, and an additional election period. The COBRA continuation coverage provisions do not apply to group health plans sponsored by employers with fewer than 20 employees. Many States require health insurance issuers who provide group health insurance coverage to plans not subject to the COBRA continuation provisions to provide comparable continuation coverage. Such continuation coverage provided pursuant to State law is also subject to ARRA's premium reduction provisions and notice requirements but not the additional election period.

II. Description of the Model Notices

a. In General

ARRA mandates the provision of three notices—a ''General Notice,'' an ''Alternative Notice,'' and a ''Notice in Connection with Extended Election Periods.'' Each of these notices must include: a prominent description of the availability of the premium reduction including any conditions on the entitlement; a model form to request treatment as an ''Assistance Eligible Individual'';[1] the name, address, and telephone number of the plan administrator (and any other person

[1] In general, an ''Assistance Eligible Individual'' is an individual who is eligible for COBRA continuation coverage as a result of an involuntary termination of employment at any time from September 1, 2008 through December 31, 2009; and who elects COBRA coverage (when first offered or during the additional election period).

with information about the premium reduction); a description of the obligation of individuals paying reduced premiums who become eligible for other coverage to notify the plan; and (if applicable) a description of the opportunity to switch coverage options. The Notice in Connection with Extended Election Periods must also include a description of the extended election period.

The Department of Labor (the Department) created these model notices to cover an array of situations in order to deal with the complexity of the various scenarios facing dislocated workers and their families. In an effort to ensure that the notices included all of the information required under ARRA while minimizing the burden imposed on group health plans and issuers, the Department created several packages. Each package is designed for a particular group of qualified beneficiaries and contains all of the information needed to satisfy the content requirements for ARRA's notice provisions. The packages include the following disclosures:

- A summary of ARRA's premium reduction provisions.
- A form to request the premium reduction.
- A form for plans (or issuers) who permit qualified beneficiaries to switch coverage options to use to satisfy ARRA's requirement to give notice of this option.
- A form for an individual to use to satisfy ARRA's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage or Medicare.
- COBRA election forms and information, as appropriate.

b. General Notice

The General Notice is required to be sent by plans that are subject to the COBRA continuation provisions under Federal law.[2] It must include the information described above and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event.

The Department has created two versions of this notice. The abbreviated version is for individuals who have elected COBRA and are still covered after experiencing a qualifying event at some time on or after September 1, 2008 to advise them of the availability of the premium reduction and other rights and obligations under ARRA. The longer version includes all of the information related to the premium reduction and other rights and obligations under ARRA as well as all of the information required in an election notice required pursuant to the Department's final COBRA notice regulations under 29 CFR 2590.606–4(b).[3] Providing the longer notice to individuals who have experienced a qualifying event from September 1, 2008 through December 31, 2009 will satisfy the Department's existing requirements for the content of the COBRA election notice as well as those imposed by ARRA.

c. Alternative Notice

The Alternative Notice is required to be sent by issuers that offer group health insurance coverage that is subject to continuation coverage requirements imposed by State law. The Alternative Notice must include the information described above and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event. Continuation coverage requirements vary among States. Thus, the Department crafted a single version of this notice that should be modified to reflect the requirements of the applicable State law. Issuers of group health insurance coverage subject to this notice requirement should feel free to use the model Alternative Notice or the abbreviated model General Notice (as appropriate).

d. Notice in Connection With Extended Election Periods

The Notice in Connection with Extended Election Periods is required to be sent by plans that are subject to COBRA continuation provisions under Federal law. It must include the information described above and be provided to any Assistance Eligible Individual (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect) who: had a qualifying event at any time from September 1, 2008 through February 16, 2009; AND either did not elect COBRA continuation coverage or who elected but subsequently discontinued COBRA. This notice MUST be provided by April 18, 2009, which is 60 days after the date ARRA was enacted.[4]

III. For Additional Information

For additional information about ARRA's COBRA premium reduction provisions, contact the Department's Employee Benefits Security Administration's Benefits Advisors at 1–866–444–3272. In addition, the Employee Benefits Security Administration has developed a dedicated COBRA Web page *http://www.dol.gov/COBRA* that will contain information on the program as it is developed. Subscribe to this page to get up-to-date fact sheets, FAQs, model notices, and applications.

IV. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not

[2] Under ARRA the Secretary generally is responsible for developing all of the model notices with the exception of model notices relating to Temporary Continuation Coverage under 5 U.S.C. 8905a, which is the responsibility of the Office of Personnel Management (OPM). In developing these notices, the Department has consulted with the Departments of the Treasury and Health and Human Services, OPM, the National Association of Insurance Commissioners, and plan administrators and other entities responsible for providing COBRA continuation coverage.

[3] ARRA provides that COBRA election notices already provided for qualifying events occurring during this time period but which did not include information on the availability of the premium reduction are not complete. As such, the end of the 60-day period for electing COBRA continuation coverage is measured from when a complete notice is provided. Moreover, although under COBRA a timely election may require a plan to make coverage available retroactively to the date of the loss of coverage, ARRA provides no new requirement for a plan to allow an individual to elect COBRA continuation coverage for any period prior to the first coverage period beginning on or after February 17, 2009.

[4] ARRA could be read to require Assistance Eligible Individuals with qualifying events from September 1, 2008 through February 16, 2009 who are already enrolled in COBRA coverage to receive both a General Notice and a Notice in Connection with Extended Election Periods with duplicate content. Because the COBRA election information would be of no practical importance to individuals already enrolled, plans may send just the abbreviated General Notice to such individuals and satisfy both ARRA notice requirements if the 60-day time frame for providing the Notice in Connection with Extended Election Periods is satisfied.

display a currently valid OMB control number. *See* 44 U.S.C. 3512.

This Notice revises the collections of information contained in the ICR titled Notice Requirements of the Health Care Continuation Coverage Provisions approved under OMB Control Number 1210–0123. OMB has approved this revision to the ICR pursuant to the emergency review procedures under 5 CFR 1320.13. The public reporting burden for this collection of information is estimated to average approximately 7 minutes per respondent, including time for gathering and maintaining the data needed to complete the required disclosure. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of the Chief Information Officer, Attention: Departmental Clearance Officer, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 or e-mail *DOL_PRA_PUBLIC@dol.gov* and reference the OMB Control Number 1210–0123.

V. Models

The Department has decided to make the model notices available in modifiable, electronic form on its Web site: *http://www.dol.gov/COBRA*.

VI. Statutory Authority

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1169, 1191c; Public Law 111–5, 123 Stat. 115; sec. 3001(a)(5), 3001(a)(2)(C), 3001(a)(7), and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003).

Signed at Washington, DC this 17th day of March 2009.

Alan D. Lebowitz,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E9–6131 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for South Carolina

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for South Carolina.

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 South Carolina for the week ending February 21, 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 March 8, 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 Building, 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.*

Signed in Washington, DC, this 13th day of March 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–6032 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,287]

The Doe-Run Company; St. Louis, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 18, 2009 in response to a worker petition filed by an official of a Missouri State workforce office on behalf of workers of The Doe-Run Company, St. Louis, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 5th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5913 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Health Standards for Diesel Particulates Matter (Underground Metal and Nonmetal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 57.5060, 57.5065, 57.5066, 57.5067, 57.5070, 57.5071, and 57.5075—Health Standards for Diesel Particulates Matter (Underground Metal and Nonmetal Mines).

DATES: Submit comments on or before May 19, 2009.

ADDRESSES: Send comments to, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2141, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Diesel particulate matter (DPM) is a probable carcinogen that consists of tiny particles present in diesel engine exhaust that can readily penetrate into the deepest recesses of the lungs. Despite ventilation, the confined underground mine work environment may contribute to significant concentrations of particles produced by equipment used in the mine. Underground miners are exposed to higher concentrations of DPM than any other occupational group. As a result, they face a significantly greater risk than other workers of developing such diseases as lung cancer, heart failure, serious allergic responses and other cardiopulmonary problems.

The DPM rule for underground Metal and Nonmetal (MNM) miners establishes a permissible exposure limit (PEL) to total carbon, which is a surrogate for measuring a miner's exposure to DPM. The rule includes a number of other requirements for the protection of miners' health.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules & Regs'', and then selecting ''FedReg. Docs''. On the next screen, select ''Paperwork Reduction Act Supporting Statement'' to view documents supporting the **Federal Register** Notice.

III. Current Actions

Currently, the Mine Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection requirement related to the health standard requirements for the protection of miners' health related to Diesel particulate matter for underground Metal and Nonmetal mines.

Underground mines are confined spaces which, despite ventilation requirements, tend to accumulate significant concentrations of particles and gases—both those produced by the mine itself (*e.g.*, methane gas and respirable dust) and those produced by equipment used in the mine (*e.g.*, diesel particulate). It is widely recognized that respirable particles can create adverse health effects. This information collection is provided to the MSHA inspector and used by the agency to monitor the mine operator's compliance with the health standard.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Health Standards for Diesel Particulates Matter (Underground Metal and Nonmetal Mines).

OMB Number: 1219–0135.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 173.

Responses: 18,752.

Total Burden Hours: 3,331 hours.

Total Burden Cost (operating/maintaining): $176,363.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 16th day of March, 2009.

John Rowlett,

Director, Management Services Division.

[FR Doc. E9–6030 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0004]

1,3-Butadiene Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the 1,3-Butadiene Standard (29 CFR 1910.1051).

DATES: Comments must be submitted (postmarked, sent, or received) by May 19, 2009.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions Online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0004, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2009–0004). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available Online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the

address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Jamaa Hill at the address below to obtain a copy of the Information Collection Request (ICR).

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

In this regard, the 1,3-Butadiene Standard requires employers to monitor employee exposure to 1,3-Butadiene; develop and maintain compliance and exposure-goal programs if employee exposures to 1,3-Butadiene are above the Standard's permissible exposure limits or action level; label respirator filter elements to indicate the date and time it is first installed on the respirator; establish medical surveillance programs to monitor employee health, and to provide employees with information about their exposures and the health effects of exposure to 1,3-Butadiene.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting OMB to extend their approval of the information collection requirements contained in the 1,3 Butadiene Standard. OSHA will summarize the comments submitted in response to this notice, and will include this summary to OMB.

Type of Review: Extension of currently approved information collection requirements.

Title: 1,3 Butadiene Standard (29 CFR 1910.1051).

OMB Number: 1218–0170.

Affected Public: Business or other for-profits; Federal government; State, local and tribal governments.

Number of Respondents: 115.

Frequency: On occasion.

Total Responses: 3,532.

Average Time per Response: Time per response ranges from 15 seconds (.004 hour) to write the date and time on each new cartridge label to 2 hours to complete a referral medical examination.

Estimated Total Burden Hours: 955.

Estimated Cost (Operation and Maintenance): $95,288.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0004). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled ''Addresses''). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Donald G. Shalhoub, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 17th day of March 2009.

Donald G. Shalhoub,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–6133 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0003]

The Temporary Labor Camps Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142).

DATES: Comments must be submitted (postmarked, sent, or received) by May 19, 2009.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0003, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2009–0003). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Jamaa Hill at the address below to obtain a copy of the Information Collection Request (ICR).

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room 2N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

OSHA is requesting approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). The main purpose of these provisions is to eliminate the incidence of communicable disease among temporary labor camps residents. The Standard requires camp superintendents to report immediately to the local health officer the name and address of any individual in the camp known to have, or suspected of having, a communicable disease. Whenever there is a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is a prominent symptom, the Standard requires the camp superintendent to report that immediately to the health authority. In addition, the Standard requires that where the toilet rooms are shared, separate toilet rooms must be provided for each sex. These rooms must be marked ''for men'' and ''for women'' by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). OSHA is proposing to increase its existing burden hour estimate from 57 hours to 67 hours, for a total increase of 10 hours. Based upon a review of new data, the Agency increased the number of ''incident of notifiable diseases'' from 711 cases to 833 cases. Additionally, based on data from the National Agricultural Statistics Service the Agency increased the number of migrant workers from 134,643 to 135,830 workers.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Temporary Labor Camps (29 CFR 1910.142).

OMB Number: 1218–0096.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 833.

Frequency of Response: On occasion.

Average Time Per Response: Time per response is 5 minutes (.08 hour) to report each incident to local public health authorities.

Estimated Total Burden Hours: 67 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the

Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0003). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Donald G. Shalhoub, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 17th day of March 2009.

Donald G. Shalhoub,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–6137 Filed 3–19–09; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of a Matter To Be Deleted From the Open Agenda and Added to the Closed Agenda for Consideration at an Agency Meeting

TIME AND DATE: 3 p.m., Thursday, March 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTER TO BE DELETED: 1. Request from Citadel Federal Credit Union for a Community Charter Expansion.

TIME AND DATE: 4:15 p.m., Thursday, March 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE ADDED: 2. Request from Citadel Federal Credit Union for a Community Charter Expansion. Closed pursuant to Exemptions (4) and (8).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E9–6243 Filed 3–18–09; 4:15 pm]

BILLING CODE 7535–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Services Performance Review Board

AGENCY: Office of National Drug Control Policy [ONDCP].

ACTION: Notice of appointments.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Dr. Terry Zobeck, Mr. Mark Coomer, Mr. Robert Denniston, and Ms. Martha Gagne.

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Linda V. Priebe, Assistant General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. E9–6063 Filed 3–19–09; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Date and Time:

April 29–30, 2009—8:30 a.m.–5 p.m.

May 1, 2009—8:30 a.m.–12 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Charles Liarakos, Senior Advisor, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda:

- ARRA and FY'09 Budget.
- Leading Edge.
- COV Reports.
- NEON Report.
- Experiments in Innovation.

Dated: March 17, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–6087 Filed 3–19–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, March 31, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 7989A Railroad Accident Report—Collision of Amtrak Passenger Train 371 and Norfolk Southern Railway Freight Train

23M, near Chicago, Illinois, November 30, 2007 (DCA–08–MR–003).

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, March 27, 2007.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: March 18, 2009.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E9–6269 Filed 3–18–09; 4:15 pm]

BILLING CODE 7533–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Neighborworks® America Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 1 p.m., Friday, March 20, 2009.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

Agenda

I. Call to Order

II. Approval of the Minutes

III. Summary Report of the Audit Committee

IV. Summary Report of the Corporate Administration Committee

V. Summary Report of the Finance, Budget and Program Committee

VI. Approval of Committee Appointments

VII. Financial Report

VIII. Corporate Scorecard

IX. Chief Executive Officer's Quarterly Management Report

X. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. E9–6196 Filed 3–18–09; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0472]

Notice of Availability of the Final Interim Staff Guidance COL/ESP–ISG–004 on the Definition of Construction and on Limited Work Authorizations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on February 23, 2009 (74 FR 8124), that announced the availability of Final Interim Staff Guidance (ISG) COL/ESP–ISG–004. This action is necessary to correct the Agencywide Documents Access Management System (ADAMS) accession number for the ISG.

FOR FURTHER INFORMATION CONTACT: Ms. Nanette V. Gilles, Division of New Reactor Licensing, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–1180 or e-mail at *Nanette.Gilles@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 8124, in the second column, Supplementary Information, sixth line, the ISG's COL/ESP–ISG–004 ADAMS accession number is corrected to read from ''ML08290729'' to ''ML082970729''.

Dated at Rockville, Maryland, this 13th day of March 2009.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–6111 Filed 3–19–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 AND 50–388; NRC–2008–0246]

PPL Susquehanna, LLC, Susquehanna Steam Electric Station, Units 1 and 2; Notice of Availability of the Final Supplement 35 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Susquehanna Steam Electric Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS)'', NUREG–1437, regarding the renewal of operating licenses NPF–14 and NPF–22 for an additional 20 years of operation for the Susquehanna Steam Electric Station, Units 1 and 2 (SSES). SSES is located on the western shore of the Susquehanna River in Salem Township, Pennsylvania. SSES is 5 miles north of the Borough of Berwick, 20 miles southeast of Wilkes-Barre, and 50 miles northwest of Allentown. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 35, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by PPL Susquehanna, LLC; (3) consultation with Federal, State, and local agencies; (4) the NRC staff's own independent review; and (5) the NRC staff's consideration of public comments, the recommendation of the staff is that the adverse environmental impacts of license renewal for SSES are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 35 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the final Supplement 35 to the GEIS is ML090700454. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* In addition, the McBride Memorial Library, located at 205 Chestnut St., Berwick, PA 18603, and the Mill Memorial Library, located at 495 East Main Street, Nanticoke, PA 18634, have agreed to make the final supplement available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Stuyvenberg, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Stuyvenberg may be contacted by telephone at 1–800–368–5642, extension 4006 or via e-mail at *andrew.stuyvenberg@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of March, 2009.

For the Nuclear Regulatory Commission.

David L. Pelton,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–6110 Filed 3–19–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0539]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide, RG 5.73.

FOR FURTHER INFORMATION CONTACT: Michael Boggi, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5309 or e-mail to *Michael.Boggi@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a new guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses

RG 5.73, ''Fatigue Management for Nuclear Power Plant Personnel,'' was issued with a temporary identification as Draft Regulatory Guide, DG–5026. This guide describes a method that the staff of the NRC considers acceptable for complying with the Commission's regulations for managing personnel fatigue at nuclear power plants. The regulations established by the NRC in Title 10, part 26, ''Fitness for Duty Programs,'' of the Code of Federal Regulations (10 CFR part 26) establish requirements for ensuring that personnel are fit to safely and competently perform their duties. Subpart I, ''Managing Fatigue,'' of 10 CFR part 26 establishes requirements for managing personnel fatigue at nuclear power plants. The regulations in subpart I provide a comprehensive and integrated approach to fatigue management, taking into account the multiple causes and effects of worker fatigue. The Commission recognizes that the potential for excessive fatigue is not solely based on extensive work hours but can result from other factors, such as stressful working conditions, sleep disorders, accumulation of sleep debt, and the disruptions of circadian rhythms associated with shift work. The requirements of the rule reflect these considerations to ensure that licensees effectively manage worker fatigue and provide reasonable assurance that workers are able to safely and competently perform their duties.

II. Further Information

In September 2008, DG–5026 was published with a public comment period of 45 days from the issuance of the guide. The public comment period closed on October 31, 2008. The staff's responses to the public comments received are included with the guide as Appendix B, ''Response to Public Comments.'' They are also located in the NRC's Agencywide Documents Access and Management System under Accession Number ML083540269. Electronic copies of RG 5.73 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 10th day of March, 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–6105 Filed 3–19–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305; NRC–2009–0125]

Dominion Energy Kewaunee, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Dominion Energy Kewaunee (the licensee) to withdraw its September 14, 2007 application for proposed amendment to Facility Operating License No. DPR–43 for Kewaunee Power Station located in Kewaunee County, Wisconsin.

The proposed amendment would have revised the Technical Specification (TS) requirements related to control room envelope habitability. The proposed changes include revisions to the control room post-accident recirculation system, the instrument operating conditions for isolation functions, and a control room envelope habitability program. The changes are consistent with TS Task Force (TSTF) Change Traveler, TSTF–448–A, Revision 3, ''Control Room Habitability.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 20, 2007 (72 FR 65363). However, by letter dated December 17, 2008, the licensee withdrew the application for the proposed amendment.

For further details with respect to this action, see the application for amendment dated September 14, 2007, and the licensee's letter dated December 17, 2008, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of March, 2009.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–6104 Filed 3–19–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Board Votes To Close February 25, 2009, Meeting

In person and by telephone vote on February 25, 2009, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC via teleconference. The Board determined that no earlier public notice was possible.

Items Considered

1. Financial matters.
2. Strategic issues.
3. Pricing.
4. Personnel matters and compensation issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–6331 Filed 3–18–09; 4:15 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Board Votes to Close March 12, 2009, Meeting

At its teleconference meeting on February 25, 2009, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 12, 2009, in Washington, DC. The Board determined that no earlier public notice was possible.

Items To Be Considered

1. Financial Matters.
2. Strategic Issues.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

FOR FURTHER INFORMATION CONTACT: Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at 202–268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–6332 Filed 3–18–09; 4:15 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 6 p.m., Monday, March 30, 2009; 10 a.m., Tuesday, March 31, 2009; and 9:45 a.m., Wednesday, April 1, 2009.

PLACE: Potomac, Maryland, at the Bolger Center for Leadership Development.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Monday, March 30 at 6 p.m. (Closed)

1. Financial Matters.
2. Strategic Issues.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Tuesday, March 31 at 10 a.m. (Closed)

Continuation of Monday's agenda.

Wednesday, April 1 at 9:45 a.m. (Closed)

Continuation of Monday's agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–6333 Filed 3–18–09; 4:15 pm]

BILLING CODE 7710–12–P

PRESIDIO TRUST

Revised Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Revised notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb, and in accordance with the Presidio Trust's bylaws, notice was given that a public meeting of the Presidio Trust Board of Directors would be held commencing 6:30 p.m. on Tuesday, April 7, 2009, at the Herbst International Exhibition Hall, 385 Moraga Avenue, San Francisco, California. The location of the public meeting has changed. A public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Tuesday, April 7, 2009, at the Palace of Fine Arts Theatre, 3301 Lyon Street, San Francisco, California.

The purposes of this meeting are to provide an Executive Director's report, to receive public comment on the revised Draft Presidio Trust Management Plan Main Post Update and Draft Supplement to the Supplemental Environmental Impact Statement, and to receive public comment on other matters in accordance with the Trust's Public Outreach Policy.

Time: The meeting will begin at 6:30 p.m. on Tuesday, April 7, 2009.

ADDRESSES: The meeting will be held at the Palace of Fine Arts Theatre, 3301 Lyon Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: March 16, 2009.

Karen A. Cook,

General Counsel.

[FR Doc. E9–6095 Filed 3–19–09; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59574; File No. 4–533]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 2 to the National Market System Plan for the Selection and Reservation of Securities Symbols To Modify Certain Effective Dates in Plan, Submitted by NASDAQ OMX BX, Inc., the Chicago Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC., the Financial Industry Regulatory Authority, Inc., the National Stock Exchange, Inc., the NASDAQ Stock Market LLC, the New York Stock Exchange LLC, NYSE Alternext U.S. LLC, NYSE Arca, Inc., and the NASDAQ OMX PHLX, Inc.

March 13, 2009.

I. Introduction

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on March 6, 2009, NASDAQ OMX BX, Inc., the Chicago Stock Exchange, Inc. (''CHX''), the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC., the Financial Industry Regulatory Authority, Inc. (''FINRA''), the National Stock Exchange, Inc. (''NSX''), The NASDAQ Stock Market LLC (''Nasdaq''), the New York Stock Exchange LLC, NYSE Alternext Exchange U.S. LLC, NYSE Arca, Inc., and the NASDAQ OMX PHLX, Inc. (''Phlx'') (together, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 2 to the National Market System Plan for the Selection and Reservation of Securities Symbols (''Symbology Plan'' or ''Plan'').[3] The amendment modifies certain effective dates in the Symbology Plan. The Commission is publishing this notice of filing and immediate effectiveness to solicit comments on the amendment from interested persons.

II. Description and Purpose of the Amendment

The purpose of Amendment No. 2 is to: (i) delay the start of the 30 initial symbol reservation period until 145 days after the Commission's approval of the Plan, and (ii) delay the establishment of the Plan as the exclusive method of allocating symbols of one-, two-, three-, four-, and five-characters in length until 175 days after the Commission approval of the Plan. Pursuant to this Amendment, the initial symbol reservation period would now commence on April 1, 2009 and the Symbology Plan would become the exclusive method of allocating symbols of one-, two-, three-, four-, and five-characters in length on April 30, 2009. The purpose of the amendment is to give the parties adequate time to properly evaluate and select the Plan processor and to implement the Plan in an organized fashion.

III. Effectiveness of the Proposed Symbology Plan Amendment

Pursuant to paragraph (b)(3)(ii) of Rule 608 under the Act,[4] the Parties have designated this amendment as one that may be put into effect upon filing with the Commission as it is concerned solely with the administration of the Plan.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the Amendment by Commission order pursuant to Rule 608(b)(2)[5] under the Act if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number 4–533 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 4–533. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–533 and should be submitted on or before April 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6085 Filed 3–19–09; 8:45 am]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published]

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, March 19, 2009 at 2 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the Thursday, March 19, 2009 closed meeting agenda:

Formal order of investigation.

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On November 6, 2008, the Commission approved the Symbology Plan that was originally proposed by the CHX, Nasdaq, FINRA, NSX, and Phlx, subject to certain changes. *See* Securities Exchange Act Release No. 58904, 73 FR 67218 (November 13, 2008) (File No. 4–533).

[4] 17 CFR 242.608(b)(3)(ii).

[5] 17 CFR 242.608(b)(2).

[6] 17 CFR 242.608(b)(3)(iii).

[7] 17 CFR 200.30–3(a)(12).

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(c)(5), (7) and (10) and 17 CFR 200.402(a)(5), (7) and (10) permit consideration of the scheduled matter at the closed meeting.

Commissioner Aguilar, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 17, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–6192 Filed 3–18–09; 4:15 pm]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59576; File No. SR–ISE–2009–07]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options Fee Changes

March 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to adopt three fee changes. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 purpose of this proposed rule change is to adopt three fee changes. These changes will be operative on March 2, 2009.

Customer orders for Complex Orders that take liquidity from the complex order book: ISE currently charges $0.18 per contract to members for customer orders that take liquidity from the complex order book. This fee does not apply until a member executes, on a monthly basis, 15,000 spread contracts that take liquidity from the complex order book. Once a member executes 15,000 spread contracts that take liquidity from the complex order book, this fee is assessed on all of the incremental spread contracts that take liquidity from the complex order book executed by the member during the month. ISE proposes to increase this fee to $0.20 per contract to align it with fees for similar types of proprietary trading.

Customer orders entered in response to special order broadcasts: ISE currently charges $0.18 per contract for transactions that result from customer orders that are entered as responses to special order broadcasts. Special order broadcasts are sent to members when certain types of orders are entered, such as facilitation orders, solicitation orders, block orders, and Price Improvement Mechanism orders. ISE similarly proposes to increase this fee to $0.20 per contract to align it with firm proprietary trading fees.

Non-ISE Market Maker (FARMM) fee discount for special orders: ISE currently charges a transaction fee of $0.45 per contract for FARMM orders. FARMM orders are orders that are sent to the Exchange by an Electronic Access Member on behalf of non-ISE market makers. In order to encourage FARMMs to execute orders in our Facilitation and Solicitation Mechanisms, ISE currently charges FARMMs a discounted transaction fee of $0.19 per contract. ISE proposes to adjust the current discount by increasing the discounted fee to $0.20 per contract. FARMM orders that respond to the Exchange's Facilitation and Solicitation auctions will be charged the standard fee of $0.45 per contract.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed fee increases are reasonable and will result in a more equitable distribution among market participants of the costs associated with the type of orders to which these fees apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder, because it establishes or changes a due, fee, or other charge imposed by the

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–07 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–ISE–2009–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–07 and should be submitted on or before April 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6086 Filed 3–19–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59571; File No. SR–BSECC–2009–02]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Articles of Organization and By-Laws of Boston Stock Exchange Clearing Corporation

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 20, 2009, Boston Stock Exchange Clearing Corporation (''BSECC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BSECC. 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 the Substance of the Proposed Rule Change

BSECC is filing this proposed rule change with regard to proposed changes to its Articles of Organization and By-Laws to increase its authorized shares and to reflect a transfer in ownership of five percent of BSECC's shares. BSECC is also proposing to amend its Articles of Organization and By-Laws to change its name to the Nasdaq Clearing Corporation and to make other miscellaneous changes. The proposed rule change will be implemented as soon as practicable following approval by the Commission. The text of the proposed rule change is available from the Commission's public reference room and at *http://nasdaqomxbx.cchwallstreet.com*.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSECC 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. BSECC 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

On August 29, 2008, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'') completed its acquisition of Boston Stock Exchange, Incorporated (recently renamed NASDAQ OMX BX, Inc.) and several of its wholly owned subsidiaries, including BSECC. As a result, BSECC has become an indirect wholly owned subsidiary of NASDAQ OMX. On January 5, 2009, OMX AB, which is another indirect wholly owned subsidiary of NASDAQ OMX, entered into agreements with Fortis Bank Global Clearing N.V. (''Fortis'') and European Multilateral Clearing Facility N.V. (''EMCF''), pursuant to which, among other things, OMX AB (i) has acquired a 22% equity stake in EMCF and (ii) has agreed to acquire a 5% equity stake in BSECC from NASDAQ OMX BX, Inc. and in turn to transfer this stake to EMCF.

The Articles of BSECC provide that:

> All of the authorized shares of Common Stock of [BSECC] shall be issued and outstanding, and shall be held by Boston Stock Exchange, Incorporated, a Delaware corporation. Boston Stock Exchange, Incorporated may not transfer or assign any shares of stock of BSECC, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

Accordingly, in order to complete the transfer of shares of BSECC contemplated by the agreements, BSECC must amend the Articles to specify an additional stockholder in BSECC and must obtain Commission approval for the transfer of stock. In addition, BSECC is proposing to amend the Articles and its By-Laws to change its name to

NASDAQ Clearing Corporation and to adopt other miscellaneous changes.

EMCF is a central counterparty clearinghouse for European equity trading on exchanges and multilateral trading facilities, including NASDAQ OMX Europe Ltd., Chi-X Europe Ltd., and BATS Trading Europe Ltd. In addition, EMCF has agreed to provide central counterparty clearing services to NASDAQ OMX exchanges in Stockholm, Helsinki, Copenhagen, and Iceland. EMCF clears stocks traded on multiple European markets, including stocks comprising the AEX, DAX, FTSE100, CAC40, and SMI20 indexes. Services offered by EMCF include novation, gross trade netting, settlement, margining, and fails and buy-in management. EMCF is headquartered in the Netherlands, and is subject to voluntary supervision by De Nederlandsche Bank and Autoriteit Financiele Markten. In addition to OMX AB, EMCF's stockholders are Fortis Bank Nederland (Holding) N.V. and Fortis Bank Global Clearing N.V. NASDAQ OMX and EMCF's other stockholders will seek to further broaden EMCF's ownership structure to include order flow providers and financial institutions. It is expected that this will increase the commitment of banks and flow providers towards EMCF, decrease EMCF's dependence on one shareholder, and demonstrate to the market that EMCF is a solid company with firm backing of shareholders with high standing and that EMCF is a company that looks after the interests of all its interested parties. Also, a key purpose of the diversified shareholders' base is to facilitate the further development of EMCF into becoming the leading central counterparty services provider for European cash equities.

Under the Share Transfer Agreement dated January 5, 2009, among Fortis, OMX AB, and EMCF, OMX AB has agreed, subject to Commission approval, to transfer a 5% stake in BSECC to EMCF. The transfer of BSECC's shares is a portion of the consideration to be paid by OMX AB for obtaining a 22% stake in EMCF. Accordingly, OMX AB must obtain the shares from NASDAQ OMX BX, Inc. prior to transferring them to EMCF. OMX AB has agreed to undertake to use reasonable endeavors to obtain Commission approval for the transfer as soon as possible and in any event by July 5, 2009.

Currently, the authorized share capital of BSECC is 150 shares, par value $100. Because 5% of 150 is 7.5, BSECC must increase its authorized share capital and pay a 2 for 1 stock dividend to NASDAQ OMX BX, Inc. such that it will own 300 shares and be able to transfer 15 of them. Accordingly, BSECC also proposes to amend its Articles in order to increase its authorized share capital. BSECC proposes to amend its Articles to reflect either OMX AB or EMCF as one of its stockholders (as well as the name change of NASDAQ OMX BX, Inc.).

The amended provisions would state:

> All of the authorized shares of Common Stock of [BSECC] shall be issued and outstanding, and shall be held by NASDAQ OMX BX, Inc., a Delaware corporation, and either OMX AB, a corporation organized under the laws of Sweden, or European Multilateral Clearing Facility, N.V., a public company with limited liability incorporated under the laws of the Netherlands.

The language in the Articles providing that a stockholder may not transfer or assign shares of stock of BSECC without approval of the Commission would remain in place, such that all of the stockholders of BSECC would be bound by that restriction.

The Share Transfer Agreement also provides that under certain circumstances, EMCF may transfer the shares of BSECC back to OMX AB or NASDAQ OMX BX, Inc., thereby unwinding this aspect of the transaction. In order to avoid the need to seek approval for such an unwinding in the future, BSECC requests that the Commission approve at this time both the initial transfer and any future unwinding.

Finally, at the time of the transfer EMCF and NASDAQ OMX BX, Inc. will enter into a Shareholders Agreement to govern their relationship with respect to BSECC. The key provisions of the Shareholders Agreement are as follows. First, EMCF will grant BSECC a right of first refusal to purchase all or any portion of its shares that EMCF may propose to transfer. Second, if NASDAQ OMX BX, Inc. proposes to transfer any of its shares of BSECC to any person, it must provide EMCF with the right to substitute EMCF's shares in such transfer in proportion to EMCF's percentage share of ownership in BSECC. Third, if NASDAQ OMX BX, Inc. proposes to enter into a transaction under which it would no longer own a majority of BSECC's outstanding shares or a sale of all or substantially all of the assets of BSECC (''Sale Transaction''), EMCF will in most circumstances take such actions as are necessary to support the consummation of the Sale Transaction. Fourth, if BSECC issues new securities it must first offer them to NASDAQ OMX BX, Inc. and EMCF. Finally, the Shareholders Agreement provides for rights of the stockholders to obtain information from BSECC about its financial performance and operations.

Because the share transfers described by the Shareholders Agreement would require Commission approval under the Articles, the Agreement also provides that ''[n]othing in the Agreement shall be construed to authorize [BSECC] or any stockholder of [BSECC] to transfer any share or other interests in [BSECC] unless such transfer is approved in accordance with the restrictions contained in the [Articles] of [BSECC] and such other restrictions as may be imposed by the * * * Commission or other governmental authority having jurisdiction over [BSECC].''

BSECC is also proposing changing its name from Boston Stock Exchange Clearing Corporation to NASDAQ Clearing Corporation. The change reflects BSECC's changed status as a subsidiary of NASDAQ OMX. In addition, BSECC is proposing the following miscellaneous changes to its Articles and By-Laws. First, BSECC is restating its Articles to consolidate prior amendments into a single document. Under Massachusetts law, the form for restatement of the Articles necessitates nonsubstantive changes to citations to Massachusetts statutes in the title of the Articles, changes to prefatory language in Article IV of the Articles, and the addition of nonsubstantive language regarding date of effectiveness as a new Article VII. Second, BSECC is amending the Articles and By-Laws to reflect the change in the name of Boston Stock Exchange, Incorporated to NASDAQ OMX BX, Inc. Finally, BSECC is correcting several typographical errors in Article X of the By-Laws.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 17A of the Act,[3] in general, and with Section 17A(b)(3)(A) of the Act,[4] in particular, in that it is designed to ensure that BSECC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. The change will allow investment in BSECC by EMCF, a central counterparty clearinghouse with substantial expertise in clearing of equity trades on exchanges and multilateral trading facilities. At the same time, the changes are structured to allow the Commission ongoing oversight over any further transfers of BSECC's common stock that may be proposed in the future.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(A).

B. Self-Regulatory Organization's Statement on Burden on Competition

BSECC 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–BSECC–2009–02 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–BSECC–2009–02. 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 BSECC, the Commission's Public Reference Room, and *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bsecc-filings/2009/SR-BSECC-2009-002.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–BSECC–2009–02 and should be submitted on or before April 10, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6084 Filed 3–19–09; 8:45 am]

BILLING CODE

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11645 and #11646]

Arkansas Disaster Number AR–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–1819–DR), dated 02/06/2009.

Incident: Severe Winter Storm.

Incident Period: 01/26/2009 through 01/30/2009.

Effective Date: 02/24/2009.

Physical Loan Application Deadline Date: 04/07/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 11/06/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for private non-profit organizations in the State of Arkansas, dated 02/06/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Pope.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–6058 Filed 3–19–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11663 and #11664]

Missouri Disaster Number MO–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1822–DR)), dated 02/17/2009.

Incident: Severe Winter Storm.

Incident Period: 01/26/2009 through 01/28/2009.

Effective Date: 02/24/2009.

Physical Loan Application Deadline Date: 04/20/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 11/17/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private non-profit organizations in the State of Missouri, dated 02/17/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Barry.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E9–6057 Filed 3–19–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6552]

Culturally Significant Objects Imported for Exhibition Determinations: ''Luis Melendez: Master of the Spanish Still Life''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Luis Melendez: Master of the Spanish Still Life,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about May 17, 2009, until on or about August 23, 2009; at the Los Angeles County Museum of Art from on or about September 23, 2009, to on or about January 3, 2010; at the Museum of Fine Arts Boston from January 21, 2010, to on or about May 31, 2010; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: March 12, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–6153 Filed 3–19–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Environmental Impact Statement (Final EIS) for the Replacement of Runway 10R/28L, Development of a New Passenger Terminal, and Other Associated Airport Projects at Port Columbus International Airport (CMH)

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Availability and notice of 30-day public comment period.

SUMMARY: The FAA is issuing this Notice of Availability to advise the public that a Final EIS will be available for public review beginning March 20, 2009. The document was prepared pursuant to major environmental directives to comply with the National Environmental Policy Act (Pub. L. 91–190); Section 106 consultation for impacts to historic structures, as identified in 36 CFR Section 800.8, *Coordination with the National Environmental Policy Act;* U.S. Department of Transportation Section 303(c), formerly referred to as Section 4(f); and other applicable Federal and State environmental laws, regulations, and Executive Orders.

The Final EIS was prepared in response to a proposal presented to the FAA by the Columbus Regional Airport Authority (CRAA), the owner and operator of CMH and identified in the Final EIS as the Airport Sponsor, for environmental review.

The FAA prepared this Final EIS to analyze and disclose potential environmental impacts related to possible future Federal Actions at CMH. Numerous Federal actions would be necessary if airfield development were to be implemented. Proposed improvements include replacement of Runway 10R/28L, development of a new passenger terminal, and other airfield projects (see below).

The Final EIS presents the purpose and need for the proposed Federal action, analysis of reasonable alternatives, including the No Action Alternative, discussion of impacts for each reasonable alternative, the selection of the FAA's preferred alternative, proposed mitigation, and supporting appendices. The FAA will consider all information contained in the Final EIS and additional information that may be provided during the public comment period before issuing the Agency's Final Decision.

The Airport Sponsor proposes to replace existing Runway 10R/28L at CMH, approximately 700 feet south of the existing Runway 10R/28L; to develop new terminal facilities in the midfield area; to provide ancillary facilities in support of the replacement runway and midfield terminal; and to implement noise abatement air traffic procedures developed for the replacement runway.

The replacement runway would be 10,113 feet long. This length would maintain CMH's ability to accommodate current and projected airport operations. Existing Runway 10R/28L would be decommissioned as a runway and converted to a taxiway upon commissioning of the replacement runway. In addition, a south taxiway and north parallel taxiway to proposed Runway 10R/28L would be constructed.

To meet future aircraft parking and passenger processing requirements, new midfield terminal facilities are needed. The Final EIS assesses a development envelope that is defined as an area large enough to encompass Phase I and II of the CRAA terminal development program. The Final EIS discusses the number of gates, approximate square footage, approximate curb frontage, and the number of passengers that the terminal would accommodate.

Ancillary facilities in support of the replacement runway and midfield terminal would be constructed. The facilities include roadway relocations and construction; parking improvements; property acquisition; and relocation of residences, as necessary. The CRAA prepared a 14 CFR Part 150 Noise Compatibility Study Update (Part 150 Update) to address the current and future noise conditions. The Part 150 Update includes an analysis of the potential noise and land use impacts resulting from the proposed development of relocating Runway 10R/28L to the south, as well as possible mitigation options. The noise abatement air traffic options recommended through the Part 150 Update are included in the Final EIS as part of the proposed project. In addition, land use mitigation CRAA recommended in the Part 150 Update is included in the Final EIS as mitigation for the impacts resulting from the proposed project. The FAA issued its Record of Availability on May 19, 2008 and its approval of the Noise Compatibility Program on May 19, 2008 [FR Doc. E8–12591 Filed 6–6–08: 8:45 am].

Public Comment: The public comment period on the Final EIS starts on March 20, 2009 and closes on April 20, 2009.

Comments can only be accepted with the full name and address of the individual commenting. Mail and fax

comments are to be submitted to Ms. Katherine S. Delaney of the FAA, at the address shown in **FOR FURTHER INFORMATION CONTACT**. E-mailed comments should be sent to *cmheis@faa.gov.* All comments must be postmarked or faxed no later than midnight, April 20, 2009. The Final EIS may be reviewed for comment during regular business hours at the following locations:

1. Federal Aviation Administration, Detroit Airports District Office, 11677 S. Wayne Road, Suite 107, Romulus, MI 48174 (Phone: 734–229–2900).

2. Columbus Regional Airport Authority, Port Columbus International Airport, Administrative Offices, 4600 International Gateway, Columbus, OH 43219 (Phone: 614–239–4063).

3. City of Gahanna, 200 South Hamilton Road, Gahanna, OH 43230 (Phone: 614–342–4000).

4. City of Whitehall, 360 South Yearling Road, Whitehall, OH 43213 (Phone: 614–338–3106).

5. Jefferson Township, 6545 Havens Road, Blacklick, OH 43004 (Phone: 614–855–4260).

6. City of Bexley, 2242 East Main Street, Bexley, OH 43209 (Phone: 614–327–6200).

7. City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, OH 43068 (Phone: 614–322–6800).

8. Columbus Metropolitan Library, Main Branch, 96 South Grant Avenue, Columbus, OH 43215 (Phone: 614–645–2275).

9. Columbus Metropolitan Library, Gahanna Branch, 310 Granville Street, Gahanna, OH 43230 (Phone: 614–645–2275).

10. Columbus Metropolitan Library, Shepard Branch, 790 North Nelson Road, Columbus, OH 43219 (Phone: 614–645–2275).

11. Columbus Metropolitan Library, Linden Branch, 2432 Cleveland Avenue, Columbus, OH 43211 (Phone: 614–645–2275).

12. Columbus Metropolitan Library, Whitehall Branch, 4371 East Broad Street, Whitehall, OH 43213 (Phone: 614–645–2275).

13. Columbus Metropolitan Library, Reynoldsburg Branch, 1402 Brice Road, Reynoldsburg, OH 43068 (Phone: 614–645–2275).

14. Bexley Public Library, 2411 East Main Street, Bexley, OH 43209 (Phone: 614–231–2793).

15. CMH EIS Web site, *http://www.airportsites.net/cmh-eis.*

SUPPLEMENTARY INFORMATION: The comments should be as specific as possible. Comments should address the contents of the Final EIS, such as the analysis of potential environmental impacts, the adequacy of the proposed action to meet the stated need, or the merits of the various alternatives. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner, so that the FAA has an opportunity to address them.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Delaney, FAA Detroit Airports District Office, 11677 S. Wayne Road, Suite 107, Romulus, MI 48174. Telephone: (734) 229–2900, Fax: (734) 229–2950.

Issued in Romulus, Michigan on March 9, 2009.

Matthew J. Thys,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. E9–6169 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Plenary Meeting, NextGen Mid-Term Implementation Task Force

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of NextGen Mid-Term Implementation Task Force meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the NextGen Mid-Term Implementation Task Force.

DATES: The meeting will be held June 9, 2009 starting at 1 a.m. to 4 p.m. Arrive in FAA Lobby at 12:30 p.m. for visitor check in.

ADDRESSES: FAA Auditorium, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a NextGen Mid-Term Implementation Task Force meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions);
- Work Group and Subgroup Status Reports and Planned Activities;
- Discussion and Next Steps;
- Closing Plenary (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 13, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–6172 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held March 16, 2009, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org. METRO: L'Enfant Plaza Station (Use 7th & Maryland Exit*)

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions);
- Report from RTCA Task Force on NextGen Mid-Term Implementation (NextGen TF);
- ATMAC Member Discussion and Recommendations;
- Closing Plenary (Other Business, Member Discussion, Adjourn).

Attendance is open to the interested public but limited to space availability.

With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 16, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–6176 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Route 58—Martin Luther King Freeway Extension in Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to the Route 58—Martin Luther King Freeway Extension in the City of Portsmouth, Virginia. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 16, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. John Simkins, Senior Environmental Specialist, Federal Highway Administration, 400 North 8th Street, Richmond, Virginia 23219; telephone: (804) 775–3342; e-mail: *John.Simkins@dot.gov*. The FHWA Virginia Division Office's normal business hours are 7 a.m. to 5 p.m. (eastern time). For the Virginia Department of Transportation: Mr. Nicholas Nies, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219; telephone: (804) 786–1092; e-mail: *Nicholas.Nies@VDOT.Virginia.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Virginia: Route 58—Martin Luther King Freeway Extension. The project would involve construction of a four-lane highway connecting Interstate 264 with existing Martin Luther King Freeway at London Boulevard. This direct connection would reduce through traffic and related congestion on local streets. The actions taken by FHWA, and the laws under which such actions were taken, are described in the Revised Environmental Assessment, the Finding of No Significant Impact (FONSI) that was issued on February 26, 2009, and in other documents in the FHWA project records. The Revised Environmental Assessment, FONSI, and other project records are available by contacting FWHA or VDOT at the addresses provided above. The Revised Environmental Assessment and FONSI can also be viewed on the Internet at *http://www.midtowntunnel.org* under ''Document Library,'' or at VDOT's offices.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq*.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)—470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209].

7. *Executive Orders:* E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13007, Indian Sacred Sites.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C 139(*l*)(1).

Issued on: March 16, 2009.

John Simkins,

Senior Environmental Specialist.

[FR Doc. E9–6091 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2009–0054]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before April 20, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0054 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketsinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 17 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Dan B. Clark

Mr. Clark, age 44, has loss of vision in his right eye due to a traumatic injury sustained in 2004. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2008, his ophthalmologist noted, ''Given the visual function with your left eye, you have sufficient vision to perform the driving tasks required to operate the commercial vehicle.'' Mr. Clark reported that he has driven tractor-trailer combinations for 16 years, accumulating 640,000 miles. He holds a Class A commercial driver's license (CDL) from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 9 mph.

Mark A. Cruz

Mr. Cruz, 25, has a retinal lesion in his right eye due to a traumatic injury sustained in 1998. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2008, his optometrist noted, ''It is my opinion that Mr. Cruz does in fact have sufficient visual acuity and visual field to operate a commercial vehicle.'' Mr. Cruz reported that he has driven straight trucks for 3 years, accumulating 36,000 miles. He holds a Class C operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry J. Dare

Mr. Dare, 44, has loss of vision in his right eye due to a central scotoma that occurred as a result of a traumatic injury sustained in 1970. The visual acuity in his right eye is count-fingers and in his left eye, 20/15. Following an examination in 2008, his ophthalmologist noted, ''It is my opinion that there is no deficiency to prohibit him from driving a commercial vehicle.'' Mr. Dare reported that he has straight trucks for 25 years, accumulating 125,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frank A. DeWitt

Mr. DeWitt, 47, has loss of vision in his left eye due to a traumatic injury sustained in 1995. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2008, his optometrist noted, ''In my professional opinion, Mr. DeWitt is capable of recognizing the colors of the traffic signals, and is capable to perform the tasks that are required to operate a commercial vehicle.'' Mr. DeWitt reported that he has driven straight trucks for 5 years, accumulating 150,000 miles, and tractor-trailer combinations for 4 years, accumulating 4.0 million miles. He holds a chauffeur operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kenneth E. Flack, Jr.

Mr. Flack, 40, has loss of vision in his right eye due to retinal scarring from an ocular injury sustained in 1992. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2008, his optometrist noted, ''I believe he does have the vision needed in order to operate a commercial vehicle.'' Mr. Flack reported that he has driven straight trucks for 24 years, accumulating 240,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for a moving violation in a CMV.

Maylin E. Frickey

Mr. Frickey, 59, has a prosthetic right eye due to traumatic injury sustained in 1963. The best corrected visual acuity in his left eye, 20/20. Following an examination in 2008, his optometrist noted, ''In my medical opinion, Mr. Frickey has sufficient vision to properly operate a commercial vehicle.'' Mr. Frickey reported that he has driven straight trucks for 17 years, accumulating 816,000 miles, and tractor-trailer combinations for 12 years, accumulating 720,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 15 mph.

Vincent E. Hardin

Mr. Hardin, 49, has complete loss of vision in his right eye due to a traumatic injury sustained in 1998. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2008, his optometrist noted, ''In my medical opinion, Mr. Hardin has sufficient vision to perform driving tasks required to operate many commercial vehicles.'' Mr. Hardin reported that he has driven straight trucks for 10 years, accumulating 98,000 miles. He holds a Class D operator's

license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry M. Hawkins

Mr. Hawkins, 56, has loss of vision in his right eye due to a corneal scar from a chemical burn sustained in 1991. The best corrected visual acuity in his right eye is light perception and in his left eye, 20/15. Following an examination in 2008, his optometrist noted, ''In my opinion, Larry Hawkins has sufficient vision to drive commercial vehicles safely with his present vision.'' Mr. Hawkins reported that he has driven straight trucks for 35 years, accumulating 700,000 miles, and tractor-trailer combinations for 18 years, accumulating 900,000 miles.

He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald R. Hunt

Mr. Hunt, 66, has had amblyopia in his left eye since early childhood. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''It is my opinion that Mr. Hunt has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hunt reported that he has driven straight trucks for 10 years, accumulating 183,000 miles, and tractor-trailer combinations for 30 years, accumulating approximately 2.8 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 11 mph.

Michael E. Lafferty

Mr. Lafferty, 52, has loss of vision in his right eye due to a traumatic injury sustained in 1983. The best corrected visual acuity in his right eye is light perception and in his left eye, 20/20. Following an examination in 2008, his optometrist noted, ''In my medical opinion, Mr. Lafferty has the visual capability to operate a commercial vehicle.'' Mr. Lafferty reported that he has driven straight trucks for 34 years, accumulating 340,000 miles, and tractor-trailer combinations for 34 years, accumulating 680,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael A. Mitchell

Mr. Mitchell, 41, has a prosthetic right eye due to a traumatic injury sustained at age 5. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''In my medical opinion, Mr. Michael Mitchell has the vision required to operate a commercial vehicle.'' Mr. Mitchell reported that he has driven straight trucks for 20 years, accumulating 1.0 million miles, and tractor-trailer combinations for 10 years, accumulating 200,000 miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eric E. Myers

Mr. Myers, 47, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/150 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, ''I feel he has sufficient vision to operate a commercial vehicle and obtain a vision waiver pursuant to Article VISION 391.41(b)(10) for an exemption under controlling authority at 49 U.S.C. 31136(e) and 31315.'' Mr. Myers reported that he has driven straight trucks for 23½ years, accumulating 1.1 million miles. He holds a Class C operator's license from Maryland. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 10 mph.

Travis W. Neiwert

Mr. Neiwert, 42, has complete loss of vision in his right eye due to a traumatic injury sustained at age 4. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2008, his optometrist noted, ''I do not see any issues that would limit his ability to operate a commercial vehicle. He has worked with having vision in only one eye since his youth and uses head movement to increase his field of vision.'' Mr. Neiwert reported that he has driven straight trucks for 12 years, accumulating 634,400 miles. He holds a Class B CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael G. Trueblood

Mr. Trueblood, 59, has loss of vision in his left eye due to an optic nerve anomaly since birth. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/400. Following an examination in 2008, his optometrist noted, ''I certify that in my opinion, Michael Trueblood has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Trueblood reported that he has driven straight trucks for 14½ years, accumulating 514,750 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald A. Uplinger, II

Mr. Uplinger, 59, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2008, his optometrist noted, ''He does have sufficient vision to operate a commercial vehicle.'' Mr. Uplinger reported that he has tractor-trailer combinations for 38 years, accumulating 2.9 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven M. Vujicic

Mr. Vujicic, 28, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/80 and in his left eye, 20/20. Following an examination in 2008, his ophthalmologist noted, ''He does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Vujicic reported that he has tractor-trailer combinations for 4 years, accumulating 165,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph Watkins

Mr. Watkins, 46, has loss of vision in his right eye due a traumatic injury sustained in 1984. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2008, his optometrist noted, ''In my opinion, Mr. Watkins has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Watkins reported that he has driven straight trucks for 10 years, accumulating 500,000 miles, and tractor-trailer combinations for 25 years, accumulating 3.0 million miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public

comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business April 20, 2009. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: March 16, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–6059 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7918; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2003–14223; FMCSA–2005–20027; FMCSA–2006–26066; FMCSA–2006–25246]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 21, 2009. Comments must be received on or before April 20, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1998–4334; FMCSA–2000–7918; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2003–14223; FMCSA–2005–20027; FMCSA–2006–26066; FMCSA–2006–25246, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments On-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 23 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 23 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Lucas R. Aleman	William R. New
Rodger B. Anders	Kirby G. Oathout
John D. Bolding, Jr.	John J. Payne
Timothy E. Coultas	James R. Petre
Michael P. Curtin	Zeljko Popovac
Jimmy W. Deadwyler	Jerald W. Rehnke
William E. Dolson	William E. Reveal
Richard L. Elyard	James R. Rieck
William H. Goss	Duane L. Riendeau
James K. Holmes	Richie J. Schwendy
Christopher J. Kane	Janusz Tyrpien
William R. Mayfield	

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and

objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 23 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 17994; 68 FR 15037; 70 FR 16886; 72 FR 18726; 65 FR 66286; 66 FR 13825; 68 FR 10300; 70 FR 7546; 72 FR 7111; 67 FR 68719; 68 FR 2629; 70 FR 14747; 67 FR 76439; 68 FR 10298; 70 FR 7545; 72 FR 18727; 68 FR 10301; 68 FR 19596; 70 FR 2701; 70 FR 16887; 71 FR 63379; 72 FR 1050; 72 FR 180; 72 FR 9397). Each of these 23 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 20, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 23 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 16, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–6060 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2009–0052]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under the procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 19, 2009.

ADDRESSES: Direct all written comments to: U.S. Department of Transportation, Docket Management Facility, West Building, 1200 New Jersey Ave, SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at *http://www.regulations.gov*. All comments should refer to the docket no. NHTSA–2009–0052.

FOR FURTHER INFORMATION CONTACT: Ms. Eunyoung Lim, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., Washington, DC 20590. Phone number: 202–366–2755. Email address: *eunyoung.lim@dot.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

National Survey of Speeding Attitudes and Behavior: 2010

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—June 30, 2012.

Summary of the Collection of Information—NHTSA proposes to

conduct a National Survey of Speeding Attitudes and Behavior by telephone among a national probability sample of 6,000 drivers, age 16 and older. Participation by respondents would be voluntary. Survey topics would include the extent to which drivers speed, attitudes and perceptions about speeding, reasons and motivations for speeding, and knowledge and attitudes towards countermeasure strategies to deter speeding.

In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. Interviews will be conducted with respondents using landline phones and with respondents using cell phones. The proposed survey would be anonymous; the survey would not collect any personal information that would allow anyone to identify respondents.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration's (NHTSA) mission is to save lives, prevent injuries, and reduce healthcare and other economic costs associated with motor vehicle crashes. Over thirty percent of all fatal crashes are estimated to be speed-related crashes, defined as racing, exceeding the speed limit, or driving too fast for conditions. Speed-related crashes resulted in 13,040 lives lost in 2007 and an estimated cost of $40.4 billion in 2000. In order to plan and evaluate programs intended to reduce speed-related crashes, NHTSA periodically conducts telephone surveys to update its knowledge and understanding of the public's attitudes and behaviors with respect to speeding issues.

NHTSA has conducted two previous administrations of the National Survey of Speeding Attitudes and Behavior—once in 1997 and again in 2002. In the 2010 survey, NHTSA intends to examine the extent to which drivers speed, who the speeders are, when and why drivers speed, and what countermeasures are most acceptable and effective in reducing speeding. Furthermore, NHTSA plans to assess whether or not self-reported behaviors, attitudes, and perceptions regarding speeding and associated countermeasure strategies have changed over time, since the administration of the 1997 and 2002 national surveys. The findings from this proposed collection of information will assist NHTSA in designing, targeting, and implementing programs intended to reduce speed on the roadways and to provide data to States, localities, and law enforcement agencies that will aid in their efforts to reduce speed-related crashes and injuries.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Under this proposed effort, the Contractor would conduct telephone interviews averaging approximately 20 minutes in length with 6,000 randomly selected members of the general driving public, age 16 and older. The respondent sample would be selected from all 50 States and the District of Columbia. Interviews would be conducted with randomly selected persons with residential phones or cell phones. Businesses are ineligible for the sample and would not be interviewed. No more than one respondent would be selected per household. Each member of the sample would complete one interview.

Prior to the administration of the survey, a total of 15 pretest interviews, averaging 20 minutes in length would be administered to test the computer programming of the questionnaire, and to determine if any final adjustments to the questionnaire are needed. Following any revisions carried out as a result of the pretest, the Contractor would begin the main survey administration.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information—NHTSA estimates that respondents will spend an average of 20 minutes each to complete the survey, for a total of 2005 hours for the 15 pretest respondents and 6000 survey respondents. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any recordkeeping burden or recordkeeping cost from the information collection.

Authority: 44 U.S.C. Section 3506(c)(2)(A)

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. E9–6116 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Corporate Average Fuel Economy Standards; Effect Upon State Laws and Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: In a notice of proposed rulemaking published on May 2, 2008, proposing Corporate Average Fuel standards for model years 2011–2015, NHTSA set forth its previously stated view regarding preemption under the Energy Policy and Conservation Act of State standards regulating carbon dioxide emissions from motor vehicle tailpipes and proposed to include a summary statement of those views in the Code of Federal Regulations. However, in a January 26, 2009 memorandum requesting that NHTSA complete its rulemaking in two phases, the President further requested the agency to reconsider its views. In accordance with that request, NHTSA will re-examine the issue of preemption in the context of its forthcoming rulemaking to establish Corporate Average Fuel Economy standards for model year 2012 and later years.

FOR FURTHER INFORMATION CONTACT: Stephen P. Wood, Acting Chief Counsel, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Energy Independence and Security Act (EISA) amended the Energy Policy and Conversation Act (EPCA) by mandating that the model year (MY) 2011–2020 Corporate Average Fuel (CAFE) standards be set sufficiently high to ensure that the industry-wide average of all new passenger cars and light trucks, combined, reaches not less than 35 miles per gallon by MY 2020. NHTSA published a notice of proposed rulemaking (NPRM) on May 2, 2008 to begin implementing the EISA mandate by establishing CAFE standards for MYs 2011–2015.[1] In the proposal, NHTSA set forth its previously stated view that State standards regulating carbon dioxide emissions from motor vehicle tailpipes are expressly and impliedly preempted and proposed to include a summary of that conclusion and the

[1] 73 FR 24352.

underlying reasoning in the Code of Federal Regulations.

On January 26, 2009, President Obama issued a memorandum concerning the completion of the rulemaking.[2] In light of the requirement in EPCA to prescribe CAFE standards for 18 months in advance,[3] i.e., by March 30, 2009 for MY 2011, and in order to provide additional time to obtain new information and consider anew the appropriate approach to establishing future CAFE standards, the President requested NHTSA to complete its rulemaking in two phases: (1) standards for MY 2011, and (2) standards for MY 2012 and beyond. The President further requested that NHTSA consider, as part of both phases, whether any provisions regarding preemption are consistent with the EISA, the Supreme Court's decision in *Massachusetts* v. *EPA* and other relevant provisions of law and the policies underlying them.

Massachusetts v. *EPA,*[4] was a case involving a 2003 order of the Environmental Protection Agency (EPA) denying a petition for rulemaking to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act.[5] The Court ruled that greenhouse gases are ''pollutants'' under the Clean Air Act and that the Act therefore authorizes EPA to regulate greenhouse gas emissions from motor vehicles if that agency makes the necessary findings and determinations under section 202 of the Act.

The Court considered EPCA briefly, stating

> [T]hat DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's ''health'' and ''welfare,'' 42 U.S.C. § 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, § 2(5), 89 Stat. 874, 42 U.S.C. § 6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

549 U.S. at 537.

In keeping with the President's remarks on January 26 regarding the need for new national policies to address the closely intertwined issues of energy independence, energy security and climate change, and for the initiation of serious and sustained domestic and international action to address them, NHTSA will develop CAFE standards for MY 2012 and beyond after collecting new information, conducting a careful review of technical and economic inputs and assumptions and standard setting methodology. It is reasonable to anticipate that this process will lead to changes, given the further review and analysis that will be conducted pursuant to the President's request, and given the steady evolution in technical and policy factors potentially relevant to the next CAFE rulemaking. NHTSA may consider numerous factors, including, but not limited to, energy and climate change needs and policy choices regarding goals and approaches to achieving them, developments in domestic legislation and international negotiations regarding those goals and approaches, technologies for reducing fuel consumption, the capacity and condition of the automotive industry, fuel prices, and climate change science and damage valuation.

The goal of the review and re-evaluation will be to ensure that the approach used for MY 2012 and thereafter produces CAFE standards that contribute, to the maximum feasible extent, consistent with the legal requirements of EPCA/EISA, to meeting the energy and environmental challenges and goals outlined by the President. We intend to craft our program with the goal of creating the maximum incentives for innovation, providing reasonable flexibility to the regulated parties, and meeting the goal of making substantial and continuing reductions in the consumption of fuel sufficient to achieve at least 35 mpg not later than model year 2020. To that end, we are committed to ensuring that the CAFE program for beyond MY 2011 is based on the best scientific, technical, and economic information available, and that such information is developed in close coordination with the Environmental Protection Agency, Department of Energy and other federal agencies and our stakeholders, including the public and the vehicle manufacturers.

In response to the President's request that NHTSA consider whether any provisions regarding preemption are consistent with EISA, the Supreme Court's decision in Massachusetts v. EPA and other relevant provisions of law and the policies underlying them, NHTSA is reconsidering its views regarding preemption under EPCA of state standards regulating motor vehicle tailpipe emissions of carbon dioxide. Accordingly, the agency will neither include any discussion of preemption in the preamble to forthcoming final rule establishing CAFE standards for MY 2011 nor include any provisions addressing preemption in the amendments made by that rule to the Code of Federal Regulations. This course of action will permit the agency to address the issue of preemption in a deliberate, comprehensive manner in the context of its forthcoming rulemaking to establish CAFE standards for 2012 and later model years.

Issued on: March 16, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–6061 Filed 3–17–09; 4:15 pm]

BILLING CODE 4910–59–P

[2] The memorandum is available at: *http://www.whitehouse.gov/the_press_office/The_Energy_Independence_and_Security_Act_of_2007/* (last accessed March 12, 2009).

[3] 49 U.S.C. 32902(a).

[4] 549 U.S. 497 (2007).

[5] 68 FR 52922 (September 8, 2003).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2009–0048]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 19, 2009.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2009–0048] by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between

9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.

• Fax: 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of this request for collection of information may be obtained at no charge from Dennis Flemons, NHTSA 1200 New Jersey Avenue, SE., Room W53–448 NVS–412, Washington, DC 20590. Mr. Flemons telephone number is (202) 366–5389. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

i. 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;

ii. 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;

iii. How to enhance the quality, utility, and clarity of the information to be collected;

iv. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Fatality Analysis Reporting System (FARS).

OMB Control Number: 2127–0006.

Form Number: HS214, HS 214A, HS214B, HS 214C.

Affected Public: State, Local, or Tribal Government.

Abstract: Under both the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966, the National Highway Traffic Safety Administration (NHTSA) has the responsibility to collect accident data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce the severity of injury and the property damage associated with motor vehicle accidents. The Fatal Accident Reporting System (FARS) is a major system that acquires national fatality information directly from existing State files and documents. Since FARS is an on-going data acquisition system, reviews are conducted yearly to determine whether the data acquired are responsive to the total user population needs. The total user population includes Federal and State agencies and the private sector.

Changes in the forms usually involve clarification adjustments to aid the user population in conducting more precise analyses, to remove ambiguity for the respondents and to differentiate data by data collection year. These changes are annual and do not affect the reporting burden of the respondent (State employees utilize existing State highway safety related files).

Other changes may involve removing outdated data elements introducing new data elements or redesigning data elements to capture higher quality data and to respond more to the needs of the user population. These changes are less frequent and affect burden very gradually. Advances in technology and systems design are incorporated to minimize the burden on the respondents.

Estimated Annual Burden: 82,407 hours.

Number of Respondents: 53.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Marilena Amoni,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. E9–6040 Filed 3–19–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35227]

Middletown and New Jersey Railroad, LLC—Acquisition and Operation Exemption—Middletown & New Jersey Railway Co., Inc.

Middletown and New Jersey Railroad, LLC (Middletown), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate 6.5 miles of rail line owned by Middletown & New Jersey Railway Co., Inc., between milepost 0.0 at Middletown, NY, and milepost 6.5 at Slate Hill, NY.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35228, *Regional Rail, LLC.—Continuance in Control Exemption—Middletown and New Jersey Railroad, LLC.,* wherein Regional Rail, LLC seeks to continue in control of Middletown, upon Middletown becoming a Class III rail carrier.

The transaction is expected to be consummated on or shortly after April 5, 2009 (the effective date of the exemption).

Middletown certifies that its projected annual revenues as a result of the transaction will not result in its becoming a Class II or Class I rail carrier and further certifies that its projected annual revenue will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any

solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 27, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35227, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 12, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–5783 Filed 3–19–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35228]

Regional Rail, LLC—Continuance in Control Exemption—Middletown and New Jersey Railroad, LLC

Regional Rail, LLC (Regional), a noncarrier, has filed a verified notice of exemption to continue in control of Middletown and New Jersey Railroad, LLC (Middletown), upon Middletown's becoming a Class III rail carrier.[1]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35227, *Middletown and New Jersey Railroad, LLC—Acquisition and Operation Exemption—Middletown & New Jersey Railway Co., Inc.* In that proceeding, Middletown seeks an exemption under 49 CFR 1150.31 to acquire and operate 6.5 miles of rail line in New York owned by Middletown & New Jersey Railway Co., Inc.

The parties intend to consummate the transaction on or shortly after April 5, 2009, the effective date of the exemption.

Regional is a Delaware limited liability company that currently controls East Penn Railroad, LLC, a Class III rail carrier that operates rail lines in Pennsylvania and Delaware. Regional states that the purpose of the proposed transaction is to reduce overhead expenses and coordinate billing, maintenance, mechanical, and personnel policies and practices of its rail carrier subsidiaries, thereby improving the overall efficiency of rail service provided by the two railroads.

Regional represents that: (1) The rail line to be acquired by Middletown does not connect with any other railroad in its corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the rail line with any other railroad in its corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 27, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35228, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 12, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–5781 Filed 3–19–09; 8:45 am]

BILLING CODE 4915–01–P

[1] Regional owns 100% of the issued and outstanding shares of Middletown.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2008 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act, and 5 U.S.C. section 552b, the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during 2008 has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management.

DATES: *Effective Date:* This notice is effective March 20, 2009.

ADDRESSES: The report is available for public inspection and requests for copies should be addressed to: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone number (202) 622–5164 (not a toll free number). The report is also available at *http://www.irs.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, AP:ART, Internal Revenue Service/Appeals, 1099 14th Street, NW., Washington, DC 20005, telephone (202) 435–5609 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis, therefore, is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Douglas H. Shulman,

Commissioner of Internal Revenue.

[FR Doc. E9–6062 Filed 3–19–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of New Pricing Methodology for Numismatic Products Containing Platinum and Gold Coins; Correction

AGENCY: United States Mint.

ACTION: Notification of New Pricing Methodology for Numismatic Products Containing Platinum and Gold Coins; correction.

SUMMARY: The United States Mint published a document in the **Federal Register** of January 6, 2009, outlining the new pricing methodology for numismatic products containing platinum and gold coins. The document contained incorrect information regarding when pricing adjustments become effective.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Correction

In the **Federal Register** of January 6, 2009, in FR Doc. E8–31424, on page 493, in the third column, replace the last sentence to read:

Price adjustments as a result of this process, if any, will be effective no later than 10 a.m. E.T. on the immediately following Thursday.

Dated: March 17, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–6151 Filed 3–19–09; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on April 6–7, 2009, at the Carlton Room, the St. Regis Washington, DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings about studies on compensation for Veterans with service-connected disabilities and other Veteran benefits programs. In the morning of April 6 and the afternoon of April 7, the Committee will break into subcommittees to work on recommendations. Also, in the afternoon of April 7, time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis.

Interested persons may submit written statements to the Committee before the meeting, or within 10 days after the meeting, by sending them to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Farber at (202) 461–9728.

Dated: March 17, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–6106 Filed 3–19–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War has scheduled a meeting for April 6–8, 2009, at the VA Central Office, 810 Vermont Avenue, Washington, DC, from 9 a.m. until 4 p.m. each day. The sessions will be held in Room 930 on April 6, in Room 430 on April 7 and in room 230 on April 8. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

The agenda for the meeting will include remarks from VA officials, a review of previous committee reports, an update of activities since the last meeting, and a period for Veterans and/or the public to address the Committee. The Committee will review comments discussed throughout the meeting to compile a report.

Members of the public may submit written statements for review by the Committee in advance of the meeting to Mr. Bradley G. Mayes, Director, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by March 31, 2008.

Dated: March 17, 2009.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–6107 Filed 3–19–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting Cancellation

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards scheduled for March 23–24, 2009, in room 630 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC has been cancelled.

Dated: March 13, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–6108 Filed 3–19–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Minority Veterans will meet on April 6–10, 2009. On April 6–7, the Committee will meet in Room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC from 9 a.m. to 4 p.m. On April 8–10, the Committee will meet at the Baltimore Marriott Inner Harbor at Camden Yards, 110 South Eutaw Street, Baltimore,

Maryland, from 8 a.m. to 5 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities.

On April 6, the agenda will include briefings and updates on the Center for Minority Veterans and the United States Court of Appeals for Veteran Claims. On April 7, the agenda will include briefings and updates on the Center for Women Veterans, Women Veterans Health Strategic Health Care Group, Human Resources, Veterans Health Administration, National Cemetery Administration, Veterans Benefits Administration, and Board of Veterans Appeals. In the evening, the Committee will hold a town hall meeting at the Washington, DC, VA Medical Center, 50 Irving St., NW., Washington, DC, beginning at 6:30 p.m. On April 8, the agenda will include briefings and updates on the American Indian/Alaska Native Ad Hoc Work Group, and from a Veterans Service Organizations panel. In the afternoon, the Committee will tour the Maryland Center for Veterans Education and Training. On April 9, the agenda will include briefings and a tour of the Baltimore VA Medical Center and Regional Office. In the evening, the Committee will hold a town hall meeting at the Baltimore Marriott Inner Harbor at Camden Yards, 110 S. Eutaw St., Baltimore, MD, beginning at 6:30 p.m. On April 10, the Committee will review and analyze comments presented during the meetings to prepare a draft of the meeting minutes and to discuss future site visits and areas of focus.

Any member of the public wishing to attend should contact Juanita J. Mullen or Ron Sagudan, Department of Veterans Affairs, Center for Minority Veterans (00M), 810 Vermont Avenue, NW., Washington, DC 20420. They may be contacted either by phone at (202) 461–6191, fax at (202) 273–7092, or e-mail at *Juanita.mullen@va.gov* or *Ronald.sagudan@va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: March 13, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–6109 Filed 3–19–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,

March 20, 2009

Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0013]

RIN 1904–AB83

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, directs the U.S. Department of Energy (DOE) to establish energy conservation standards for certain commercial and industrial equipment, including commercial heating, air-conditioning, and water-heating equipment. Of particular relevance here, the statute also requires that each time the corresponding industry standard—the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1—is amended, DOE must assess whether there is a need to update the uniform national energy conservation standards for the same equipment covered under EPCA. ASHRAE officially released an amended version of this industry standard (ASHRAE Standard 90.1–2007) on January 10, 2008, thereby triggering DOE's related obligations under EPCA. Specifically, pursuant to EPCA, DOE assessed whether the revised ASHRAE efficiency levels are more stringent than the existing Federal energy conservation standards; and for those equipment classes for which ASHRAE set more-stringent efficiency levels (*i.e.*, commercial packaged boilers), analyzed the economic and energy savings potential of amended national energy conservation standards (at both the new ASHRAE Standard 90.1 levels and more-stringent efficiency levels).

DOE has tentatively concluded that the statutory criteria have been met for commercial packaged boilers and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h, thereby justifying consideration of national energy conservation standards set at the revised levels in ASHRAE Standard 90.1–2007.

Furthermore, DOE has tentatively concluded that clear and convincing evidence does not exist, as would justify more-stringent standard levels than the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers. DOE has also tentatively concluded that there are no water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h being currently manufactured, and therefore, it is not possible to assess the economic and energy savings potential for adopting efficiency levels at or above the ASHRAE Standard 90.1–2007 efficiency levels for such equipment. Accordingly, in this notice, DOE is proposing to amend the energy conservation standards for commercial packaged boilers and to adopt a new energy conservation standard for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h at the efficiency levels specified by ASHRAE Standard 90.1–2007. DOE is also proposing related amendments to its test procedures for commercial packaged boilers. In addition, DOE is announcing a public meeting to receive comment on its proposal and related issues.

DATES: DOE will hold a public meeting on April 7, 2009, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., March 24, 2009. DOE must receive a signed original and an electronic copy of statements to be made at the public meeting before 4 p.m., March 31, 2009.

DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than June 3, 2009. See section VII, ''Public Participation,'' of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Any comments submitted must identify the NOPR for Energy Conservation Standards and Test Procedures for ASHRAE Standard 90.1 Products, and provide the docket number EERE–2008–BT–STD–0013 and/or Regulatory Information Number (RIN) 1904–AB83. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: ASHRAE_90.1_rulemaking@ee.doe.gov*. Include the docket number EERE–2008–BT–STD–0013 and/or RIN 1904–AB83 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, 6th Floor, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov*.

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I. Summary of Proposed Rule

The Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291 *et seq.*), as amended, requires DOE to consider amending the existing Federal energy conservation standard for each type of equipment listed (generally, commercial water heaters, commercial packaged boilers, commercial air conditioning and heating equipment, and packaged terminal air conditioners and heat pumps), each time ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings*, is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended,[1] DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level as a national

[1] Although EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1, DOE provided its interpretation of what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007 (hereafter referred to as the March 2007 final rule). 72 FR 10038. In that rule, DOE stated that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. *Id.* at 10042. In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A).

standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate, DOE must establish an amended standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B))

This NOPR sets forth DOE's determination of scope for consideration of amended energy conservation standards with respect to certain heating, ventilating, air-conditioning, and water-heating equipment addressed in ASHRAE Standard 90.1–2007. Such inquiry is necessary to ascertain whether the revised ASHRAE efficiency levels have become more stringent, thereby ensuring that any new amended national standard would not result in ''backsliding'' which is prohibited under 42 U.S.C. 6295(o)(1) and 42 U.S.C. 6316(a). For those equipment classes for which ASHRAE set more-stringent efficiency levels (*i.e.*, commercial packaged boilers), DOE analyzed the economic and energy savings potential of amended national energy conservation standards (at both the new ASHRAE Standard 90.1 efficiency levels and more-stringent efficiency levels). DOE also found that ASHRAE set a more-stringent efficiency level for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. However, DOE did not analyze the economic and energy savings potential of amended national energy conservation standards because there is no equipment currently being manufactured in this equipment class.

In light of the above, DOE has tentatively concluded that for ten classes of commercial packaged boilers: (1) The revised efficiency levels in ASHRAE 90.1–2007 [2] are more stringent than current national standards; and (2) their adoption as national standards would result in significant energy savings. DOE has also tentatively concluded that there is not clear and convincing evidence as would justify adoption of more-stringent efficiency levels for this equipment.

Thus, in accordance with these criteria discussed in this notice, DOE is proposing to amend the energy conservation standards for ten equipment classes of commercial packaged boilers and to adopt a new energy conservation standard for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h by adopting the efficiency levels specified by ASHRAE Standard 90.1–2007. The proposed standards for commercial packaged boilers would apply to the ten equipment classes of commercial packaged boilers manufactured on or after the date two years after the effective date specified in ASHRAE Standard 90.1–2007. (42 U.S.C. 6313(a)(6)(D)(i)) The proposed standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h would apply to such equipment manufactured on or after the date three years after the effective date specified in ASHRAE Standard 90.1–2007. (42 U.S.C. 6313(a)(6)(D)(ii))

In addition, DOE is proposing amendments to its test procedures for commercial packaged boilers, which manufacturers are required to use to certify compliance with energy conservation standards mandated under EPCA. Specifically, these amendments would update the citations and references to the most recent version of the industry standards already referenced in DOE's test procedures. In addition, these amendments would specify a definition and methodology to test the thermal efficiency of these boilers, which is the metric DOE is proposing for eight of the ten equipment classes of commercial packaged boilers to conform with the new energy efficiency metric adopted in ASHRAE Standard 90.1–2007. Lastly, these amendments would make a small number of technical modifications to DOE's existing test procedure for commercial packaged boilers.

II. Introduction

A. Authority

Title III of EPCA, Public Law 94–163, as amended, sets forth a variety of provisions concerning energy efficiency. Part A–1 [3] of Title III created the energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Part A–1 specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm air furnaces, packaged boilers, storage water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE Standard 90.1, as in effect on October 24, 1992 (*i.e.*, ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a).

In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation standard for each type of equipment listed, each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines that a more-stringent standard is justified under 42 U.S.C. 6313(a)(6)(A)(ii)(II), then it must

[2] To obtain a copy of ASHRAE Standard 90.1–2007, visit *http://www.ashrae.org/technology/page/548* or contact the ASHRAE publications department by e-mail at *orders@ashrae.org* or by telephone at (800) 527–4723.

[3] This part was originally titled Part C; however, it was redesignated Part A–1 after Part C of Title III of EPCA was repealed by Public Law 109–58.

establish such more-stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B))

ASHRAE officially released and made public on January 10, 2008, ASHRAE Standard 90.1–2007. This action triggered DOE's obligations under 42 U.S.C. 6313(a)(6), as outlined above.

Pertinent to any rulemaking in response to an ASHRAE revision of Standard 90.1, it is noted that EPCA contains what is commonly known as an ''anti-backsliding'' provision, which mandates that the Secretary shall not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of covered equipment. (42 U.S.C. 6295(o)(1); 42 U.S.C. 6316(a)) It is a fundamental principle in EPCA's statutory scheme that DOE cannot weaken standards from those that have been published as a final rule. *See Natural Resources Defense Council* v. *Abraham*, 355 F.3d 179 (2d Cir. 2004).

When considering the possibility of a more-stringent standard, DOE's more typical rulemaking requirements under EPCA apply (*i.e.*, a determination of technological feasibility, economic justification, and significant energy savings). For example, EPCA provides that in deciding whether such a standard is economically justified, DOE must determine, after receiving comments on the proposed standard, whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the products which are likely to result from the imposition of the standard;

3. The total projected amount of energy savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy conservation; and

7. Other factors the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)–(ii); 42 U.S.C. 6316(a))

Additionally, the Secretary may not prescribe an amended standard if interested persons have established by a preponderance of the evidence that the amended standard is ''likely to result in the unavailability in the United States of any product type (or class)'' with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4); 42 U.S.C. 6316(a))

Federal energy conservation requirements for commercial equipment generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316 (a) and (b)) However, DOE can grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D))

When considering more stringent standards for the ASHRAE equipment under consideration here, EPCA states that there is a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard level is less than three times the value of the first-year energy (and as applicable water) savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(a)) Generally, DOE's LCC and PBP analyses generate values that calculate the payback period for consumers of potential energy conservation standards, which includes, but is not limited to, the three-year payback period contemplated under the rebuttable presumption test discussed above. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(a). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

B. Background

1. ASHRAE Standard 90.1–2007

On January 9, 2008, ASHRAE's Board of Directors gave final approval to ASHRAE Standard 90.1–2007, which ASHRAE released on January 10, 2008. The ASHRAE standard addresses efficiency levels for many types of commercial heating, ventilating, air-conditioning (HVAC), and water-heating equipment covered by EPCA. ASHRAE Standard 90.1–2007 revised the efficiency levels for certain commercial equipment, but for the remaining equipment, ASHRAE left in place the preexisting efficiency levels (*i.e.*, the efficiency levels specified in ASHRAE Standard 90.1–1999 [4]).

Table II.1 below shows the existing Federal energy conservation standards and the efficiency levels specified in ASHRAE Standard 90.1–2007 for equipment where ASHRAE modified its requirements. DOE is addressing this equipment in today's notice. In section IV of today's NOPR, DOE assesses these equipment types to determine whether the amendments in ASHRAE Standard 90.1–2007 constitute increased energy conservation levels, as would necessitate further analysis. This step was necessary because DOE found that while ASHRAE had made changes in ASHRAE Standard 90.1–2007, it was not immediately apparent whether such revisions to the ASHRAE Standard 90.1 level would make the equipment more or less efficient, as compared to the existing Federal energy conservation standards. For example, when setting a standard using a different efficiency metric (as is the case for several types of commercial packaged boiler equipment), ASHRAE Standard 90.1–2007 changes the standard level from that specified in EPCA, but it is not immediately clear whether a standard level will make equipment more or less efficient. Therefore, DOE is undertaking this additional threshold analysis in order to thoroughly evaluate the amendments in ASHRAE Standard 90.1–2007 in a manner consistent with its statutory mandate.

[4] DOE reviewed and adopted some of the efficiency levels in ASHRAE Standard 90.1–1999 in a Final Rule published on January 12, 2001. 66 FR 3336.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT*

ASHRAE equipment class	Federal energy conservation standards	ASHRAE standard 90.1–2007	
		Energy efficiency levels	Effective date
Commercial Warm Air Furnaces			
Gas-Fired Commercial Warm Air Furnace	E_t = 80%	E_c = 80% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent, or flue damper**.	1/10/2008‡
Oil-Fired Commercial Warm Air Furnace	E_t =81%	E_t = 81% Interrupted or intermittent ignition device, jacket losses not exceeding 0.75% of input rating, power vent, or flue damper**.	1/10/2008‡
Commercial Package Air-Conditioning and Heating Equipment			
Through-the-Wall Air Conditioners	13.0 SEER*** (Effective as of 06/19/08)	12.0 SEER	1/23/2010
Through-the-Wall Air-Cooled Heat Pumps	13.0 SEER (Effective as of 06/19/08)	12.0 SEER 7.4 HSPF†	1/23/2010
Small Duct, High Velocity, Air-Cooled Air Conditioners.	13.0 SEER (Effective as of 06/19/08)	10.0 SEER	1/10/2008
Small Duct, High-Velocity, Air-Cooled Heat Pumps.	13.0 SEER (Effective as of 06/19/08)	10.0 SEER 6.8 HSPF	1/10/2008
Packaged Air-Cooled Air Conditioners with Cooling Capacity ≥760,000 Btu/h†† and with No Heating or with Electric Resistance Heating.	None	9.7 EER†††	1/1/2010
Packaged Air-Cooled Air Conditioners with Cooling Capacity ≥760,000 Btu/h and with Heating That is Other Than Electric Resistance Heating.	None	9.5 EER	1/1/2010
Water-Cooled and Evaporatively-Cooled Air Conditioner with Cooling Capacity ≥135,000 and <240,000 Btu/h, and with No Heating or with Electric Resistance Heating.	11.0 EER	11.0 EER	1/10/2008‡
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥135,000 and <240,000 Btu/h, and with Heating That is Other Than Electric Resistance Heating.	11.0 EER	10.8 EER	1/10/2008‡
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and with No Heating or with Electric Resistance Heating.	None	11.0 EER	1/10/2008‡
Water-Cooled and Evaporatively Cooled Air Conditioner with Cooling Capacity ≥240,000 Btu/h and with Heating That is Other Than Electric Resistance Heating.	None	10.8 EER	1/10/2008‡
Commercial Packaged Boilers			
Small Gas-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 80%	E_T = 80%	3/2/2010
Small Gas-Fired, Steam, All Except Natural Draft Commercial Packaged Boilers.	E_C = 80%	E_T = 79%	3/2/2010
Small Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers.	E_C = 80%	E_T = 77% E_T = 79%	3/2/2010 3/2/2020
Small Oil-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 83%	E_T = 82%	3/2/2010
Small Oil-Fired, Steam, Commercial Packaged Boilers.	E_C = 83%	E_T = 81%	3/2/2010
Large Gas-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 80%	E_C = 82%	3/2/2010
Large Gas-Fired, Steam, All Except Natural Draft, Boilers.	E_C = 80%	E_T = 79%	3/2/2010
Large Gas-Fired, Steam, Natural Draft, Commercial Packaged Boilers.	E_C = 80%	E_T = 77% E_T = 79%	3/2/2010 3/2/2020
Large Oil-Fired, Hot Water, Commercial Packaged Boilers.	E_C = 83%	E_C = 84%	3/2/2010

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2007 FOR SPECIFIC TYPES OF COMMERCIAL EQUIPMENT*—Continued

ASHRAE equipment class	Federal energy conservation standards	ASHRAE standard 90.1–2007	
		Energy efficiency levels	Effective date
Large Oil-Fired, Steam, Commercial Packaged Boilers.	E_C = 83%	E_T = 81%	3/2/2010

*All equipment classes included in this table are equipment where there is a perceived difference between the current Federal standard levels and the efficiency levels specified by ASHRAE Standard 90.1–2007. Although, in some cases, the efficiency levels in this table may appear to be equal or lower than the Federal energy conservation standards, DOE further reviewed the efficiency levels in ASHRAE Standard 90.1–2007 and presented its findings in section III.

** A vent damper is an acceptable alternative to a flue damper for those furnaces that draw combustion air from conditioned space.

*** Seasonal energy efficiency ratio

† Heating seasonal performance factor

†† British thermal units per hour (Btu/h)

††† Energy efficiency ratio

‡For the purposes of this NOPR, the date shown in this column is the date of publication of ASHRAE Standard 90.1–2007 (Jan. 10, 2008) for equipment where the ASHRAE Standard 90.1–2007 initially appears to be different from the Federal energy conservation standards and where no effective date was specified by ASHRAE Standard 90.1–2007.

2. Notice of Data Availability and Request for Public Comment

On July 16, 2008, DOE published a notice of data availability (July 2008 NODA) and request for public comment in the **Federal Register** as a preliminary step pursuant to EPCA's requirements for DOE to consider amended energy conservation standards for certain types of commercial equipment covered by ASHRAE Standard 90.1. 73 FR 40770 (July 16, 2008). Specifically, the July 2008 NODA presented for public comment DOE's analysis of the potential energy savings estimates for amended national energy conservation standards for types of commercial equipment based on: (1) The modified efficiency levels contained within ASHRAE Standard 90.1–2007; and (2) more-stringent efficiency levels. *Id.* at 40772. DOE has described these analyses and preliminary conclusions and sought input from interested parties, including the submission of data and other relevant information. *Id.*

In addition, DOE presented a discussion in the July 2008 NODA of the changes found in ASHRAE Standard 90.1–2007. *Id.* at 40776–86. Lastly, the July 2008 NODA includes an initial description of DOE's evaluation of each ASHRAE equipment type to determine which energy conservation standards, if any, have been set pursuant to EPCA, in order for DOE to determine whether the amendments in ASHRAE Standard 90.1–2007 have increased efficiency levels. For those types of equipment in ASHRAE Standard 90.1 for which ASHRAE increased efficiency levels, DOE subjected that equipment to the potential energy savings analysis discussed above and presented the results in the July 2008 NODA for public comment. 73 FR 40770, 40776–86 (July 16, 2008).

As a result of the preliminary determination of scope set forth in the July 2008 NODA, DOE found the only equipment type for which ASHRAE increased the efficiency levels and equipment was available on the market were commercial packaged boilers, generally. 73 FR 40770, 40776–86 (July 16, 2008). DOE presented its methodology, data, and results for the preliminary energy savings analysis developed for most of the commercial packaged boiler equipment classes in the July 2008 NODA for public comment. 73 FR 40770, 40786–91 (July 16, 2008).

III. General Discussion of Comments Regarding the ASHRAE Process and DOE's Interpretation of EPCA's Requirements With Respect to ASHRAE Equipment

In response to its request for comment on the July 2008 NODA, DOE received six comments from manufacturers, trade associations, and energy efficiency advocates. The issues raised in these comments, along with DOE's responses, are set forth below.

A. The ASHRAE Process

In response to the preliminary determination of scope and analyses set forth in the July 2008 NODA, DOE received several comments regarding the ASHRAE process for considering revised efficiency levels for certain commercial heating, ventilating, air-conditioning, and water heater equipment, including commercial packaged boilers.

Edison Electric Institute (EEI) stated its belief that DOE should make proposals for increased efficiency to ASHRAE and not perform a separate rulemaking on commercial packaged boilers. EEI asserted this would streamline DOE's efforts and provide opportunities to increase equipment efficiency through the ASHRAE consensus process. (EEI, No. 2 at p. 2) [5]

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) asserted that the efficiency levels for commercial packaged boilers in ASHRAE Standard 90.1–2007 are the product of a consensus agreement between AHRI boiler manufacturer members, ACEEE, and several other organizations. AHRI stated its belief these efficiency levels reflect the collective experience of the manufacturers and the knowledge of the relationship between combustion efficiency and thermal efficiency for their models that comes from practical experience of transforming design concepts to models coming off the production line. Further, AHRI asserted DOE should accept the efficiency levels in ASHRAE Standard 90.1–2007 as negotiated standards that can be processed through an expedited rulemaking. (AHRI, No. 3 at p. 4)

The American Council for an Energy-Efficient Economy (ACEEE), the Appliance Standards Awareness Project (ASAP), the Alliance to Save Energy (ASE), the California Energy Commission (CEC), the Natural Resources Defense Council (NRDC), the Northeast Energy Efficiency Partnerships (NEEP), and the Northwest Power and Conservation Council (NPCC) submitted a joint comment in response to the July 2008 NODA

[5] ''EEI, No. 2 at p. 2'' refers to (1) a statement that was submitted by the Edison Electric Institute and is recorded in the Resource Room of the Building Technologies Program in the docket under ''Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment,'' Docket Number EERE–2008–BT–STD–0013, as comment number 2; and (2) a passage that appears on page 2 of that statement.

(hereafter referred to as the Advocates Comment). (The Advocates Comment, No. 4 at p. 2) The Advocates Comment stated its support for the adoption of the efficiency levels in ASHRAE Standard 90.1–2007 for commercial boilers, except for any specific equipment class for which further DOE analysis shows that adoption of the ASHRAE efficiency levels would violate the anti-backsliding clause. The Advocates Comment pointed out that the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers are the result of a 2006 agreement between several efficiency advocacy groups and the trade association for commercial packaged boilers. (The Advocates Comment, No. 4 at p. 2)

Lastly, AHRI, ACEEE, ASAP, ASE, and NRDC submitted a joint letter to the Assistant Secretary (hereafter referred to as the Joint Letter) urging DOE to adopt as Federal minimum energy conservation standards the efficiency levels contained in ASHRAE Standard 90.1–2007 for commercial packaged boilers. (The Joint Letter, No. 5 at p. 1) The Joint Letter asserted that the commercial boiler efficiency levels are more stringent than the corresponding requirements in the previous version of the ASHRAE Standard.[6] In addition, the Joint Letter pointed out that the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers are the result of a consensus recommendation. Finally, the Joint Letter stated its belief that given the origin of these efficiency levels in the consensus process (both with the negotiated agreement and the ASHRAE process) and their significant potential energy savings, DOE should give these recommendations deference and move to adopt them as a final rule as expeditiously as possible. (The Joint Letter, No. 5 at p. 2)

While DOE acknowledges that certain efficiency levels in ASHRAE Standard 90.1–2007 are the result of consensus standards, including those for commercial packaged boilers, EPCA specifies DOE's obligations to review the amendments when ASHRAE issues revised standards. Specifically, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) In order to determine if more-stringent efficiency levels would meet EPCA's criteria, DOE must review the efficiency levels in ASHRAE Standard 90.1–2007 and more-stringent efficiency levels for their energy savings and economic potentials irrespective of whether the efficiency levels were once part of a consensus standard. Contrary to what some commenters seem to suggest, DOE may not delegate its standard-setting authority either directly or indirectly to ASHRAE or any other party.

B. The Definition of Amendment With Respect to the Efficiency Levels in an ASHRAE Standard

DOE stated in the July 2008 NODA that EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1, but the July 2008 NODA pointed out that DOE provided its interpretation of what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007 (72 FR 10038). 73 FR 40770, 40771 (July 16, 2008). In that final rule, DOE stated that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. 72 FR 10038, 10042 (March 7, 2007). In other words, if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). 73 FR 40770, 40771 (July 16, 2008).

In response to DOE's interpretation of the definition of ''amendment,'' the Advocates Comment argued that DOE has applied an unlawfully narrow definition to the word ''amendment.'' (The Advocates Comment, No. 4 at pp. 2–3) Instead, the Advocates Comment asserts that EPCA requires DOE to consider changes to the Federal minimum energy conservation standards for covered products ''[i]f ASHRAE/IES Standard 90.1 is *amended* * * *'' (The Advocates Comment, No. 4 at pp. 2–3 (referring to 42 U.S.C. 6313(a)(6)(A)(i)) (emphasis in original)). In other words, the Advocates Comment suggests that DOE has very broad authority to consider amended standards for any and all ASHRAE equipment, once ASHRAE acts to revise any of the levels in Standard 90.1. The Advocates Comment asserts that Congress's use of the neutral terms ''amended'' and ''amendment'' imposes no threshold requirement that before DOE can analyze the energy saving potential of revised Federal energy conservation standards it must first determine that the amended ASHRAE standard is more stringent than the prior Federal energy conservation standard. The Advocates Comment stated its belief that DOE's very limited definition of ''amendment'' is inconsistent with the plain language of EPCA. (The Advocates Comment, No. 4 at p. 3)

DOE does not agree with the Advocates Comment's assertions. DOE maintains its position that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. As described in the March 2007 final rule, the intent of section 342, generally, is for DOE to maintain uniform national standards consistent with those set in ASHRAE Standard 90.1. 72 FR 10038, 10042 (March 7, 2007). Given this intent, if ASHRAE has not amended a standard for a product subject to section 342, there is no change, which would require action by DOE to consider amending the uniform national standard to maintain consistency with ASHRAE Standard 90.1. *Id.* If ASHRAE considered amending the standards for a given equipment type but ultimately chose not to do so, the statutory trigger for DOE to adopt ASHRAE's amended standards did not occur with respect to this equipment. *Id.* The statutory language specifically links ASHRAE's action in amending standards for specific equipment to DOE's action for those same equipment. *Id.*

C. Different Types of Changes in ASHRAE Standard 90.1–2007

The Advocates Comment asserted that ASHRAE Standard 90.1–2007 includes at least three different types of amendments, which must trigger DOE

[6] DOE reviewed the previous efficiency levels for commercial packaged boilers, which were incorporated into ASHRAE Standard 90.1–1999, in a notice of document availability published on March 13, 2006. 71 FR 12634, 12639 (March 13, 2006). At that time, DOE determined it could not adopt the efficiency levels in ASHRAE Standard 90.1–1999 for small commercial packaged boilers due to backsliding concerns. 71 FR 12634, 12639–41 (March 13, 2006). In addition, DOE determined it did not have the authority to consider amended energy conservation standards for large commercial packaged boilers because ASHRAE did not change the existing energy conservation standard levels in ASHRAE Standard 90.1–1999. 71 FR 12634, 12641–42 (March 13, 2006).

review of the existing Federal energy conservation standards, including: (1) A change in the efficiency performance metric; (2) an addition of a new prescriptive or performance requirement; and (3) a possible decrease to the efficiency standard. (The Advocates Comment, No. 4 at p. 4–5) The Advocates Comment further asserted that DOE cannot reject the consideration of amendments which change the performance metric or which add new prescriptive or performance requirements on top of existing Federal requirements. The Advocates Comment further stated that even DOE's definition of ''amendment'' compels consideration of amendments which add energy-saving requirements since these requirements ''increase'' the level of energy efficiency for a given equipment type. If DOE decides it cannot adopt multiple efficiency requirements (an interpretation the Advocates Comment believes is contrary to EPCA), the Advocates Comment argued that these requirements still trigger DOE review. (The Advocates Comment, No. 4 at p. 4–5)

When reviewing the changes in ASHRAE Standard 90.1–2007, DOE stated in the July 2008 NODA that for each class of commercial equipment for which ASHRAE modified the existing standard, DOE would assess whether the change made would increase energy efficiency and, therefore, require further DOE analysis and consideration. 73 FR 40770, 40775 (July 16, 2008). DOE initially completed a comprehensive analysis of the products covered under both EPCA and ASHRAE Standard 90.1–2007 to determine which product types require further analysis. The July 2008 NODA contains a description of DOE's initial evaluation of each ASHRAE equipment type for which energy conservation standards have been set pursuant to EPCA, in order for DOE to determine whether the amendments in ASHRAE Standard 90.1–2007 have resulted in increased efficiency levels. 73 FR 40770, 40773–40786 (July 16, 2008).

DOE does not agree with the Advocates Comment's assertion that DOE is required to review changes in ASHRAE Standard 90.1–2007, which do not increase the efficiency level when compared to the current Federal energy conservation standards for a given piece of equipment. Further as DOE has previously explained, since EPCA does not explicitly define the term ''amended'' in the context of ASHRAE Standard 90.1, DOE provided its interpretation of what would constitute an ''amended standard'' in a final rule published in the **Federal Register** on March 7, 2007. 72 FR 10038. In that rule, DOE stated that the statutory trigger requiring DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. *Id.* at 10042. Even though DOE realizes that these prescriptive requirements could save additional energy in addition to the energy-efficiency level, DOE does not believe adding a prescriptive requirement alone without increasing the efficiency level triggers DOE review. In addition, if ASHRAE adds a prescriptive requirement for equipment where an efficiency level is already specified, DOE does not believe it has the authority to address a dual descriptor for a single equipment type (see section IV.A.1 below for additional explanation). In light of the above, DOE maintains its position set out in the July 2008 NODA. If the revised ASHRAE Standard 90.1 leaves the standard level unchanged (even if ASHRAE adds prescriptive requirements) or lowers the standard, as compared to the level specified by the national standard adopted pursuant to EPCA, DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). 73 FR 40770, 40771 (July 16, 2008).

D. DOE's Review of ASHRAE Equipment Independent of the ASHRAE Standards Process

The Advocates Comment pointed to language in EPCA (at 42 U.S.C. 6313(a)(6)(C)) that it believes triggers DOE review to determine the need to amend the energy conservation standard for a given piece of equipment, including a six-year timeframe elapsing since the last final rule ''establishing or amending a standard'' for that product. (The Advocates Comment, No. 4 at p. 5) The Advocates Comment also stated that the same provision of EPCA further provides that if DOE determines that the statutory criteria have not been met for amending the energy conservation standard for a product, DOE must conduct the same review process within the next three years. (The Advocates Comment, No. 4 at p. 5) The Advocates Comment stated its belief that the timeline (three or six years) has elapsed for several equipment categories, including: (1) Central water-source and evaporatively-cooled AC products; (2) warm-air furnaces; (3) gas and oil storage water heaters; (4) gas and oil instantaneous water heaters; (4) tankless oil-fired instantaneous water heaters and unfired hot water storage tanks; (5) electric water heaters; (6) tankless gas-fired instantaneous water heaters; and (7) commercial packaged boilers. (The Advocates Comment, No. 4 at p. 5–6)

In response, DOE acknowledges that section 305(b) of the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110–140, amended Section 342(a)(6) of EPCA to create an additional requirement that directs DOE to assess whether there is a need to update the Federal energy conservation standards for certain commercial equipment (*i.e.*, ASHRAE equipment) after a certain amount of time has elapsed. Specifically, EPCA, as amended, states that ''the Secretary must publish either a notice of determination that standards for a product do not need to be amended, or a notice of proposed rulemaking including new proposed standards within 6 years after the issuance of any final rule establishing or amending a standard.'' (42 U.S.C. 6313(a)(6)(C)(i)) In addition, if the Secretary chooses to publish a notice of determination that the standards for a product do not need to be amended, a new determination must be issued within 3 years of the previous determination. (42 U.S.C. 6313(a)(6)(C)(iii)(II)) These requirements are applicable to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. (42 U.S.C. 6313(a)(6)(A)(i))

DOE believes that the commenters have misconstrued the amendments in section 305(b) of EISA 2007 by suggesting that the relevant provisions should be applied retroactively, rather than prospectively. DOE does not believe it was Congress's intention to apply these requirements retroactively, so that DOE would immediately be in violation of its legal obligations upon passage of the statute, thereby failing from its inception. DOE does not believe that the interpretation in the Advocates Comment is reasonable, nor does DOE agree with the assertion that DOE is late and should initiate an immediate review of certain commercial equipment cited by the commenters above.

E. Equipment Classes With a Two-Tier Efficiency Level Specified in ASHRAE Standard 90.1–2007

For commercial packaged boilers, ASHRAE Standard 90.1–2007 further divides the existing equipment classes (*i.e.*, gas-fired and oil-fired) into 10 different divisions. For two of the ten equipment classes specified in ASHRAE Standard 90.1–2007, ASHRAE specifies a two-tier efficiency level, with one efficiency level effective in 2010 and another more-stringent efficiency level effective in 2020. The two equipment classes where ASHRAE Standard 90.1–2007 specifies a two-tier efficiency levels are small gas-fired steam natural draft and large gas-fired steam natural draft commercial packaged boilers. In determining whether the efficiency levels in ASHRAE Standard 90.1–2007 violated EPCA's anti-backsliding clause, DOE examined only the efficiency levels with a 2010 effective date. However, DOE considers the two-tier efficiency levels to be a ''package'' set of potential amended energy conservation standards. DOE does not intend to adopt one efficiency level without adopting the latter efficiency level. Accordingly, in its economic and energy savings analysis DOE analyzes these two equipment classes as if both the 2010 and 2020 levels will be adopted on their respective effective dates.

IV. General Discussion of the Changes in ASHRAE Standard 90.1–2007 and Determination of Scope for Further Rulemaking Analyses

As discussed above, before beginning an analysis of economic impacts and energy savings that would result from adopting the efficiency levels specified by ASHRAE Standard 90.1–2007 or more-stringent efficiency levels, DOE first sought to determine whether or not the ASHRAE Standard 90.1–2007 efficiency levels actually represented an increase in efficiency above the current Federal standard levels. This section discusses each equipment class where the ASHRAE Standard 90.1–2007 efficiency level differs from the current Federal standard level, along with DOE's preliminary conclusion as to the action DOE would take with respect to that equipment.

A. Commercial Warm Air Furnaces

Under EPCA, a ''warm air furnace'' is defined as ''a self-contained oil-or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm-air furnace/electric air-conditioning units but does not include unit heaters and duct furnaces.'' (42 U.S.C. 6311(11)(A)) In its regulations, DOE defines a ''commercial warm air furnace'' as a ''warm-air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 Btu [British thermal units] per hour or more.'' 10 CFR 431.72. The amendments in ASHRAE Standard 90.1–2007 changed the efficiency metric for gas-fired commercial warm air furnaces and added design requirements for both gas-fired and oil-fired commercial warm air furnaces, thereby triggering DOE to further review ASHRAE's changes as presented below.

1. Gas-Fired Commercial Warm Air Furnaces

Gas-fired commercial warm air furnaces are fueled by either natural gas or propane. The Federal energy conservation standard for commercial gas-fired warm air furnaces corresponds to the efficiency level in ASHRAE Standard 90.1–1999, which specifies that for equipment with a capacity of 225,000 Btu per hour (h) or more, the thermal efficiency at the maximum rated capacity (rated maximum input) must be no less than 80 percent. 10 CFR 431.77(a). The Federal energy conservation standard for gas-fired commercial warm air furnaces applies to equipment manufactured on or after January 1, 1994. 10 CFR 431.77.

ASHRAE changed the efficiency levels for gas-fired commercial warm air furnaces by changing the metric from a thermal efficiency descriptor to a combustion efficiency descriptor and adding three design requirements. Specifically, the efficiency levels in ASHRAE Standard 90.1–2007 specify a minimum combustion efficiency of 80 percent. ASHRAE Standard 90.1–2007 also specifies the following design requirements for commercial gas-fired warm air furnaces: The gas-fired commercial warm air furnace must use an interrupted or intermittent ignition device, have jacket losses no greater than 0.75 percent of the input rating, and use a power vent or flue damper.

To evaluate the change in efficiency level (if any) specified by the amended ASHRAE standard, DOE reviewed the change of metric for gas-fired commercial warm air furnaces. In general, the energy efficiency of a product is a function of the relationship between the product's output of services and its energy input. A furnace's output is largely the energy content of its output (*i.e.*, warm air delivered to the building). A furnace's energy losses consist of energy that escapes through its flue (commonly referred to as ''flue losses''), and of energy that escapes into the area surrounding the furnace (commonly referred to as ''jacket losses'').

In a final rule published in the **Federal Register** on October 21, 2004 (the October 2004 final rule), DOE incorporated definitions for commercial warm air furnaces and its efficiency descriptor, energy efficiency test procedures, and energy conservation standards. 69 FR 61916 (Oct. 21, 2004). In the October 2004 final rule, DOE pointed out that EPCA specifies the energy conservation standard levels for commercial warm air furnaces in terms of thermal efficiency (42 U.S.C. 6313(a)(4)(A)–(B); 10 CFR 431.77), but provides no definition for this term. *Id.* DOE proposed to interpret this term in the context of commercial warm air furnaces to mean combustion efficiency (*i.e.*, 100 percent minus percent flue loss). *Id.* Given the use of the thermal efficiency term in EPCA and its continued use as the efficiency descriptor for furnaces in ANSI Standard Z21.47, ''Gas-Fired Central Furnaces'' (DOE's test procedure for this equipment), DOE stated that it would be confusing to use the term ''combustion efficiency'' in the final rule. Accordingly, DOE defined the term ''thermal efficiency'' to mean 100 percent minus the percent flue loss in the October 2004 final rule for gas-fired commercial warm air furnaces. *Id.*

DOE presented an initial review of the ASHRAE efficiency levels for warm-air furnaces in the July 2008 NODA. DOE stated that upon reviewing the efficiency levels and methodology specified in ASHRAE Standard 90.1–2007, DOE believed that despite changing the name of the energy efficiency descriptor from ''thermal efficiency'' to ''combustion efficiency,'' ASHRAE did not intend to change the efficiency metric for gas-fired commercial warm air furnaces. 73 FR 40770, 40776 (July 16, 2008). When ASHRAE specified a newer version of the test procedure for manufacturers' use with gas-fired commercial air furnaces (*i.e.*, ANSI Standard Z21.47–2001), the calculation of thermal efficiency did not change from the previous version. Therefore, despite that change in the name of the energy efficiency descriptor, the terms are synonymous in the present context because the calculation of that value has not changed (*i.e.*, 100 percent minus the percent flue loss). DOE sees no plausible reason why ASHRAE would have chosen to incorporate a different metric than that used in the ANSI Standard Z21.47–2001 test procedure. Consequently, because the amendments for this type of equipment set out in ASHRAE Standard 90.1–2007 do not

appear to have substantively changed the efficiency level, DOE tentatively decided to leave the existing Federal energy conservation standards in place for gas-fired commercial warm air furnaces; these standards specify a thermal efficiency of 80 percent using the definition of ''thermal efficiency'' established by DOE in the October 2004 final rule and presented in subpart D to 10 CFR part 431. 73 FR 40770, 40776 (July 16, 2008).

In response to the preliminary review set forth in the July 2008 NODA, the Advocates Comment noted that ASHRAE added additional energy saving requirements, including a standard limiting jacket losses, a prescriptive requirement for intermittent or interrupted ignition devices, and a requirement for power venting or flue dampers in ASHRAE Standard 90.1–2007 for commercial gas-fired warm air furnaces. (The Advocates Comment, No. 4 at p. 6) The Advocates Comment further stated that the addition of these requirements triggers DOE review, which must lead to either adoption of the new ASHRAE standards or more-stringent standards. (The Advocates Comment, No. 4 at p. 6) The Advocates Comment also asserted that ASHRAE recognized that combustion efficiency is an inadequate efficiency descriptor and added these additional efficiency requirements to capture off cycle losses, which can waste significant amounts of energy. (The Advocates Comment, No. 4 at p. 6) Even though the comments concluded DOE has asserted in other rulemakings that it lacks the authority to apply more than one efficiency metric to a given product, the commenters believe DOE's viewpoint is contrary to the language and purposes of EPCA. (The Advocates Comment, No. 4 at p. 7) Further, the Advocates Comment stated that because ASHRAE has adopted a performance standard and multiple design requirements, DOE must read the statute as permitting DOE sufficient authority to harmonize Federal and ASHRAE requirements. Lastly, the comments point out that some of the multi-part standards (*e.g.*, those for commercial storage instantaneous water heaters and commercial heat pumps) are based on equivalent multi-part requirements in ASHRAE 90.1. (The Advocates Comment, No. 4 at p. 6–7)

DOE has determined that the design requirements in ASHRAE Standard 90.1–2007 for gas-fired commercial warm air furnaces are beyond the scope of its legal authority. EPCA authorizes the Secretary to amend the energy conservation standards for specified equipment. (42 U.S.C. 6313(a)(6))

Section 340(18) of EPCA defines the term ''energy conservation standard'' as:

''(A) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or

(B) a design requirement for a product.''

(42 U.S.C. 6311(18))

The language of EPCA authorizes DOE to establish a performance standard or a single design standard. As such, a standard that establishes both a performance standard and a design requirement is beyond the scope of DOE's legal authority, as would be a standard that included more than one design requirement. In this case, ASHRAE Standard 90.1–2007 recommends three design requirements, which goes beyond EPCA's limit of one design requirement for the specified covered equipment.

Therefore, DOE has not changed its preliminary review set forth in the July 2008 NODA. Because the amendments for this type of equipment set out in ASHRAE Standard 90.1–2007 do not appear to have changed the efficiency level, DOE is leaving the existing Federal energy conservation standards in place for gas-fired commercial warm air furnaces; these standards specify a thermal efficiency of 80 percent using the definition of ''thermal efficiency'' established by DOE in the October 2004 final rule and presented in subpart D to 10 CFR part 431. 73 FR 40770, 40776 (July 16, 2008). DOE is not conducting any further analysis on gas-fired commercial warm air furnaces.

2. Oil-Fired Commercial Warm Air Furnaces

The Federal energy conservation standard for commercial oil-fired warm air furnaces corresponds to the efficiency level in ASHRAE Standard 90.1–1999, which specifies that for equipment with a capacity of 225,000 [British thermal units per hour] (Btu/h) or more, the thermal efficiency at the maximum rated capacity (rated maximum input) must be no less than 81 percent. 10 CFR 431.77(b). The Federal energy conservation standard for oil-fired commercial warm air furnaces applies to equipment manufactured on or after January 1, 1994. 10 CFR 431.77.

The efficiency level in ASHRAE Standard 90.1–2007 specifies a minimum thermal efficiency of 81 percent. ASHRAE did not change the efficiency levels for oil-fired commercial warm air furnaces, but ASHRAE added three design requirements. ASHRAE Standard 90.1–2007 now specifies that commercial, oil-fired, warm air furnaces must use an interrupted or intermittent ignition device, have jacket losses no greater than 0.75 percent of the input rating, and use a power vent or flue damper.

DOE published a final rule in the **Federal Register** on March 7, 2007, which states that the statutory trigger that requires DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to change a standard by increasing the energy efficiency of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313(a)(6)(A)(i)). 72 FR 10038, 10042.

In practice, 42 U.S.C. 6313 generally allows ASHRAE Standard 90.1 to set energy efficiency levels for equipment as a model building code and directs DOE to use these efficiency levels as the basis for maintaining consistent, uniform national energy conservation standards for the same equipment, provided all other applicable statutory requirements are met. DOE stated in the July 2008 NODA that if ASHRAE has not changed an efficiency level for a class of equipment subject to 42 U.S.C. 6313, DOE does not have authority to consider amending the uniform national standard at the time of publication of the amended ASHRAE Standard 90.1. 73 FR 40770, 40777 (July 16, 2008). DOE also pointed out that although ASHRAE added design requirements in ASHRAE Standard 90.1–2007, it did not change the efficiency levels for oil-fired commercial warm air furnaces. *Id.* Therefore, DOE tentatively concluded that it does not have authority to amend the uniform national standard for this equipment. *Id.*

In response to the preliminary review of oil-fired commercial warm air furnaces set forth in the July 2008 NODA, the Advocates Comment made the same assertion regarding the three design requirements added by ASHRAE as it did for gas-fired commercial warm air furnaces above. (The Advocates Comment, No. 4 at p. 7)

DOE does not have any reason to treat oil-fired commercial warm air furnaces any differently than gas-fired commercial warm air furnaces. The language of EPCA authorizes DOE to establish a performance standard or a single design standard. As such, DOE is concluding a standard for oil-fired commercial warm air furnaces that establishes both a performance standard and a design requirement is beyond the scope of DOE's legal authority, as it did with gas-fired commercial warm air furnaces.

Therefore, DOE has not changed its preliminary review set forth in the July 2008 NODA. Because the amendments for this equipment type set out in

ASHRAE Standard 90.1–2007 did not change the efficiency level for oil-fired commercial warm air furnaces, DOE is leaving the existing Federal energy conservation standards in place for this equipment; these standards specify a thermal efficiency of 81 percent. Accordingly, DOE is not conducting any further analysis on oil-fired commercial warm air furnaces.

B. Commercial Package Air-Conditioning and Heating Equipment

EPCA, as amended, defines ''commercial package air-conditioning and heating equipment'' as ''air-cooled, water-cooled, evaporatively cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application.'' (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA also defines ''small,'' ''large,'' and ''very large commercial package air-conditioning and heating equipment'' based on the equipment's rated cooling capacity. (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) Specifically, the term ''small commercial package air-conditioning and heating equipment'' means ''commercial package air-conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity).'' (42 U.S.C. 6311(8)(B); 10 CFR 431.92) The term ''large commercial package air-conditioning and heating equipment'' means ''commercial package air-conditioning and heating equipment that is rated: (i) At or above 135,000 Btu per hour and (ii) below 240,000 Btu per hour (cooling capacity).'' (42 U.S.C. 6311(8)(C); 10 CFR 431.92) The term ''very large commercial package air-conditioning and heating equipment'' means ''commercial package air-conditioning and heating equipment that is rated: (i) at or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity).'' (42 U.S.C. 6311(8)(D); 10 CFR 431.92)

The amendments in ASHRAE Standard 90.1–2007 include: (1) Identifying separate efficiency levels for three-phase through-the-wall air-cooled air conditioners and heat pumps and three-phase, small-duct, high-velocity air-cooled air conditioners and heat pumps; (2) adding equipment classes corresponding efficiency levels for commercial package air-cooled air conditioners with a cooling capacity at or above 760,000 Btu/h and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h; and (3) changing the efficiency levels for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h, thereby triggering DOE to further review ASHRAE's changes as presented below.

1. Three-Phase Through-the-Wall Air-Cooled Air Conditioners and Heat Pumps

ASHRAE Standard 90.1–2007 identifies efficiency levels for three-phase through-the-wall air-cooled air conditioners and heat pumps, single-package and split systems, with a cooling capacity of no greater than 30,000 Btu/h. The efficiency levels specified by ASHRAE Standard 90.1–2007 include a seasonal energy efficiency ratio of 12.0 for cooling mode and a heating seasonal performance factor of 7.4 for equipment manufactured on or after January 23, 2010.[7] ASHRAE aligned these efficiency levels and its corresponding effective dates with the efficiency levels established in EPCA for single-phase residential versions of the same products.

Neither EPCA nor DOE has established a specific definition for commercial ''through-the-wall air-cooled air conditioners and heat pumps.'' Residential through-the-wall air-cooled air conditioners and heat pumps are consumer products covered as ''central air conditioners'' under EPCA, as amended, which are defined at 42 U.S.C. 6291(21) and 10 CFR 430.2. Residential through-the-wall air-cooled air conditioners and heat pumps are by definition single-phase products (*Id.*), whereas the commercial through-the-wall air-cooled air conditioners and heat pumps mentioned in ASHRAE Standard 90.1–2007 are three-phase products. In DOE's regulations, a residential ''[t]hrough-the-wall air conditioner and heat pump'' means ''a central air conditioner or heat pump that is designed to be installed totally or partially within a fixed-size opening in an exterior wall * * *'' 10 CFR 430.2. Furthermore to be covered, this equipment (1) must be manufactured before January 23, 2010; (2) must not be weatherized; (3) must be clearly and permanently marked for installation only through an exterior wall; (4) have a rated cooling capacity no greater than 30,000 Btu/h; (5) exchange all of its outdoor air across a single surface of the equipment cabinet; and (6) have a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface described in paragraph (5) of this definition. *Id.*

In terms of equipment construction, commercial and residential through-the-wall air-cooled air conditioners and heat pumps use the same components in the same configurations to provide space cooling and heating. Commercial versions of through-the-wall air-cooled air conditioners and heat pumps are essentially the same as residential versions, except that they are powered using three-phase electric power.

EPCA does not separate three-phase through-the-wall air-cooled air conditioners and heat pumps from other types of small commercial package air-conditioning and heating equipment in its definitions. Therefore, EPCA's definition of ''small commercial package air-conditioning and heating equipment'' would include three-phase through-the-wall air-cooled air conditioners and heat pumps. Although EPCA does not use the term ''three-phase through-the-wall air-cooled air conditioners and heat pumps,'' the three-phase versions of this equipment, regardless of cooling capacity, fall within the definition of ''small commercial package air-conditioning and heating equipment.'' (42 U.S.C. 6311(8)(A)–(B)) There is no language in EPCA to indicate that three-phase through-the-wall air-cooled air conditioners and heat pumps are a separate class of covered equipment.

The Federal energy conservation standards for three-phase commercial package air conditioners and heat pumps less than 65,000 Btu/h were established by EISA 2007 for such products manufactured on or after June 19, 2008. Specifically, section 314(b)(4)(C) of EISA 2007 amended section 342(a)(7) of EPCA (42 U.S.C. 6313(a)(7)) by adding new provisions for three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h. (42 U.S.C. 6313(a)(7)(D)) These provisions in EISA 2007 mandate SEERs for cooling mode and HSPFs for heating mode of air-cooled three-phase electric central air conditioners and central air-conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h.[8]

[7] ASHRAE provides the same requirement for single-phase and three-phase through-the-wall air-cooled air conditioners and heat pumps used in covered commercial buildings, but points out that single-phase products are regulated as residential products under 10 CFR 430.32(c)(2).

[8] Section 314(b)(4)(C) of EISA 2007 specifies for ''equipment manufactured on or after the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007—

(i) the minimum seasonal energy efficiency ratio of air-cooled 3-phase electric central air

Three-phase through-the-wall air-cooled air conditioners and heat pumps are a smaller subset of three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h, and were not explicitly excluded from the standards in section 314(b)(4)(C) of EISA 2007. DOE noted in the July 2008 NODA that since EISA 2007 set these standards, DOE must follow them, and they are more stringent than the levels contained in ASHRAE Standard 90.1–2007 for three-phase through-the-wall air-cooled air conditioners and heat pumps. 73 FR 40770, 40778 (July 16, 2008). Accordingly, DOE affirmed that the EISA 2007 efficiency levels for small commercial package air-conditioning and heating equipment less than 65,000 Btu/h, as set forth at 42 U.S.C. 6313(a)(7)(D), apply to three-phase through-the-wall air-cooled air conditioners and heat pumps with a cooling capacity no greater than 30,000 Btu/h. *Id.*

In response to the preliminary conclusions set forth in the July 2008 NODA, AHRI stated that the minimum energy efficiency standards for small commercial package air conditioning and heating equipment less than 65,000 Btu/h specified in ASHRAE Standard 90.1–2007 were initially amended by addendum f to ASHRAE/IES 90.1–2004 in 2005, well before Congress enacted EISA 2007. (AHRI, No. 3 at pp. 1–2) AHRI further commented ''[t]he intent behind addendum f was to harmonize the minimum energy efficiency standards, product classes and effective dates for the three-phase products covered by ASHRAE Standard 90.1 with the respective efficiency standards, product classes and effective dates established under EPCA for single-phase residential products.'' *Id.* AHRI further noted that it believes the intent of Congress was very clear in EISA 2007 (*i.e.*, to harmonize the standard for three-phase commercial products with cooling capacities less than 65,000 Btu/h with that of the single-phase residential products of the same capacity). Further, AHRI commented that Congress never intended to require a minimum 13 SEER/7.7 HSPF standards for three-phase, through-the-wall, air-cooled air conditioners and heat pumps; DOE itself found it impossible to meet that efficiency level during the last rulemaking on central air conditioners and heat pumps. (AHRI, No. 3 at pp. 1–2)

AHRI also stated its belief that DOE has the authority to establish a separate product class for three-phase, through-the-wall, air-cooled air conditioners and heat pumps. (AHRI, No. 2 at p. 2) AHRI pointed out that prior to the last rulemaking on residential central air conditioners (*i.e.*, single-phase, air-cooled air conditioners and heat pumps), EPCA did not specifically address through-the-wall products. AHRI asserted it was DOE that established the product class when it determined that through-the-wall products had unique space-constraint challenges that warranted a lower minimum efficiency standard than conventional systems. (AHRI, No. 3 at p. 2) AHRI commented that DOE can and should do the same for commercial three-phase versions of these products. AHRI also stated that DOE can adopt the proposed ASHRAE 90.1–2007 efficiency levels for three-phase through-the-wall air-cooled air conditioners and heat pumps because the efficiency levels were developed and justified by DOE through a lengthy rulemaking process (*i.e.*, the 2001 rulemaking on central air conditioners and heat pumps [9]). Lastly, AHRI pointed out that due to space-constraint issues, three-phase through-the-wall air-cooled air conditioners and heat pumps cannot meet the 13 SEER/7.7 standard established by EISA 2007. AHRI stated that manufacturers of three-phase commercial through-the-wall products would have no choice but to file for a waiver if the ASHRAE Standard 90.1–2007 efficiency levels were not adopted by DOE for this equipment class. (AHRI, No. 3 at p. 2)

DOE does not agree with AHRI's assertions regarding three-phase through-the-wall air-cooled air conditioners and heat pumps. Specifically, while ASHRAE may have been trying to harmonize the definitions, equipment classes, and energy conservation standards for equipment classes of similar types with their residential counterparts, the energy conservation standards specified by EISA 2007 supersede the efficiency levels in ASHRAE Standard 90.1–2007. EISA 2007 did not explicitly exclude three-phase through-the-wall air-cooled air conditioners and heat pumps from its regulations for the larger class of small commercial package air conditioning and heating equipment.

As to AHRI's assertion regarding establishing a separate equipment class for these subsets of equipment, DOE agrees with AHRI that DOE has the authority to adopt a separate equipment class for this equipment when initially established by ASHRAE Standard 90.1–2007. However, DOE does not have the authority to adopt a less stringent efficiency level for a separate equipment class, including three-phase through-the-wall air-cooled air conditioners and heat pumps in contravention of the prescriptive standard levels set by EISA 2007. Effectively, the efficiency levels in ASHRAE Standard 90.1–2007 are less stringent than the energy conservation standards specified by EISA 2007 for three-phase, through-the-wall, air-cooled air conditioners and heat pumps. As DOE stated in the July 2008 NODA, DOE is affirming in today's notice that the EISA 2007 efficiency levels set forth in 42 U.S.C. 6313(a)(7)(D) for small commercial package air-conditioning and heating equipment less than 65,000 Btu/h apply to three-phase through-the-wall air-cooled air conditioners and heat pumps with a cooling capacity no greater than 30,000 Btu/h. 73 FR 40770, 40778 (July 16, 2008). DOE does not have authority to grant exception relief from the prescriptive standard levels set by EISA 2007 for three-phase commercial through-the-wall air conditioners and heat pumps, nor can it provide a waiver from the test procedure as a means of avoiding this statutory requirement.

2. Three-Phase, Small-Duct, High-Velocity Air-Cooled Air Conditioners and Heat Pumps

ASHRAE Standard 90.1–2007 identifies efficiency levels for three-phase small-duct, high-velocity (SDHV) air-cooled air conditioners and heat pumps, both single-package and split systems, with a cooling capacity less than 65,000 Btu/h.[10] The efficiency levels specified by ASHRAE Standard 90.1–2007 include a SEER of 10.0 for cooling mode and a HSPF of 6.8 for

conditioners and central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 13.0;

(ii) the minimum seasonal energy efficiency ratio of air-cooled 3-phase electric central air conditioners and central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 13.0;

(iii) the minimum heating seasonal performance factor of air-cooled 3-phase electric central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 7.7; and

(iv) the minimum heating seasonal performance factor of air-cooled 3-phase electric central air-conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 7.7.'' (42 U.S.C. 6313(a)(7)(D)).

[9] DOE published a final rule amending the energy conservation standards for residential central air conditioners and heat pumps on January 22, 2001. 66 FR 7170 (Jan. 22, 2001).

[10] ASHRAE Standard 90.1–2007 includes efficiency levels for three-phase and single-phase SDHV air-cooled air conditioners and heat pumps used in commercial buildings. ASHRAE Standard 90.1–2007 also includes a footnote to these provisions, which indicates that the single-phase versions of this equipment are regulated as residential products under 10 CFR 430.32(c)(2).

equipment. ASHRAE aligned these efficiency levels and the corresponding effective dates with the efficiency levels established in EPCA for single-phase residential versions of the same products.[11]

Just as with three-phase through-the-wall air-cooled air conditioners and heat pumps, neither EPCA nor DOE has established a specific definition for commercial ''three-phase SDHV air conditioners and heat pumps.'' In its regulations, DOE defines a residential ''SDHV air-cooled air conditioner or heat pump'' as ''a heating and cooling product that contains a blower and indoor coil combination that: (1) Is designed for and produces at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM [cubic feet per minute] per rated ton of cooling; and (2) When applied in the field, uses high-velocity room outlets generally greater than 1,000 fpm [feet per minute] which have less than 6.0 square inches of free area.'' 10 CFR 430.2.

In terms of equipment construction, commercial and residential SDHV air conditioners and heat pumps utilize the same components in the same configurations to provide space cooling and heating. Commercial versions of SDHV systems are essentially the same as residential versions powered with single-phase electric power, except that they are powered using three-phase electric power.

EPCA does not separate three-phase SDHV air conditioners and heat pumps from other types of small commercial package air-conditioning and heating equipment in its definitions. Therefore, EPCA's definition of ''small commercial package air-conditioning and heating equipment'' would include three-phase SDHV air conditioners and heat pumps. Although EPCA does not use the term ''three-phase SDHV air conditioners and heat pumps,'' the three-phase versions of this equipment, regardless of cooling capacity, fall within the definition of ''small commercial package air-conditioning and heating equipment.'' (42 U.S.C. 6311(8)(A)–(B)) There is no language in EPCA to indicate that three-phase SDHV air conditioners and heat pumps are a separate type of covered equipment.

The Federal energy conservation standards for three-phase, commercial package air conditioners and heat pumps less than 65,000 Btu/h were established by EISA 2007 for products manufactured on or after June 19, 2008. Specifically, section 314(b)(4)(C) of EISA 2007 amended section 342(a) of EPCA (42 U.S.C. 6313(a)) by adding new provisions for three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h. (42 U.S.C. 6313(a)(7)(D)) As mentioned previously, this provision in EISA 2007 mandates seasonal energy efficiency ratios for cooling mode and heating seasonal performance factors for heating mode of air-cooled three-phase electric central air conditioners and central air-conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h. (42 U.S.C. 6313(a)(7)(D)) Three-phase SDHV air conditioners and heat pumps are a smaller subset of three-phase commercial package air conditioners with a cooling capacity of less than 65,000 Btu/h and were not explicitly excluded from the standards in section 314(b)(4)(C) of EISA 2007. Because EISA 2007 set such standards, and because they are more stringent than the levels contained in ASHRAE Standard 90.1–2007 for those products, DOE must continue to implement the EISA 2007 standards and will not consider amended standard levels based on ASHRAE's action.

Thus, manufacturers of three-phase SDHV equipment must follow the energy conservation standards in EISA 2007. DOE affirms that the EISA 2007 efficiency levels for three-phase small commercial package air-conditioning and heating equipment less than 65,000 Btu/h apply to three-phase SDHV air-cooled air conditioners and heat pumps with a cooling capacity less than 65,000 Btu/h. Accordingly, DOE is not conducting any further analysis on three-phase SDHV equipment. DOE notes that it does not have authority to grant exception relief from the prescriptive standard levels set by EISA 2007 for three-phase SDHV air-cooled air conditioners and heat pumps, nor can it provide a waiver from the test procedure as a means of avoiding this statutory requirement.

3. Commercial Package Air-Cooled Air Conditioners With a Cooling Capacity at or Above 760,000 Btu per Hour

EPCA specifies energy conservation standards for small (cooling capacities at or above 65,000 and less than 135,000 Btu/h), large (cooling capacities at or above 135,000 and less than 240,000 Btu/h), and very large (cooling capacities at or above 240,000 and less than 760,000 Btu/h) commercial package air-cooled air conditioners. (42 U.S.C. 6313(a)(1)–(2), (7)–(9); 10 CFR 431.97) However, there are no Federal energy conservation standards for commercial package air-cooled air conditioners with a cooling capacity at or above 760,000 Btu/h. In contrast, ASHRAE Standard 90.1–2007 sets the energy efficiency levels for commercial package air-cooled air conditioners with a cooling capacity at or above 760,000 Btu/h at 9.7 EER for equipment with electric resistance heating, and 9.5 EER for equipment with any other type of heating or without heating. The efficiency level in ASHRAE Standard 90.1–2007 applies to equipment manufactured on or after January 1, 2010.

Units with capacities at or above 760,000 Btu/h fall outside the definitions of the small, large, and very large commercial package air-cooled air conditioner equipment classes established in EPCA. (42 U.S.C. 6311(8)(A)–(D); 10 CFR 431.92) Therefore, DOE has concluded that it does not have the authority to review the efficiency level for that equipment. Accordingly, DOE is not conducting any further analysis on commercial package air-cooled air conditioners with a cooling capacity at or above 760,000 Btu/h.

4. Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps With a Cooling Capacity at or Above 135,000 Btu/h and Less Than 240,000 Btu/h

The Federal energy conservation standard for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h requires an EER no less than 11.0 for equipment manufactured on or after October 29, 2004. 10 CFR 431.97, Table 1.

ASHRAE Standard 90.1–2007 includes the same efficiency level for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h that use electric

[11] DOE notes that the residential versions of SDHV are subject to an exception issued by DOE's Office of Hearing and Appeals (OHA). On October 14, 2004, OHA granted an exception to SpacePak and Unico, Inc., authorizing them to manufacture SDHV systems (as defined in 10 CFR 430.2) with a SEER of no less than 11.0 and a heating seasonal performance factor (HSPF) of 6.8. The exception relief will remain in effect until DOE modifies the general energy efficiency standard for central air conditioners and establishes a different standard for SDHV systems that complies with EPCA. However, this exception only applies to the residential single-phase SDHV systems and would, therefore, exclude three-phase SDHV equipment. (DOE's Office of Hearing and Appeals, Decision and Order: Applications for Exception (Oct. 14, 2004) (Available at: *http://www.oha.doe.gov/cases/ee/tee0010.pdf.*))

resistance heating (*i.e.*, an EER no less than 11.0). However, ASHRAE Standard 90.1–2007 specifies a different efficiency level for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h that use any type of heating other than electric resistance (*i.e.*, an EER no less than 10.8).

DOE reviewed a final rule published on January 12, 2001 (hereafter referred to as the January 2001 final rule) which considered ASHRAE Standard 90.1–1999 to determine the efficiency levels applicable to water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h. 66 FR 3336, 3340 (Jan. 12, 2001). DOE adopted the efficiency levels specified by ASHRAE Standard 90.1–1999 for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h in the January 2001 final rule. *Id.* at 33340. The January 2001 final rule did not establish different efficiency levels for different types of supplemental heating systems associated with this equipment. *Id.* All large water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps were subject to the same efficiency level of 11.0 EER regardless of heating type. ASHRAE Standard 90.1–1999 did establish different efficiency levels applicable to water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h for different types of supplemental heating systems.

DOE has concluded that the ASHRAE Standard 90.1–2007 efficiency levels for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h that utilize electric resistance heating or no heating would maintain the efficiency level in the current Federal energy conservation standard. ASHRAE Standard 90.1–2007 would effectively lower the efficiency levels (*i.e.*, EER) required by EPCA and allow increased energy consumption for equipment that utilize any type of heating other than electric resistance. Not only has ASHRAE Standard 90.1–2007 not increased the efficiency levels for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 135,000 Btu/h and less than 240,000 Btu/h, but it could result in backsliding for those products that utilize any type of heating other than electric resistance. Accordingly, DOE is not conducting any further analysis on water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a capacity at or above 135,000 Btu/h and less than 240,000 Btu/h.

5. Water-Cooled and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps With a Cooling Capacity at or Above 240,000 Btu/h and Below 760,000 Btu/h

Under EPCA, ''commercial package air-conditioning and heating equipment'' means ''air-cooled, water-cooled, evaporatively cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application.'' (42 U.S.C. 6311(8)(A); 10 CFR 431.92) EPCA goes on to define ''very large commercial package air-conditioning and heating equipment'' as commercial package air-conditioning and heating equipment that is rated at or above 240,000 Btu per hour and below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92) Although water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h fall within the definition of very large commercial package air-conditioning and heating equipment, EPCA does not specify Federal energy conservation standards for this equipment class. (EPCA set standards for air-cooled systems only, under 42 U.S.C. 6313(a)(7)–(9).) ASHRAE added this new equipment class to ASHRAE Standard 90.1–2007, setting efficiency levels at 11.0 EER for equipment with electric resistance heating or without heating, and at 10.8 EER for equipment with all other types of heating. Under EPCA, DOE must either adopt the efficiency level specified in ASHRAE Standard 90.1–2007 for this new class of equipment, or consider a more stringent level that would result in significant additional energy savings and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6))

For the July 2008 NODA, DOE reviewed the market for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps and found that manufacturers offer few models. 73 FR 40770, 40779–80 (July 16, 2008). For this study, DOE surveyed the AHRI Directory of Certified Product Performance, but did not identify any equipment on the market with a cooling capacity at or above 240,000 Btu/h. *Id.* DOE stated in the July 2008 NODA that there are no energy savings associated with this class because there is no equipment being manufactured in this class, and therefore, it is not possible to assess the potential for additional energy savings beyond the levels anticipated in ASHRAE Standard 90.1–2007. *Id.* Thus, DOE did not perform a potential energy-savings analysis on this equipment type. DOE specifically sought comment from interested parties on the market and energy savings potential for this equipment type in the July 2008 NODA. 73 FR 40770, 40780 and 40791 (July 16, 2008).

In response to the March 2008 NODA, DOE did not receive any comments on the market for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h. In absence of a market for water-cooled and evaporatively-cooled equipment in the given capacity range, DOE cannot perform an economic and energy savings analysis.

However, DOE is proposing to adopt the ASHRAE Standard 90.1–2007 efficiency levels for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h as required by EPCA. (42 U.S.C. 6313(a)(6)(A)(ii)) Even though ASHRAE specified efficiency levels for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h, DOE is specifying an upper bound to the cooling capacity since DOE's authority under the very large commercial package air-conditioning and heating equipment definition only covers equipment with cooling capacities less than 760,000 Btu/h. (42 U.S.C. 6311(8)(D)(ii)) DOE is proposing to add subsection (d) to 10 CFR Part 431.97, which will specify the proposed standards and effective dates for this equipment. These standards would be applicable to any water-cooled and evaporatively-cooled commercial package air conditioner or heat pump with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h manufactured on or after the effective date, which is three years after the effective date specified in ASHRAE

Standard 90.1–2007. (42 U.S.C. 6313(a)(6)(D)(ii)) Since ASHRAE Standard 90.1–2007 does not explicitly set an effective date for this equipment, DOE is interpreting the effective date of amended standards to be three years from the publication of ASHRAE Standard 90.1–2007 (*i.e.*, January 10, 2011).

C. Commercial Packaged Boilers

EPCA defines a ''packaged boiler'' as ''a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.'' (42 U.S.C. 6311(11)(B)) In its regulations, DOE further refined the ''packaged boiler'' definition to exclude a boiler that is custom designed and field constructed. 10 CFR 431.102. Additionally, if the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location. *Id.* In the marketplace, there are various different types of commercial packaged boilers, which can be distinguished based on the input capacity size (*i.e.*, small or large), fuel type (*i.e.*, oil or gas), output (*i.e.*, hot water or steam), and draft type (*i.e.*, natural draft or other).

However, the current Federal energy conservation standards separate commercial packaged boilers only by the type of fuel used by the boiler, creating two equipment classes: (1) Gas-fired, and (2) oil-fired. (42 U.S.C. 6313(a)(4)(C)–(D); 10 CFR 431.87) As set forth below, EPCA specified minimum Federal standards for commercial packaged boilers manufactured on or after January 1, 1994. *Id.* The minimum combustion efficiency at the maximum rated capacity of a gas-fired packaged boiler with capacity of 300,000 Btu/h (300 kBtu/h) or more must be 80 percent. (42 U.S.C. 6313(a)(4)(C); 10 CFR 431.87(a)) The minimum combustion efficiency at the maximum rated capacity of an oil-fired packaged boiler with capacity of 300,000 Btu/h or more must be 83 percent. (42 U.S.C. 6313 (a)(4)(D); 10 CFR 431.87(b))

In contrast, ASHRAE has adopted a different approach when considering commercial packaged boilers, as described below. ASHRAE Standard 90.1–2007 further divided these two equipment classes into the following ten classes:

- Small gas-fired hot water boilers;
- Small gas-fired steam, all except natural draft boilers;
- Small gas-fired steam, natural draft boilers;
- Small oil-fired hot water boilers;
- Small oil-fired steam boilers;
- Large gas-fired hot water boilers;
- Large gas-fired steam, all except natural draft boilers;
- Large gas-fired steam, natural draft boilers;
- Large oil-fired hot water boilers; and
- Large oil-fired steam boilers.

Table IV.1 shows the ten equipment classes and efficiency levels established by ASHRAE.

TABLE IV.1—ASHRAE STANDARD 90.1–2007 ENERGY EFFICIENCY LEVELS FOR COMMERCIAL PACKAGED BOILERS

Equipment type	Size category (Input kBtu/h)	ASHRAE standard 90.1–2007 (effective 3/2/2010)*	ASHRAE standard 90.1–2007 (effective 3/2/2020)*
Small Gas-fired Hot Water	300–2,500	E_T = 80%	E_T = 80%
Small Gas-fired Steam All Except Natural Draft	300–2,500	E_T = 79%	E_T = 79%
Small Gas-fired Steam Natural Draft	300–2,500	E_T = 77%	E_T = 79%
Small Oil-fired Hot Water	300–2,500	E_T = 82%	E_T = 82%
Small Oil-fired Steam	300–2,500	E_T = 81%	E_T = 81%
Large Gas-fired Hot Water	>2,500	E_C = 82%	E_C = 82%
Large Gas-fired Steam All Except Natural Draft	>2,500	E_T = 79%	E_T = 79%
Large Gas-fired Steam Natural Draft	>2,500	E_T = 77%	E_T = 79%
Large Oil-fired Hot Water	>2,500	E_C = 84%	E_C = 84%
Large Oil-fired Steam	>2,500	E_T = 81%	E_T = 81%

*E_C = combustion efficiency; E_T = thermal efficiency.

Of particular relevance here, ASHRAE changed the metric for determining energy efficiency for five equipment classes of small commercial packaged boilers and three equipment classes of large commercial packaged boilers in ASHRAE Standard 90.1–2007. Whereas the Federal energy conservation standards for these eight equipment classes are expressed in terms of combustion efficiency (42 U.S.C. 6313(a)(4)), the efficiency levels in ASHRAE Standard 90.1–2007 are expressed in terms of thermal efficiency. ASHRAE initially attempted to transition small commercial boilers from an energy conservation standard using the combustion efficiency metric to a standard using the thermal efficiency metric the last time the efficiency levels for commercial packaged boilers in ASHRAE Standard 90.1 were revised, in 1999 (*i.e.*, ASHRAE Standard 90.1–1999). However, DOE was unable to accept those efficiency levels due to EPCA's anti-backsliding clause, which resulted in DOE leaving the existing standard levels in place in terms of combustion efficiency, as explained below. 72 FR 10038, 10043 (March 7, 2007). The sections below detail the following: (1) The differences between the thermal and combustion efficiency metrics; (2) the analysis done for DOE's review of small commercial packaged boiler efficiency levels in ASHRAE Standard 90.1–1999; (3) the market analysis developed for DOE's current review of the efficiency levels in ASHRAE Standard 90.1–2007; (4) the preliminary conclusions regarding the market analysis; and (5) DOE's conclusions regarding the efficiency levels contained in ASHRAE Standard 90.1–2007 for commercial packaged boilers.

1. Efficiency Metric Description (Combustion Efficiency and Thermal Efficiency)

In general, the energy efficiency of a product is a function of the relationship between the product's output of services and its energy input. A boiler's output of services is measured largely by the energy content of its output (steam or hot water). Consequently, its efficiency is understood to be the ratio between its energy output and its energy input, with the energy output being calculated as the energy input minus the energy lost in producing the output. A boiler's energy losses consist of energy that escapes through its flue (commonly referred to as ''flue losses''), and of energy that escapes into the area

surrounding the boiler (commonly referred to as jacket losses). However, the combustion efficiency descriptor used for commercial packaged boilers in EPCA only accounts for flue losses, and is defined as ''100 percent minus percent flue loss.'' (42 U.S.C. 6313(a)(4)(C)–(D); 10 CFR 431.82) The thermal efficiency descriptor used in ASHRAE Standard 90.1–2007 accounts for jacket losses as well as flue losses, and can be considered combustion efficiency minus jacket loss. Because all boilers will have at least some jacket losses (even if small) and because thermal efficiency takes these losses into account, the thermal efficiency for a particular boiler, as measured under the same set of conditions, must necessarily be lower than its combustion efficiency.

While the above-described relationship exists between combustion and thermal efficiencies, there is no direct mathematical correlation between these two measures of efficiency. The factors that contribute to jacket loss (*e.g.*, the boiler's design and materials) have little or no direct bearing on combustion efficiency. The lack of correlation between combustion efficiency and thermal efficiency causes difficulties in comparing an energy conservation standard that is based on thermal efficiency to an energy conservation standard based on combustion efficiency. However, when DOE last evaluated the change in efficiency metric for commercial packaged boilers in response to ASHRAE Standard 90.1–1999, it developed a methodology to determine quantitatively whether backsliding could occur, as explained in section IV.C.2 below. DOE uses the methodology developed for determining backsliding in DOE's review of ASHRAE Standard 90.1–1999, along with the consideration of several other factors (described in detail in the sections below) to evaluate the appropriateness of the efficiency levels for commercial packaged boilers specified by ASHRAE Standard 90.1–2007.

2. Analysis of Energy Efficiency Levels in ASHRAE Standard 90.1–1999

Prior to publishing ASHRAE Standard 90.1–2007, the last time ASHRAE revised the efficiency levels for commercial packaged boilers in ASHRAE Standard 90.1 occurred in 1999 (ASHRAE Standard 90.1–1999). DOE reviewed the efficiency levels in ASHRAE Standard 90.1–1999 for small commercial packaged boilers and issued a Notice of Data Availability (NODA) in March 2006 (here after referred to the March 2006 NODA) to present its findings. 71 FR 12634 (March 13, 2006). In the March 2006 NODA, DOE examined whether the thermal efficiencies for small gas-fired and small oil-fired commercial packaged boilers specified in ASHRAE Standard 90.1–1999 would result in a decrease in the required efficiency for particular piece of equipment compared to the Federal energy conservation standard established by EPCA. *Id.*

For the 2006 analysis, DOE examined the average thermal efficiency of small commercial packaged boiler models that were minimally compliant with the Federal standard. Id. DOE defined ''minimally compliant'' as being within one percent of the minimum combustion efficiency set by EPCA. 71 FR 12634, 12684 (March 13, 2006). DOE specifically examined the minimally complying boilers because the anti-backsliding clause in EPCA mandates that DOE not prescribe a standard that ''decreases the minimum required energy efficiency.'' (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) [12] DOE determined that it would be appropriate to examine the boilers currently at the minimum required combustion efficiency established in EPCA to determine whether the potential adoption of the thermal efficiency levels in ASHRAE Standard 90.1, as Federal minimums, would allow for a decrease in the efficiency of those models.

DOE calculated the average thermal efficiency of the boilers classified as minimally compliant and compared it to the thermal efficiency specified in ASHRAE Standard 90.1–1999. DOE found that the thermal efficiency levels for small commercial packaged boilers specified in ASHRAE Standard 90.1–1999 were significantly lower (*i.e.*, 1.8 percent lower for small gas-fired boilers and 3.1 percent lower for small oil-fired boilers) than the average thermal efficiency of the minimally complying models on the market. 71 FR 12634, 12640 (March 13, 2006). DOE stated in the March 2006 NODA that this analysis did not establish directly that the small boiler efficiency levels in Standard 90.1–1999 were lower than those in EPCA because EPCA's combustion efficiency standards for this equipment set maximum amounts of flue losses, but do not regulate jacket losses. *Id.* Thermal efficiency is a function of both flue losses (*i.e.*, combustion efficiency) and jacket losses. 71 FR 12634, 12640 (March 13, 2006). Since these two losses can be independent of one another, in theory, a small boiler could meet or exceed EPCA's applicable combustion efficiency standard, but have sufficiently large jacket losses that cause it to have a thermal efficiency lower than the efficiency levels specified in ASHRAE Standard 90.1–1999. *Id.* Thus, DOE stated that adoption of ASHRAE Standard 90.1–1999 thermal efficiency levels would not have directly decreased the minimum combustion efficiencies required in EPCA for small boilers. *Id.* However, the adoption of the ASHRAE Standard 90.1–1999 thermal efficiency levels for small boilers would have had the effect of lowering minimum combustion efficiency levels required by EPCA. *Id.*

DOE outlined its basis for rejecting the efficiency levels for small commercial boilers specified by ASHRAE Standard 90.1–1999 in the March 2006 NODA. The basis for DOE's decision was as follows:

> The thermal efficiency of a small commercial boiler is a function of (1) the manufacturer's compliance with the applicable EPCA combustion efficiency standard and (2) decisions it makes independent of EPCA concerning the boiler's design, materials, and other features that affect jacket losses. Although EPCA does not regulate jacket losses, for both small gas-fired and oil-fired commercial packaged boilers with relatively low combustion efficiencies, manufacturers restricted jacket losses to levels that kept thermal efficiencies, within an average of 2.6 percentage points below their combustion efficiencies. [DOE] does not believe its adoption of Standard 90.1–1999's thermal efficiency levels for small commercial boilers would result in manufacturers' increasing the amount of jacket losses for this equipment. No reason is readily apparent as to why manufacturers would alter their current practices to make equipment that has greater jacket losses, even if mandatory thermal efficiency levels were set below the levels that equipment was currently achieving. However, setting thermal efficiency standards at levels lower than the thermal efficiencies of existing equipment could potentially result in equipment with lower combustion efficiencies. This allows for the possibility of equipment having lower efficiencies than permitted by EPCA, meaning that the current Federal minimum (required) efficiency would be decreased.
>
> For these reasons, it appears to [DOE] that EPCA precludes it from prescribing as amended Federal energy conservation standards the ASHRAE Standard 90.1–1999 thermal efficiency levels (one for gas-fired and the other for oil-fired equipment) for small commercial packaged boilers because each would decrease the minimum required efficiency of the equipment. (42 U.S.C. 6313(a)(6)(B)(ii))

71 FR 12634; 12641 (March 13, 2006).

[12] At the time, a different anti-backsliding clause was in effect for commercial boilers, although it contained language identical to that quoted here in the text (previously, 42 U.S.C. 6313(a)(6)(B)(ii) prior to the enactment of EISA 2007).

3. Analysis of Energy Efficiency Levels in ASHRAE Standard 90.1–2007

For its current analysis of the efficiency levels for commercial packaged boilers in ASHRAE Standard 90.1–2007, DOE based the preliminary market assessment and potential energy savings analysis performed for the July 2008 NODA solely on the information provided by the January 2008 edition of the I=B=R Ratings for Boilers, Baseboard Radiation, Finned Tube (Commercial) Radiation and Indirect-Fired Water Heaters[13] (referred to hereafter as the January 2008 I=B=R Directory).

Regarding the preliminary analysis performed in the July 2008 NODA, AHRI stated its belief that the January 2008 I=B=R Directory is incomplete because participation in the certification program and listing in the directory is voluntary and some manufacturers do not participate. (AHRI, No. 3 at p.3) Burnham Hydronics made a similar assertion, pointing out that Bryan Steam's (another Burnham Holdings subsidiary) boilers are not listed in the January 2008 I=B=R Directory (Burnham Hydronics, No. FDMS DRAFT 0003 at pp. 1–2).

In response to these comments and in an effort to enhance its analysis, DOE made further efforts to identify commercial boiler manufacturers along with commercial boiler equipment produced by these manufacturers that are not included in the January 2008 I=B=R Directory. DOE examined the Canadian Standards Association-International (CSA-International) certified product listings and the South Coast Air Quality Management District (SCAQMD) list of certified boiler equipment. For the CSA-International product listings, DOE only identified those manufacturers that certified their equipment to U.S. standards. From these two product listings, DOE went to each manufacturer's Web site and verified that they produced equipment that meets the definition of commercial packaged boilers. From this review, DOE identified 16 additional commercial boiler manufacturers, as listed in section V.B.3.b. DOE also identified manufacturers with other model offerings not included in the January 2008 I=B=R Directory. When DOE found equipment that fit the definition of ''commercial packaged boiler'' and found efficiency ratings reported for that equipment in manufacturer literature, DOE included the equipment in its database of commercial boiler equipment used for this analysis (hereafter referred to as DOE's commercial boiler database).

However, for today's analysis of commercial packaged boilers, DOE did not use all of the models in the January 2008 I=B=R Directory or in its own database. DOE filtered out any boiler models that did not contain all of the information needed for DOE's analysis or that appeared to have erroneous efficiency ratings before analyzing commercial packaged boiler data for its market analysis. DOE divided the boilers into the equipment classes in which they would be classified to apply ASHRAE Standard 90.1–2007. Then, for the eight equipment classes where ASHRAE Standard 90.1–2007 specifies an efficiency level in thermal efficiency, DOE filtered out boilers that did not contain a thermal efficiency rating. DOE did not filter out models without a thermal efficiency rating for the two equipment classes where ASHRAE Standard 90.1–2007 specifies an efficiency level in combustion efficiency. Next, for all equipment classes, DOE eliminated any boilers where both thermal and combustion efficiency were provided, but the thermal efficiency was higher than the combustion efficiency. DOE eliminated those boilers because it is physically impossible for a boiler to have a thermal efficiency that is higher than its combustion efficiency, which led DOE to conclude that the efficiency ratings for those boilers may be inaccurate.[14] See chapter 2 of the NOPR Technical Support Document (TSD)[15] for other market data regarding DOE's commercial packaged boiler database of equipment.

To review the commercial packaged boiler efficiency levels specified in ASHRAE Standard 90.1–2007, DOE first developed a quantitative analysis similar to that conducted for the March 2006 NODA for the commercial boiler equipment classes specified in ASHRAE Standard 90.1–2007. DOE analyzed the available market data to estimate the percentage of the market held by each equipment class. DOE also examined the percentage of models available on the market below the efficiency levels in ASHRAE Standard 90.1–2007, the average efficiency of models currently available on the market, and the range of efficiencies currently on the market for each equipment class. In addition, for each equipment class with an efficiency metric change, DOE separated out the models that minimally comply with the existing EPCA standard levels (*i.e.*, models with $80 \leq E_C < 81$ for gas-fired boilers and $83 \leq E_C < 84$ for oil-fired boilers), and then calculated the average thermal efficiency of those models for each equipment class based on the thermal efficiencies in DOE's database of market data. Table IV.2 shows the results of DOE's quantitative market analysis for the eight equipment classes where ASHRAE Standard 90.1–2007 specifies a thermal efficiency level, as well as for the two equipment classes where ASHRAE Standard 90.1–2007 specifies a combustion efficiency level.

TABLE IV.2—RESULTS OF DOE'S COMMERCIAL PACKAGED BOILER QUANTITATIVE MARKET ANALYSIS *

Equipment class	Market share**	Current federal energy conservation standard	ASHRAE standard 90.1–2007 efficiency level	Average thermal efficiency of minimally complying boilers	Range of thermal efficiencies of minimally complying boilers	Percentage of market below ASHRAE standard 90.1–2007 efficiency level	Average efficiency of equipment class
Small Gas-fired Hot Water	24.2%	80% E_C	80% E_T	78.3% E_T	77.0%–80.0%	8.9%	84.9% E_T
Small Gas-fired Steam All Except Natural Draft	8.2%	80% E_C	79% E_T	79.6% E_T	79.3%–79.9%	9.0%	80.5% E_T

[13] The Hydronics Institute division of the Air Conditioning, Heating, and Refrigerating Institute, I=B=R Ratings for Boilers, Baseboard Radiation, Finned Tube (Commercial) Radiation, and Indirect-Fired Water Heaters (Jan. 2008). Available at: *http://www.gamanet.org/gama/inforesources.nsf/vAttachmentLaunch/E9E5FC7199EBB1BE85256FA100838435/$FILE/01-08_CBR.pdf.*

[14] These anomalous ratings are likely due to Hydronics Institute's (HI) de-rating procedures, manufacturers' interpolation of results, varying test chambers and instrument calibration among manufacturers, or submittal of erroneous ratings.

[15] Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.*

TABLE IV.2—RESULTS OF DOE'S COMMERCIAL PACKAGED BOILER QUANTITATIVE MARKET ANALYSIS *—Continued

Equipment class	Market share**	Current federal energy conservation standard	ASHRAE standard 90.1–2007 efficiency level	Average thermal efficiency of minimally complying boilers	Range of thermal efficiencies of minimally complying boilers	Percentage of market below ASHRAE standard 90.1–2007 efficiency level	Average efficiency of equipment class
Small Gas-fired Steam Natural Draft	12.6%	80% E_C	77% E_T (2010) 79% E_T (2020)	76.7% E_T	75.4%–78.6%	26.5% (2010) 77.6% (2020)	77.4% E_T
Small Oil-fired Hot Water	6.8%	83% E_C	82% E_T	80.7% E_T	79.2%–81.8%	29.3%	83.8% E_T
Small Oil-fired Steam	11.4%	83% E_C	81% E_T	81.6% E_T	79.7%–83.6%	17.5%	82.2% E_T
Large Gas-fired Hot Water	3.9%	80% E_C	82% E_C	.....	.....	17.0%	83.6% E_C
Large Gas-fired Steam All Except Natural Draft	7.1%	80% E_C	79% E_T	79.4% E_T	78.8%–79.9%	17.7%	80.6% E_T
Large Gas-fired Steam Natural Draft	9.1%	80% E_C	77% E_T (2010) 79% E_T (2020)	78.1% E_T	75.4%–79.4%	3.3% (2010) 57.7% (2020)	78.9% E_T
Large Oil-fired Hot Water	1.9%	83% E_C	84% E_C	.....	.....	0%	86.5% E_C
Large Oil-fired Steam	15.0%	83% E_C	81% E_T	81.9% E_T	81.1%–83.5%	0%	82.8% E_T

* E_C is combustion efficiency and E_T is thermal efficiency.
** DOE calculated the percentage of boilers in each equipment class based on the number of models it analyzed for that equipment class divided by the total number of models it analyzed in all equipment classes. These totals were taken after all filters and modifications to DOE's commercial packaged boiler database, described in section 3, were applied.

4. Preliminary Conclusions From Market Analysis for Commercial Packaged Boilers

Based solely on the quantitative analysis, DOE found that the average thermal efficiency of the minimally compliant equipment was higher than the efficiency level specified by ASHRAE Standard 90.1–2007 for five of the commercial packaged boiler equipment classes, as shown in Table IV.2. This indicates that it would be theoretically possible for backsliding to occur for those equipment classes. As explained below, several interested parties commented on DOE's method for determining backsliding in response to the preliminary analysis presented in the July 2008 NODA. However, when DOE also evaluated a number of other considerations (including accuracy of the thermal efficiency ratings), it tentatively concluded that backsliding is unlikely to occur for any of the classes in question. This topic is discussed in further detail below.

Burnham Hydronics stated that DOE could not use the least efficient boiler on the market as the *de facto* standard for determining whether a standard is backsliding. (Burnham Hydronics, No. FDMS DRAFT 0003 at p. 2) Burnham Hydronics asserted that ''DOE's legal framework defines backsliding in terms of 'maximum *allowable* energy use,' not 'maximum energy actually used by an individual product on the market at a particular moment in time.' '' (Burnham Hydronics, No. FDMS DRAFT 0003 at p. 2) To determine that an efficiency level is backsliding, Burnham Hydronics stated that DOE must ''prove that a less efficient boiler could not be built under the current [F]ederal standards [than could be built if the efficiency levels in ASHRAE Standard 90.1–2007 were adopted as Federal energy conservation standards].'' (Burnham Hydronics, No. FDMS DRAFT 0003 at pp. 2)

In response, DOE does not agree with Burnham's assertion that to determine backsliding DOE must prove that a less efficient boiler could not be built under the Federal standards than could be built if the efficiency levels in ASHRAE Standard 90.1–2007 were adopted as Federal energy conservation standards. EPCA's anti-backsliding clause states, ''[t]he Secretary may not prescribe any amended standard which increases the maximum allowable energy use * * * or decreases the minimum required energy efficiency of a covered product.'' (42 U.S.C. 6295(o)(1); 42 U.S.C. 6316(a)) Because the Federal standard levels for commercial packaged boilers are specified in terms of an energy efficiency requirement rather than an allowable energy use requirement, DOE believes that the applicable part of EPCA's anti-backsliding clause here is the requirement that the Secretary may not prescribe any amended standard that ''decreases the minimum required efficiency'' of this equipment. DOE believes that to determine backsliding it must prove that the efficiency levels in ASHRAE Standard 90.1–2007 would allow for the construction of equipment with lower combustion efficiencies than the current Federal standards require, thereby decreasing the minimum required energy efficiency. Therefore, to determine backsliding, DOE examined whether the thermal efficiency levels in ASHRAE Standard 90.1–2007 would effectively result in a decrease in the required combustion efficiencies currently specified in EPCA (*i.e.*, 80 percent combustion efficiency for gas-fired equipment and 83 percent combustion efficiency for oil-fired equipment).

Further, Federal standards currently do not regulate the thermal efficiency or the jacket losses of commercial packaged boilers. Consequently, although it is not practical, a boiler could theoretically be constructed with 100 percent jacket losses under the Federal standards, resulting in an infinite amount of energy use. If DOE were to examine ''the maximum allowable energy use,'' as Burnham suggests, then any thermal efficiency level would not constitute backsliding because there are no existing Federal energy conservation standards regulating the jacket losses. Therefore, DOE has investigated the potential for backsliding with respect to the energy efficiency of the equipment rather than the allowable energy use (as noted above).

DOE does note, however, that models currently being manufactured with the highest jacket losses (*i.e.*, the models

with the lowest thermal efficiencies) represent the practical limit to the amount of jacket losses that occur in commercial boilers. DOE also notes that there is equipment manufactured with thermal efficiencies lower than the thermal efficiency levels specified by ASHRAE Standard 90.1–2007, which would create the need for manufacturers to discontinue or redesign certain models to meet the efficiency levels in ASHRAE Standard 90.1–2007 if those levels are adopted as Federal minimums. Because certain models manufactured under the current Federal standards would be discontinued or replaced with higher-efficiency models if the ASHRAE Standard 90.1–2007 levels were adopted as Federal minimums, DOE recognizes that the ASHRAE Standard 90.1–2007 efficiency levels represent an increase in efficiency and a decrease in energy use when compared to the EPCA levels.

AHRI stated that the criterion to determine backsliding (where a specific minimum thermal efficiency requirement is considered less stringent if it might theoretically allow a model to have a combustion efficiency lower than the current minimum combustion efficiency requirement) is overly stringent because there is no direct mathematical correlation between combustion and thermal efficiency. (AHRI, No. 3 at p. 2)

DOE considered both Burnham Hydronics' and AHRI's comments when determining whether the efficiency levels for commercial packaged boilers are in violation of EPCA's anti-backsliding clause. DOE considered the difference between the average thermal efficiency of minimally-complying models and the efficiency levels specified in ASHRAE Standard 90.1–2007. DOE used the average thermal efficiency because DOE found there was a range of thermal efficiencies that correspond to the minimally-complying models. DOE found that the difference is very small (between 0.4 and 0.9 percent) for those equipment classes where it is believed that backsliding could potentially occur. Therefore, there are several other important issues to consider in determining whether the efficiency levels specified in ASHRAE Standard 90.1–2007 are, in fact, backsliding. DOE also considered the uncertainty of the reported thermal efficiency ratings, the benefit of switching to an energy conservation standard using a thermal efficiency metric, and the overall energy savings that could result from adopting the ASHRAE Standard 90.1–2007 efficiency levels for commercial packaged boilers. Each of these considerations is discussed below.

a. Accuracy of Thermal Efficiency Ratings

The Federal energy conservation standards for commercial packaged boilers are expressed only using the combustion efficiency metric. 10 CFR 431.86. Although the industry standard incorporated by reference in the applicable DOE test procedure also contains a test for thermal efficiency, DOE's test procedures only specify that manufacturers need to conduct the combustion efficiency test for determining the energy efficiency of commercial packaged boilers. *Id.* Consequently, all manufacturers test for combustion efficiency, but only some of the manufacturers test for thermal efficiency. Of the manufacturers that report results for thermal efficiency, only some actually test for thermal efficiency, while the others estimate it. The method of estimation can vary from one manufacturer to another and is not described in manufacturer literature. The fact that a requirement to test and rate the thermal efficiency of commercial packaged boilers in accordance with an approved DOE test procedure does not exist brings into question the validity of the reported values for thermal efficiency. The reported thermal efficiency ratings are the basis for the vast majority of DOE's quantitative analysis for this equipment. Since DOE has no way of determining which thermal efficiency ratings are the result of actual testing and which are simply manufacturer estimates, DOE cannot be absolutely certain of the accuracy and validity of the thermal efficiency ratings used in its analyses. In fact, when performing an analysis of its data, DOE had to exclude nearly one-fifth of the ratings because they appeared to be erroneous.[16] However, with the exclusion of the models with erroneous ratings and the uncertainties in accuracy of the considered ratings, DOE believes that it has adequately controlled for the potential sources of error and that the 2008 I=B=R Directory and manufacturer catalogs represent the best available sources of information that could be used for the analyses that DOE must conduct in this rulemaking.

As mentioned previously, AHRI stated that DOE's analysis relied too heavily on the information presented in the 2008 I=B=R Directory. AHRI stated that the directory is incomplete because participation in the certification program and listing in the directory is voluntary and some manufacturers do not participate. Because the program does not require a manufacturer to list all the models that come within the scope of the program, AHRI asserted that the commercial boiler listings are incomplete, and stated that it can be assumed manufacturers do not list their least-efficient offerings. Further, AHRI stated that due to anomalous combustion and thermal listings caused by a variety of testing issues, the values from the tests cannot be used definitively to evaluate the true relationship between combustion and thermal efficiency for a specific listing. (AHRI, No. 3 at pp. 3–4)

Burnham Hydronics also stated that the I=B=R Directory is unsuitable for use as the basis for DOE's analysis. Burnham Hydronics stated that the I=B=R Directory does not consistently represent the relationship between thermal and combustion efficiency. (Burnham Hydronics, No. FDMS DRAFT 0003 at pp. 1–2)

DOE agrees with the comments made by AHRI and Burnham Hydronics, and recognizes the inconsistent relationship between combustion and thermal efficiencies listed in the January 2008 I=B=R Directory. However, because no other widely-recognized source for commercial packaged boiler ratings exists, DOE relied on the January 2008 I=B=R Directory and manufacturers' catalogs as its primary sources for its analysis. Whenever possible, DOE checked the efficiency ratings in the January 2008 I=B=R Directory against manufacturers' literature for consistency. Also, although manufacturers are not required to test for thermal efficiency and report it to the I=B=R Directory, DOE believes the majority of the ratings in the I=B=R Directory are valid. DOE believes the I=B=R Directory, with the addition of boiler models from manufacturers that are not included from the directory, provides a good proxy of what the thermal efficiency ratings would be if all commercial boiler models were tested and rated according to the Hydronics Institute (HI) BTS–2000 test procedure for thermal efficiency (*i.e.*, the industry standard incorporated by reference in the DOE test procedure for these products).

Once DOE has determined the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers represent, on average, an increase in energy efficiency when

[16] These boiler models list a thermal efficiency rating greater than its combustion efficiency rating, which is physically impossible. These anomalous ratings are likely due to Hydronics Institute's (HI's) de-rating procedures, manufacturers' interpolation of results, variances in test chambers and instrument calibration among manufacturers, or submittal of erroneous ratings.

compared to the Federal energy conservation standards for this equipment, DOE will further consider amended energy conservation standards at the ASHRAE Standard 90.1–2007 efficiency levels as presented in section V. The limited confidence in the thermal efficiency data being reported for commercial packaged boilers and the lack of a mathematical conversion between thermal and combustion efficiency (explained in section IV.A.1) become an issue when deciding whether efficiency levels in ASHRAE Standard 90.1–2007 are comparable to Federal energy conservation standards, which would be based solely on the average thermal efficiency of minimally-complying equipment. In addition, even if all commercial packaged boilers were tested for thermal efficiency, there would be some margin of error inherent to the testing and measurement of thermal efficiency. For these reasons, DOE believes the difference between the listed thermal efficiencies of the minimally-complying models and the efficiency levels in ASHRAE Standard 90.1–2007 is within the margin of error of this analysis. (See chapter 2 of the NOPR TSD for more details about thermal efficiency of minimally-complying models.)

This identified problem would be mitigated if DOE migrates to a thermal efficiency metric, because DOE would amend its test procedure to require manufacturers to verify their equipment's thermal efficiency ratings through testing in accordance with a DOE-mandated test procedure. A Federal energy conservation standard based on thermal efficiency, rather than combustion efficiency, would also require manufacturers to rate the thermal efficiency of their equipment, thereby resolving the issue of uncertainty in the reporting of the thermal efficiency metric.

b. Benefits of the Thermal Efficiency Metric

In the March 2006 NODA, DOE stated that the thermal efficiency metric provides a preferred method for measuring the efficiency of commercial boilers because it is more inclusive and better reflects the total energy losses of the equipment, as compared to the combustion efficiency metric prescribed by EPCA. 71 FR 12634, 12641 (March 13, 2006). In addition, the thermal efficiency metric is more consistent with EPCA's definition of ''energy efficiency'' [17] for commercial equipment. *Id.* Interested parties agree that thermal efficiency is superior to combustion efficiency as a metric for rating boilers because it is a more complete measure of efficiency. (AHRI, No. 3 at p. 3) Although DOE preferred the thermal efficiency approach expressed in ASHRAE Standard 90.1–1999, DOE was prevented from adopting those standard levels due to the backsliding concerns discussed above. ASHRAE Standard 90.1–2007, for the reasons discussed below, has largely resolved such concerns. Not adopting the efficiency levels in ASHRAE Standard 90.1–2007 for several of the equipment classes would prevent the efficiency metric change (from combustion efficiency to thermal efficiency) that DOE has recognized in the past and continues to recognize as beneficial in the regulation of commercial packaged boilers.

In a written comment to DOE, AHRI stated that there are several key aspects that support rating commercial boilers using the thermal efficiency metric. These key factors include: (1) Thermal efficiency provides more useful information since it indicates the energy being put into the water; (2) in many cases the specified minimum thermal efficiency will require models to have a combustion efficiency higher than the current minimum combustion efficiency, and the current combustion efficiency requirements allow models to have significantly lower thermal efficiency values; and (3) even if the thermal efficiency is two or three points less than the corresponding combustion efficiency, it is still more stringent than a combustion efficiency standard because it focuses on energy transferred rather than energy not lost through the flue. (AHRI, No. 3 at p. 2)

DOE agrees with AHRI that the thermal efficiency metric does provide key benefits over the current combustion efficiency metric for commercial packaged boilers used in EPCA. As stated in the March 2006 NODA, the thermal efficiency metric provides a preferred method for measuring the efficiency of commercial boilers because it is more inclusive and better reflects the total energy losses in the equipment than the combustion efficiency metric prescribed by EPCA. 71 FR 12634, 12641 (March 13, 2006). In addition, because ASHRAE Standard 90.1 has switched to a thermal efficiency metric for certain commercial packaged boiler equipment classes, a one-time conversion in the DOE efficiency metric will be required at some point. Once the issue of differing efficiency metrics is resolved, DOE will again be able to make direct comparisons with future versions of ASHRAE Standard 90.1.

c. Overall Energy Savings

As a further consideration, the efficiency levels specified in ASHRAE Standard 90.1–2007, taken together, when compared to the Federal energy conservation standards, would result in increased energy savings to the Nation. Conversely, a decision by DOE not to adopt the efficiency levels in ASHRAE Standard 90.1–2007 for the equipment classes where it believes backsliding could possibly occur would result in a loss of potential energy savings by not adopting the thermal efficiency levels provided in ASHRAE Standard 90.1–2007 for those five equipment classes (See chapter 7 of the NOPR TSD for details on the potential energy savings). Although not controlling on the issue of determining backsliding, it does carry some weight in terms of how DOE acts in resolving the uncertainties associated with conversions and calculations between the two different metrics.

5. Conclusions Regarding the Efficiency Levels in ASHRAE Standard 90.1–2007 for Commercial Packaged Boilers

When considering if adopting ASHRAE Standard 90.1–2007's efficiency levels would violate EPCA's anti-backsliding provision, DOE considered the uncertainty in the reporting of the thermal efficiency metric, the benefits of rating the efficiency of commercial packaged boilers with a thermal efficiency metric, and the overall energy savings that would result from the adoption of ASHRAE Standard 90.1–2007. When viewed comprehensively, DOE has tentatively concluded that these considerations justify analyzing and proposing adoption of the efficiency levels in ASHRAE Standard 90.1–2007 as Federal energy conservation standards (see section V for a discussion of the commercial packaged boiler analysis methodology and section VI for the analytical results of the commercial packaged boiler analysis). Although the average thermal efficiency of minimally-compliant [18] models on the market is slightly higher than the levels specified in ASHRAE Standard 90.1–2007 for 5 of the 10 equipment classes, the difference

[17] For commercial equipment, ''[t]he term 'energy efficiency' means the ratio of the useful output of services from an article of industrial equipment to the energy use by such article, determined in accordance with test procedures under section 6314 of [title 42 of the United States Code].'' (42 U.S.C. 6311(3))

[18] It is noted here that in the selection of ''minimally compliant'' boilers, DOE included boilers whose combustion efficiency was up to 0.9 percentage point above the EPCA minimum level.

between the two values are small, which is within the margin of error of the analysis.[19] The current situation is unlike the boiler analysis conducted for the March 2006 NODA, which reviewed the commercial packaged boiler efficiency levels in ASHRAE Standard 90.1–1999 and found the differences between the ASHRAE Standard 90.1–1999 efficiency levels and the average thermal efficiency of minimally-compliant models to be relatively large (*i.e.,* significantly greater than a percentage point).

Therefore, based upon this analysis of the efficiency levels in ASHRAE Standard 90.1–2007, DOE has tentatively concluded that the qualitative considerations outweigh the slight differences revealed by the quantitative analysis of the ASHRAE Standard 90.1–2007 efficiency levels for the five equipment classes at issue. In light of the foregoing, DOE has determined that the efficiency levels for all ten equipment classes identified in ASHRAE Standard 90.1–2007 represent an increase in efficiency for commercial packaged boilers as compared to the current Federal energy conservation standards. Consequently, DOE performed a market analysis, economic analysis, and energy savings analysis for all of the identified commercial packaged boiler equipment classes to consider energy conservation standards at the ASHRAE Standard 90.1–2007 efficiency levels, as well as levels more stringent than those found in ASHRAE Standard 90.1–2007, in accordance with EPCA. (42 U.S.C. 6313 (a)(6)(A)(ii)(II))

V. Methodology and Discussion of Comments for Commercial Packaged Boilers

This section addresses the analyses DOE has performed for this rulemaking with respect to commercial packaged boilers. A separate subsection addresses each analysis. DOE used a spreadsheet to calculate the life-cycle cost (LCC) and payback periods (PBPs) of potential amended energy conservation standards. DOE used another spreadsheet to provide shipments forecasts and then calculate national energy savings and net present value impacts of potential amended energy conservation standards.

This section also proposes amendments to the DOE test procedure for commercial packaged boilers to require testing in terms of thermal efficiency, consistent with the amended efficiency levels in ASHRAE Standard 90.1–2007. In addition, DOE is proposing to remove certain outdated provisions from the test procedure (*e.g.,* references to an alternate test procedure that has been phased out).

A. Test Procedures

Section 343(a) of EPCA requires the Secretary to amend the test procedures for packaged boilers to the latest version generally accepted by industry or the rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) [20] or by ASHRAE, as referenced by ASHRAE/IES Standard 90.1, unless the Secretary determines by clear and convincing evidence that the latest version of the industry test procedure does not meet the requirements for test procedures described in paragraphs (2) and (3) of section 343(a). (42 U.S.C. 6314(a)(4)(B)) DOE published a final rule on October 21, 2004 that amended its test procedure for commercial packaged boilers to incorporate by reference the industry test procedure for commercial packaged boilers, the Hydronics Institute (HI) division of the Gas Appliance Manufacturer's Association (GAMA) Boiler Testing Standard BTS–2000, ''Method to Determine the Efficiency of Commercial Space Heating Boilers'' (HI BTS–2000). 69 FR 61949. This rulemaking responded to ASHRAE's action in ASHRAE Standard 90.1–1999 to revise the test procedures for certain commercial equipment, including commercial packaged boilers.

In 2007, AHRI made several changes to BTS–2000 and reaffirmed BTS–2000 (Rev06.07) as the testing standard for commercial boilers. The changes include updating the numbering of the subsections and a change to the tolerance of the inlet temperature for condensing boilers (from ±5 °F to ±10 °F). DOE compared the two versions and found that the only changes were to the inlet temperature tolerances and there were no other changes to the testing method. Furthermore, DOE believes the changes to the test tolerances do not significantly affect the measure of energy efficiency. Therefore, DOE is proposing to update the uniform test procedure for commercial packaged boilers to incorporate by reference the version of HI BTS–2000 (Rev06.07) that AHRI reaffirmed in 2007.

In the October 2004 test procedure final rule for commercial packaged boilers, DOE also incorporated by reference the American Society of Mechanical Engineers (ASME) Power Test Codes for Steam Generating Units, ASME PTC 4.1–1964, reaffirmed 1991 (including 1968 and 1969 addenda) (ASME PTC 4.1) as an alternate test method for rating the efficiency of steel commercial packaged boilers only. 69 FR 61956 (Oct. 21, 2004). DOE provided ASME PTC 4.1, with modifications, as an alternate test procedure for steel commercial packaged boilers because many manufacturers of steel boilers were unfamiliar with HI BTS–2000 and its predecessor, HI–1989, and typically tested their boilers using the ASME PTC 4.1 test procedure. *Id* at 61951. DOE designated a transition period for manufacturers to convert from using the ASME PTC 4.1 test procedure to the HI BTS–2000 test procedure. *Id.* This would allow manufacturers of steel boilers an opportunity to become familiar with HI BTS–2000 and ensure that their equipment would be able to comply with EPCA standards using that procedure. *Id.* at 61956. DOE stated that it would allow the use of ASME PTC 4.1 as an alternate test procedure for two years after the publication of the October 2004 final rule. *Id.* The transition period ended on October 23, 2006, and now all commercial boilers are required to be tested using the HI BTS–2000 test procedure. 10 CFR 431.86

Because DOE no longer accepts the ASME PTC 4.1 as a method for testing steel commercial packaged boilers, DOE is proposing to remove item (b)(2) of 10 CFR 431.85, which listed ASME PTC 4.1 as a material incorporated by reference. Further, DOE proposes to delete item (d) of 10 CFR 431.86, which describes use of ASME PTC 4.1 as an alternative test method for commercial packaged boilers. Finally, in item (c) of 10 CFR 431.86, DOE proposes to remove the sentence instructing manufacturers to follow either the provisions in (c) or (d) of that part for steel commercial packaged boilers because part (d) will be removed. Manufacturers are required to use the provisions in part (c) for all commercial packaged boilers. Eliminating the references to ASME PTC 4.1 in the CFR does not introduce any changes to the test procedure for this equipment; it simply removes obsolete references. Manufacturers are still required to test all steel boilers using the method that references the HI BTS–2000 test procedure, as they have been since October 23, 2006.

[19] DOE believes the small differences between the two efficiency metrics attributing to the margin of error could arise from a number of factors including manufacturing tolerances, testing tolerances, and equipment design differences.

[20] The Air-Conditioning and Refrigeration Institute (ARI) and the Gas Appliance Manufacturers Association (GAMA) announced on December 17, 2007, that their members voted to approve the merger of the two trade associations to represent the interests of cooling, heating, and commercial refrigeration equipment manufacturers. The merged association became AHRI on January 1, 2008.

Currently, the uniform test method for the measurement of energy efficiency of commercial packaged boilers requires that only the combustion efficiency be tested and calculated in accordance with the HI BTS–2000. 10 CFR 431.86(c)(1)(ii). In this notice, DOE is proposing to adopt as Federal energy conservation standards several thermal efficiency levels described in ASHRAE Standard 90.1–2007. For this reason, DOE intends to amend the definitions in 10 CFR 431.82 to incorporate the definition of ''thermal efficiency'' as written in section 3.0 of the HI BTS–2000 (Rev06.07) test procedure. Thus, DOE is proposing to add the definition of ''thermal efficiency'' to 10 CFR 431.82 as follows: ''Thermal efficiency for a commercial packaged boiler is determined using test procedures prescribed under § 431.86 and is the ratio of the heat absorbed by the water or the water and steam to the higher heating value in the fuel burned.''

In addition to adding the definition of ''thermal efficiency'' to its regulations, DOE is proposing to amend the definition of ''combustion efficiency'' to remove the statement describing it as ''the efficiency descriptor for packaged boilers.'' DOE is proposing this change because after the effective date of the final rule amending the energy conservation standards for commercial packaged boilers to include efficiency levels based on those specified in ASHRAE Standard 90.1–2007 (*i.e.,* March 2, 2012), combustion efficiency would no longer be the efficiency descriptor for all commercial packaged boiler equipment classes. Thus, DOE proposes to amend the definition of ''combustion efficiency'' in 10 CFR 431.82 to read: ''Combustion efficiency for a commercial packaged boiler is determined using the test procedures prescribed under § 431.86 and equals to 100 percent minus percent flue loss (percent flue loss is based on input fuel energy).'' DOE is seeking input from interested parties about its proposed definitions for ''thermal efficiency'' and ''combustion efficiency.'' This is identified as Issue 1 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of today's NOPR.

In addition, DOE is proposing to modify 10 CFR 431.86 (Uniform test method for measurement of energy efficiency of commercial packaged boilers) to include requirements for the measurement of thermal efficiency for those commercial packaged boiler classes where the thermal efficiency metric is being proposed in today's notice. In 10 CFR 431.86(a), *Scope,* DOE is proposing to modify the scope to state that in addition to procedures for measuring combustion efficiency of commercial packaged boilers, that section also contains procedures for measuring the thermal efficiency of commercial packaged boilers. Under 10 CFR 431.86(c), ''Test Method for Commercial Packaged Boilers—General,'' DOE is proposing to update several items. DOE proposes to amend subparagraph (c)(1)(ii), the test setup requirements, to require manufacturers to perform the thermal efficiency test in section 5.1 (thermal efficiency test) of the HI BTS–2000 (Rev06.07) for the following eight commercial packaged boiler equipment classes, if the ASHRAE Standard 90.1–2007 efficiency levels go into effect as Federal energy conservation standards, as proposed:

- Small gas-fired hot water;
- Small gas-fired steam all except natural draft;
- Small gas-fired steam natural draft;
- Small oil-fired hot water;
- Small oil-fired steam;
- Large gas-fired steam all except natural draft;
- Large gas-fired steam, natural draft;
- Large oil-fired steam.

DOE proposes to direct manufacturers rating their commercial packaged boilers before March 2, 2012 (the effective date of a final rule for amended energy conservation standards) to use the test setup requirements in section 5.2 (Combustion Efficiency Test) of the HI BTS–2000 (Rev06.07) for all commercial packaged boiler equipment classes in accordance with the Federal energy conservation standards in 10 CFR 431.86. 69 FR 61961 (Oct. 21, 2004). DOE is proposing that manufacturers use the revised version of the test procedure (*i.e.,* HI BTS–2000 (Rev06.07) effective thirty days from the publication of the final rule in the **Federal Register** to represent their model's energy efficiency and compliance with the current Federal energy conservation standards. DOE is also proposing to revise the requirement to conduct the combustion efficiency test to specify that beginning on March 2, 2012 (the effective date if DOE were to adopt the ASHRAE Standard 90.1–2007 efficiency levels as Federal energy conservation standards) the combustion efficiency test will only be required for large gas-fired hot water and large oil-fired hot water boilers.

In 10 CFR 431.86(c)(1)(iv), ''Test Conditions,'' DOE proposes to add a requirement to use the test conditions from section 8.0 of HI BTS–2000 (Rev06.07) for testing the thermal efficiency, in addition to the combustion efficiency (which is already provided, along with certain exclusions). DOE proposes to update the exclusions for the combustion efficiency test conditions to exclude only section 8.6.2 to reflect the changes made to HI BTS–2000 (Rev06.07) when it was reaffirmed in 2007. In addition, DOE proposes to delete 10 CFR 431.86(c)(1)(iv)(A). DOE is proposing to eliminate 10 CFR 431.86(c)(1)(iv)(A) from the test procedure, because in the HI BTS–2000 (Rev06.07) (reaffirmed 2007), the test procedures for condensing boilers were amended to be identical to those listed in 10 CFR 431.86(c)(1)(iv)(A). Therefore, paragraph (c)(1)(iv)(A) and any provisions referring to it are no longer necessary. Eliminating this paragraph and replacing it with a reference to the applicable HI BTS–2000 (Rev06.07) section (section 8.5.2 for test conditions and section 9.1.2.1.4 for test procedures) would not introduce any changes to the test procedure because the requirements in HI BTS–2000 (Rev06.07) are now the same as the requirements that had been set forth in 10 CFR 431.86(c)(1)(iv)(A).

In 10 CFR 431.86(c)(2), ''Test Measurements,'' DOE is proposing to include an additional provision to measure thermal efficiency according to sections 9.1 and 10.1 of the HI BTS–2000 (Rev06.07) for the commercial packaged boiler equipment classes in cases where the Federal standard would be specified in thermal efficiency. DOE is proposing that manufacturers should continue to measure the combustion efficiency of equipment in those eight equipment classes until proposed amended energy conservation standards based on the ASHRAE Standard 90.1–2007 efficiency levels would become effective on March 2, 2012. At such time, manufacturers would be expected to begin measuring the thermal efficiency for the applicable equipment classes. Also, DOE proposes to update the instructions for measuring combustion efficiency in the Test Measurements section to specify that combustion efficiency only needs to be measured for the two equipment classes where the Federal standard will be specified in combustion efficiency (*i.e.,* large gas-fired hot water and large oil-fired hot water commercial packaged boilers) after the effective date of a final rule for amended national standards.

DOE also proposes to update the instructions for measuring combustion efficiency in 10 CFR 431.86(c)(2). DOE proposes to remove the provision in 10 CFR 431.86(c)(2) that excludes section 9.1.2.1.4 of HI–BTS 2000 and replaces it with the requirements in 10 CFR 431.86(c)(1)(iv)(A) for condensing boiler tests. DOE is proposing to allow for the use of section 9.1.2.1.4 because in HI BTS–2000 (Rev06.07), the requirements

in that section were modified to be the same as those in 10 CFR 431.86(c)(1)(iv)(A). Such modification would not introduce any substantive changes to the test procedure because the requirements in HI BTS–2000 are now the same as the requirements in 10 CFR 431.86(c)(1)(iv)(A).

Under 10 CFR 431.86(c)(2)(iii), ''Test Measurements for a Boiler Capable of Supplying Either Steam or Water,'' DOE is proposing to update the provision that allows manufacturers to measure and rate the combustion efficiency of these boilers only as steam boilers. DOE proposes to change that provision to require the testing and measurement of thermal efficiency in addition to combustion efficiency for any boiler capable of producing steam and hot water that is being tested only as a steam boiler for equipment manufactured on and after March 2, 2012. Prior to that date, DOE proposes to instruct manufacturers to continue testing only for combustion efficiency of those boilers being tested in steam mode only. DOE must require manufacturers to test for both the combustion and thermal efficiencies in steam mode for units capable of producing both steam and hot water because, due to the new efficiency levels specified in ASHRAE Standard 90.1–2007, the boilers would be required to meet an efficiency level using both metrics under any amended energy conservation standard based upon ASHRAE Standard 90.1–2007. In other words, DOE is proposing to allow manufacturers to test dual output boilers (*i.e.*, those capable of producing both steam and hot water) in only steam mode. However, DOE is modifying its existing provisions to require manufacturers to conduct both the combustion efficiency and the thermal efficiency test for these dual output boilers. This will ensure that a dual output boiler is meeting the thermal efficiency requirement when operated in steam mode and the combustion efficiency requirement when operated in hot water mode, because achieving compliance in steam mode is generally more challenging. Thus, a boiler that complies with the standard in steam mode would be presumed to meet the standard in hot water mode. In essence, manufacturers will be required to rate dual output boilers using both the thermal and combustion efficiency metrics. DOE points out that the only other alternative for testing dual output boilers would be for manufacturers to separately run the combustion efficiency test in hot water mode and the thermal efficiency test in steam mode on or after March 2, 2012. Because DOE believes running two independent tests on the same boiler could be burdensome and that testing only in steam mode would suffice for compliance purposes, DOE is proposing to allow manufacturers to only test in steam mode for both metrics to mitigate this additional testing burden to manufacturers.

In addition to allowing boilers capable of producing both steam and hot water to be tested only in steam mode, the test procedure at 10 CFR 431.86(c)(2)(iii) also allows boilers capable of producing steam and hot water to be tested and rated in both steam mode and hot water mode separately. DOE proposes to amend 10 CFR 431.86(c)(2)(iii) of the test procedure to specify that when testing a large gas-fired or oil-fired boiler in hot water mode on or after March 2, 2012, combustion efficiency must be tested for and rated; however, for large gas- or oil-fired boilers in steam mode or for any other boiler equipment class, the thermal efficiency must be tested and rated.

Finally, DOE proposes to amend 10 CFR 431.86(c), ''Test Method for Commercial Packaged Boilers—General,'' by adding a provision to calculate the thermal efficiency using the calculation procedure described in section 11.1 of HI BTS–2000. DOE proposes to note in this provision that thermal efficiency should be calculated only for the eight equipment classes of commercial packaged boilers for which DOE is proposing to adopt a Federal energy conservation standard using a thermal efficiency metric. In addition, DOE proposes to specify this should only be done on or after March 2, 2012, the anticipated effective date of the corresponding amended energy conservation standards for this equipment.

In addition, DOE proposes to modify the ''Calculation of Combustion Efficiency'' under 10 CFR 431.86(c)(3) to specify that on or after March 2, 2012, combustion efficiency only needs to be calculated when rating commercial packaged boiler equipment classes with a Federal energy conservation standard specified in combustion efficiency (*i.e.*, large gas-fired hot water and large oil-fired hot water commercial packaged boilers).

See the regulatory text at the end of today's notice for all the changes made to the definitions, reference materials, effective dates, and the uniform test procedure for commercial packaged boilers in 10 CFR 431.86.

B. Market Assessment

When beginning a review of the ASHRAE Standard 90.1–2007 efficiency levels, DOE developed information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly-available information. The subjects addressed in the market assessment for this rulemaking include equipment classes, manufacturers, quantities, and types of equipment sold and offered for sale. The key findings of DOE's market assessment are summarized below. For additional detail, see chapter 2 of the NOPR TSD.

1. Definitions of Commercial Packaged Boilers

EPCA defines a ''packaged boiler'' as ''a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.'' (42 U.S.C. 6311(11)(B)) In its regulations at 10 CFR 431.102, DOE further refined the ''packaged boiler'' definition to exclude a boiler that is custom designed and field constructed. Additionally, 10 CFR 431.102 provides that if the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location. In its regulations in 10 CFR 431.82, DOE also defines a ''commercial packaged boiler'' as a type of packaged low pressure boiler that is industrial equipment with a capacity, (rated maximum input) of 300,000 BTU per hour (Btu/h) or more which, to any significant extent, is distributed in commerce: (1) For heating or space conditioning applications in buildings; or (2) For service water heating in buildings but does not meet the definition of 'hot water supply boiler' in [part 431]. 10 CFR 431.82.

2. Equipment Classes

Federal energy conservation standards currently separate commercial packaged boilers only by the type of fuel used by the boiler, creating two equipment classes: (1) Gas-fired, and (2) oil-fired. (42 U.S.C. 6313(a)(4)(C)–(D); 10 CFR 431.87) However, commercial packaged boilers can be distinguished by several factors, which include the input capacity size (*i.e.*, small or large), fuel type (*i.e.*, oil or gas), output (*i.e.*, hot water or steam), and draft type (*i.e.*, natural draft or other). ASHRAE

Standard 90.1–2007 further divided the two equipment classes designated in EPCA into the following ten classes:

- Small gas-fired hot water boilers;
- Small gas-fired steam, all except natural draft;
- Small gas-fired steam, natural draft boilers;
- Small oil-fired hot water boilers;
- Small oil-fired steam boilers;
- Large gas-fired hot water boilers;
- Large gas-fired steam all except natural draft boilers;
- Large gas-fired steam natural draft boilers;
- Large oil-fired hot water boilers; and
- Large oil-fired steam boilers.

In general, DOE divides equipment classes by the type of energy used or by capacity or other performance-related features that affect efficiency. Different energy conservation standards may apply to different equipment classes. (42 U.S.C. 6295(q)) In the context of the present rulemaking, DOE believes input capacity size (*i.e.*, small or large), fuel type (*i.e.*, oil or gas), output (*i.e.*, hot water or steam), and draft type (*i.e.*, natural draft or other) are all performance-related features that affect commercial packaged boiler efficiency. By examining the market data, DOE found commercial packaged boilers in a wide range of efficiencies depending on their design and features. Consequently, DOE is proposing the ten equipment classes in ASHRAE Standard 90.1–2007 to differentiate between types of commercial packaged boilers.

3. Review of Current Market for Commercial Packaged Boilers

In order to obtain the information needed for the market assessment for this rulemaking, DOE consulted a variety of sources, including trade associations, manufacturers, and shipments data (*i.e.*, the quantities and types of equipment sold and offered for sale). The information DOE gathered serves as resource material throughout the rulemaking. Chapter 2 of the NOPR TSD provides additional detail on the market assessment.

a. Trade Association Information

AHRI, formerly GAMA (and sometimes referred to as such in this notice), is the trade association representing commercial packaged boiler manufacturers. AHRI develops and publishes technical standards for residential and commercial equipment using rating criteria and procedures for measuring and certifying equipment performance. The DOE test procedure is an AHRI standard. The HI division of AHRI has developed the Boiler Testing Standard (BTS) 2000 ''Method to Determine the Efficiency of Commercial Space Heating Boilers,'' as discussed in section IV.A above. The DOE test procedure incorporates by reference this AHRI standard.[21]

The Institute of Boiler and Radiator Manufacturers (I=B=R), a division of the HI, developed a certification program that the majority of the manufacturers in the commercial packaged boiler industry use to certify their equipment. Through the certification program, AHRI determines if the equipment conforms to HI BTS–2000. Once AHRI has determined that the equipment has met all the requirements under the HI BTS–2000 standards and certification program, it is added to the I=B=R Directory. DOE used I=B=R's certification data, as summarized by the January 2008 I=B=R Directory, in the engineering analysis.

Another trade association representing the interests of commercial boiler manufacturers is the American Boiler Manufacturers Association (ABMA). ABMA represents manufacturers serving a number of markets. One of these markets is boilers intended for use in commercial systems. ABMA's Web site[22] describes ''light commercial'' systems as having Btu input capacities of 400,000 to 12.5 MMBH and applications that include ''hydronic hot water heating boilers, low-pressure steam boilers * * * for heating * * * applications.'' Because such boilers meet the definition of commercial packaged boilers covered by this rulemaking, ABMA is a trade association that could represent commercial packaged boiler manufacturers covered by this rulemaking.

b. Manufacturer Information

DOE initially identified manufacturers of commercial packaged boilers by reviewing AHRI's January 2008 I=B=R Directory of commercial packaged boilers and equipment literature. Table V.1 shows the 26 separate commercial packaged boiler manufacturers identified in the January 2008 I=B=R Directory. Several of these manufacturers share the same parent company, which is shown in parentheses next to the individual brand name.

TABLE V.1—COMMERCIAL PACKAGED BOILER MANUFACTURERS REPRESENTED IN AHRI'S JANUARY 2008 I=B=R RATINGS DIRECTORY

A.O. Smith Water Products Co.	New Yorker Boiler Co., Inc. (Burnham Holdings, Inc.)
AERCO International, Inc	P B Heat, LLC.
BIASI, S.p.A. c/o QHT, Inc	Pennco (ECR International, Inc.).
Bosch Thermotechnology Corp	Raypak, Inc.
Burnham Commercial (Burnham Holdings, Inc.)	RBI Water Heaters (Mestek, Inc.).
Burnham Hydronics (Burnham Holdings, Inc.)	Slant/Fin Corporation.
Columbia Boiler Company of Pottstown	Smith Cast Iron Boilers.
Crown Boiler Co. (Burnham Holdings, Inc.)	Thermal Solutions Products, LLC (Burnham Holdings, Inc.).
De Dietrich	Thermo-Dynamics Boiler Co.
Dunkirk Boilers (ECR International, Inc.)	Triangle Tube.
Heat Transfer Products Inc	Utica Boilers (ECR International, Inc.).
LAARS Heating Systems Company	Viessmann Manufacturing Company, Inc.
Lochinvar Corporation	Weil-McLain.

While several of the manufacturers listed in Table V.1 specialize in residential boiler equipment, all offer at least some equipment with capacities that classify them as commercial boilers. DOE also identified 20 additional manufacturers of commercial packaged boiler equipment from ABMA's member listings, and from searching the

[21] DOE has incorporated by reference HI BTS–2000 as the DOE test procedure at 10 CFR 431.85.

[22] For more information on ABMA's commercial systems group, visit *http://www.abma.com/commercialSystems.html.*

SCAQMD certification directory and the CSA-International product listings. The additional manufacturers DOE identified through these methods were: AESYS Technologies, Inc.; Ajax Boiler, Inc.; Bryan Steam, LLC; Cleaver-Brooks, Inc.; Easco Boiler Corporation; Johnston Boiler Company; Miura; Sellers Engineering; Superior Boiler Works, Inc.; Vapor Power International; Fulton Boiler; Parker Boiler; Patterson-Kelley Company (division of Harsco); Triad Boiler Systems; CAMUS Hydronics, Ltd.; Gasmaster Industries; General Boiler Co., Inc.; Hurst Boiler and Welding Co., Inc.; Lattner Boiler Company; and Unilux Advanced Manufacturing, LLC. Each commercial boiler manufacturer generally specializes in a specific type of commercial boiler construction. For example, manufacturers such as Weil-McLain, Smith Cast Iron, and Burnham Commercial specialize in cast iron boilers; manufacturers such as Raypak and Lochinvar tend to manufacture a higher number of copper-tube boilers.

c. Shipments Information

DOE obtained data on estimated annual shipments for commercial packaged boilers from AHRI, which totaled approximately 36,000 units in 2007. DOE notes that these estimated total shipments likely underestimates the actual total shipments of the commercial packaged boiler market because the data only include information provided through AHRI. Some manufacturers have not have provided information to AHRI regarding their shipments. However, DOE believes the fraction of shipments not included in this total would be small. Further details regarding the shipments estimates and forecasts can be found in section V.G., National Impact Analysis, below.

C. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency of a piece of equipment DOE is evaluating for potential amended energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers and the Nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing the possibility for energy efficiency improvements. A baseline piece of equipment here refers to a model having features and technologies typically found in equipment currently offered for sale. The baseline model in each equipment class represents the typical characteristics of equipment in that class and, for equipment already subject to energy conservation standards, usually is a model that just meets the current Federal standard. After identifying the baseline models, DOE estimates the costs to the customer through an analysis of contractor costs and markups. ''Markups'' are the multipliers DOE uses to determine the costs to the customer based on contractor cost.

DOE typically structures its engineering analysis around one of three methodologies: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels without regard to the particular design options used to achieve such increases; and/or (3) the reverse-engineering or cost-assessment approach, which involves a ''bottom-up'' manufacturing cost assessment based on a detailed bill of materials derived from tear-downs of the product being analyzed.

1. Approach

For this analysis, DOE used an efficiency-level approach to evaluate the cost of commercial packaged boilers at the baseline efficiency level, as well as efficiency levels above the baseline. DOE used the efficiency level approach because of the wide variety of designs available of the market and because the efficiency level approach does not examine a specific design in order to reach each of the efficiency levels. The efficiency levels that DOE considered in the engineering analysis were representative of commercial packaged boilers currently being produced by manufacturers at the time the engineering analysis was developed. DOE relied primarily on data collected through discussions with mechanical contractors or equipment distributors of commercial boiler equipment to develop its cost-efficiency relationship for commercial packaged boilers. (See chapter 3 of the NOPR TSD for further detail.)

2. Representative Input Capacities

For commercial packaged boilers, each energy efficiency level is expressed as either a thermal efficiency or combustion efficiency, which covers the full output capacity range. For each ''small'' equipment class analyzed, DOE collected contractor cost data for three representative rated output capacities of small commercial packaged boilers: 400, 800, and 1,500 kBtu/h. DOE then normalized the contractor costs by capacity for each small commercial packaged boiler equipment class. DOE used all the normalized contractor costs on a per kBtu/h basis to create a single cost-efficiency curve with 800 kBtu/h as the representative capacity. DOE chose 800 kBtu/h because it is the median of the three representative capacities and because a large number of shipments correspond to this capacity.

For each ''large'' equipment class analyzed, DOE used a similar approach, in which it collected cost data and created a cost-efficiency curve for one representative output capacity, 3,000 kBtu/h. (See chapter 3 of the NOPR TSD for additional details.)

3. Baseline Equipment

DOE selected baseline efficiency levels as reference points for each equipment class, against which it measured changes resulting from potential amended energy conservation standards. DOE defined the baseline efficiency levels in the engineering analysis and the LCC and PBP analyses as reference points to compare the technology, energy savings, and cost of equipment with higher energy efficiency levels. Typically, units at the baseline efficiency level just meet Federal energy conservation standards and provide basic consumer utility. However, DOE is not able to consider efficiency levels lower than those specified in ASHRAE Standard 90.1–2007 for commercial packaged boilers. Therefore, the baseline efficiency levels DOE identified for this analysis were the efficiency levels specified for each commercial packaged boiler equipment class in ASHRAE Standard 90.1–2007. Table V.2 lists the ASHRAE Standard 90.1–2007 efficiency levels for each commercial packaged boiler equipment class.

TABLE V.2—BASELINE EFFICIENCY LEVELS FOR COMMERCIAL PACKAGED BOILERS

Equipment class	ASHRAE standard 90.1–2007 efficiency level (percent)
Small Gas-Fired Hot Water	80 E_T
Small Gas-Fired Steam All Except Natural Draft	79 E_T
Small Gas-Fired Steam Natural Draft	77 E_T
Small Oil-Fired Hot Water	82 E_T
Small Oil-Fired Steam	81 E_T
Large Gas-Fired Hot Water	82 E_C
Large Gas-Fired Steam, All Except Natural Draft	79 E_T
Large Gas-Fired Steam Natural Draft	77 E_T
Large Oil-Fired Hot Water	84 E_C
Large Oil-Fired Steam	81 E_T

4. Identification of Efficiency Levels for Analysis

In the engineering analysis, DOE established energy efficiency levels for each equipment class that reflect the current commercial packaged boiler market. DOE reviewed the commercial packaged boiler market to determine what types of equipment are available to consumers. DOE examined all of the manufacturers' product offerings to identify the energy efficiencies that correspond to efficiency levels with models already widely available on the market. DOE used these energy efficiencies to develop the efficiency levels of the engineering analysis. For this NOPR, DOE used an efficiency level approach, which allows DOE to estimate the costs and benefits associated with a particular efficiency level rather than a particular design. Table V.3 through Table V.12 show the efficiency levels analyzed for each equipment class.

a. Small Gas-Fired Hot Water Commercial Packaged Boiler Efficiency Levels

For small gas-fired hot water commercial packaged boilers, DOE selected four efficiency levels to analyze above the baseline efficiency level. Table V.3 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the representative output capacity (*i.e.*, 800 kBtu/h) for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.3—SMALL GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	80
Efficiency Level 1	82
Efficiency Level 2	84
Efficiency Level 3	86
Efficiency Level 4 (Condensing)	92

b. Small Gas-Fired Steam All Except Natural Draft Commercial Packaged Boiler Efficiency Levels

For small gas-fired steam all except natural draft commercial packaged boilers, DOE selected four efficiency levels to analyze above the baseline efficiency level. Table V.4 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 800 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.4—SMALL GAS-FIRED STEAM, ALL EXCEPT NATURAL DRAFT COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	79
Efficiency Level 1	80
Efficiency Level 2	81
Efficiency Level 3	82
Efficiency Level 4	83

c. Small Gas-Fired Steam Natural Draft Water Commercial Packaged Boiler Efficiency Levels

For small gas-fired steam natural draft commercial packaged boilers, DOE selected three efficiency levels to analyze above the baseline efficiency level. Table V.5 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 800 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.5—SMALL GAS-FIRED STEAM NATURAL DRAFT COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	77
Efficiency Level 1	78
Efficiency Level 2	79
Efficiency Level 3	80

d. Small Oil-Fired Hot Water Commercial Packaged Boiler Efficiency Levels

For small oil-fired hot water commercial packaged boilers, DOE selected three efficiency levels to analyze above the baseline efficiency level. Table V.6 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 800 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.6—SMALL OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	82
Efficiency Level 1	84
Efficiency Level 2	86
Efficiency Level 3	88

e. Small Oil-Fired Steam Commercial Packaged Boiler Efficiency Levels

For small oil-fired steam commercial packaged boilers DOE selected three efficiency levels to analyze above the baseline efficiency level. Table V.7 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 800 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.7—SMALL OIL-FIRED STEAM COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	81
Efficiency Level 1	82
Efficiency Level 2	83
Efficiency Level 3	85

f. Large Gas-Fired Hot Water Commercial Packaged Boiler Efficiency Levels

For large gas-fired hot water commercial packaged boilers, DOE selected four efficiency levels to analyze above the baseline efficiency level. Table V.8 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 3,000 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.8—LARGE GAS-FIRED HOT WATER COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Combustion efficiency (E_C) levels for analysis (percent)
Baseline Efficiency	82
Efficiency Level 1	83
Efficiency Level 2	84
Efficiency Level 3	85
Efficiency Level 4 (Condensing)	95

g. Large Gas-Fired Steam, All Except Natural Draft Commercial Packaged Boiler Efficiency Levels

For large gas-fired steam, all except natural draft commercial packaged boilers, DOE selected four efficiency levels to analyze above the baseline efficiency level. Table V.9 shows the efficiency levels selected by DOE. DOE examined these efficiency levels for the 3,000 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.9—LARGE GAS-FIRED STEAM, ALL EXCEPT NATURAL DRAFT COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	79
Efficiency Level 1	80
Efficiency Level 2	81
Efficiency Level 3	82
Efficiency Level 4	83

h. Large Gas-Fired Steam Natural Draft Commercial Packaged Boiler Efficiency Levels

For large gas-fired steam natural draft commercial packaged boilers, DOE selected four efficiency levels to analyze above the baseline efficiency level. Table V.10 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 3,000 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.10—LARGE GAS-FIRED STEAM NATURAL DRAFT COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	77
Efficiency Level 1	78
Efficiency Level 2	79
Efficiency Level 3	80
Efficiency Level 4	81

i. Large Oil-Fired Hot Water Commercial Packaged Boiler Efficiency Levels

For large oil-fired hot water commercial packaged boilers, DOE selected three efficiency levels to analyze above the baseline efficiency level. Table V.11 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 3,000 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.11—LARGE OIL-FIRED HOT WATER COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Combustion efficiency (E_C) levels for analysis (percent)
Baseline Efficiency	84
Efficiency Level 1	86
Efficiency Level 2	87
Efficiency Level 3	88

j. Large Oil-Fired Steam Commercial Packaged Boiler Efficiency Levels

For large oil-fired steam commercial packaged boilers, DOE selected four efficiency levels to analyze above the baseline efficiency level. Table V.12 shows the efficiency levels DOE selected. DOE examined these efficiency levels for the 3,000 kBtu/h representative output capacity for analysis purposes. However, DOE notes these efficiency levels can be found at numerous other capacities within the range of covered capacities.

TABLE V.12—LARGE OIL-FIRED STEAM COMMERCIAL PACKAGED BOILER EFFICIENCY LEVELS

Efficiency level	Thermal efficiency (E_T) levels for analysis (percent)
Baseline Efficiency	81
Efficiency Level 1	82
Efficiency Level 2	83
Efficiency Level 3	84
Efficiency Level 4	86

5. Oil-Fired Commercial Packaged Boilers

DOE estimated that oil-fired commercial packaged boilers are, on average, 3 percent more efficient than gas-fired boilers of identical construction. Because the construction of oil-fired and gas-fired boilers is basically the same, with the exception of some differences in controls, DOE assumed the incremental cost for increasing the efficiency of both types of boilers would be the same. The difference in the cost of controls would make no difference in the incremental cost of equipment because the same additional cost for controls would be applied across the range of oil-fired commercial boiler efficiencies. Once the cost-efficiency curves were normalized, the cost of the controls was subtracted. For these reasons, DOE estimated the incremental cost-efficiency curves for oil-fired equipment by shifting the cost-efficiency curves for each gas-fired equipment class by 3 percent (*e.g.*, DOE shifted the small gas-fired hot water curve 3 percent higher in efficiency to obtain the small oil-fired hot water curve).

For the steam curves, where gas-fired equipment is divided into natural draft and all except natural draft curves, DOE used the all except natural draft curves to develop the cost-efficiency curves for oil-fired steam boilers. This is because the majority of oil-fired steam boilers in DOE's database are categorized as all except natural draft.

6. Dual Output Boilers

Dual output boilers are boilers capable of producing either hot water or steam as the boiler's output of services. DOE analyzed dual output boilers by classifying them as steam only boilers. DOE did this because the current test procedure for commercial packaged boilers instructs manufacturers to test boilers capable of producing both steam and hot water either only in steam mode or in both steam mode and hot water mode. 10 CFR 431.86(c)(2)(iii)(A).

Further, the test procedure states that if a manufacturer chooses to test a boiler in both steam mode and hot water mode, the boiler must be rated for efficiency in each mode as two separate listings in the I=B=R Directory. 10 CFR 431.86(c)(2)(iii)(B). Therefore, DOE assumed the efficiency ratings for dual output boilers were representative of the efficiency of the boiler tested in steam mode only. DOE seeks comment from interested parties regarding the efficiency of dual output boilers in both steam mode and hot water mode. Specifically, DOE is interested in receiving data or comments, which would allow DOE to convert the steam ratings in the I=B=R Directory and manufacturers' catalogs to hot water ratings. This is identified as Issue 2 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of today's NOPR.

7. Engineering Analysis Results

The result of the engineering analysis is a set of cost-efficiency curves. Creating the cost-efficiency curves involved three steps: (1) Plotting the contractor cost versus efficiency; (2) aggregating the cost data by manufacturer; and (3) using an exponential regression analysis to fit a curve that best defines the aggregated data. DOE refers to the contractor cost—provided directly from mechanical contractors or equipment distributors—as the ''absolute cost.'' DOE correlated the absolute cost as a function of each commercial packaged boiler's rated efficiency. Most manufacturers publish the rated thermal and/or combustion efficiencies of their commercial packaged boilers according to AHRI specifications. DOE only presents the incremental costs of increasing the efficiency of a commercial packaged boiler in the NOPR TSD to avoid the possibility of revealing sensitive information about individual manufacturers' equipment. Different manufacturers might have substantially different absolute costs for their equipment at the same efficiency level due to design modifications and manufacturing practices.

To determine the relationship of incremental cost versus efficiency for each of the representative capacities in each equipment class, DOE aggregated the absolute cost data. After aggregating the data, DOE fit an exponential curve to the data at each representative capacity for each equipment class and normalized the data. That is, DOE adjusted the costs of every manufacturer's equipment so that the cost of its equipment was zero at the baseline ASHRAE Standard 90.1–2007 efficiency levels (Table V.2). The normalized exponential cost curves from the aggregated data establish cost-efficiency curves for each equipment class that represent the average incremental cost of increasing efficiency above the ASHRAE Standard 90.1–2007 levels.

The curves do not represent any single manufacturer, and they do not describe any variance among manufacturers. The curves simply represent, on average, the industry's cost to increase equipment efficiency. It should be noted that in this analysis, several types of boiler construction are aggregated into single equipment classes, and the cost-efficiency curves represent only an average boiler and not any individual boiler with any specific design characteristics. For example, small gas hot water boilers are commonly manufactured as copper tube boilers or as cast iron sectional boilers. The difference in the two materials and the construction of these boilers results in a wide range of prices and efficiencies for this boiler equipment class. DOE attempted in its analysis to determine what the average cost-efficiency relationship would look like across the range of boiler types included in each equipment class. The results show that the cost-efficiency relationships for each of the ten equipment classes are nonlinear. As efficiency increases, manufacturing becomes more difficult and more costly for manufacturers. Chapter 3 of the NOPR TSD provides additional information about the engineering analysis, as well as the complete set of cost-efficiency results.

D. Markups To Determine Equipment Price

DOE understands that the price of commercial boilers depends on the distribution channel the customer uses to purchase the equipment. Typical distribution channels for commercial HVAC equipment include manufacturers' national accounts, wholesalers, mechanical contractors, and/or general contractors. DOE developed costs for mechanical contractors directly in the engineering analysis and estimated cost to customers using a markup chain beginning with the mechanical contractor cost. DOE did not develop an estimate for manufacturer selling prices in the engineering analysis and consequently, did not develop an estimate of markups for national account distribution channels with sales directly from manufacturers to customers. Because of the complexity of installation and based on few shipments to mercantile/retail building types, DOE estimated most sales of commercial packaged boilers involved mechanical contractors. Consequently, DOE did not develop separate markups for costs through a national account distribution chain or directly from wholesalers.

DOE developed supply chain markups in the form of multipliers that represent increases above the mechanical contractor cost. DOE applied these markups (or multipliers) to the mechanical contractor costs it developed from the engineering analysis. DOE then added sales taxes and installation costs to arrive at the final installed equipment prices for baseline and higher-efficiency equipment. See chapter 5 of the NOPR TSD for additional details on markups. DOE identified two separate distribution channels for commercial boilers to describe how the equipment passes from the mechanical contractor to the customer (Table V.13).

*COM022*TABLE V.13—DISTRIBUTION CHANNELS FOR COMMERCIAL PACKAGED BOILER EQUIPMENT

Channel 1 (replacements)	Channel 2 (new construction)
Mechanical Contractor.	Mechanical Contractor.
	General Contractor.
Customer	Customer.

DOE assumed that general contractors would be involved in new construction involving installation of commercial boilers. DOE assumed that replacement of existing boilers would not involve general contractors.

DOE estimated percentages for both the new construction and replacement markets based on data developed for the shipment's model and based on growth in new construction and replacement of existing stock as shown in Table V.14. Based on these results, DOE assumes that approximately 33 percent of commercial boilers purchased will be installed in new construction, and the remaining 67 percent will replace existing commercial boilers.

TABLE V.14—PERCENTAGE OF COMMERCIAL PACKAGED BOILER MARKET SHARES PASSING THROUGH EACH DISTRIBUTION CHANNEL

	Channel 1 (%)	Channel 2 (%)
Replacement Market	100	0
New Construction Market	0	100

For each step in the distribution channels presented above, DOE estimated a baseline markup and an incremental markup. DOE defined a baseline markup as a multiplier that converts the mechanical contractor cost of equipment with baseline efficiency to the customer purchase price for the equipment at the same baseline efficiency level. An incremental markup is defined as the multiplier to convert the incremental increase in mechanical contractor cost of higher-efficiency equipment to the customer purchase price for the same equipment. Both baseline and incremental markups only depend on the particular distribution channel and are independent of the boiler efficiency levels.

DOE developed the markups for each distribution channel based on available financial data. DOE based the mechanical contractor markups on data from the Air Conditioning Contractors of America (ACCA) [23] and on the 2002 U.S. Census Bureau financial data [24] for the plumbing, heating, and air conditioning industry. DOE derived the general contractor markups from U.S. Census Bureau financial data for the commercial and institutional building construction sector.

The overall markup is the product of all the markups (baseline or incremental) for the different steps within a distribution channel plus sales tax. DOE calculated sales taxes based on 2008 State-by-State sales tax data reported by the Sales Tax Clearinghouse. Because both contractor costs and sales tax vary by State, DOE developed distributions of markups within each distribution channel by State. Because the State-by-State distribution of boiler unit sales varies by building type, the National distribution of the markups varies among business types. Chapter 5 of the NOPR TSD provides additional detail on markups.

[23] Air Conditioning Contractors of America. Financial Analysis for the HVACR Contracting Industry, 2005. Available at: *http://www.acca.org.*

[24] The 2002 U.S. Census Bureau financial data for the plumbing, heating, and air conditioning industry is the latest version data set and was issued in December 2004. Available at: *http://www.census.gov/prod/ec02/ec0223i236220.pdf.*

E. Energy Use Characterization

DOE used the building energy use characterization analysis to assess the energy savings potential of commercial boilers at different efficiency levels. This analysis estimates the energy use of commercial boilers at specified efficiency levels by using previously calculated Full Load Equivalent Operating Hour (FLEOH) metrics by building type and by climate across the United States. FLEOHs are effectively the number of hours that a system would have to run at full capacity to serve a total load equal to the annual load on the equipment. Boiler FLEOHs are calculated as the annual heating load divided by the equipment capacity. The FLEOH values used for the boiler analysis were based on simulations documented for the ''Screening Analysis for EPACT-Covered Commercial [Heating, Ventilating and Air-Conditioning] HVAC and Water-Heating Equipment'' [25] (hereafter, 2000 Screening Analysis) (66 FR 3336 (Jan. 12, 2001)) and used 7 different building types and 11 different U.S. climates.

For each equipment class, DOE estimated the energy use of a given piece of equipment by multiplying the characteristic equipment output capacity by the FLEOH appropriate to each combination of representative building type and climate location. The product is effectively the total annual heat output from the boiler. The input energy is then determined by dividing the annual heat output by the thermal efficiency of the equipment at each efficiency level. The thermal efficiency is used here for all equipment classes since it defines the relationship between energy input and useful output of a commercial packaged boiler. For the two classes where a thermal efficiency metric was not specified by ASHRAE Standard 90.1–2007, an estimate of the thermal efficiency of equipment just meeting the combustion efficiency requirements specified by ASHRAE Standard 90.1–2007 was developed based on DOE's market analysis. DOE adjusted the unit energy use for each nominal equipment efficiency level DOE considered.

In addition for condensing hot water boilers, it is recognized that the thermal efficiency of a commercial packaged boiler in actual use depends on the return water conditions. In turn, the return water conditions are dependent upon the hydronic system design and control. For DOE's analysis, the rated thermal efficiencies for fully condensing equipment were further adjusted to reflect return water conditioners based on installation in existing buildings with conventional hydronic heating coils. DOE's estimates allow for the supply water temperature to reset sufficiently to meet the estimated heating coil loads during the year. See chapter 4 of the TSD for further details.

DOE estimated the national energy impacts of higher efficiency equipment by: (1) Mapping climate locations onto regions; and (2) estimating the fraction of each year's national equipment shipments (by product category) within market segments, as defined by a representative building type within a particular region of the United States. Seven representative building types were used, including: Assembly, Education, Food Service, Lodging, Office, Retail, and Warehouse buildings, as were used in the 2000 Screening Analysis. Because detailed statistical information related to where and in what types of buildings the equipment is currently being installed is generally unavailable, DOE developed an allocation process. The estimated allocation of national shipments to market segments was based on information from the 2003 Commercial Buildings Energy Consumption Survey (CBECS) [26] related to floor space and relative fraction of floor space reporting use of boilers for each market segment.

DOE developed the energy use estimates for the seven key commercial building types in 11 geographic regions. Seven of these regions correspond directly to U.S. Census divisions. The Pacific and Mountain Census divisions were subdivided individually into northern and southern regions to

[25] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Conservation Program for Consumer Products: Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment Screening Analysis'' (April 2000).

[26] Energy Information Administration (2003). Available at: *http://www.eia.doe.gov/emeu/cbecs/contents/html* (2003).

account for north-south climate variation within those Census divisions, as discussed in the 2000 Screening Analysis. The LCC and national energy savings (NES) analyses use the annual energy consumption of commercial boilers in each equipment class analyzed. As expected, annual energy use of commercial boilers decreased as the efficiency level increased from the baseline efficiency level to the highest efficiency level analyzed. Chapter 4 of the NOPR TSD provides additional details on the energy use characterization analysis.

F. Life-Cycle Cost and Payback Period Analyses

DOE conducted the LCC and PBP analyses to estimate the economic impacts of potential standards on individual customers of commercial packaged boilers. DOE first analyzed these impacts for commercial packaged boilers by calculating the change in customers' LCCs likely to result from higher efficiency levels compared with the baseline efficiency levels. The LCC calculation considers total installed cost (contractor cost, sales taxes, distribution chain markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE calculated the LCC for all customers as if each would purchase a new commercial boiler unit in the year the standard takes effect. Since DOE is considering both the efficiency levels in ASHRAE Standard 90.1–2007 and more-stringent efficiency levels, an amended energy conservation standard becomes effective on different dates depending upon the efficiency level and equipment class. The statutory lead times for DOE adopting of the ASHRAE Standard 90.1–2007 efficiency levels and more-stringent efficiency levels are different. (See section V.H.1 below for additional explanation of the effective dates.) However, from the customer's viewpoint, there is only a single boiler purchase date in determining the LCC benefits to the customer from purchase of a boiler at more-stringent efficiency levels. To account for this, DOE presumes that the purchase year for the LCC calculation is 2014, the earliest year in which DOE can establish an amended energy conservation level at an efficiency level more stringent than the ASHRAE efficiency level. To compute LCCs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment.

Second, DOE analyzed the effect of changes in installed costs and operating expenses by calculating the PBP of potential standards relative to baseline efficiency levels. The PBP estimates the amount of time it would take the customer to recover the incremental increase in the purchase price of more-efficient equipment through lower operating costs. The PBP is the change in purchase price divided by the change in annual operating cost that results from the standard. DOE expresses this period in years. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses. However, unlike the LCC, DOE only considers the first year's operating expenses in the PBP calculation. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP.

DOE conducted the LCC and PBP analyses using a commercially-available spreadsheet model. This spreadsheet accounts for variability in energy use, installation costs and maintenance costs, and energy costs, and uses weighting factors to account for distributions of shipments to different building types and States to generate national LCC savings by efficiency level. The results of DOE's LCC and PBP analyses are summarized in section VI below and described in detail in chapter 5 of the NOPR TSD.

1. Approach

Recognizing that each business that uses commercial packaged boiler equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations assuming a one-to-one correspondence between business types and market segments (characterized as building types) for customers located in seven types of commercial buildings. DOE developed financial data appropriate for the customers in each building type. Each type of building has typical customers who have different costs of financing because of the nature of the business. DOE derived the financing costs based on data from the Damodaran Online site.[27]

The LCC analysis used the estimated annual energy use for each commercial packaged boiler unit described in section V.E. Because energy use of commercial packaged boilers is sensitive to climate, it varies by State. Aside from energy use, other important factors influencing the LCC and PBP analyses are energy prices, installation costs, equipment distribution markups, and sales tax. At the national level, the LCC spreadsheets explicitly modeled both the uncertainty and the variability in the model's inputs, using probability distributions based on the shipment of commercial packaged boiler equipment to different States.

As mentioned above, DOE generated LCC and PBP results by building type and State and used developed weighting factors to generate national average LCC savings and PBP for each efficiency level. As there is a unique LCC and PBP for each calculated value at the building type and State level, the outcomes of the analysis can also be expressed as probability distributions with a range of LCC and PBP results. A distinct advantage of this type of approach is that DOE can identify the percentage of customers achieving LCC savings or attaining certain PBP values due to an increased efficiency level, in addition to the average LCC savings or average PBP for that efficiency level.

2. Life-Cycle Cost Inputs

For each efficiency level DOE analyzed, the LCC analysis required input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table V.15 summarizes the inputs and key assumptions DOE used to calculate the customer economic impacts of all energy efficiency levels analyzed in this rulemaking. A more detailed discussion of the inputs follows.

TABLE V.15—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Inputs	Description
Affecting Installed Costs	
Equipment Price	Equipment price was derived by multiplying contractor cost (from the engineering analysis) by mechanical and general contractor markups as needed plus sales tax from the markups analysis.

[27] Damodaran Online. Leonard N. Stern School of Business, New York University (Jan. 2006). Available at: *http://www.stern.nyu.edu/adamodar/New_Home_Page/data.html.*

TABLE V.15—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES—Continued

Inputs	Description
Installation Cost	Installation cost includes installation labor, installer overhead, and any miscellaneous materials and parts, derived from *RS Means CostWorks 2007*.[28] DOE added additional costs to reflect the installation of near condensing and condensing boilers at efficiency levels more stringent than ASHRAE Standard 90.1–2007 efficiency levels. These costs include control modifications, stainless steel flues, and condensate pumps and piping to remove condensate.
Affecting Operating Costs	
Annual Energy Use	DOE derived annual energy use using FLEOH data for commercial boilers combined with thermal efficiency estimates for each boiler efficiency level analyzed. DOE did not incorporate differences in annual electricity use by efficiency level. DOE used State-by-State weighting factors to estimate the national energy consumption by efficiency level.
Fuel Prices	DOE developed average commercial natural gas and fuel oil prices for each State using EIA's State Energy Database Data for 2006 for natural gas and oil price data.[29] DOE used AEO2008 energy price forecasts to project oil and natural gas prices into the future.
Maintenance Cost	DOE estimated annual maintenance costs for commercial boilers based on MARS 8 Facility Cost Forecast System Database [30] for commercial boilers. Annual maintenance cost did not vary as a function of efficiency.
Repair Cost	DOE estimated the annualized repair cost for baseline efficiency commercial boilers based on cost data from MARS 8 Facility Cost Forecast System Database for commercial boilers. DOE assumed that repair costs would vary in direct proportion with the MSP at higher efficiency levels because it generally costs more to replace components that are more efficient.
Affecting Present Value of Annual Operating Cost Savings	
Equipment Lifetime	DOE estimated equipment lifetime assuming a 30-year lifespan for all commercial boilers based on data published by ASHRAE.
Discount Rate	Mean real discount rates for all buildings range from 2.3 percent for education buildings to 5.9 percent for retail building owners.
Analysis Start Year	Start year for LCC is 2014, which is four years after the publication of the final rule for amended energy conservation standards higher than ASHRAE.
Analyzed Efficiency Levels	
Analyzed Efficiency Levels	DOE analyzed the baseline efficiency levels (ASHRAE Standard 90.1–2007) and up to four higher efficiency levels for all ten equipment classes. See the engineering analysis for additional details.

a. Equipment Prices

The price of a commercial boiler reflects the application of distribution channel markups (mechanical and general contractor markups) and sales tax to the mechanical contractor cost established in the engineering analysis. As described in section V.C, DOE determined mechanical contractor costs for ten commercial boilers defined by a single representative equipment capacity (output capacity) for each of ten equipment classes. For each equipment class, the engineering analysis provided contractor costs for the baseline equipment and up to four higher equipment efficiencies.

The markup is the percentage increase in price as the commercial packaged boiler equipment passes through the distribution channel. As explained in section V.D, distribution chain markups are based on two truncated distribution channels, starting with a mechanical contractor cost for each efficiency level, based on whether the equipment is being purchased for the new construction market or to replace existing equipment.

b. Installation Costs

DOE derived national average installation costs for commercial boilers from data provided in *RS Means CostWorks 2007* (RS Means) for commercial boiler equipment with efficiencies at or below the ASHRAE Standard 90.1–2007 efficiency levels.[31] RS Means provides estimates for installation costs for hot water and steam boilers by equipment capacity and fuel type, as well as cost indices that reflect the variation in installation costs for 295 cities in the United States. The RS Means data identifies several cities in all 50 States and the District of Columbia. DOE incorporated location-based cost indices into the analysis to capture variation in installation cost, depending on the location of the customer.

For more-stringent efficiency levels, DOE estimated the cost for stainless steel venting at more-stringent efficiency levels based on an assumed 35-foot flue length and applied the entire materials cost to commercial packaged boilers going into the replacement market. In addition, DOE assumed additional costs for control modifications for higher-efficiency boilers and for condensate removal for near condensing and condensing boilers. DOE recognized, however, that installation costs could potentially be higher with higher efficiency commercial packaged boilers due primarily to venting concerns with existing flues and chimney cases in the replacement market. DOE did not have data to calibrate the extent to which additional cost should apply. This is identified as Issue 3 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of today's NOPR.

[28] RS Means CostWorks 2007, R.S. Means Company, Inc. 2007. Kingston, Massachusetts (2007). Available at: *http://www.meanscostworks.com/.*

[29] Natural Gas Price and Expenditure Estimates by Sector, EIA, 2006. Available at: *http://www.eia.doe.gov/emeu/states/sep_fuel/html/fuel_pr_ng.html.* 2006 Distillate Fuel Price and Expenditure Estimates by Sector, EIA, 2006. Available at: *http://www.eia.doe.gov/emeu/states/hf.jsp?incfile=sep_fuel/html/fuel_pr_df.html*

[30] MARS 8 Facility Cost Forecast System Database, Whitestone Research, 2008. Washington, DC. Available at: *http://www.whitestoneresearch.com/mars/index.htm.*

[31] RS Means CostWorks 2007, R.S. Means Company, Inc. 2007. Kingston, Massachusetts (2007). Available at: *http://www.meanscostworks.com/.*

c. Annual Energy Use

DOE estimated the annual natural gas or fuel oil energy consumed by each class of commercial boiler, by efficiency level, based on the energy use characterization described in section V.E. DOE aggregated the average annual energy use per unit at the State level by applying a regional building-type weighting factor to establish the relative building type shipments for each of 11 geographic regions composed of select States, and then a population-weighting factor for each State within the geographic regions.

DOE adjusted the condensing efficiency levels identified in the engineering analysis for small and large gas-fired hot water commercial packaged boilers to more accurately reflect actual field efficiencies. In both cases, DOE degraded the thermal efficiencies to 88 percent. DOE assumed that commercial packaged boilers serve a standard fan coil or air handler delivery system and that the load of the system varies linearly with the outdoor temperature from a balance point of 50 degrees Fahrenheit. Chapter 4 of the NOPR TSD describes the annual energy use calculations.

In determining the reduction in energy consumption of commercial packaged boiler equipment due to increased efficiency, DOE did not take into account a rebound effect. The rebound effect occurs when a piece of equipment, after it is made more efficient, is used more intensively, and therefore the expected energy savings from the efficiency improvement do not fully materialize. For the commercial boilers that are the subject of this rulemaking, DOE has no basis for concluding that a rebound effect would occur and has not taken the rebound effect into account in the energy use characterization.

d. Fuel Prices

Fuel prices are needed to convert the gas or oil energy savings from higher-efficiency equipment into energy cost savings. Because of the variation in annual fuel consumption savings and equipment costs across the country, it is important to consider regional differences in electricity prices. DOE used average effective commercial natural gas and commercial fuel oil prices at the State level from Energy Information Administration (EIA) data for 2006 and 2007. Where 2006 data were used, EIA fuel escalation factors from the 2008 Annual Energy Outlook (*AEO2008*) were used to escalate prices to 2007 average fuel price estimates. This approach captured a wide range of commercial fuel prices across the United States. Furthermore, different kinds of businesses typically use electricity in different amounts at different times of the day, week, and year, and therefore face different effective prices. To make this adjustment, DOE used EIA's 2003 CBECS [32] data set to identify the average prices the seven building types paid and compared them with the average prices all commercial customers paid.[33] DOE used the ratios of prices paid by the seven types of businesses to the national average commercial prices seen in the 2003 CBECS as multipliers to adjust the average commercial 2007 State price data.

DOE weighted the prices each building type paid in each State by the estimated sales of commercial boilers to each building type to obtain a weighted-average national electricity and national average fuel oil price for 2007. The State/building type weights reflect the probabilities that a given boiler unit shipped will operate with a given fuel price. The effective prices (2007$) range from approximately $4.75 per million Btu to approximately $27.98 per million Btu for natural gas, and from approximately $14.83 per million Btu to approximately $17.56 cents per million Btu for commercial fuel oil. (See chapter 5 of the NOPR TSD.)

The natural gas and fuel price trends provide the relative change in fuel costs for future years to 2042. DOE applied the *AEO2008* reference case as the default scenario and extrapolated the trend in values from 2020 to 2030 of the forecast to establish prices in 2030 to 2042. This method of extrapolation is in line with methods the EIA uses to forecast fuel prices for the Federal Energy Management Program. DOE provides a sensitivity analysis of the LCC savings and PBP results to different fuel price scenarios using both the *AEO2008* high-price and low-price forecasts in chapter 5 of the NOPR TSD.

e. Maintenance Costs

Maintenance costs are the costs to the customer of maintaining equipment operation. Maintenance costs include services such as cleaning heat-exchanger coils and changing air filters. DOE estimated annual routine maintenance costs for commercial boiler equipment as $1.445/kbtu-hr output capacity per year for boilers with output capacities of nominally 800 kBtu/h, and as $0.945/kbtu-hr output capacity per year for boilers with output capacities of 3000 kBtu/h, reported in the MARS 8 Facility Cost Forecast System database. Because data were not available to indicate how maintenance costs vary with equipment efficiency, DOE decided to use preventive maintenance costs that remain constant as equipment efficiency increases.

f. Repair Costs

The repair cost is the cost to the customer of replacing or repairing components that have failed in the commercial boiler. DOE estimated the annualized repair cost for baseline efficiency commercial boilers as $443/yr for boilers with output capacities of nominally 800 kBtu/h, and as $820/yr for boilers with output capacities of 3000 kBtu/h, based on costs for component repair documented in MARS 8 Facility Cost Forecast System database. DOE determined that repair costs would increase in direct proportion with increases in equipment prices. Because the price of boilers increases with efficiency, the cost for component repair will also increase as the efficiency of equipment increases.

g. Equipment Lifetime

DOE defines equipment lifetime as the age when a commercial boiler is retired from service. DOE reviewed available literature and consulted with manufacturers to establish typical equipment lifetimes. The literature and experts consulted offered a wide range of typical equipment lifetimes. DOE used a 30-year lifetime for commercial boilers in the 2000 Screening Analysis based on data from ASHRAE's 1995 Handbook of HVAC Applications.[34] DOE continued to use this estimate for the LCC analysis. Chapter 5 of the NOPR TSD contains a discussion of equipment lifetime.

h. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE estimated the discount rate by estimating the cost of capital for purchasers of commercial boilers. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted-average cost of debt and equity financing, or the weighted-average cost of capital (WACC), less the expected inflation.

[32] EIA's Commercial Buildings Energy Consumption Survey, Energy Information Agency. Public use microdata available at: *http://www.eia.doe.gov/emeu/cbecs/cbecs2003/public_use_2003/cbecs_pudata2003.html*.

[33] EIA's 2003 CBECS is the most recent version of the data set.

[34] ASHRAE Handbook: 1995 Heating, Ventilating, and Air-Conditioning Applications, ASHRAE, 1995. Available for purchase at: *http://www.ashrae.org/publications/page/1287*.

To estimate the WACC of commercial boiler purchasers, DOE used a sample of over 2000 companies grouped to be representative of operators of each of five of seven commercial building types (food service, lodging, office, retail, and warehouse) and drawn from a database of 7,369 U.S. companies presented on the Damodaran Online website.[35] This database includes most of the publicly-traded companies in the United States. For public assembly and education buildings, DOE estimated the cost of capital based on composite tax exempt bond rates. When one or more of the variables needed to estimate the discount rate was missing or could not be obtained, DOE discarded the firm from the analysis. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and thus depreciation due to more expensive equipment, on the overall tax status.

DOE used the final sample of companies to represent purchasers of commercial boilers. For each company in the sample, DOE derived the cost of debt, percent debt financing, and systematic company risk from information on the Damodaran Online Web site. Damodaran estimated the cost of debt financing from the long-term government bond rate (4.39 percent) and the standard deviation of the stock price. DOE then determined the weighted average values for the cost of debt, range of values, and standard deviation of WACC for each category of the sample companies. Deducting expected inflation from the cost of capital provided estimates of real discount rate by ownership category. Based on this database, DOE calculated the weighted average after-tax discount rate for commercial boiler purchases, adjusted for inflation, in each of the seven building types used in the analysis. Chapter 5 of the NOPR TSD contains the detailed calculations on the discount rate.

3. Payback Period

DOE also determined the economic impact of potential amended energy conservation standards on customers by calculating the PBP of more-stringent efficiency levels relative to a baseline efficiency level. The PBP measures the amount of time it takes the commercial customer to recover the assumed higher purchase expense of more-efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses for each building type and State, weighted on the probability of shipment to each market. Because the PBP does not take into account changes in operating expense over time or the time value of money, DOE considered only the first year's operating expenses to calculate the PBP, unlike the LCC. Chapter 5 of the NOPR TSD provides additional details about the PBP.

G. National Impact Analysis—National Energy Savings and Net Present Value Analysis

The national impacts analysis evaluates the impact of a proposed energy conservation standard from a national perspective rather than from the customer perspective represented by the LCC. This analysis assesses the net present value (NPV) (future amounts discounted to the present) and the NES of total commercial customer costs and savings, which are expected to result from amended standards at specific efficiency levels. For each efficiency level analyzed, DOE calculated the NPV and NES for adopting more-stringent standards than the efficiency levels specified in ASHRAE Standard 90.1–2007. The NES refers to cumulative energy savings from 2012 through 2042. DOE calculated new energy savings in each year relative to a base case, defined as DOE adoption of the efficiency levels specified by ASHRAE Standard 90.1–2007. The NPV refers to cumulative monetary savings. DOE calculated net monetary savings in each year relative to the base case as the difference between total operating cost savings and increases in total installed cost. Cumulative savings are the sum of the annual NPV over the specified period. DOE accounted for operating cost savings until 2085, when 95 percent of all the equipment installed in 2042 should be retired.

1. Approach

Over time, equipment that is more efficient in the standards case gradually replaces less-efficient equipment. This affects the calculation of both the NES and NPV, which are a function of the total number of units in use and their efficiencies. Both the NES and NPV depend on annual shipments and equipment lifetime, including changes in shipments and retirement rates in response to changes in equipment costs due to amended energy conservation standards. Both calculations start by using the shipments estimate and the quantity of units in service derived from the shipments model.

With regard to estimating the NES, because more-efficient boilers gradually replace less-efficient ones, the energy per unit of capacity used by the boilers in service gradually decreases in the standards case relative to the base case. DOE calculated the NES by subtracting energy use under a standards-case scenario from energy use in a base case scenario.

Unit energy savings for each equipment class are the weighted-average values calculated in the LCC spreadsheet. To estimate the total energy savings for each efficiency level, DOE first calculated the national site energy consumption (*i.e.,* the energy directly consumed by the units of equipment in operation) for each class of commercial packaged boilers for each year of the analysis period. The NES and NPV analysis periods began with the earliest expected effective date of amended Federal energy conservation standards (*i.e.,* 2012) based on DOE adoption of the baseline ASHRAE 90.1–2007 efficiency levels. For the analysis of DOE adoption of more-stringent efficiency levels, the earliest effective date is 2014, four years after DOE would likely issue a final rule requiring such standards. Second, DOE determined the annual site energy savings, consisting of the difference in site energy consumption between the base case and the standards case for each class of boiler. Third, DOE converted the annual site energy savings into the annual amount of energy saved at the source of gas generation (the source energy), using a site-to-source conversion factor. Finally, DOE summed the annual source energy savings from 2012 to 2042 to calculate the total NES for that period. DOE performed these calculations for each efficiency level considered for commercial packaged boilers in this rulemaking.

DOE considered whether a rebound effect is applicable in its NES analysis. A rebound effect occurs when an increase in equipment efficiency leads to an increased demand for its service. EIA in its national energy modeling system (NEMS) model assumes a certain elasticity factor to account for an increased demand for service due to the increase in cooling (or heating) efficiency.[36] EIA refers to this as an efficiency rebound.[37] For the

[35] Damodaran financial data used for determining cost of capital available at: *http://pages.stern.nyu.edu/~adamodar/ for commercial businesses.* Data for determining financing for public buildings available at: *http://finance.yahoo.com/bonds/composite_bond_rates.*

[36] DOE used the NEMS version consistent with *AEO2008.* An overview of the NEMS model and documentation is found at *http://www.eia.doe.gov/oiaf/aeo/overview/index.html.*

[37] EIA, Assumptions to the *Annual Energy Outlook 2007* (2007). Available at: *http://www.eia.doe.gov/oiaf/aeo/assumption/index.html.*

commercial heating equipment market, there are two ways that a rebound effect could occur: (1) Increased use of the heating equipment within the commercial buildings they are installed in; and (2) additional instances of heating a commercial building where it was not being heated before.

The first instance does not occur often because commercial buildings are generally heated to the thermal comfort temperatures desired in these buildings during the occupied periods. DOE also does not believe that increases in the efficiency of commercial boilers would result in significant increases in operating hours during which heating might be utilized in buildings.

With regard to the second instance, commercial boilers are unlikely to be installed in previously unheated building spaces, because commercial packaged boilers are not primarily found in warehouse buildings. Furthermore, relatively little unheated commercial building space exists outside of warehouse buildings. For warehouse buildings generally, other heating equipment types tend to be utilized today and will likely continued to be used in the future, because of lower first costs with direct heating equipment such as furnaces and unit heaters as well as the use of high temperature radiant heaters for human comfort in some warehouses. Therefore, DOE did not assume a rebound effect in the present NOPR analysis. DOE seeks input from interested parties on whether there will be a rebound effect for improvements in the efficiency of commercial packaged boilers. If interested parties believe a rebound effect will occur, DOE is interested in receiving data quantifying the effects as well as input regarding how should DOE quantify this in its analysis. This is identified as Issue 4 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of today's NOPR.

To estimate NPV, DOE calculated the net impact as the difference between total operating cost savings (including electricity, repair, and maintenance cost savings) and increases in total installed costs (including customer prices and installation cost). DOE calculated the NPV of each standard level over the life of the equipment using the following three steps. First, DOE determined the difference between the equipment costs under the standard-level case and the base case in order to obtain the net equipment cost increase resulting from the higher standard level. Second, DOE determined the difference between the base-case operating costs and the standard-level operating costs in order to obtain the net operating cost savings from each higher efficiency level. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase in order to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2008 for boilers bought on or after 2012 and summed the discounted values to provide the NPV of an efficiency level. An NPV greater than zero shows net savings (*i.e.,* the efficiency level would reduce customer expenditures relative to the base case in present value terms). An NPV that is less than zero indicates that the efficiency level would result in a net increase in customer expenditures in present value terms.

To make the analysis more transparent to all interested parties, DOE used a commercially-available spreadsheet model to calculate the energy savings and the national economic costs and savings from amended standards. Chapter 7 of the NOPR TSD helps explain the models and how to use them. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs, but relies on national average first costs and energy costs developed from the LCC spreadsheet. DOE examined sensitivities by applying different scenarios. DOE used the NES spreadsheet to perform calculations of energy savings and NPV using the annual energy consumption and total installed cost data from the LCC analysis. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV of benefits for equipment sold in each boiler equipment class from 2012 through 2042. The forecasts provided annual and cumulative values for all four output parameters described above.

2. Shipments Analysis

Equipment shipments are an important element in the estimate of the future impact of a standard. DOE developed shipments projections under a base case and each of the standards cases using a shipments model. DOE used the standards-case shipments projection and, in turn, the standards-case equipment stock to determine the NES. The shipments portion of the spreadsheet model forecasts boiler shipments from 2012 to 2042. Chapter 6 of the NOPR TSD provides details of the shipment projections.

DOE developed shipments forecasts by accounting for (1) the growth in the stock of commercial buildings which use boilers; (2) equipment retirements; and (3) equipment lifetimes.

The shipments model assumes that in each year, each existing boiler either ages by one year or breaks down, and that equipment that breaks down is replaced. In addition, new equipment can be shipped into new commercial building floor space, and old equipment can be removed through demolitions. DOE's shipments model is based on current shipments for commercial packaged boilers based on data provided by AHRI, as described above, as well as on an existing boiler survival function consistent with a 30-year equipment life. Shipments are separated into two groups: (1) Shipments to new construction; and (2) shipments for replacements. Total commercial boiler shipment data for 2007 from AHRI was first disaggregated into these two groups using the relative floor space between new construction and existing stock (as determined in the NEMS model for 2007) and assuming the same saturation rate for boiler usage between new and existing buildings. DOE then disaggregated total boiler shipments into shipments by equipment class, based on the relative fraction of models for each equipment class reflected in DOE's market database. This data allowed DOE to allocate sales of equipment to the different equipment classes. Annual shipments to new construction grew in proportion to the annual construction put in place as forecast by the NEMS model. Shipments for replacements in each year are based on a replacement model, which tracks the quantity and types of boilers that must be replaced in the building stock based on the boiler survival function. Chapter 2 of the NOPR TSD summarizes the total shipments data and the market database.

Table V.16 shows the forecasted shipments for the different equipment classes of commercial boilers for selected years from 2012 to 2042 for the base case. As equipment purchase price increases with efficiency, DOE recognizes that higher first costs can result in a drop in shipments. However, DOE had no basis for estimating the elasticity of shipments for commercial packaged boilers as a function of either first costs or operating costs. Therefore, DOE presumed that total shipments do not change with higher standard levels. Table V.16 also shows the cumulative shipments for boilers from 2012 to 2042. Chapter 6 of the NOPR TSD provides additional details on the shipments forecasts, including the standards case forecast.

TABLE V.16—BASE-CASE SHIPMENTS FORECAST FOR COMMERCIAL BOILERS

Equipment	Thousands of units shipped by year and equipment class								
	2012	2015	2020	2025	2030	2035	2040	2042	Cumulative shipments (2012–2042)
Small gas-fired hot water	6,853	7,112	7,494	7,922	8,848	10,343	12,239	12,984	73,795
Small gas-fired steam all except natural draft	2,322	2,410	2,539	2,684	2,998	3,505	4,147	4,399	25,005
Small gas-fired steam natural draft	3,568	3,703	3,902	4,125	4,607	5,385	6,372	6,760	38,422
Small oil-fired hot water	1,926	1,999	2,106	2,226	2,486	2,906	3,439	3,648	20,736
Small oil-fired steam	3,228	3,350	3,530	3,732	4,168	4,872	5,765	6,116	34,763
Large gas-fired hot water	1,104	1,146	1,208	1,277	1,426	1,667	1,972	2092	11,893
Large gas-fired steam all except natural draft	2,011	2,087	2,199	2,324	2,596	3,034	3,591	3,809	21,651
Large gas-fired steam natural draft	2,577	2,674	2,818	2,979	3,327	3,889	4,602	4,882	27,750
Large oil-fired hot water	538	558	588	622	695	812	961	1,019	5,794
Large oil-fired steam	4,248	4,408	4,645	4,910	5,485	6,411	7,586	8,048	45,741
Total	28,376	29,449	31,030	32,801	36,637	42,824	50,675	53,758	305,550

3. Base-Case and Standards-Case Forecasted Distribution of Efficiencies

The annual energy consumption of a commercial boiler unit is inversely related to the thermal efficiency of the unit. Thus, DOE forecasted shipment-weighted average equipment thermal efficiencies that, in turn, enabled a determination of the shipment-weighted annual energy consumption values for the base case and each efficiency level analyzed. DOE determined shipment-weighted average efficiency trends for commercial boilers equipment by first converting the 2008 equipment shipments by equipment class into market shares by equipment class. DOE then reviewed DOE's market database to determine the distribution of efficiency levels for commercially-available models within each equipment class. DOE bundled the efficiency levels into ''efficiency ranges'' and determined the percentage of models within each range. DOE applied the percentages of models within each efficiency range to the total unit shipments for a given equipment class to estimate the distribution of shipments within the base case. To determine the percentage of models in each efficiency range, DOE considered models greater than or equal to the lower bound of the efficiency range and models with efficiencies less than the upper bound of the efficiency range. For example, for the thermal efficiency range of 79–80 percent, DOE considered models with thermal efficiency levels from 79.0 to 79.9 to be within this range. Then, from those market shares and projections of shipments by equipment class, DOE extrapolated future equipment efficiency trends both for a base-case scenario and standards-case scenarios. The difference in equipment efficiency between the base case and standards cases was the basis for determining the reduction in per-unit annual energy consumption that could result from amended standards.

For the base case, DOE assumed that, absent amended standards, forecasted market shares would remain frozen at the 2012 efficiency levels until the end of the forecast period (30 years after the effective date, or 2042). This prediction could cause DOE to overestimate the savings associated with the higher efficiency levels discussed in this notice because historical data indicated boiler efficiencies or relative efficiency class preferences may change voluntarily over time. Therefore, DOE seeks comment on this assumption and the potential significance of any overestimation of savings. In particular, DOE requests data that would allow it to better characterize the likely increases in packaged boiler efficiencies that would occur over the 30-year analysis period absent adoption of either the ASHRAE 90.1–2007 efficiency levels or higher efficiency levels considered in this rule. This is identified as Issue 5 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of today's NOPR.

For each efficiency level analyzed, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that standards become effective (*i.e.*, 2014 if DOE adopts more-stringent efficiency levels than those in ASHRAE Standard 90.1–2007). DOE collected information that suggests the efficiencies of equipment in the base case that did not meet the standard level under consideration would roll up to meet the standard level. This information also suggests that equipment efficiencies in the base case that were above the standard level under consideration would not be affected.

DOE seeks input on its basis for the NES-forecasted base-case distribution of efficiencies and its prediction of how amended energy conservation standards affect the distribution of efficiencies in the standards case. This is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section VIII.E of today's NOPR.

4. National Energy Savings and Net Present Value

The commercial boiler equipment stock is the total number of commercial boilers in each equipment class purchased or shipped from previous years that have survived until the point at which stock is taken. The NES spreadsheet,[38] through use of the shipments model, keeps track of the total number of commercial boilers shipped each year. For purposes of the NES and NPV analyses, DOE assumes that retirements follow a Weibull[39] distribution with a 30-year mean lifetime. Retired units are replaced until 2042. For units shipped in 2042, any units still remaining at the end of 2085 are retired.

[38] The NES spreadsheet can be found on the DOE's ASHRAE Products Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_docs_meeting.html.*

[39] The Weibull distribution is a continuous probability distribution used to understand the failure and durability of equipment. It is popular because it is extremely flexible and can accurately model various types of failure processes. A two-parameter version of the Weibull was used and is described in chapter 7 of the TSD.

The national annual energy consumption is the product of the annual unit energy consumption and the number of boiler units of each vintage in the stock. This approach accounts for differences in unit energy consumption from year to year. In determining national annual energy consumption, DOE first calculated the annual energy consumption at the site (*i.e.,* million Btus of fuel consumed by commercial boilers) and multiplied that by a conversion factor to account for distribution losses.

To discount future impacts, DOE follows Office of Management and Budget (OMB) guidance in using discount rates of 7 percent and 3 percent in evaluating the impacts of regulations. In selecting the discount rate corresponding to a public investment, OMB directs agencies to use ''the real Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis.'' [40] The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the United States economy, and reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE also used the 3-percent discount rate to capture the potential effects of standards on private customers' consumption (*e.g.,* reduced purchasing of equipment due to higher prices and purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*e.g.,* yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years. Table V.17 summarizes the inputs to the NES spreadsheet model along with a brief description of the data sources. The results of DOE's NES and NPV analysis are summarized in section VI.B.2 below and described in detail in chapter 7 of the NOPR TSD.

TABLE V.17—SUMMARY OF NES AND NPV MODEL INPUTS

Inputs	Description
Shipments	Annual shipments from shipments model (see chapter 6 of the NOPR TSD).
Effective Date of Standard	2014 for adoption of a more-stringent efficiency level than those specified by ASHRAE Standard 90.1–2007. 2012 for adoption of the efficiency levels specified by ASHRAE Standard 90.1–2007.
Base Case Efficiencies	Distribution of base-case shipments by efficiency level.
Standard Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards-case annual shipment-weighted market shares remain the same as in the base case and each standard level for all efficiencies above the efficiency level being analyzed. All other shipments are at the efficiency level.
Annual Energy Use per Unit	Annual national weighted-average values are a function of efficiency level. (See chapter 4 of the NOPR TSD.)
Total Installed Cost per Unit	Annual weighted-average values are a function of efficiency level. (See chapter 5 of the NOPR TSD.)
Repair Cost per Unit	Annual weighted-average values increase with manufacturer's cost level. (See chapter 5 of the NOPR TSD.)
Maintenance Cost per Unit	See chapter 5 of the NOPR TSD.
Escalation of Fuel Prices	*AEO2008* forecasts (to 2030) and extrapolation for beyond 2030. (See chapter 5 of the NOPR TSD.)
Site-Source Conversion	Based on average annual site-to-source conversion factor for natural gas from *AEO2008.*
Discount Rate	3 percent and 7 percent real.
Present Year	Future costs are discounted to 2008.

H. Other Issues

1. Effective Date of the Proposed Amended Energy Conservation Standards

Generally, covered equipment to which a new or amended energy conservation standard applies must comply with the standard if such equipment is manufactured or imported on or after a specified date. In today's NOPR, DOE is evaluating whether more-stringent efficiency levels than those in ASHRAE Standard 90.1–2007 would be economically justified and result in a significant amount of energy savings. If DOE were to propose a rule prescribing energy conservation standards at the efficiency levels contained in ASHRAE Standard 90.1–2007, EPCA states that any such standards shall become effective ''on or after a date which is two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard * * *''. (42 U.S.C. 6313(a)(6)(D)) DOE has applied this two-year implementation period to determine the effective date of any energy conservation standard equal to the efficiency levels specified by ASHRAE Standard 90.1–2007 proposed by this rulemaking. Thus, if DOE decides to adopt one of the efficiency levels in ASHRAE Standard 90.1–2007 for the equipment classes where a two-tier standard is set-forth, the effective date of the rulemaking would be dependent upon the effective date specified in ASHRAE Standard 90.1–2007. For example, in certain cases, the effective date in ASHRAE Standard 90.1–2007 is March 2, 2010 for the initial efficiency level (which would require an effective date of 2012), but the effective date is March 2, 2020 for the second tier efficiency level (which would require an effective date of 2022).

If DOE were to propose a rule prescribing energy conservation standards higher than the efficiency levels contained in ASHRAE Standard 90.1–2007, EPCA states that any such standards ''shall become effective for products manufactured on or after a date which is four years after the date such rule is published in the **Federal**

[40] OMB Circular No. A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'' (Oct. 29, 1992) section 8.c.1.

Register.'' (42 U.S.C. 6313(a)(6)(D)) DOE has applied this 4-year implementation period to determine the effective date of any energy conservation standard higher than the efficiency levels specified by ASHRAE Standard 90.1–2007 that might be prescribed in a future rulemaking. Thus, for products for which DOE might adopt a level more stringent than the ASHRAE efficiency levels, the rule would apply to products manufactured on or after July 2014, which is four years from the date of publication of the final rule.[41]

Table V.18 presents the anticipated effective dates of an amended energy conservation standard for each equipment class for which DOE developed a potential energy savings analysis.

TABLE V.18—ANTICIPATED EFFECTIVE DATE OF AN AMENDED ENERGY CONSERVATION STANDARD FOR EACH EQUIPMENT CLASS OF COMMERCIAL PACKAGED BOILERS

Equipment class	Anticipated effective date for adopting the efficiency levels in ASHRAE standard 90.1–2007	Anticipated effective date for adopting more-stringent efficiency levels than those in ASHRAE standard 90.1–2007
Small Gas-Fired Hot Water Commercial Packaged Boilers	2012	2014
Small Gas-Fired Steam, All Except Natural Draft Commercial Packaged Boilers	2012	2014
Small Gas-Fired Steam Natural Draft Commercial Packaged Boilers	2012 or 2022	2014
Small Oil-Fired Hot Water Commercial Packaged Boilers	2012	2014
Small Oil-Fired Steam Commercial Packaged Boilers	2012	2014
Large Gas-Fired Hot Water Commercial Packaged Boilers	2012	2014
Large Gas-Fired Steam, All Except Natural Draft Commercial Packaged Boilers	2012 or 2022	2014
Large Gas-Fired Steam Natural Draft Commercial Packaged Boilers	2012	2014
Large Oil-Fired Hot Water Commercial Packaged Boilers	2012	2014

VI. Analytical Results

A. Efficiency Levels Analyzed

Table VI.1 presents the baseline efficiency level and the efficiency levels analyzed for each equipment class of commercial packaged boilers subject to today's proposed rule. The baseline efficiency levels correspond to the efficiency levels specified by ASHRAE Standard 90.1–2007. The efficiency levels above the baseline represent efficiency levels above those specified in ASHRAE Standard 90.1–2007 where equipment is currently available on the market.

TABLE VI.1—EFFICIENCY LEVELS ANALYZED

Equipment class	Representative capacity kBtu/h	Efficiency levels analyzed (percent)
Small gas-fired hot water	800	Baseline—80 E_T
		82 E_T
		84 E_T
		86 E_T
		Condensing—92 E_T
Small gas-fired steam all except natural draft	800	Baseline—79 E_T
		80 E_T
		81 E_T
		82 E_T
		83 E_T
Small gas-fired steam natural draft	800	Baseline—77 E_T
		78 E_T
		79 E_T
		80 E_T
Small oil-fired hot water	800	Baseline—82 E_T
		84 E_T
		86 E_T
		88 E_T
Small oil-fired steam	800	Baseline—81 E_T
		82 E_T
		83 E_T
		85 E_T
Large gas-fired hot water	3,000	Baseline—82 E_C
		83 E_C
		84 E_C
		85 E_C
		Condensing—95 E_C

[41] Since ASHRAE published ASHRAE Standard 90.1–2007 on January 10, 2008, EPCA requires that DOE publish a final rule adopting more-stringent standards than those in ASHRAE Standard 90.1–2007 within 30 months of ASHRAE action (*i.e.,* by July 2010). Thus, four years from July 2010 would be July 2014, which would be the anticipated effective date for DOE adoption of more-stringent standards.

TABLE VI.1—EFFICIENCY LEVELS ANALYZED—Continued

Equipment class	Representative capacity kBtu/h	Efficiency levels analyzed (percent)
Large gas-fired steam all except natural draft	3,000	Baseline—79 E_T 80 E_T 81 E_T 82 E_T 83 E_T
Large gas-fired steam natural draft	3,000	Baseline—77 E_T 78 E_T 79 E_T 80 E_T 81 E_T
Large oil-fired hot water	3,000	Baseline—84 E_C 86 E_C 87 E_C 88 E_C
Large oil-fired steam	3,000	Baseline—81 E_T 82 E_T 83 E_T 84 E_T 86 E_T

B. Economic Justification and Energy Savings

1. Economic Impacts on Commercial Customers

a. Life-Cycle Cost and Payback Period

To evaluate the economic impact of the efficiency levels on commercial customers, DOE conducted an LCC analysis for each efficiency level. More efficient commercial packaged boilers would affect these customers in two ways: (1) Annual operating expense would decrease; and (2) purchase price would increase. Inputs used for calculating the LCC include total installed costs (*i.e.*, equipment price plus installation costs), operating expenses (*i.e.*, annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs), equipment lifetime, and discount rates.

The output of the LCC model is a mean LCC savings for each equipment class, relative to the baseline commercial packaged boiler efficiency level. The LCC analysis also provides information on the percentage of customers that are negatively affected by an increase in the minimum efficiency standard.

DOE performed a PBP analysis as part of the LCC analysis. The PBP is the number of years it would take for the customer to recover the increased costs of higher-efficiency equipment as a result of energy savings based on the operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Chapter 5 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

DOE's LCC and PBP analyses provided five key outputs for each efficiency level above the baseline (*i.e.*, efficiency levels more stringent than those in ASHRAE Standard 90.1–2007), reported in Table VI.2 through Table VI.11. The first three outputs are the proportion of commercial boiler purchases where the purchase of a commercial packaged boiler that is compliant with the amended energy conservation standard creates a net LCC increase, no impact, or a net LCC savings for the customer. The fourth output is the average net LCC savings from standard-compliant equipment. The fifth output is the average PBP for the customer investment in standard-compliant equipment.

TABLE VI.2—SUMMARY LCC AND PBP RESULTS FOR SMALL GAS-FIRED HOT WATER BOILERS, 800 KBTU/H OUTPUT CAPACITY

Small gas-fired hot water	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_T)	82%	84%	86%	92%
Equipment with Net LCC Increase (%)	11	26	47	66
Equipment with No Change in LCC (%)	77	48	25	18
Equipment with Net LCC Savings (%)	12	27	28	17
Mean LCC Savings ($)	$860	$2,007	($319)	($6,649)
Mean PBP (years)	26.8	30.7	42.5	56.5
Increase in Total Installed Cost ($)	$3,754	$5,936	$9,486	$14,642

Note: Numbers in parentheses indicate negative LCC savings.

TABLE VI.3—SUMMARY LCC AND PBP RESULTS FOR SMALL GAS-FIRED STEAM ALL EXCEPT NATURAL DRAFT, 800 KBTU/H OUTPUT CAPACITY

Small gas-fired steam all except natural draft	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_T)	80%	81%	82%	83%
Equipment with Net LCC Increase (%)	30	60	73	75
Equipment with No Change in LCC (%)	64	19	10	7
Equipment with Net LCC Savings (%)	6	21	17	18
Mean LCC Savings ($)	($1,530)	($1,545)	($3,521)	($4,163)
Mean Payback Period (years)	44.1	42.8	51.2	50.7
Increase in Total Installed Cost ($)	$3,592	$5,350	$8,103	$10,109

Note: Numbers in parentheses indicate negative savings.

TABLE VI.4—SUMMARY LCC AND PBP RESULTS FOR SMALL GAS-FIRED STEAM NATURAL DRAFT BOILERS, 800 KBTU/H OUTPUT CAPACITY

Small gas-fired steam natural draft	Efficiency level		
	1	2	3
Thermal Efficiency (E_T)	78%	79%	80%
Equipment with Net LCC Increase (%)	49	39	51
Equipment with No Change in LCC (%)	32	22	3
Equipment with Net LCC Savings (%)	19	38	46
Mean LCC Savings ($)	($712)	$789	$1,103
Mean PBP (years)	33.5	26.6	28.9
Increase in Total Installed Cost ($)	$3,261	$4,321	$5,972

Note: Numbers in parentheses indicate negative savings.

TABLE VI.5—SUMMARY LCC AND PBP RESULTS FOR SMALL OIL-FIRED HOT WATER BOILERS, 800 KBTU/H OUTPUT CAPACITY

Small oil-fired hot water	Efficiency level		
	1	2	3
Thermal Efficiency (E_T)	84%	86%	88%
Equipment with Net LCC Increase (%)	20	25	37
Equipment with No Change in LCC (%)	39	27	7
Equipment with Net LCC Savings (%)	41	48	56
Mean LCC Savings ($)	$2,441	$5,376	$5,212
Mean PBP (years)	19.2	19.6	26.6
Increase in Total Installed Cost ($)	$3,897	$6,325	$10,185

TABLE VI.6—SUMMARY LCC AND PBP RESULTS FOR SMALL OIL-FIRED STEAM BOILERS, 800 KBTU/H OUTPUT CAPACITY

Small oil-fired hot water	Efficiency level		
	1	2	3
Thermal Efficiency (E_T)	82%	83%	85%
Equipment with Net LCC Increase (%)	29	46	54
Equipment with No Change in LCC (%)	58	24	6
Equipment with Net LCC Savings (%)	13	30	40
Mean LCC Savings ($)	($732)	$88	$864
Mean PBP (years)	35.1	33.7	35.0
Increase in Total Installed Cost ($)	$3,524	$5,142	$8,670

Note: Numbers in parentheses indicate negative savings.

TABLE VI.7—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED HOT WATER BOILERS, 3,000 KBTU/H OUTPUT CAPACITY

Large gas-fired hot water	Efficiency level			
	1	2	3	4
Combustion Efficiency (E_C)	83%	84%	85%	95%
Equipment with Net LCC Increase (%)	9	20	34	49
Equipment with No Change in LCC (%)	51	23	17	6

TABLE VI.7—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED HOT WATER BOILERS, 3,000 KBTU/H OUTPUT CAPACITY—Continued

Large gas-fired hot water	Efficiency level			
	1	2	3	4
Equipment with Net LCC Savings (%)	40	58	49	46
Mean LCC Savings ($)	$5,254	$9,421	$8,678	$7,637
Mean PBP (years)	16.0	19.3	27.8	37.1
Increase in Total Installed Cost ($)	$4,489	$8,172	$14,043	$37,821

TABLE VI.8—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED STEAM, ALL EXCEPT NATURAL DRAFT BOILERS, 3,000 KBTU/H OUTPUT CAPACITY

Large gas-fired steam all except natural draft	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_T)	80%	81%	82%	83%
Equipment with Net LCC Increase (%)	6	5	4	4
Equipment with No Change in LCC (%)	61	26	23	20
Equipment with Net LCC Savings (%)	33	69	73	77
Mean LCC Savings ($)	$6,711	$16,291	$25,415	$34,087
Mean Payback Period (years)	12.5	9.1	8.1	7.7
Increase in Total Installed Cost ($)	$4,364	$6,048	$7,824	$9,697

TABLE VI.9—SUMMARY LCC AND PBP RESULTS FOR LARGE GAS-FIRED STEAM NATURAL DRAFT BOILERS, 3,000 KBTU/H OUTPUT CAPACITY

Large gas-fired steam natural draft	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_T)	78%	79%	80%	81%
Equipment with Net LCC Increase (%)	1	3	6	10
Equipment with No Change in LCC (%)	88	42	24	7
Equipment with Net LCC Savings (%)	11	55	71	82
Mean LCC Savings ($)	$8,339	$17,917	$25,371	$30,669
Mean Payback Period (years)	9.8	8.2	9.1	10.8
Increase in Total Installed Cost ($)	$3,800	$5,893	$9,073	$13,367

TABLE VI.10—SUMMARY LCC AND PBP RESULTS FOR LARGE OIL-FIRED HOT WATER BOILERS, 3,000 KBTU/H OUTPUT CAPACITY

Large oil-fired hot water	Efficiency level		
	1	2	3
Combustion Efficiency (E_C)	86%	87%	88%
Equipment with Net LCC Increase (%)	5	11	15
Equipment with No Change in LCC (%)	52	24	24
Equipment with Net LCC Savings (%)	43	65	61
Mean LCC Savings ($)	$18,874	$23,498	$27,342
Mean PBP (years)	9.3	12.9	15.4
Increase in Total Installed Cost ($)	$7,063	$12,536	$18,256

TABLE VI.11—SUMMARY LCC AND PBP RESULTS FOR LARGE OIL-FIRED STEAM BOILERS, 3,000 KBTU/H OUTPUT CAPACITY

Large oil-fired steam	Efficiency level			
	1	2	3	4
Thermal Efficiency (E_T)	82%	83%	84%	86%
Equipment with Net LCC Increase (%)	4	7	11	12
Equipment with No Change in LCC (%)	66	41	16	11
Equipment with Net LCC Savings (%)	30	53	73	77
Mean LCC Savings ($)	$9,613	$19,472	$26,117	$40,322
Mean Payback Period (years)	9.7	9.3	11.2	12.3
Increase in Total Installed Cost ($)	$4,280	$7,392	$12,189	$20,635

2. National Impact Analysis

a. Amount and Significance of Energy Savings

To estimate the energy savings through 2042 due to amended energy conservation standards, DOE compared the energy consumption of commercial boilers under the base case (*i.e.*, the ASHRAE 90.1–2007 efficiency levels) to energy consumption of boilers under higher efficiency standards. DOE examined up to four efficiency levels higher than those of ASHRAE Standard 90.1–2007. The amount of energy savings depends not only on the potential increase in energy efficiency due to a standard, but also on the rate at which the stock of existing, less-efficient commercial boilers will be replaced over time after implementation of the amended energy conservation standard. Table VI.12 shows the forecasted national energy savings at each of the standard levels. DOE reports both undiscounted and discounted estimates of energy savings. Table VI.13 and Table VI.14 show the magnitude of the energy savings if they are discounted at rates of 7 percent and 3 percent, respectively. Each standard level considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards. (See chapter 7 of the NOPR TSD.)

TABLE VI.12—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042, UNDISCOUNTED)

Equipment class	National energy savings (quads)*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	0.022	0.072	0.140	0.212
Small gas-fired steam, all except natural draft	(0.000)	0.014	0.030	0.045
Small gas-fired steam natural draft	(0.006)	0.016	0.042	.....
Small oil-fired hot water	0.015	0.034	0.057	.....
Small oil-fired steam	0.009	0.027	0.068	.....
Large gas-fired hot water	0.014	0.037	0.061	0.176
Large gas-fired steam, all except natural draft	0.022	0.063	0.105	0.148
Large gas-fired, steam natural draft	(0.022)	0.002	0.032	0.067
Large oil-fired hot water	0.014	0.024	0.034	.....
Large oil-fired steam	0.039	0.106	0.198	0.410

*Numbers in parentheses indicate negative potential energy savings due to the delayed implementation of more-stringent efficiency levels compared to the efficiency levels specified in ASHRAE Standard 90.1–2007.

TABLE VI.13—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042, DISCOUNTED AT SEVEN PERCENT)

Equipment class	National energy savings (quads)*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	0.004	0.015	0.029	0.043
Small gas-fired steam, all except natural draft	(0.000)	0.003	0.006	0.009
Small gas-fired steam natural draft	(0.000)	0.004	0.009	.....
Small oil-fired hot water	0.003	0.007	0.012	.....
Small oil-fired steam	0.002	0.005	0.014	.....
Large gas-fired hot water	0.003	0.008	0.012	0.036
Large gas-fired steam, all except natural draft	0.004	0.013	0.021	0.030
Large gas-fired, steam natural draft	(0.003)	0.002	0.008	0.015
Large oil-fired hot water	0.003	0.005	0.007	.....
Large oil-fired steam	0.008	0.022	0.041	0.084

*Numbers in parentheses indicate negative potential energy savings due to the delayed implementation of more-stringent efficiency levels compared to the efficiency levels specified in ASHRAE Standard 90.1–2007.

TABLE VI.14—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042, DISCOUNTED AT THREE PERCENT)

Equipment class	National energy savings (quads)*			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	0.010	0.035	0.068	0.103
Small gas-fired steam, all except natural draft	(0.000)	0.007	0.014	0.022
Small gas-fired, steam natural draft	(0.002)	0.008	0.021	.....
Small oil-fired hot water	0.007	0.016	0.027	.....
Small oil-fired steam	0.004	0.013	0.033	.....
Large gas-fired hot water	0.007	0.018	0.030	0.085
Large gas-fired steam, all except natural draft	0.010	0.031	0.051	0.072
Large gas-fired steam, natural draft	(0.009)	0.002	0.017	0.034
Large oil-fired hot water	0.007	0.012	0.016	.....

TABLE VI.14—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL BOILERS (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042, DISCOUNTED AT THREE PERCENT)—Continued

Equipment class	National energy savings (quads) *			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Large oil-fired steam	0.019	0.051	0.096	0.199

* Numbers in parentheses indicate negative potential energy savings due to the delayed implementation of more-stringent efficiency levels compared to the efficiency levels specified in ASHRAE Standard 90.1–2007.

b. Net Present Value

The NPV analysis is a measure of the cumulative benefit or cost of standards to the Nation. In accordance with OMB's guidelines on regulatory analysis (OMB Circular A–4, section E (Sept. 17, 2003)), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE also used the 3-percent rate to capture the potential effects of standards on private customers' consumption (*e.g.*, reduced purchasing of equipment due to higher prices for equipment and purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*e.g.*, yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years. Table VI.15 and Table VI.16 provide an overview of the NPV results. (See chapter 7 of the NOPR TSD.)

TABLE VI.15—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR BOILERS

[Discounted at seven percent]

Equipment class	Net present value (billion 2008)			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	($0.014)	($0.010)	($0.166)	($0.543)
Small gas-fired steam, all except natural draft	($0.038)	($0.041)	($0.081)	($0.114)
Small gas-fired, steam natural draft	($0.037)	($0.016)	($0.028)	.....
Small oil-fired hot water	($0.008)	($0.000)	($0.041)	.....
Small oil-fired steam	($0.031)	($0.040)	($0.085)	.....
Large gas-fired hot water	$0.011	$0.028	$0.003	($0.093)
Large gas-fired steam, all except natural draft	$0.027	$0.127	$0.226	$0.322
Large gas-fired steam, natural draft	($0.054)	($0.021)	($0.013)	($0.045)
Large oil-fired hot water	$0.042	$0.071	$0.063	.....
Large oil-fired steam	$0.062	$0.184	$0.248	$0.504

* Numbers in parentheses indicate negative NPV.

TABLE VI.16—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR BOILERS

[Discounted at three percent]

Equipment class	Net present value (billion 2008$)			
	Efficiency level 1	Efficiency level 2	Efficiency level 3	Efficiency level 4
Small gas-fired hot water	$0.077	$0.274	$0.146	($0.510)
Small gas-fired steam, all except natural draft	(0.076)	(0.014)	(0.034)	(0.050)
Small gas-fired steam, natural draft	(0.100)	0.041	0.125	.....
Small oil-fired hot water	0.053	0.137	0.121	.....
Small oil-fired steam	(0.023)	0.014	0.049	.....
Large gas-fired hot water	0.093	0.222	0.259	0.483
Large gas-fired steam, all except natural draft	0.166	0.576	0.984	1.391
Large gas-fired steam, natural draft	(0.257)	(0.081)	0.077	0.174
Large oil-fired hot water	0.146	0.243	0.262	.....
Large oil-fired steam	0.302	0.830	1.328	2.702

* Numbers in parentheses indicate negative NPV.

C. Proposed Standards for Commercial Packaged Boilers

EPCA specifies that, for any commercial and industrial equipment addressed in section 342(a)(6)(A)(i) of EPCA, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE/IESNA Standard 90.1, as amended, only if ''clear and convincing evidence'' shows that a more-stringent standard ''would result in significant additional conservation of energy and is technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In evaluating more-stringent efficiency levels for commercial packaged boilers than those specified by ASHRAE Standard 90.1–2007, DOE reviewed the results in terms of their technological feasibility, economic justification, and significance of energy savings.

DOE first examined the potential energy savings that would result from the efficiency levels specified in ASHRAE Standard 90.1–2007 and compared that to the potential energy savings that would result from proposing efficiency levels more stringent than those in ASHRAE Standard 90.1–2007 as Federal energy conservation standards. All of the efficiency levels examined by DOE resulted in cumulative energy savings, including the efficiency levels in ASHRAE Standard 90.1–2007. DOE estimates that a total of 0.10 quads of energy will be saved if DOE adopts the efficiency levels for each commercial boiler equipment class specified in ASHRAE Standard 90.1–2007. If DOE were to propose efficiency levels more stringent than those specified by ASHRAE Standard 90.1–2007 as Federal minimum standards, the potential additional energy savings ranges from 0.14 quads to 1.26 quads. Associated with proposing more-stringent efficiency levels is a two-year delay in implementation compared to the adoption of energy conservation standards at the level specified in ASHRAE Standard 90.1–2007 (see section V.H.1). This two-year delay in implementation of amended energy conservation standards would result in a small amount of energy savings being lost in the first two years (2012 and 2013) compared to the savings from adopting the levels in ASHRAE Standard 90.1–2007; however, this energy savings may be compensated for by increased savings from higher standards in later years.

In addition to energy savings, DOE also examined the economic justification of proposing efficiency levels more stringent than those specified in ASHRAE Standard 90.1–2007. As shown in section VI.B.1.a, higher efficiency levels result in a positive mean LCC savings for some commercial packaged boiler equipment classes. For example, in the largest commercial packaged boiler equipment class (*i.e.*, small, gas-fired hot water boilers), the mean LCC savings ranges from $860 to a mean LCC cost of $6,649 for efficiency level 1 through efficiency level 4. The total installed cost increases from $3,754 to $14,642 for efficiency level 1 through efficiency level 4 when compared to the baseline. Overall, there would be a wide range of commercial customer LCC impacts based on climate, hydronic system operating temperature, and installation costs, which might place a significant burden on some commercial customers.

In general, there is a large range in the total installed cost of different types of commercial boiler equipment, leading to a high variance and uncertainty in the economic analyses. Many factors affect the cost of a commercial boiler, including the type of commercial packaged boilers, the material of the heat exchanger being used, and the overall design. In addition, the installation costs of boilers vary greatly depending on the efficiency, the location of the boiler, and the venting system. In more-efficient boilers, the flue must be made out of corrosion resistant materials to prevent the possibility of corrosion caused due to condensing flue gases. Because the mean LCC savings can be considered small in comparison to the total installed cost of the equipment, a relatively minor change in the differential installed cost estimate could negate the mean LCC savings realized by proposing more-stringent efficiency levels as Federal minimum standards for commercial packaged boilers.

After examining the potential energy savings and the economic justification of proposing efficiency levels more stringent than those specified in ASHRAE Standard 90.1–2007, DOE believes there are several other factors it should consider before proposing amended energy conservation standards for commercial packaged boilers.

First, DOE reexamined the certainty in its analysis of commercial packaged boilers. As noted in section IV.C.4.a, due to current test procedure requirements, not all manufacturers test for the thermal efficiency of their commercial boiler models, nor do they all report it to the I=B=R Directory or in manufacturers' catalogs. Some manufacturers simply do not report thermal efficiency, and of those manufacturers that do report thermal efficiency, some may estimate the thermal efficiency ratings of their equipment, rather than actually test for the thermal efficiency of their equipment. DOE has no way to determine which thermal efficiency ratings are the result of estimation and which are the result of actual testing. Further, in the case of manufacturers that do test for thermal efficiency, variances in testing facilities and equipment can lead to inconsistent results in the thermal efficiency testing among the manufacturers. The combination of these factors leads to concerns about the viability of using the data from the I=B=R Directory and manufacturers' catalogs as the source for thermal efficiency ratings for the basis of this analysis. Such concerns are heightened the further one moves away from the consensus efficiency levels in ASHRAE Standard 90.1–2007 in the context of this standard-setting rulemaking.

Because ASHRAE Standard 90.1–2007 has switched to a thermal efficiency metric for certain commercial packaged boiler equipment classes, a one-time conversion in the DOE efficiency metric will be required at some point. The transition to a thermal efficiency metric will require manufacturers to test for and report thermal efficiency for 8 out of 10 commercial boiler equipment classes. This would mitigate the problem of uncertainty in the thermal efficiency ratings for those equipment classes, allowing DOE to be able to make more definitive comparisons with future versions of ASHRAE Standard 90.1. DOE believes that an earlier transition to a rated thermal efficiency across the industry will provide additional, near-term benefits covering the entire industry that are not captured in the DOE analysis presented. These benefits may include more rapid exposure of purchasers to the rated thermal efficiency of competing products, which lays the groundwork for assessing the benefits of one boiler against another in the marketplace and will create greater competition among manufacturers to provide customers with additional purchasing choices. DOE has no information with which to calculate this benefit.

Second, DOE notes the efficiency levels in ASHRAE Standard 90.1–2007 are part of a consensus agreement between the trade association representing the manufacturers and several energy-efficiency advocacy groups. DOE strongly encourages stakeholders to work together to propose agreements to DOE. When DOE receives

a consensus agreement, DOE takes careful consideration to review the agreement resulting from groups that commonly have conflicting goals. DOE also points out that the Joint Letter submitted by AHRI, ACEEE, ASAP, ASE, and NRDC strongly urged DOE to adopt as Federal minimum energy conservation standards the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers. (The Joint Letter, No. 5 at p. 1) DOE believes this negotiated agreement was made in good faith, and DOE is hesitant to second guess the outcome based on a limited analysis with many uncertainties. In light of those considerations, DOE is presenting the results for all the efficiency levels analyzed for commercial packaged boilers for stakeholder feedback.

Third, DOE has not assessed any likely change in the efficiencies of models currently on the boiler market in the absence of setting more-stringent standards. DOE recognizes that manufacturers would continue to make future improvements in the boiler efficiencies even in the absence of mandated energy conservation standards. Such ongoing technological developments could have a disproportionately larger impact on the analytical results for the more-stringent efficiency levels analyzed in terms of reduced energy benefits as compared to the ASHRAE Standard 90.1–2007 efficiency level scenario. When manufacturers introduce a new product line, they typically introduce higher-efficiency models, while maintaining their baseline product offering (*i.e.*, equipment at the ASHRAE Standard 90.1–2007 efficiency levels). Any introduction of higher-efficiency equipment and subsequent purchase by commercial customers, which usually buy higher-efficiency equipment, could reduce the energy savings benefits of more-stringent efficiency levels.

Fourth, DOE believes there could be a possible difference in life expectancy between the commercial packaged boilers at the ASHRAE Standard 90.1–2007 efficiency levels and those at more-stringent efficiency levels, including condensing boilers. DOE did not have any information to quantify these differences and is seeking comments from interested parties regarding these potential differences in expected lifetime.

Finally, DOE also recognizes that commercial packaged boilers are one component in a hydronic system. Unlike most of the other residential appliances and commercial equipment for which DOE mandates energy conservation standards, the design and operation of that hydronic system (*i.e.*, the hot-water distribution system) can result in significant variances in the annual field efficiencies of the commercial packaged boilers compared to the rated efficiency levels of these units. DOE recognizes that as a result, a critical piece of information needed to ensure that the benefits of high nominal efficiency commercial packaged boilers are actually achieved in the field is not captured in the DOE analysis.

After weighing the benefits and burdens of proposing the ASHRAE Standard 90.1–2007 efficiency levels as Federal standards for commercial packaged boilers as compared to those for proposing more-stringent efficiency levels, DOE has tentatively concluded to propose the efficiency levels in ASHRAE 90.1–2007 as amended energy conservation standards for all ten commercial packaged boilers equipment classes. DOE must have ''clear and convincing'' evidence in order to propose efficiency levels more stringent than those specified in ASHRAE 90.1–2007, and for the reasons explained in this notice, the totality of information does not meet the level necessary to support these more-stringent efficiency levels. Given the relatively small mean LCC savings (in comparison to the total installed cost), even a slight alteration in DOE's installation estimates could result in the potential for negative mean LCC savings. In addition, the uncertainty of the thermal efficiency values reported may have resulted in the overstatement or understatement of the efficiency of some equipment, leading to even greater uncertainty in the economic benefits of more-stringent standards.

DOE recognizes that the thermal efficiency metric is superior to the combustion efficiency metric because thermal efficiency is a more complete measure of boiler efficiency than the combustion efficiency metric (thermal efficiency accounts for jacket losses and combustion efficiency does not). DOE believes that once commercial packaged boilers are transitioned from the combustion efficiency metric to the thermal efficiency metric, the thermal efficiency ratings of certified equipment will be more accurate and consistent. The efficiency levels in ASHRAE Standard 90.1–2007 are an acceptable foundation that will allow the commercial boiler industry to begin the transition from using combustion efficiency to a thermal efficiency metric. DOE also takes into account the consensus nature of the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers.

Therefore, based on the discussion above, DOE has tentatively concluded that the efficiency levels beyond those in ASHRAE Standard 90.1–2007 for commercial packaged boilers are not economically justified and is proposing as Federal minimum standards the efficiency levels in ASHRAE Standard 90.1–2007 for all ten equipment classes of commercial packaged boilers. DOE seeks comments from interested parties on its proposed amended energy conservation standards for commercial packaged boilers as well as the other efficiency levels considered. Although DOE currently believes that it would be appropriate to adopt the efficiency levels in ASHRAE Standard 90.1–2007 for commercial packaged boilers, DOE would consider the possibility of setting standards at more-stringent efficiency levels if public comments and additional data supply clear and convincing evidence in support of such an approach. Table VI.17 shows the proposed energy conservation standards for commercial packaged boilers.

TABLE VI.17—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS

Equipment type	Subcategory	Size category (input)	Efficiency level *	
			Effective date: March 2, 2012	Effective date: March 2, 2022
Hot Water Commercial Packaged Boilers.	Gas-fired	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	80% E_T	80% E_T
Hot Water Commercial Packaged Boilers.	Gas-fired	> 2,500,000 Btu/h	82% E_C	82% E_C
Hot Water Commercial Packaged Boilers.	Oil-fired	≥300,000 Btu/h and ≤ 2,500,000 Btu/h.	82% E_T	82% E_T

TABLE VI.17—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL PACKAGED BOILERS—Continued

Equipment type	Subcategory	Size category (input)	Efficiency level *	
			Effective date: March 2, 2012	Effective date: March 2, 2022
Hot Water Commercial Packaged Boilers.	Oil-fired	> 2,500,000 Btu/h	84% E_C	84% E_C
Steam Commercial Packaged Boilers.	Gas-fired—all, except natural draft	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	79% E_T	79% E_T
Steam Commercial Packaged Boilers.	Gas-fired—all, except natural draft	> 2,500,000 Btu/h	79% E_T	79% E_T
Steam Commercial Packaged Boilers.	Gas-fired—natural draft	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	77% E_T	79% E_T
Steam Commercial Packaged Boilers.	Gas-fired—natural draft	> 2,500,000 Btu/h	77% E_T	79% E_T
Steam Commercial Packaged Boilers.	Oil-fired	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	81% E_T	81% E_T
Steam Commercial Packaged Boilers.	Oil-fired	> 2,500,000 Btu/h	81% E_T	81% E_T

* E_T is the thermal efficiency and E_C is the combustion efficiency.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's proposed rule has been determined not to be a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.

B. Review Under the National Environmental Policy Act

DOE plans to prepare an environmental assessment (EA) of the impacts of the proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). This assessment would include a concise examination of the impacts of emission reductions likely to result from the rule. Most of these impacts are likely to be positive. The EA will be incorporated into the final rule TSD. DOE requests that interested members of the public, Tribes, and States submit any relevant data or other information for DOE to consider when preparing the EA.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov*.

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. 68 FR 7990. As part of this rulemaking, DOE examined the existing compliance costs manufacturers already bear and compared them to the revised compliance costs, based on the proposed revisions to the test procedure. Since DOE is proposing to adopt the efficiency levels in ASHRAE Standard 90.1–2007, which are part of the prevailing industry standard and were a result of a consensus agreement, DOE believes that commercial packaged boiler manufacturers are already producing equipment at these efficiency levels. For water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h, DOE believes the efficiency levels being proposed in today's NOPR are also part of the prevailing industry standard and that manufacturers would experience no impacts, because no such equipment is currently manufactured. Furthermore, DOE believes the industry standard was developed through a process which would attempt to mitigate the impacts on manufacturers, including any small commercial packaged boiler manufacturers, while increasing the efficiency of this equipment. In addition, DOE does not find that the costs imposed by the revisions proposed to the test procedure for commercial packaged boilers in this document would result in any significant increase in testing or compliance costs. DOE requests public comment on the impact of this proposed rule on small entities.

For the reasons stated above, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Therefore, DOE did not prepare an initial regulatory flexibility analysis for the proposed rule. DOE transmitted its certification and a supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), a person is not required to respond to a collection of information by a Federal agency, including a requirement to maintain records, unless the collection displays a valid OMB control number. (44 U.S.C. 3506(c)(1)(B)(iii)(V)) This NOPR would not impose any new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the PRA.

E. Review Under the Unfunded Mandates Reform Act of 1995

DOE reviewed this regulatory action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), which requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement assessing the resulting costs, benefits, and other effects of the rule on the national economy (2 U.S.C. 1532(a) and (b)). Section 204 of UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' (2 U.S.C. 1534) Section 203 of UMRA requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments that may be affected before establishing any requirements that might significantly or uniquely affect small governments. (2 U.S.C. 1533) On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at: *http://www.gc.doe.gov*).

Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no assessment or analysis is required under UMRA.

F. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, as set forth in EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D)) No further action is required by Executive Order 13132.

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729 (Feb. 7, 1996)) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and, therefore, is not a significant energy action. Furthermore, this regulatory action has not been designated as a significant energy action

by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). 15 U.S.C. 788. Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the FTC concerning the impact of the commercial or industry standards on competition.

The amendments and revisions to the test procedure for commercial packaged boilers proposed in this notice incorporate updates to commercial standards already codified in the CFR. DOE has evaluated these revised standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition before prescribing a final rule.

M. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB in consultation with the Office of Science and Technology Policy (OSTP), issued its ''Final Information Quality Bulletin for Peer Review'' (Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemakings analyses are ''influential scientific information.'' The Bulletin defines ''influential scientific information'' as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667 (Jan. 14, 2005).

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and analyses, and then prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation process using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

VIII. Public Participation

A. Attendance at Public Meeting

DOE will hold a public meeting on April 7, 2009, from 9 a.m. to 4 p.m. in Washington, DC. The meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent e-mail to: *Brenda.Edwards@ee.doe.gov*.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons scheduled to make a presentation submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the

public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Forrestal Building, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this notice of proposed rulemaking. Information submitted should be identified by docket number EERE–2008–BT–STD–0013 and/or RIN 1904–AB83. Please submit comments, data, and information electronically, to the following e-mail address: *ASHRAE_90.1_rulemaking@ee.doe.gov*. Stakeholders should submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption, and whenever possible carry the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed paper original. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, DOE requires any person submitting information that he or she believes to be confidential and exempt by law from public disclosure to submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE's proposed definitions for ''thermal efficiency'' and ''combustion efficiency'' for commercial packaged boilers.

2. The efficiency of dual output boilers in both steam mode and water mode. Specifically, DOE is interested in receiving data or comments, which would allow DOE to convert the steam ratings in the I=B=R Directory and manufacturers' catalogs to hot water ratings.

3. DOE's assumption of fixed installation cost for each equipment class independent of equipment efficiency. DOE seeks data or comment on how installation costs could potentially increase with higher-efficiency commercial boilers due primarily to venting concerns.

4. The potential for a rebound effect to occur in the commercial packaged boiler industry.

5. DOE's assumption and the potential significance of any overestimation of savings. In particular, DOE requests data that would allow it to better characterize the likely increases in packaged boiler efficiencies that would occur over the 30-year analysis period absent amended energy conservation standards.

6. The NES-forecasted base-case distribution of efficiencies and DOE's prediction of how amended energy conservation standards affect the distribution of efficiencies in the standards case.

IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's Notice of Proposed Rulemaking.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on March 10, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend Chapter II of Title 10, Code of Federal Regulations, Part 431 to read as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. In § 431.82, revise the definition ''combustion efficiency'' and add the definition ''thermal efficiency,'' in alphabetical order to read as follows:

§ 431.82 Definitions concerning commercial packaged boilers.

* * * * *

Combustion Efficiency for a commercial packaged boiler is determined using test procedures prescribed under § 431.86 and equals to 100 percent minus percent flue loss (percent flue loss is based on input fuel energy).

* * * * *

Thermal Efficiency for a commercial packaged boiler is determined using test procedures prescribed under § 431.86 and is the ratio of the heat absorbed by the water or the water and steam to the higher heating value in the fuel burned.

3. Revise § 431.85 to read as follows:

§ 431.85 Materials incorporated by reference.

(a) *General.* We incorporate by reference the following standards into Subpart E of Part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, this material is

available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, 202–586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/*. Standards can be obtained from the sources listed below. (b) *HI.* Hydronics Institute Division of GAMA, P.O. Box 218, Berkeley Heights, NJ 07922, or *http://www.gamanet.org/publist/hydroordr.htm*.

(1) HI BTS–2000 (Rev06.07), *Method to Determine Efficiency of Commercial Space Heating Boilers*, June 2007, IBR approved for § 431.86.

(2) [Reserved]

4. Revise § 431.86 to read as follows:

§ 431.86 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.

(a) *Scope.* This section provides test procedures that must be followed for measuring, pursuant to EPCA, the steady state combustion efficiency and thermal efficiency of a gas-fired or oil-fired commercial packaged boiler. These test procedures apply to packaged low pressure boilers that have rated input capacities of 300,000 Btu/hr or more and are ''commercial packaged boilers,'' but do not apply under EPCA to ''packaged high pressure boilers.''

(b) *Definitions.* For purposes of this section, the Department incorporates by reference the definitions specified in Section 3.0 of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85), with the exception of the definition for the terms ''packaged boiler,'' ''condensing boilers,'' and ''packaged low pressure steam'' and ''hot water boiler.''

(c) *Test Method for Commercial Packaged Boilers—General.* Follow the provisions in this paragraph (c) for all testing of packaged low pressure boilers that are commercial packaged boilers.

(1) *Test Setup*—(i) *Classifications.* If employing boiler classification, you must classify boilers as given in Section 4.0 of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85).

(ii) *Requirements.* (A) Before March 2, 2012, conduct the combustion efficiency test as given in Section 5.2 (Combustion Efficiency Test) of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85) for all commercial packaged boiler equipment classes.

(B) On or after March 2, 2012, conduct the thermal efficiency test as given in Section 5.1 (Thermal Efficiency Test) of the HI BTS–2000 (Rev06.07) for the following commercial packaged boiler equipment classes: small, gas, hot water; small, gas, steam, all except natural draft; small, gas, steam, natural draft; small, oil, hot water; small, oil, steam; large, gas, steam, all except natural draft; large, gas, steam, natural draft; and large, oil, steam. On or after March 2, 2012, conduct the combustion efficiency test as given in Section 5.2 (Combustion Efficiency Test) of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85) for the following commercial packaged boiler equipment classes: large, gas-fired, hot water and large, oil-fired, hot water.

(iii) *Instruments and Apparatus.* (A) Follow the requirements for instruments and apparatus in sections 6 (Instruments) and 7 (Apparatus), of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85), with the exception of section 7.2.5 (flue connection for outdoor boilers) which is replaced with paragraph (c)(1)(iii)(B) of this section.

(B) *Flue Connection for Outdoor Boilers.* For oil-fired and power gas outdoor boilers, the integral venting means may have to be revised to permit connecting the test flue apparatus described in section 7.2.1 of HI BTS–2000 (Rev06.07). A gas-fired boiler for outdoor installation with a venting system provided as part of the boiler must be tested with the venting system in place.

(iv) *Test Conditions.* Use test conditions from Section 8.0 (excluding 8.6.2) of HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85) for combustion efficiency testing. Use all of the test conditions from Section 8.0 of HI BTS–2000 (Rev06.07) for thermal efficiency testing.

(2) *Test Measurements*—(i) *Non-Condensing Boilers.* (A) *Combustion Efficiency.* Measure for combustion efficiency according to sections 9.1 (excluding sections 9.1.1.2.3 and 9.1.2.2.3), 9.2 and 10.2 of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85).

(B) *Thermal Efficiency.* Measure for thermal efficiency according to sections 9.1 and 10.1 of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85).

(ii) *Procedure for the Measurement of Condensate for a Condensing Boiler.* For the combustion efficiency test, collect flue condensate as specified in Section 9.2.2 of HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85). Measure the condensate from the flue gas under steady state operation for the 30 minute collection period during the 30 minute steady state combustion efficiency test. Flue condensate mass shall be measured immediately at the end of the 30 minute collection period to prevent evaporation loss from the sample. The humidity of the room shall at no time exceed 80 percent. Determine the mass of flue condensate for the steady state period by subtracting the tare container weight from the total container and flue condensate weight measured at the end of the test period. For the thermal efficiency test, collect and measure the condensate from the flue gas as specified in Section 9.1.1 and 9.1.2 of HI BTS–2000 (Rev06.07).

(iii) *A Boiler That is Capable of Supplying Either Steam or Hot Water*—(A) *Testing.* For purposes of EPCA, before March 2, 2012, measure the combustion efficiency of any size commercial packaged boiler capable of supplying either steam or hot water either by testing the boiler in the steam mode or by testing it in both the steam and hot water modes. On or after March 2, 2012, measure the combustion efficiency and thermal efficiency of a large (fuel input greater than 2500 kBtu/h) commercial packaged boiler capable of supplying either steam or hot water either by testing the boiler for both efficiencies in steam mode, or by testing the boiler in both steam and hot water modes measuring the thermal efficiency of the boiler in steam mode and the combustion efficiency of the boiler in hot water mode. Measure only the thermal efficiency of a small (fuel input of greater than or equal to 300 kBtu/h and less than or equal to 2500 kBtu/h) commercial packaged boiler capable of supplying either steam or hot water either by testing the boiler for thermal efficiency only in steam mode or by testing the boiler for thermal efficiency in both steam and hot water modes.

(B) *Rating.* If testing a large boiler only in the steam mode, use the efficiencies determined from such testing to rate the thermal efficiency for the steam mode and the combustion efficiency for the hot water mode. If testing a large boiler in both modes, rate the boiler's efficiency for each mode based on the testing in that mode. If testing a small boiler only in the steam mode, use the efficiencies determined from such testing to rate the thermal efficiency for the steam mode and the hot water mode. If testing a small boiler in both modes, rate the boiler's efficiency for each mode based on the testing in that mode.

(3) *Calculation of Efficiency.* (i) *Combustion Efficiency.* Use the calculation procedure for the combustion efficiency test specified in Section 11.2 (including the specified subsections of 11.1) of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85).

(ii) *Thermal Efficiency*. Use the calculation procedure for the thermal efficiency test specified in Section 11.1 of the HI BTS–2000 (Rev06.07) (incorporated by reference, see § 431.85).

5. Revise § 431.87 to read as follows:

§ 431.87 Energy conservation standards and their effective dates.

(a) Each commercial packaged boiler manufactured on or after January 1, 1994, and before March 2, 2012, must meet the following energy efficiency standard levels.

(1) For a gas-fired packaged boiler with a capacity (rated maximum input) of 300,000 Btu/hr or more, the combustion efficiency at the maximum rated capacity must be not less than 80 percent.

(2) For an oil-fired packaged boiler with a capacity (rated maximum input) of 300,000 Btu/hr or more, the combustion efficiency at the maximum rated capacity must be not less than 83 percent.

(b) Each commercial packaged boiler manufactured on or after the effective date listed in Table 1 to § 431.87, must meet the applicable energy conservation standard in Table 1.

TABLE 1 TO § 431.87—COMMERCIAL PACKAGED BOILER ENERGY EFFICIENCY LEVELS

Equipment type	Subcategory	Size category (input)	Efficiency level	
			Effective date: March 2, 2012*	Effective date: March 2, 2022*
Hot Water Commercial Packaged Boilers.	Gas-fired	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	80.0% E_T	80.0% E_T
Hot Water Commercial Packaged Boilers.	Gas-fired	> 2,500,000 Btu/h	82.0% E_C	82.0% E_C
Hot Water Commercial Packaged Boilers.	Oil-fired	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	82.0% E_T	82.0% E_T
Hot Water Commercial Packaged Boilers.	Oil-fired	> 2,500,000 Btu/h	84.0% E_C	84.0% E_C
Steam Commercial Packaged Boilers.	Gas-fired—all, except natural draft	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	79.0% E_T	79.0% E_T
Steam Commercial Packaged Boilers.	Gas-fired—all, except natural draft	> 2,500,000 Btu/h	79.0% E_T	79.0% E_T
Steam Commercial Packaged Boilers.	Gas-fired—natural draft	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	77.0% E_T	79.0% E_T
Steam Commercial Packaged Boilers.	Gas-fired—natural draft	> 2,500,000 Btu/h	77.0% E_T	79.0% E_T
Steam Commercial Packaged Boilers.	Oil-fired	≥ 300,000 Btu/h and ≤ 2,500,000 Btu/h.	81.0% E_T	81.0% E_T
Steam Commercial Packaged Boilers.	Oil-fired	> 2,500,000 Btu/h	81.0% E_T	81.0% E_T

* Where E_C is combustion efficiency and E_T is thermal efficiency as defined in § 431.82.

6. In § 431.97, add paragraph (d) to read as follows:

§ 431.97 Energy conservation standards and their effective dates.

* * * * *

(d) Each water-cooled and evaporatively-cooled commercial package air conditioning and heating equipment with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h manufactured on or after January 10, 2011, shall meet the following standard levels:

(1) For equipment that utilizes electric resistance heat or without heating, the energy efficiency ratio must be not less than 11.0.

(2) For equipment that utilizes all other types of heating, the energy efficiency ratio must be not less than 10.8.

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